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Speech by Robert Ophèle, AMF Chairman - FESE – Convention 2021 - 1st June 2021

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Sustainability and digitalisation, which are the topics of the two panels this afternoon, are obviously the two main challenges facing our economies and the financial industry lies at their core.

Largely speaking, sustainability and digitalisation are different domains but, if we wish to boost our economies, we need to draw maximum potential from both of them. The financial sector has a key role to play notably by favouring investment in both sustainable activities and the transition to more sustainable activities and by gaining efficiency with the recourse to digitalised processes.

In order to meet these challenges, ambitious regulatory proposals are on the table at EU level. This in itself is fortunate since a national level has its obvious limits. The proposed regulatory frameworks could deliver a decisive step forward and there is a need to deliver rapidly on both fronts. Nevertheless, in both cases, these proposals have triggered criticism and this afternoon, there are two shared types of danger on which I intend to focus.

- First, the danger of being overly complex. Actually, and to best grasp these challenges, several issues need to be addressed both consistently and simultaneously. Let us be straight, this is not a given and I firmly believe that many of us today lack a clear and full picture of the state of play in both areas. Yet, without a set of consistent and fully understood requirements, there will be no support for such wide-ranging reforms.

- Second, both challenges cannot be addressed in isolation from the rest of the world; there is a strong degree of international interdependence and there are possible extra-territorial consequences of any regulation in these fields. Achieving the right balance in order to set requirements that deliver the expected outcome, without isolating the EU and being, at the end, detrimental to our financial industry is also highly challenging.

Let me come back more precisely on these two dangers: over complex and inconsistent regulation and then the risk of over Eurocentric regulation.

Quite arguably, when considering the Taxonomy Regulation, the Corporate Sustainability Reporting Directive, the Sustainable Finance Disclosure Regulation and the new delegated acts concerning product governance and investment advice one could be in some doubt as to whether the average corporation or the average financial service provider is able to, first fully understand, and then fulfil, what is required of it. Reacting to this perceived complexity, some stakeholders react bluntly. They advocate that in order to avert these requirements, SMEs (according to the CSRD definition) would shun the regulated market and many financial service providers would abandon their investment advice activities and focus on Order Reception and Transmission. Critics also stress – and rightly so – that the EU has put the cart before the horses by first laying down disclosure rules for investors regarding sustainability, and then taking care of establishing a sustainable reporting standard for issuers. In the meantime, such awkward inversion significantly contributes to reinforcing the role and influence of third party ESG data providers as well as the pressure on issuers who are routinely asked to fill in dozens of duplicative questionnaires.

Failing to address excessive complexity would be detrimental to us all. Sustainability disclosure cannot be a constraint weighing solely on companies listed on a regulated market. The impact of a company on climate change does not depend on whether its shares are listed on a regulated market or on its staff number. Demand for disclosure from investors and financial intermediaries goes well beyond listed companies, and covers all type of financing. And demand for sustainability information stems not only from the financial community of investors, but also from a wide spectrum of stakeholders at large.

By extending the number of firms covered by NFRD from 11 000 if you take into account the national options, to a minimum of 50 000, including large companies, listed or not, the proposed directive is taking the right approach. Furthermore, in my mind, it should be clear that this is just an initial step; at some point sustainable disclosure would need to stand on an equal footing with financial disclosure, even if the proportionality principle warrants lighter requirements for smaller companies. As a matter of fact, we should be careful not to widen the existing gap in terms of disclosure requirements between listed and non-listed companies, which is eventually detrimental to the attractiveness of EU public markets.

Investment advice has a clear value added for many unsophisticated, middle-size investors. Making this too burdensome for the investor or too risky for the service provider would be ill advised; it would incentivise investing in risk free products or, at the other end of the spectrum, in dubious products, none of which would adequately finance the needs of our economies. In order to avoid such risk, the sustainable readability of financial products should be improved. For example, greater clarification is needed of how sustainability preferences, as collected or targeted by financial service providers and insurers, are linked and coordinated with product definitions set by SFDR. On one hand, one is expected to ask the client if, how and to what extent sustainable financial instruments should be integrated into his portfolio, and on the other, one has financial products promoting environmental or social characteristics – the so-called article 8 products - and those targeting sustainable investments – the so called article 9 products. How these different concepts interact together needs clarifying. In the short term, the European Commission should provide answers to the many questions raised by supervisors and market participants. In the longer term, my view is that we will inevitably have to introduce minimum standards for sustainable products to make sure we can effectively prevent greenwashing, as originally intended.

We also need to obtain more clarity from providers of ESG data, ratings and services on their methodologies and how they manage their potential conflicts of interests. Together with our peers, we call on the Commission to address this regulatory vacuum as part of its Renewed sustainable finance strategy, and to propose a mandatory framework for these providers.

Turning to digitalisation, the same complexity rapidly arises since the requirements contemplated for the financial industry with DORA, MICA and the Pilot Regime need to be coordinated with the more global framework of the Digital services package. The dividing line between electronic-money tokens and asset-referenced tokens is indeed fine and then the separation between asset-referenced tokens and tokenized financial instruments is vague, considering that there is still no common definition of financial instruments across the EU. The articulation between regulation of instruments and regulation of service providers is complex and the neutrality vis-à-vis technology is tricky to implement. Furthermore, the case of a platform that is at the same time a social media and a trading platform should also be covered. Finally there are too many competent authorities, national and European, for activities, which are largely similar, whatever the financial sector or the national location. We all know that when the regulatory and supervisory framework is not homogeneously applied, the passporting of services is generally a risky exercise.

Coming to my second point, the risk of having either a too lax or a too late regulation, which means that we would miss our goal, or an ambitious but too European-centric regulation,

which would be detrimental to the competitiveness and efficiency of our financial intermediation.

With regard to sustainable finance, the possibility to have directly international standards instead of European standards would appear most appealing. After all, European large companies would warm to the idea of being on an equal footing with their third country competitors and of avoiding the burden of delivering multiple disclosures according to standards that are specific to some jurisdictions or promoted by some large institutional investors. Likewise and understandably all institutional investors would appreciate making their own sustainability assessment based on a single set of international standards.

With the change in the US stance vis-à-vis sustainable matters and the proposal by the IFRS foundation to develop sustainability-reporting standards, there is a convincing opportunity to rely on a set of common standards.

This said, one could nevertheless argue that this opportunity is just an illusion. The proposal focuses first on climate and financial materiality, which is not sufficient to meet EU's objectives and level of maturity on these matters. Furthermore, since it would not be acceptable to just adopt the prototype proposed by the Alliance of private standard setters, it could take too long for delivering such just a small set of standards. Indeed, the EU is well underway with CSRD and the new mandate given to EFRAG. The temptation to slow down our work while waiting for international standards would thus be a huge mistake.

Obviously, we should find a middle way and progress in a coordinated manner. For Europe, this means contributing to the international standards, which could serve as a baseline, while developing a broader, more ambitious framework encompassing all ESG pillars and double materiality. Since sustainability standards are also largely sector-specific, a common sectoral breakdown should be sought at international level. Let's try to achieve this; in my opinion, IOSCO, the International Organization of Securities Commissions, could be instrumental here.

There is a similar trade-off in the digital field. One could consider that currently the largest and most critical service providers are third-country corporations. To a large extent, the competitiveness and efficiency (and sometimes security) of our industry depends on the recourse to these external service providers. Nevertheless, to be highly dependent upon them is a dangerous situation and, for our financial industry, this would represent a weakness with financial stability issues at stake. A more balanced framework is therefore necessary. Basically, with DORA, the constraints would however mainly be placed on the financial industry when it comes to using the services of information and communications technology third-party providers. To some extent, this would assume that our financial firms have strong negotiating powers when negotiating their contracts with large non-European

critical service providers. It is actually unlikely, even if the single market is an important part of their business development. I believe that we should carefully rebalance the envisaged requirements: make some contractual clauses mandatory, impose that contracts be signed with an EU located service provider and expand the ESAs sanctioning powers.

In both fields, we are well under way to build an appropriate regulatory framework fit for the coming decade.

Within this framework, European exchanges will find new opportunities to play their full role in the sustainability transition and the digitalization of our economies. They will enable the innovative businesses and unicorns that have grown with private investments to reach the scale they need and achieve their long-term objectives. Public exchanges are also given the chance to innovate with the Pilot Regime for blockchain technologies. They are uniquely positioned to benefit from and contribute to the growth in green and sustainable finance, thanks to the advance of the EU regulatory regime.


Therefore, let us finalise it without lending undue complexity, whilst keeping the competitiveness of our financial industry in mind.

Thank you for your attention.

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