

## **Keynote speech to the European Supervisory Authorities Consumer Protection Day 2019**

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Good morning and thank you for the invitation. It's a particular pleasure to be speaking to this European audience in my hometown and also appropriate that you are reflecting on European financial supervision in a country that suffered the drastic consequences of insufficient supervision after the financial crash of 2008 and 2009.

Ten years later, Dublin is a city much transformed. Those of you who have had an opportunity to walk around the city center will have noticed its vibrancy; lots of bars, lots of restaurants, lots of cranes, lots of new construction, an energy that points to recovery from a decade of misery and which inflicted enormous hardship on so many people.

The recovery of course has not been even. Many communities still struggle. We have problems of homelessness and a young generation that finds it hard to afford to buy somewhere to live and particularly in Dublin. The vibrancy of a city center often masks problems elsewhere.

The recovery also poses political challenges for our leaders, torn between the expectations of those who believe we can now spend much more, and the warnings of others who counsel against making the same mistakes of a decade ago.

Political choices are inherently difficult but they are made easier when guided by external rules and rule makers and bodies such as yours that can serve as neutral influencers and guide the lawmakers and policy makers towards good decision making. You, as supervising authorities, are the product of the crisis and chaos that Ireland and other EU countries faced during that period. As such, you serve not only a practical purpose, but also a moral purpose.

Your essential role is to be the protective interface between the financial industry and the people whose lives stand to be enhanced or damaged by how well or how badly you do your work, or are enabled to do your work.

People have short memories and when the good times come back, there can be a temptation to question regulation and regulators, to argue that a new boom, a new financial upswing, is being damaged by 'over regulation'.

The challenge for the political system and the regulators is to remain clear-sighted about that



moral purpose, to remember how light or non-existent regulation had an impact not just on abstractions such as 'markets;' but contributed directly to the destruction of many people's lives and livelihoods, and to the actual deaths of unknown numbers of others who took their own lives as a result of the financial stress they endured. Those who had believed themselves protected had been grossly deceived.

As an Ombudsman, first in Ireland, and now in the EU, I gained insight into that hardship and often into that overwhelming stress. I dealt with Irish people bewildered not just by loss of income or jobs but also by the sudden, dramatic disappearance of many social supports as the country struggled to meet the demands of the Troika.

In Brussels, I was often contacted by people from Greece or from Cyprus, deeply worried about their public services and particularly by their healthcare systems, which were failing to meet even basic needs.

At EU level, there was little that I could do, either because the particular issue was a member state concern, or because the Troika, was essentially accountable to no one. It was not an EU institution and one could therefore not make a complaint to the Ombudsman about it.

I say this not to criticise the Troika - indeed many Irish people were not unhappy to see them arrive - but rather to point to the frustration of so many people at neither understanding why the crisis had come about nor who to turn to when their lives were so severely disrupted. The creation of the supervisory bodies helped at least to give some voice to that despair, an attempt at least to make sure that those events do not happen again.

The cornerstones of our respective work are a commitment to independence, to help maintain and build public trust, and to provide high quality analysis of the concerns of financial sector consumers and investors on your part, and citizens who deal with the EU administration on my part.

For example, an important part of your roles is to ensure that financial products and services are transparent, fair and as simple and easy to understand for consumers and investors as possible. I think that we can both agree that this is no easy task. New financial products are constantly appearing, often with names or acronyms that are bewildering - and at times deliberately so - to the ordinary consumer.

Even the simplest account of the financial crisis for example can be challenging to the average reader, as multiple generic instruments were broken down, repackaged, renamed, all in a bid to attract more and more people to invest and particularly, in the US at least, and most damagingly, in the housing mortgage market.

Anyone who has seen the Hollywood film 'The Big Short' will know, that even senior financial sector managers had no idea what Credit Default Swaps were before the crash. And that ignorance fed directly into a global financial crisis, which continues to reverberate not just in the financial world, but in the political world as well.



The fact that so much of what went on was essentially high risk betting and gambling largely went unnoticed by people seduced by cheap loans and the possibility of home ownership, people who also believed that someone in authority was protecting their interests.

While perhaps not quite as obscure as some financial products, the European Union and its institutions are also perceived as complex and opaque. My role, as I approach it, is to help to ensure the EU's institutions and bodies function in an open, ethical, effective and fair manner, and to ensure the EU administration acts in the public interest. And part of that is to attempt to make the way in which they operate as intelligible as possible.

So, I am very glad to see that financial education is a topic for your discussions today. An informed citizen is a protected citizen, able to make decisions rationally and in their own interest, immune to spin, and understanding of the forces that might do them harm.

An iconic television ad, made by the then Irish Financial Regulator at the height of the boom, drew attention to public financial ignorance. It featured ordinary people on a bus, confessing with embarrassment to their complete lack of knowledge about the very instruments they were using to invest in housing and other goods- investments that for many would soon have devastating impacts.

One man stands up, and says, in a line that has now become part of Irish popular culture, “ *I don't know what a tracker mortgage is!* ”. At the time, most people simply found the ad funny and took little notice of its underlying message. But, just a few years later, when the property market collapsed, there were few Irish adults who did not precisely know what a tracker mortgage was and how unfortunate they were not to have one. Yet the same cannot be said about other elements of our daily interactions with the financial industry and this is precisely where your role is key.

Therefore, I welcome the discussion today on financial education and encourage you all to take this part of your mandate very seriously. If we are not communicating in a meaningful way with the people we serve, European citizens, then others will fill the space with false or misleading information and that is in no one's interest.

But, there are wider issues around all of this, issues in which both, I as European Ombudsman, and you as supervisory authorities, must have a strong awareness of, and belief in, in our respective roles.

Any assessment of the crash and its ongoing aftermath must put 'trust' to its front and centre. The word 'trust' tends perhaps to be overused and sometimes fails to resonate. But, trust is everything. The crash happened because people had trusted in other people and in institutions - public and private - that betrayed that trust. They believed that there were people in high positions who were diligently doing what they claimed to be diligently doing, but were not.

And when the crash happened, they felt, and in many cases were, abandoned. Those who were



not responsible for the crash were nonetheless forced to clean up after it and the resentment caused by that collapse of trust continues to echo today, partly through the rise of populism and euroscepticism and partly through a social media world where expert opinions are often afforded the same value as non expert.

We see it through the rise of the anti vax movement, we see it in the US in particular vis a vis climate change, where unimpeachable facts about the destruction of the planet are dismissed as another point of view. I cannot say if all of this flowed from the financial crash but if those in charge of our most precious material assets - our money and our homes - can be so unworthy of trust, then why not others in positions of power.

There is clearly no easy way to restore public trust. However, both democratic institutions and economic actors must take ownership of at least attempting to do so. It is not the responsibility alone of the political class, particularly in a world where many global corporations yield far more influence than those entities with actual law making and executive powers.

But if part of the narrative that explains the financial crash concerns trust, another part concerns the relationship between the regulators and the regulated and the extent to which that relationship breached appropriate boundaries, so called regulatory capture. Can citizens trust that the protection of the public interest is not compromised in this way?

A large part of my work in Brussels over the past 5 years has been about how to make lobbying more transparent. Lobbying is of course an important part of evidence-based policymaking and those involved in devising policies need to consult with industries and others that stand to be affected by those policies.

However, if lobbying is not transparent, if the public cannot know who is influencing policy making and in what way, then clearly there is a problem.

Another important focus of my work has been to assess the rules and procedures that the EU administration has in place to prevent conflicts of interest, particularly with top officials such as Commissioners or senior civil servants.

This includes the ‘ **revolving doors** ’ challenge, faced by many public administrations, whereby officials sometimes leave the EU institutions for the private sector (or vice versa) creating at times a possible conflict of interest.

Public trust can be undermined by perceptions that senior public officials are influenced by potential future jobs or use their networks to benefit the private interests of an employer or former employer in the private sector. Of course, people have a right to work where they choose but any possible conflict of interest must be managed.

One high profile case my Office dealt with concerned former **Commission President Barroso’s appointment to Goldman Sachs** . This move generated significant public concern at a very challenging time for the EU, in part, because of the prominence gained by Goldman



Sachs in the context of the financial crisis both in the US and in Europe.

Commissioners and former Commissioner swear an oath at the European Court of Justice to behave with integrity and discretion, even when they leave office. This is especially crucial for former Commission Presidents whose former networks are naturally significant and potentially highly influential

While Mr Barroso may have complied with the procedures - in waiting until the end of the so-called 'cooling off period' before accepting the Goldman Sachs position - the move seemed to ignore the purpose and intention of those procedures and was questionable when considering the oath taken before the Court.

His move, unsurprisingly, was also seized upon by eurosceptics and others as evidence of EU institutional lack of concern for the feelings of citizens whose lives had been damaged by the behaviour of banks such as Goldman Sachs.

In this instance, I concluded that the Commission had not taken sufficient steps to check whether Mr Barroso's actions conformed to the ethics obligations in place, or to recommend possible mitigating measures.

The Juncker Commission subsequently strengthened the Code of Conduct for Commissioners, including extending the cooling off period, and that was a welcome development.

As supervisory authorities, you will have frequent engagement with financial institutions and the quality and integrity of that engagement will determine how the public view your work and how much they can trust what you do. It can be delicate work, as you have to balance commercial sensitivity with the need for public accountability but it is a balance that you must always try to get right.

The ECB, for example, helped by an intervention by my office, revised its stakeholder engagement policy to make sure that no one sector was given even the perception of privileged access.

It is important therefore that the relationship is as transparent as possible, and that along with the financial institutions, you also consult with other interest representatives, such as trade unions, civil society groups and academics to ensure your work truly serves the wider public interest.

It is also important to have regular internal interrogations of what you do and how you do it. We can all at times fall victim to 'group think' and fail to question assumptions and practices. The best way of doing this is often the simplest way, by asking ourselves what are we here to do, what is our purpose within the wider European Union.

In my experience, organisations and institutions fail when over time they stop doing what they're supposed to do, get bogged down in daily tasks and begin to disregard their original purpose. It



can happen when regulators become far too understanding of the commercial or other concerns of those they regulate, or - as happened with some banks before the crisis - they essentially became high risk betting shops.

It is also important for your institutions, whether public or private, to maintain a 360 degree view of your work - to be aware of the external factors, be they political, economic, social or cultural that impact even if indirectly on your work and the risks they sometimes pose to the effective operation of your mandate.

Many of you have heard the expression '*culture eats strategy for breakfast*' which means that even the best strategies, the best laws and regulations can be undermined if a cultural shift that opposes their essential purpose takes place.

We have seen this in countries where a populist government or populist leader - by force of will or personality or by appealing to an emotional need within their community - begins to erode regulatory or other norms as has happened for example in the United States.

It's important to realise that when the wind changes direction, the law or rulebook alone is not necessarily sufficient to prevent the erosion or undermining of a particular mandate.

In Ireland, for example, the office of the Director of Corporate Enforcement, did not always find a very welcoming climate for his work during the boom times, when things were going well and when not everyone wanted to look too closely at how some companies were operating.

He struggled at one point to get additional staff for example. But fast forward a few years, when the economy was near collapse, suddenly the appetite for more rigorous monitoring of business significantly increased. His legal mandate hadn't changed but the climate around him most definitely had and that was what made the difference.

What that means for supervising authorities, and likewise for civil society or private sector organisation, is that protecting a culture supportive of your work must be an integral part of your operations. The soft power of influence is one that you need continuously to engage, to deal not just with your direct stakeholders but with the wider public and with other influencers whether in civil society, academia, the media, or elsewhere.

Recent events both globally and here in Europe have shown us how quickly what we consider to be settled norms can be disrupted. Never taking your role or your relevance for granted is critical, but never taking the benign climate in which you operate for granted is just as important.

A final, related aspect of my work concerns lobbying transparency which I briefly referenced earlier. I have long supported the creation of a binding '**transparency register**' to cover the lobbying of all EU institutions and agencies. The Irish model is frequently referenced as a good model of such a register. But it is particularly important at EU level that the public can see as easily and as comprehensively as possible what is going on, because of the distance between the member states and the EU institutions.



It is important that all financial institutions present today, and which engage with the EU administration, as well as those individuals who represent you, are signed up to the EU register if they fall under the defined scope. I should point out that many lobbyists themselves are also supportive of such a register as this level of transparency, they believe, makes the process fairer for everybody and prevents the giving of privileged access to those whose work and influence is not always visible.

One institution currently missing from the Register is the Council, the institution comprising the national governments and which is naturally lobbied both in Brussels - often through the EU ambassadors - and in the national capitals. I believe that the Council should be as transparent as other EU major institutions as it is important that citizens be aware of how and by whom influence is being exerted on all of the institutional players.

It would be wrong of me, before I conclude, not to acknowledge the high standards of administration and of integrity throughout the EU administration, standards which are often much higher than those of many of the individual member states. But if this is the case, it is also appropriate that it should be the case, given not just the power of the institutions and agencies on all of our lives, but also the leadership role that the EU administration can and should play and not just in Europe, but globally.

The exercise, even of soft power, can be transformative and all of us, no matter how small our organisation or institution must never lose sight of that potential. As supervisory authorities, you can choose to exercise all of your powers as narrowly as possible or you can choose to live out to the maximum the higher obligations bestowed upon you - to play your role in ensuring that the nightmare endured by millions when the crash happened will never happen again and that European consumer and investors are protected. Of course, the responsibility for that cannot possibly be yours alone, it is a task for all of the European Union, public and private sectors, but never underestimate just how powerful an influencer all of you can be.

The public are once again depending on us.

Thank you.