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DES MARCHÉS FINANCIERS

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Speech by Robert Ophèle, AMF Chairman - ACPR-AMF Forum Fintech – Monday 12 October 2020

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Good morning,

To close this morning's proceedings, I would like to emphasise the natural complementarity between the three strategic plans adopted by the European Commission, whose implementation can be expected to shape the EU's prosperity in the coming years: Capital Markets Union, Digital Finance and the Green Deal. By complementarity I mean how digital finance can contribute to the success of the Capital Markets Union and the fulfilment of the Green Deal.

Digital finance can make a decisive contribution to the success of the Capital Markets Union. The Autorité des Marchés Financiers has for many years endeavoured to foster innovations, while managing the new risks that they pose. I can therefore only be delighted that the European Union has chosen regulation within the framework of the new Digital Finance legislative package, be it in the field of crypto-assets or in the field of the operational resilience of the financial sector.

The European Commission has provided two cross-cutting regulations on crypto-assets: one on financial-instrument crypto-assets and the other on crypto-assets which are not financial instruments.

Regarding the crypto-assets which are qualified as financial instrument – security tokens – the Commission proposes an innovative regime for innovative market infrastructures. This is a regime of exemption from certain obligations arising from European regulations for market infrastructures based on distributed ledger technology. These exemptions are carefully targeted. Before such activity can commence, an application must be made to the regulator, who will check the justification for the exemptions on a case-by-case basis. This exemption regime, the "pilot regime", makes it possible to experiment with new platform models.

We had supported this approach and have discussed this subject with many of our European regulator counterparts. I am therefore delighted that a consensus has been reached on the principle of exemption, as stressed by the European Commission in its explanatory statement: Member State representatives expressed overall support for the approach chosen to create a pilot regime to allow for experimentation with the application of DLT in financial services. They highlighted it should not be too restrictive, but at the same time cannot lead to market fragmentation or undermine important existing regulatory requirements.

I am also delighted that what is referred to is a regulation as opposed to a directive; a union cannot be built on the basis of 27 transpositions of minimum harmonisation directives. In any case, this regulation is very good news for the promotion of innovation, because it will allow several innovative market infrastructure projects to resume, by removing the regulatory obstacles which had been identified, in particular the obligation of centralised management of trading and depository services, even though blockchains operate by consensus and are therefore inherently decentralised.

Hence, what are the potential gains to be expected from authorising this type of platform? The overall aim is to reduce cross-border payments costs and improve their speed, while also streamlining settlement and delivery processes by reducing the number of processing steps, and consequently reducing friction costs and mitigating the risks induced by these processes. It is also a question of keeping Europe competitive at a time when similar approaches are now being rolled out in many countries.

One should not be led to believe that by partially exempting platforms from their obligations this means a lax approach to the monitoring of these infrastructures. Quite the contrary, the governance mechanism planned by the Commission is one of close supervision:

- first, by the national competent authority which will be responsible for monitoring of the innovative business model – and this the AMF will of course do;
- second, monitoring by ESMA, which will examine all infrastructure projects, give its opinion and will control uniformity of the system within the Union.

But we can probably even be slightly bolder:

- by opening the exemption regime to all types of market participant, including new entrants, without relaxing the constraints weighing on the projects. This will foster healthy competition, giving Europe all its chances in the race to technological progress;
- by broadening the range of SMEs able to benefit from the listing/admission of their securities on blockchain-based infrastructures; this is necessary to ensure the financial balance of the projects of which we are aware;
- by taking care not to prohibit certain business models from the outset. We should remain cautious and humble in the face of technological progress in order to adopt a balanced response.

Accordingly, we will all have to work hard, but at least we will be legally equipped to develop and regulate changes in market infrastructures, the reactor core.

The European Union has also chosen to regulate crypto-assets which are not financial instruments. Yes, the time has come to regulate bitcoins, ethers and other crypto-assets. This can be done all the more effectively if we do it in a harmonised and concerted manner throughout the Union, with a single regime for issuance and the provision of services. The European MiCA Regulation (Markets in Crypto-Assets) provides a framework for Initial Coin Offerings and Digital Asset Service Providers, our DASPs.

Here, we are taking a major step forward: not only will the MiCA Regulation ensure harmonised regulations from the outset, but it will enable two passport mechanisms: one passport for coin offerings, and the other for the provision of crypto-asset investment services. This will undoubtedly strengthen Capital Markets Union.

This has been long-awaited by European crypto-asset service providers. They are still of modest size in the EU, and we can hope to see some of them scaling up thanks to the depth of the European single market. The regulatory approach, meanwhile, will have to remain proportionate to the size of the companies in the sector.

The PACTE Law [French national legislation on ICOs and digital assets service providers] will therefore cease to apply on the day when the MiCA Regulation comes into force. In the meantime, the PACTE Law regime still applies, and I believe that this solidly paves the way for the European regime. The PACTE Law requires standards to be raised in the sector, and efforts made by crypto-asset service providers to date will not go to waste. What has been checked by the regulator will not have to be re-checked during the MiCA authorisation process, because the regulation provides that what a regulator has already checked with

regard to a DASP will not have to be checked again during the examination process. Transition will be more straightforward.

In order to accompany the current application process, the AMF published an FAQ a few weeks ago answering the most frequent queries from companies wishing to obtain DASP registration and/or a DASP license, be they French or foreign; I refer you to this document.

The AMF Board has so far registered four digital-asset service providers, and by the end of the year it is quite possible that we will have registered about twenty others. Latterly and as second step, some of them have indicated that they want to apply for an optional license. This is confirmation of the French ecosystem's vitality.

Financial innovations for the benefit of finance, therefore, but financial innovation for the benefit of sustainable finance.

Fintechs are often associated with the huge consumption of energy involved in certain blockchain technologies. This is of course highly simplistic, and I would like to draw your attention to just how decisively fintechs are contributing to the field of green finance. Of course, all the fintech applications that we have just mentioned can be available in green finance, be it crowdfunding for green projects, ICOs with, for example, the issuance of tokens representative of kiloWatt hours of renewable energy, or STOs for equities or bonds issued by companies engaged in combating global warming, or elsewhere, the development of platforms which, based on a given blockchain technology, securely bring together relevant data concerning green bond issuers (green asset wallet). Indeed it seems to me that in some cases, these fintechs are particularly relevant, or even indispensable. This is the case, for example, with the deployment of artificial intelligence resources for ESG analysis, with the management of risks related to global warming, and the development of insurance products covering natural disasters. To get a good idea of fintechs' contribution to green finance, I invite you to examine the list of projects identified in this sector by Finance for Tomorrow.

In the digital era, information and communication technologies support complex systems. Increased digitisation and interconnection amplify the risks related to information and communication technologies, and this makes society as a whole, and the financial system in particular, more vulnerable to cyber threats or the disruption of information systems.

The European Commission's initiative to supplement its digital package with a Regulation DORA, "Digital Operational Resilience (Act) for the financial sector", covering the entire sector, is therefore welcome. It will thus cover investment firms, credit institutions, asset management companies, crypto-asset service providers, all market infrastructures, and

trade repositories. This is a powerful ambition, because it aims to bring the best standards into general use. DORA will, in particular, require financial institutions to establish comprehensive governance and internal control frameworks for the risks related to information and communication technologies. Financial institutions must have and maintain updated systems and protocols, and identify and document potential risk sources, notably configurations which interconnect with internal and external information systems.


Outsourcing is a long-term trend which raises the question of the control of risks associated with service providers, because the inadequacy of such controls is generally one of the main vulnerabilities identified in the financial sector. The draft DORA legislation defines key principles for third-party risk management related to information and communication technologies; when preparing an outsourcing contract, every financial institution's reasoning should take into account the risk that its supplier might use a third-party service provider that is dominant and not easily substitutable, as second-tier supplier.

Although the introduction of such strict requirements will entail significant costs of implementation for the various stakeholders, this is nevertheless an essential step towards greater resilience of the financial sector as a whole, and is thus conducive to trust – a prerequisite to be able to propose efficient financial services.

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