Committee on Finance, Public Expenditure and Reform

Discussion on the EU Commission's proposals to reform the European System of Financial Supervision – 28 November 2017

OPENING STATEMENT by Mr Oliver Gilvarry, Principal Officer, Department of Finance

Opening Statement

A Cathaoirleach, I wish firstly to thank the Committee for the invitation to discuss the Commission's legislative proposals to reform the European System of Financial Supervision otherwise known as the ESFS Review.

I am accompanied today by Ms Iqra Zainul Abedin, Mr Alex Costello and Mr Shane McNamee from the Department of Finance and also by colleagues from the Central Bank of Ireland, Mr Gerry Cross, Ms Grainne McEvoy and Ms Martina Kelly.

Introduction

Let me begin by reminding the Committee of where we have come from in terms of the European model. The European System of Financial Supervision (ESFS) was introduced in 2011 to strengthen the European supervision frameworks. This system includes the ESRB, the three European Supervisory Authorities (the EBA, ESMA and EIOPA), and national supervisors.

Earlier this year, the Commission published a consultation paper on the framework. Member States, including Ireland, submitted views with many signalling that at this point, targeted amendments to the framework was the preferred approach, rather than a more fundamental change with additional new roles for the various supervisory bodies.

Following that consultation, the Commission is now proposing legislative measures to amend the ESFS with the stated aim of strengthening the EU's integrated supervision framework in order to promote the Capital Markets Union, market integration and financial stability, and to respond to new challenges which the EU is facing following the decision of the United Kingdom to leave the Union.

Key elements of the proposals

The Commission proposal is amending a number of pieces of existing legislation and introducing new powers and roles for the European Supervisory Authorities (ESAs), a number of which will have a significant impact on our financial services sector and on the work of our relevant competent authorities.

Changes to the Governance Structures of the three European Supervisory Authorities

The Commission proposal maintains the Board of Supervisors' position as the main body of the European Supervisory Authorities in charge of its overall guidance and decision making. However, the proposal seeks to change the composition of the Board to include full-time members of the relevant European Supervisory Authority.

These full time staff members will be part of a new Executive Board, the main function of which will be to examine, give an opinion, and make proposals on all matters to be decided by the Board of Supervisors. It will also be the decision making body for certain tasks of a non-regulatory nature, such as dispute settlements, breach of Union law and independent reviews.

We have previously supported the concept of introducing permanent staff members to the Board of Supervisors of the different European Supervisory Authorities, but the Executive Board as proposed by the Commission dilutes the power of the National Competent Authorities too far, as these are the people with the required expertise and knowledge of their local markets.

Independent Reviews of National Competent Authorities activities

The proposals aim to significantly strengthen the existing powers of the European Supervisory Authorities through independent reviews of national authorities' activities and early intervention in cases of possible supervisory arbitrage. The Commission has argued that these extra powers are required to ensure that European rules are applied equally by all Member States, or, in other words, that we ensure supervisory convergence across the Union.

We fully support a move towards a greater focus of the European Supervisory Authorities on supervisory convergence, but the Commission are introducing new powers for them which, in effect, provide them a role in the day-to-day authorisation and supervision of relevant entities. This, we believe, is not warranted.

For example, one of the new powers envisaged for the European Supervisory Authorities is the ability to co-ordinate the supervisory actions of National Competent Authorities in the area of outsourcing and delegation of activities to 3rd country entities. The Commission proposal will compel national regulators to notify a European Supervisory Authority every time they receive a request for authorisation by a firm that delegates part of its activities outside of the EU.

We see the framework being proposed for the delegation of activities to 3rd countries as adding further unnecessary complexity, when the existing powers available to the ESAs could achieve the same result of ensuring supervisory convergence.

We would note that ESMA issued an Opinion in July of this year to support supervisory convergence in the area of asset management which highlighted what national competent authorities should consider when allowing an entity to delegate functions such as asset management. This is a good example of how the ESAs can use their existing powers to help ensure supervisory convergence across the Union.

Direct Supervisory Roles for ESMA

The Commission has proposed to give further direct supervisory roles to ESMA as they believe that the only way to ensure supervisory convergence is to provide a direct supervisory role for the European Supervisory Authorities in certain cases.

The Commission proposal will give ESMA supervisory responsibility for the approval of certain categories of prospectuses (wholesale non-equity prospectuses, prospectuses drawn up by specialist issuers, prospectuses of asset-backed securities, and prospectuses by third country issuers).

In addition, ESMA will be given responsibility for the authorisation and supervision of certain types of investment funds structures (European Venture Capital Funds, European Social Entrepreneurship Funds and European Long-Term Investment Funds).

As we highlighted in our response to the Commission Consultation Paper, we see no need for ESMA to be given a direct supervisory role in the area of investment funds. We stated in our response that the existing powers of ESMA are sufficient in order to ensure that the European rules applicable to all investment funds and also to prospectuses are applied equally across the Union and thus ensure supervisory convergence between Member States.

The use of Peer Reviews is, in our view, a powerful tool to ensure the Single Rulebook is applied equally across the Union. The existing toolkit should be used more frequently by the European Supervisory Authorities before the Commission considers such a fundamental change as moving supervision of some investment funds and approval of certain prospectuses to a central European body.

Current position of negotiations

We, along with a majority of Member States, have voiced concerns over the scale and impact of the proposals at Council Working Parties. In particular, the increased role being proposed for ESMA has been criticised by a large number of Member States. This file will be progressed in Brussels under the Bulgarian Presidency and we expect further meetings at a technical level to commence in January. We will continue to engage, make our valid points known, work with other Member States, and seek to have a more proportionate outcome from this review.

Conclusion

To conclude, in this proposal, the Commission has introduced significant changes to the European Supervisory Authorities' framework with the stated aim of creating a stronger and more integrated European financial supervision for the Capital Markets Union.

Ireland has been an enthusiastic supporter of the Capital Markets Union project, as we see the provision of more non-bank financing would be of significant benefit to the real economy.

However, we believe the proposed changes will not help achieve the aim of developing Europe's Capital Markets. They will instead add further complexity and costs for entities engaging with European markets.

In addition, we also fully believe in the need to prevent regulatory arbitrage and to ensure that the rules agreed between the co-legislators are applied equally across the Union. But that does not mean that we believe in a significantly reduced role for national competent authorities.

The proposed changes to the European Supervisory Authorities will dilute the input of national competent authorities in decision making processes, and we must remember that these are the people with the expert knowledge of local markets and, in particular, who have the corporate knowledge of the firms operating there.

Go raibh maith agat, a Cathaoirleach.