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Crypto-asset markets: the AMF responds to the European Commission consultation

Two years after the publication of its Fintech Action Plan, the European Commission is working on a new strategy to promote digital finance in the EU, while addressing the new risks it raises. It has launched a public consultation, open from 19 December 2019 to 19 March 2020, on the development of a European framework for crypto-assets markets. The AMF supports this approach and publishes its response in which it promotes an ambitious approach to foster the development of blockchain projects at the European level.

The Commission's main areas of reflection include deepening the Single Market for digital financial services, promoting a data-driven financial sector in the EU while managing its risks and ensuring a level playing field, improving the EU financial services regulatory framework to make it more conducive to innovation and enhancing the digital operational resilience of the financial system.

The consultation, which consisted of 117 questions, was structured around the following issues:

- How to define and classify crypto-assets (questions 5 to 9)?
- What regulatory response should be given to crypto-assets that do not fall within the scope of existing European regulations (questions 10 to 36)?

- How to deal with several cross-cutting issues such as market integrity, the fight against money laundering and terrorist financing (AML-CFT), investor protection or the supervision format (questions 37 to 53)
- To what extent are the frameworks applicable to crypto-assets qualifying as financial instruments ("security tokens") appropriate? The scope of the European regulations and directives studied is very broad: MiFID, Prospectus Regulation, CSDR, Finality Directive, Collateral Directive, Short-selling Regulation, AIFM Directive, UCITS Directive, EMIR and MAR (questions 54 to 112).

The Autorité des marchés financiers (AMF) has made public its response to the European Commission's services.

The AMF's responses follow on from the work carried out by its teams on crypto-assets over the past three years: exploratory, legal and economic analyses prior to the PACTE law on digital assets, work on the adaptation and implementation of the said law, and more recent analyses on security tokens.

The structuring messages addressed to the European Commission are as follows:

- The AMF proposes to base the classification of crypto-assets on the existing categories and, in particular, to distinguish between crypto-assets that qualify as financial instruments and those that do not;
- The AMF supports the development at European level of a new regime for crypto-assets that are not financial instruments, comprising mandatory components, as in the AML-CFT, and optional components;
- The AMF proposes to create a "Digital Lab" at the European level to test projects in the field of security tokens, in order to overcome the regulatory obstacles to their development that have been identified;
- The AMF supports the creation of an interbank settlement asset in central bank money to facilitate Delivery vs Payments process on chain.

Create a Digital Lab at the European level to test projects

The AMF also makes the following proposals:


- Adopt specific provisions for global stablecoins, which could pose systemic risks for the European Union;

- Harmonise, as far as possible, the interpretations of the concept of financial instrument, in order to limit the divergences between the Member States of the European Union;
- Complete the European AML-CFT system applicable to crypto-assets initiated by the 5th Directive, while continuing work on the technological feasibility study, to ensure that the regulations to be introduced are adapted and implemented consistently across the Member States;
- Place ESMA at the heart of the system for supervising market activities in crypto-assets that do not qualify as financial instruments, and give it a role as coordinator of the European Digital Lab for crypto-assets that are financial instruments.

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