**Keynote speech: TRENDS IN REGULATORY LANDSCAPE**

**Introduction**

Good afternoon and thank you for inviting me to speak here at the Malta's Stock Exchange GRC Summit. It's a pleasure to be here with you and to have the opportunity to share with you some ideas on financial regulation and possible trends where it's going. I do not consider myself a great traveller, but when the invitation came to take part on this conference, I was not hesitating a lot to accept it. Because Malta is definitely one of the countries that we in central Europe recognise as progressive centre for finance and a country that we in certain aspects look up to when discussing our domestic financial regulation issues.

I start with a general observation – the financial regulation has become a mainstay in the financial services business, at least here in the EU. The regulatory update is something you have as an everyday agenda item in financial conferences like this one is, regulation is written about in newspapers, or at least in some of them, and you have firms specializing only in financial regulation and compliance issues.

On the other hand, you can hear opposing voices. At least in my country, where the financial market is based on several banks and then mostly a number of very small firms, we always hear that it is "over-regulated". That it is impossible to keep pace with all the regulatory developments. And that the regulatory burden is "just too much". We, the supervisors, certainly don't give in to such critique, but it is fair to say it has some merit. Of course, things could be better; there is much room for improvement.

**Benefits of financial regulation**

Today in the upcoming panel, you will have the opportunity to listen to fellow speakers on issues related to recent regulatory developments, whether it is the AML/CFT package, the MiCA or the DORA regulation. I will let my colleagues bring you the substance of these files, and here I want to focus on the broader picture of financial law. Two key questions need serious consideration: first, why do we need the financial regulation and supervision, and second, how to improve it?

The answer to the first one is relatively straightforward. First of all, there is the need for financial stability. You need a financial market that is more or less stable, with firms providing services to consumers and the economy without significant incidents leading to loss and detriment.

Also, trust in the market is crucial. I can share with you the experience from my country, where the capital market never had a deep tradition. Then with the liberalization of the economy and privatization in the 90s, the market exploded. And, imploded then a few years later. Society was not prepared for the such massive development, whether it was lack of institutions' readiness or consumers' financial literacy. Many assets were lost, and many firms and funds went bankrupt. And the trust was gone. Last decades in Slovakia we are still discussing how to bring the capital market back on track, there are many issues with that, but everyone understands that the slowly rebuilt trust needs to be preserved. Luckily today, we have much more tools for that than we had back in the 90s.

So, what you need for capital market functioning is the protection of the weaker party – the clients and investors – to keep the trust. Also, for the very same reason you need prevention of financial crime. And so, with regulated financial markets, you can make society wealthier and more robust.

Therefore, we have new regulations, like MiCA, DORA, and AML package. It is challenging to cope with them – as for the industry and as well as for us the supervisors – but we need them.

**Creating better regulation**

Now back to the second question – with so many regulations in place and coming, how can it work for society, for consumers and firms as well? How to make it better?

There are a few ideas we can discuss. Let's start with the idea of proportionality This is the most usual way to react to the regulatory burden. However, it is a relatively cumbersome and technically difficult solution. For applying proportionality, proper criteria need to be chosen. And this adds to the complexity of the regulation. Also then the supervisors need to check whether the firms fulfil the criteria on an ongoing basis and whether they are not circumventing the rules by misusing the proportionality principle. Thus, this leads to a more complex and more costly supervision. However, I wouldn’t completely discount the proportionality idea, not at all. Only I think we need to be aware of the backside of it.

Another idea for creating a better regulatory environment could be, let’s name it “not to over-complicate the rules”. This means going back to principle-based regulation. Here again, there are some difficulties, or rather preconditions, to make it work. As we know it had not worked well in the past. Firstly, a strong regulator must be able to interpret the principles in various situations of application. Also, then there need to be respected industry associations or similar bodies, in order to set proper market standards and culture. And finally, there need to be other institutions sufficiently enhanced, that support the enforcement of such regulation, notably the courts. I believe this option is for the long run, but it leads to success.

For making a better regulation, other aspects could be mentioned:

* it needs to be created it in a transparent and open process;
* it needs to react to global changes and macro trends;
* it needs to be based on facts and data;
* it should support the development of the market, or at least it should not hinder it, and
* it should make use of technological advances, enabling for example development and use of the RegTech.

All of these could be disputed, of course. However, I would like to briefly mention two pieces of regulation – the EU DLT Pilot regime and recent CMU package proposal – that, in my view, represent two different attempts to enable market development.

The DLT Pilot Regime is, let’s say, “a hybrid”, where the co-legislators try to combine new technology in finance with traditional market infrastructure. I hope to see possible synergy effects coming out of this and I hope this marks the road for DLT to be used in capital markets and supervision as well.

Then the recent CMU package is of course very different in nature. It contains many changes – in areas of prospectus, market abuse rules, issuer-sponsored research, clearing services, and insolvency rules. The good news is, it focuses on the simplification of rules – and that is in favour of the market participants. However, if you would ask me whether it will lead to the development of EU capital markets, the answer would be: “*I don't know, and I am somewhat sceptical*.”. The reason is the design of the CMU project itself: it tries to build EU capital markets mainly through regulation: either through a new one or amending the existing one. Of course, this can be useful. However, I believe that much more is needed to reach the objective. I am talking here about non-legislative actions undertaken by the public sector, but also by private firms. Because the biggest issue, in my view, is the costs of financing through the capital market. Here, I'd give you just one example – when we assume the CMU reform provides a shorter prospectus, would such a prospectus be less costly to draft? Well, I better stop here short of the answer.

**Challenges in supervision**

Now in this last part of my contribution, I would like to touch upon supervision issues. Because efficient supervision is a key to functioning regulation. So, what do we, as supervisors, need from the regulatory environment? And what are the challenges we are facing?

Firstly, we supervisors in EU's Single market need a single rulebook. That enables the firms and us to apply the rules in the same manner irrespectively in which Member state they are operating. On the other hand, we also need tools that allow us, on a national level, to apply measures to react on specific firms, risks or trends in our domestic markets. To have a combination of these two objectives is quite a complex and challenging goal.

What is also a pressing issue, and it has been identified, is the cross-border supervision in the EU. Europe has a complex structure of its financial market. Some countries are Home member states for several firms from different sectors. Other countries are mostly Host member states where the services are being provided. But national supervisors have mostly their mandates issued by their parliaments and so indirectly by their nationals. So there is a question of accountability of supervisors. And in a single EU market, the national supervisors should have a responsibility to oversee the business of firms under their supervision irrespectively where it is undertaken. This is the theory, of course. But in practice, we still have gaps in the single market, like the non-existing depositary passport. I need to admit, as I was taking part on the UCITS IV negotiations in Council back in 2008, that my country was one of those that were against it.

Now in 2023, the landscape is very much different. We have here the European Securities and Markets Authority – the ESMA. ESMA is an organization that has been built for 12 years; a lot has changed in that time as well. Today ESMA is supervisory authority itself and it leads the regulatory development in the EU. It is not yet a single EU supervisor for capital markets, but it runs supervisory convergence processes. These enable us, the national supervisors, to communicate with each other, to learn from each other and to adapt our processes to a common standard. If there was a single success of ESMA to be named, I guess it is probably this one.

Also ESMA puts forward the issue of cross-border supervision and it will make steps in order to make this work more efficiently. When this objective will be fulfilled, we will work in an environment where the ideas, like the depositary passport, could be revisited again.

I wish for ESMA to keep up the great job it has done until now. And also that it even more improves communication with national supervisors. And most of all that it improves its ability to react on issues identified on national level. When this will be running swiftly, In my view ESMA will make a great step towards becoming the single supervisor for EU capital markets.

Let me please finish here with a quote of former U.S. Judge Louis Brandeis: “*If we desire respect for the law, we must first make the law respectable.*” I am sure that we are on the right track, but still there is a lot to do.

Thank you.