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DES MARCHÉS FINANCIERS

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## Speech by Robert Ophèle, AMF Chairman - Presentation of the AMF 2018 annual report - Tuesday 7 May 2019

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2018 was the first year of our new strategic plan. It also saw the appointment of the new Board and was my first full year as Chairman. Hence this annual report is singularly significant.

The AMF's teams were highly active in a wide range of fields throughout 2018 and I would like to begin this speech by paying tribute to the work they have accomplished.

Their achievements included implementing a raft of new European regulations:

- The MiFID II market transactions directive, with the roll-out of our new market-supervision platform, which processes five million declarations per day and enables us to exchange transaction data on a daily basis with other European Union (EU) authorities.
- The Central Securities Depositories Regulation (CSDR), which brought us to authorise ID2S, a new central securities depository (CSD) for money market instruments. This was followed by the authorisation of Euroclear France just a few days ago. The Belgian, Dutch and French CSDs that together form Euroclear's ESES subset, were authorised shortly afterwards. ESES is the first major group of CSDs to comply with the new European regulation.
- The Money Market Fund Regulation (MMFR), which brought about an in-depth review of how such funds operate with a view to making them more robust, and hence required a re-examination of the authorisation of all existing funds.

Their achievements also encompassed preparations for Brexit, which not only involved the processing of numerous individual applications from organisations such as investment management companies, investment firms and trading platforms, but also amending both French and European regulations to minimise the risks associated with the eventuality of a no-deal Brexit.

I should also like to highlight the on-going efforts to tackle financial crime, which our market-supervision tool, the confirmation of our right to use connection data (FADETS), our monitoring of social networks and alerts from finance professionals and investors, have all made the execution of our task as a regulator less onerous and more effective. Such alerts are recorded on our Epargne Info Service platform, which receives 1,000 enquiries, complaints and alerts every month, and enable the publication of the AMF's blacklists or websites to be shut down. In 2019, the AMF is set to endorse the bans on the marketing of binary options and of certain high-leverage contracts for difference (CFDs), as provisionally adopted by the European Securities and Markets Authority (ESMA) in 2018.

2018 was also the year in which the AMF rolled out a new approach to the inspection of finance professionals, by carrying out swift, thematic inspections on a sample of firms with a view to identifying best and poor practice and sharing its findings with stakeholders operating on France's financial markets. In 2018, 63 inspections were carried out, versus 47 in 2017. Furthermore, you will no doubt have seen this morning's publication of our findings from such inspections on discretionary mandates.

Finally, also among the AMF's teams' achievements were their contribution to preparing for and scrutiny of the PACTE bill, which is currently going through the French parliament. In particular, this work strengthens the AMF's role in two fields that were priorities in our

strategic plan: responsible and sustainable finance, with focus on the risks posed by climate change, and digital finance, with focus on crypto-assets.

However, this morning I would like to focus on the challenges facing Europe, at a time when both the Parliament's and the Commission's terms of office are coming to an end and with new teams about to take over in Parliament and at the Commission for the next five years. As you know, the AMF is firmly in favour of a set of common rules and close convergence of supervisory duties and powers within the EU. These are the conditions required to create a true Capital Markets Union, a Union that was a key ambition of the outgoing Parliament and Commission.

Now, despite a productive end to the term in many areas, the overall track record is nevertheless disappointing. Although some progress has been made in our relations with third countries – progress that is vital for the EU's future relations with the United Kingdom – little headway has been made in improving the internal management of the EU, or indeed in developing European financial instruments.

In my view, strengthening the role of the European Securities and Markets Authority (ESMA) was the yardstick for measuring progress on this convergence, whether ESMA is assigned direct supervisory powers or simply stronger powers than it has today, that would enable it to ensure this convergence between national authorities. Ultimately, we still have a long way to go.

ESMA's direct supervisory powers remain limited. These additional powers, effective from 1st January 2022, will in fact be confined to a number of critical indices and data reporting service providers (APA, ARM and CTP), whose importance to the interior market would be significant. In reality, ESMA has been granted greater power over third-country financial market participants authorised to operate in the EU than over the equivalent participants from EU member states. This applies to clearing houses, which remain under national supervision, irrespective of their size, despite the fact that ESMA will have supervisory powers over third-country central counterparty clearing houses (CCPs), which would cover the entire EU. It also applies to third-country benchmark administrators applying for recognition in the EU (although third-country benchmarks could be endorsed by an EU benchmark administrator).

ESMA undoubtedly has more powers now to facilitate greater convergence, particularly with regard to supervising EU clearing houses, but the scope of these powers remains limited. This is illustrated by the following examples:

- ESMA will provide a supervisory handbook for financial market participants that will set out supervisory best practice.
- The peer review principle has been retained and its independence has been slightly strengthened via the presidency, which is now assumed by ESMA rather than carried out on a national basis.
- The role of Q&As is recognised, but answers are officially deemed "non-binding" and there is no guarantee of transparency in relation to different national practices.
- Common strategic priorities will be set, but with no more than two objectives per three-year cycle.
- "Coordination groups" may be established in light of specific market developments, but only when requested by at least five Board members.

Turning to ESMA's governance, here only minor changes have been made, which will leave plenty of scope for clashes of/on national interests. Governance could even become more complex by the introduction (through the European Market Infrastructure Regulation (EMIR) 2.2) of a supervisory board for clearing houses comprising three permanent members.

Similarly, efforts to define "new" Europe-wide products have fallen short. No progress has been made on simple, transparent and standardised (STS) securitisation and the new EU regime for covered bonds still includes several national options (including the decision to accept debt securities from outside the EU). There does not appear to be significant demand for the Pan-European Personal Pension product (PEPP) (unlike an employee savings plan product, which would have a greater impact/be more successful/see greater success). Finally, the proposed development of sovereign bond-backed securities has not borne fruit.

We should be in no doubt; the blame for these disappointments lies squarely with the Council. The Commission's proposals have on many occasions received Parliamentary support, only to be watered down by the majority of Member States on the Council, in their desire to retain as much room for manoeuvre as possible at the national level.

I note that the United Kingdom has just made clear, through the Chief Executive Officer of the Financial Conduct Authority (FCA), Andrew Bailey, the extent to which it hopes to use its departure from the EU as an opportunity to completely overhaul its approach to financial regulation. It wants to gradually withdraw from the highly detailed set of rules that have been drawn up at the highest levels of legal standards by top European co-legislators, and instead move towards a more pragmatic, reactive approach, primarily through a supervisory body that must ultimately account for the effectiveness of its actions. Put simply, it is abandoning the "rule-based" approach in favour of a "Common-Law" culture, deemed to be

more favourable to the growth of financial markets. The aim is to make London more competitive in the financial services sector. This should press home the need for the EU to set ambitious goals over the course of its new term, without a rematch of the lost European Supervision Authorities (ESA) reform.

The AMF is finalising its proposals that fall within its remit and will publish them in a few weeks' time. I would now like to focus on just four of the many proposals to be published, which I consider to be particularly fundamental and need to be addressed at European level: implementing a digital strategy for financial services; making sustainable finance a reality; reviewing the structure of legal texts on asset management; and providing more effective investor information.

Innovation(s) enabled by new types of technology are speeding up change in the finance sector now and they are proving to be disruptive. They are revealing gaps in our regulations that themselves at times have proved to be overly liberal, at others overly restrictive and occasionally, inconsistent.

Digital assets provide us with a striking illustration by pointing to where there is a complete lack of European regulation of cryptocurrencies and utility tokens, and in the case of security tokens, inadequate regulation. Europe must tackle this issue head-on since the digitisation of assets and use of network technologies are setting significant trends within the finance sector.

The development of platforms for trading financial products is another key trend that is undermining the sector's traditional approach. For example, the marketing of UCITS (undertakings for collective investment in transferable securities) and alternative investment funds is subject to strict regulation, but the fact that they are listed on a market partly renders such regulation obsolete; this lowers intermediation costs but it also lowers investor protection. Europe must adapt its approach/stance.

Although making Europe's sustainable finance goals a reality poses significant challenges of methodological nature, it is absolutely essential to overcome these in order to finance the various transitions and demonstrate that finance is socially useful. The different components of the framework that will favour investment are gradually being put in place, with the introduction of standards adapted to issuers and understood by investors, as well as the adoption of partly standardised reporting, combined with checks to guarantee the reliability of information in the public domain. However, it is vital for us to finalise European work on taxonomy, i.e. the creation of a European classification of environmentally sustainable economic activities. This is a huge challenge for all financial sector participants, regulators included.

The oversight of financial intermediation has encouraged growth in the asset management sector, with collective investments in Europe now totalling some €16 trillion. The regulatory

landscape has become particularly complex with a combination of legal texts regulating products and texts regulating market participants. In some cases, this has left room for different national interpretations that have posed problems, as in the case of eligible assets for UCITS. The growth in this sector has given rise to specific risks and, for the sake of financial stability, we must keep a close eye on liquidity and valuation risks, particularly in the unlisted and real estate sectors, as well as the level of leverage applied to hedge funds, particularly given that current reporting seems unsatisfactory. The forthcoming reviews of the Alternative Investment Fund Managers (AIFM) and UCITS directives are an opportunity to create greater consistency within a sector whose operations often straddle several different countries. For example, an investment management company might be based in one country but its actual management could be delegated to another country, with the fund in question registered in a third country and then marketed in several others, with the latter countries having no control over the associated risks.

Finally, we need to ensure that investors are provided with more effective information and therefore are offered greater protection. The due diligence required under MiFID is increasingly becoming a reality in the everyday practice of finance professionals. For example, they must make sure that clients are who they say they are, that appropriate advice is provided and that the services provided at a client's request are suitable. The AMF is determined to enforce rules on the proper marketing of financial products. However, too much due diligence and information can prove counterproductive as it discourages producers of financial products and investors alike. The Packaged Retail and Insurance-based Investment Products (PRIIPs) regulation is a case in point. In seeking to impose uniform, standardised information on all packaged products that may be marketed to retail investors, European co-legislators in fact ended up producing key information documents (KIDs) that in many cases are not fit for purpose. The decision to postpone the extension of the KID requirement to UCITS reflected the unanimous opposition to the extension throughout the finance sector, as well as among investor associations and regulators. It is vital that we make the most of this postponement to carry out an in-depth review of PRIIPs, with a view to creating documents that are better suited to the type of products being marketed to investors.

To be capable of meeting all of these challenges, the AMF must bolster its workforce and continue to digitalise its processes. I am counting on the public authorities to provide us with the means to achieve our common goals, because, of course, proper regulation requires proper means.

And with these introductory remarks, I am now more than happy to answer any questions you may have.

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