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## AMF Annual Conference 2017 - 'The evolution of the financial services regulation in a post-brexit Europe' - Speech by Robert Ophèle, Chairman of the Autorité des marchés financiers – 13 November 2017

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Ladies and Gentlemen,

Last year, this event focused on the impact of Brexit on Europe's financial services; this year it is devoted to **the future of financial regulation in post-Brexit Europe**. It is quite likely that when we set the theme, we thought the negotiations for the withdrawal of the United Kingdom from the Union would have reached a more advanced stage.

In fact, we are now faced with a rather problematic telescoping of subjects and calendars. Firstly, Europe is on the eve of the effective implementation of an unprecedented wave of new regulations. While in the field of banking and insurance, the bulk of the work has already been done with CRD4-CRR and Solvency 2, in the field of financial markets, MIFID 2, PRIIPS, MMFR - to name only a few of the most significant regulations – come into force next year. Beyond the technical challenges associated with these reforms, third country relationships are affected by these regulations, and hence potentially the future relationship with the United Kingdom; research funding or the obligation to trade on a platform are well known examples of this.

Then we are in the process of discussing developments in financial regulation in Europe, be this as part of the EMIR review or that of the ESAs; such developments probably will not be

finalised early enough to be usefully mobilized in the framework or in parallel with the UK withdrawal agreement, even though third country relationships are at the very heart of these reform proposals.

In principle, the UK is indeed to leave the EU on March 29, 2019, even though in the financial sector no guidance has been set at this stage, the idea of a transition period remains uncertain and technical exchanges between authorities have not really started as is normally the case when the general framework has not been finalised at the political level. I remind you that for the withdrawal negotiation period to be extended beyond two years, a unanimous vote by the Council would be required.

Therefore, to carry these three files forward in parallel is an extremely complex enterprise, be it from an operational perspective or in terms of structural consequences. I believe the rest of the world is looking on with concern.

And yet, it is quite clear that a status quo is not an option and it is as much up to the United Kingdom as it is up to the EU27 to act on Brexit's consequences. Today London is the lung with which the Union breathes, financially speaking – it is the entry and exit point for most of the financial flows with the rest of the world as well as between EU countries. It's clear that after Brexit, even if the London market has to remain at the heart of international financial exchanges, it can no longer play the same role for the Union; no powerful economic zone can be dependent on an offshore financial centre. It is therefore particularly necessary for the EU27 to set to work and build a financially efficient system from within that best ensures the financing of our economies - in short a real Capital Markets Union.

I do not think that this project means the emergence of a single financial centre in the EU27 which would replicate what London does today. Looking closely at the strengths of the cities in the Union that seem to be competing today to develop financial activities, everything would point to the emergence of a multi-polar apparatus. This however only makes sense if these financial market places are coherently supervised. The current system with 27 national authorities - in fact much more than 27 since some countries have several competent authorities – all of whom are supposed to uphold a common body of regulation (the "single rule book"), this system has many handicaps, that Brexit has cruelly highlighted.

This has led to a hypertrophy or swelling of regulations that - probably to avoid national drifts - has entered a stage of extreme luxury of details. MIFID 2 is made up of about fifty Level 1 and 2 directives and regulations; 1700 pages of regulation. Now that has not prevented disparate national transpositions and has led to a rigidifying of regulation of a very damaging sort. When highlighting either an inconsistency, a detrimental impact, or a new circumstance, which calls a rule into question, its change requires, be it simply a detail, the triggering of a complex institutional process and, pending these developments, no

capacity exists to issue the equivalent of the American "no action letter". Obviously we would like slimmer regulation, largely principles-based, and leaving the supervisor broad latitude to implement it depending on the circumstances, fully applying the well-known principle of proportionality.

This is of course only conceivable if financial supervision is exercised by or at least under the co-ordination of a European authority. This is one of the reasons why there is a burning need to strengthen the role of ESMA. The Commission has presented proposals in this direction; this or that aspect may be debatable, and I'll come back to it, but in my mind it must be supported, certainly improved, but neither rendered insipid nor distorted. The need for single supervision, as I have just indicated, is to make the transition to more agile regulation based on principles possible, but also to structure the Capital Markets Union and to establish balanced relationships with third countries. Any union has the vocation to rely both on common rules and on common institutions; there will be no Capital Markets Union without a strong ESMA. Similarly, there will be no balanced relationships with third countries if ESMA is not the main European counterpart. One can see exactly where the all-too-often national temptation lies: in fact, this lies in the facilitation of regulatory arbitrage that is most likely to attract financial activity. It is not on this basis that we can build a Capital Markets Union to ensure efficient financing for our economies; nor is it on this basis that the EU27 can play a part in the international financial scene that reflects its economic power.

Let me briefly mention the role that ESMA could play in post-Brexit financial regulation.

The Commission has rightly wished to strengthen both ESMA's direct and indirect powers of supervision; regarding third countries, it wished to position ESMA in the center of this mechanism. It is easy to see the complexity that lies in the trade-off to be made between what should fall under direct supervision and what should remain in the field of indirect supervision; in a way indirect supervision amounts to the surveillance of supervisors to ensure that they consistently apply the policy adopted at a European level; this leaves competence at national authority level, however it makes for a heavier mechanism. By transferring competence, process is simplified and homogeneity of treatment is ensured. On the other hand, the terrain moves farther away, which can be detrimental to dealing with small financial intermediaries' files, covering marketing to retail investors or those largely based on purely national law. The centralisation of powers must be strongly justified - this is indeed the very rule upon which European construction is based.

In my mind, ESMA is therefore intended to become the competent authority only for products or operations which have a cross-border dimension or systemic importance for the Union. This is the case I believe for market infrastructures, so-called "wholesale" products, European-labeled products and critical benchmarks. It is also intended that ESMA coherently

structure all data requests to the industry within a unified mechanism in the Union for the collection and centralisation of data in a common data lake, leaving the responsibility of ensuring a first level of quality control of data transmitted with the national authorities.

We can see that in many ways this goes beyond the current proposals.

In the case of market infrastructures, only clearing houses are currently being discussed much with the reluctance we are all aware of, by several countries in the Union. But it is difficult to see what justifies a national authority to be competent for the regulation of infrastructures with European, and often global reach, and all the more so when it is ESMA which, in the case of clearing houses, that would carry competence for third country CCPs at a European level.

Regarding prospectuses for wholesale financial products, the proposal covers only ABS issues and non-equity security issues admitted to trading only on regulated markets reserved for qualified investors. The latter category is in fact an empty one, the "wholesale" market being characterised by the minimum nominal value of the securities (over 100 000 euros) and not by the market on which they are traded. Hence, it would be appropriate for these to be included.

As regards relationships with third countries, with their financial institutions and their regulators, once again, the purpose is to make life easier for our counterparts and to avoid regulatory arbitrage by offering them a single interlocutor or at least a homogeneous response between the countries of the European Economic Area. I must say that currently, the fact that different international financial institutions are doing the rounds of the EU27 financial market places, highlights the differences between the treatment of banking activities - where the SSM ensures homogeneous treatment - and the treatment of insurance activities as well as that of market activities where the role of the European Supervisory Authorities, EIOPA and ESMA, remains very limited and where national responses may therefore be singularly different. As a reminder, the wholly relevant opinions published by ESMA a few months ago, by nature, are not binding.

In the light of the three projects that as I mentioned at the beginning of my speech, have telescoped, and given the difficulty in organizing Brexit in the field of financial services without clarification of the desired organization of EU27, and the establishment of mechanisms that enable to ensure the independence, as well as the effectiveness of our financing structures, it seems necessary to avoid hard Brexit and reasonable to introduce a transition period in this field of financial services. The case of central clearing is from this point of view iconic; if we take the case of interest rate swaps; any rushed, sudden solution for the relocation of IRS clearing, be it in the context of a hard Brexit or as part of the

activation of the faculty currently provided for in the draft revision of EMIR, would penalise the European economy first; it must therefore be, from my point of view, avoided.

This AMF event therefore comes at a time when the future of Post-Brexit financial regulation looks particularly uncertain. I observe, moreover, that our British friends are worried about us; the House of Lords is currently conducting hearings on "Financial regulation and supervision following Brexit "; allow me to quote excerpts from the hearings of prominent law firms held on October 11 this year:

"You have to remember that European financial regulation as it stands was almost entirely written by the UK. These are our rules. We wrote them (...) I do not think that anybody would doubt that it is a legitimate objective for Europe to seek to protect the euro, the issue becomes, how do you do that in the extraordinary and unique factual situation that we are about to create of an enormous economy whose financial centre is outside its territory and not subject to its regulation? For the EU and for us, that creates an almost completely unprecedented problem.

(...)

The UK has as many financial regulators as the rest of Europe put together. (...)The UK has been the engine and the motor of European financial regulation certainly since the late 1980s and for as long as I have been in practice. What happens to Europe when you take that engine out of the machine?

(...)

Whether Europe can keep up with the UK in a post-Brexit world is a matter of real concern.

(...)


If we look at the history of many of the regulations, taking MiFID II as an example, much of it has copied our own domestic regime. I agree that one of the big questions on this side of the channel and in the EU as it will be is whether there will be enough expertise and market knowledge to do the job".

When we meet again next year – 2019 will be the 15th anniversary of the creation of the AMF – I hope that Europe will have set to work to reassure our British friends on its ability to find the right answers to the challenge of post-Brexit financial regulation. The AMF will contribute decisively to this end.

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