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11 October 2021

Keynote speech by Robert Ophèle, Chairman of the AMF - conference "The Attractiveness of the Paris Financial Centre" for La Nuit du Droit - 4 October 2021

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There are many factors that facilitate the development of a financial centre. There is of course the strength of the local economy, the savings base, the quality of the people involved, the regulatory framework, and trust in the institutions, but also the fiscal framework.

The legal dimension also plays an important role in determining how attractive a financial centre is. That is why in 2014, the public authorities decided that we needed to improve our organisation in this area, and structure our thinking around an institution that could harness the best available skills of the financial centre. Its mission was to identify legal issues, in particular those linked with the negotiation of European regulatory texts, provide clarifications that reinforce the legal security of both the public and private sectors, make proposals for amendments of legislation and, ultimately, promote the French legal framework.

It was Gérard Rameix, Chairman of the AMF at the time, who took this initiative. He came to see me at Banque de France and very quickly we decided together to create the Legal High Committee for Financial Markets of Paris or HCJP. Since 2015, it has been chaired successively by Michel Prada, Guy Canivet and Gérard Rameix, and has carried out independent work that is invaluable to the financial regulators in the broadest sense of the

term. I am thinking not only of the AMF and the Banque de France, but also of the ACPR, the French Treasury and the Ministry for Justice. It embodies the dynamism of the financial community, bringing together academics, lawyers, legal experts from the financial sector, and former members of the judiciary.

Among the very many topics addressed by the HCJP (it currently has nearly fifteen working groups preparing reports), we have selected two for this Night of Law: Brexit and crypto-asset regulation. These two topics will be addressed in the upcoming roundtables. What they have in common is that they illustrate the importance of the legal dimension in reinforcing the vibrancy of a financial centre.

Brexit is one of the issues that has engaged the High Committee - and indeed the AMF - most extensively in recent years.

- Brexit has raised a large number of legal issues for financial regulation, whether it be banking, insurance, investment services, market operations or asset management. It was vital to make the right decisions to facilitate the transition and avert the destabilisation of the financial system. It was also important to take the necessary measures to ensure the competitiveness of the European Union in general and France in particular in a highly competitive environment relating to the choice of business location, whether within the Union in other countries or outside the Union in third countries whose rules are deemed to be equivalent.
- With this in mind, the High Committee published ten or so reports and opinions between 2017 and 2020, analysing these legal issues in detail and providing input for decision-making. What did the UK's exit from a zone characterised by the freedom to provide services and the right of establishment mean in concrete terms for France? What were the consequences for existing relationships and for the future ability of UK financial institutions to access the French market and, conversely, for the ability of French financial institutions to access the UK market?
- More generally, how could the attractiveness and efficiency of the French legal framework be improved at a time when the European Union's main financial centre was leaving?
 - The HCJP worked extensively to ensure the continuity of financial contracts in a context where the United Kingdom was to become a third country. Its work gave rise to legislative proposals that were notably included in the PACTE Law.
 - These proposals made it possible to adapt the regulations to ensure the attractiveness of a new French law framework contract for market transactions (known as the ISDA

framework contract), whereas until now market participants had essentially only concluded contracts governed by English law.

- The HCJP's reports have also led to the creation of international chambers of the Paris Commercial Court and Court of Appeal, designed to deal with some of the financial market litigation that has hitherto been the preserve of English courts, by adopting innovative litigation procedures that can be conducted entirely in English, for example.

The purpose of these HCJP reports, however, has gone far beyond proper preparation for the UK's exit from the EU; Brexit is in fact only the beginning of a process. This is because the EU and UK regulatory frameworks will gradually diverge, and this will lead financial structures to evolve accordingly. The analyses and recommendations of these reports have not yet been fully explored; I am thinking, for example, of the opinion on the legal feasibility of developing a clearing service for interest rate derivatives or the recommendations concerning the convergence of the various national and sectoral regimes regulating asset management in the EU.

The regulation of crypto-assets is another illustration of the importance of law in ensuring that Paris is an attractive financial centre.

- The AMF and the HCJP were among the first in Europe to examine the legal issues raised by the development of crypto-assets. Since 2016, the AMF has been deeply committed to supporting innovation in this area, where legal considerations are essential given that shared registries and tokenisation techniques are shaking up our traditional legal categories. They are disrupting them by creating new asset classes - and here I am thinking of digital assets such as bitcoin and utility tokens - but also by materializing traditional assets, such as financial securities or central bank money, in digital form.
- At the end of 2017, the AMF published an initial legal analysis of digital assets and the results of a market consultation on a possible regulatory framework. It was closely involved in the drafting of the regulatory framework of the PACTE Law concerning crypto-asset activity. The AMF is committed to receiving project promoters to help them legally their activity qualify and understand the regulations that apply to them. So far, we have registered 23 digital asset service providers (DASPs), all of which are listed on our website. These national provisions are intended to be replaced by European provisions currently being finalised (the MiCA project), many aspects of which are natural extensions of the French system.
- The AMF and the HCJP have conducted extensive joint analysis of digital financial securities, i.e. security tokens, which are registered on a distributed ledger and not on the books of a financial institution. In 2017, we contributed to the development of the

blockchain ordinance that allows the use of distributed ledgers for unlisted securities. With regard to listed securities, where European regulation is dominant, the work led to the publication in March 2020 of an AMF legal analysis on the application of financial regulation to security tokens, followed by a full report by the HCJP in November 2020 on the same subject. These analyses highlight convergent findings regarding the legal obstacles to the development of financial instruments on the blockchain and lead to proposals.


- In particular, the aim was to create a European Digital Laboratory that would allow players in the crypto-asset ecosystem to experiment with new uses linked to blockchain (in particular trading and settlement platforms for these securities), while being exempted from the application of certain European regulations in exchange for closer monitoring by the public authorities. This proposal has, I believe, largely inspired the European Commission in its proposal for a regulation establishing a pilot scheme for market infrastructures on blockchain, which is in the final stages of negotiation in the Council and the European Parliament.

These two subjects - Brexit and the regulation of crypto-assets - demonstrate the Paris financial centre's real power to make proposals and changes, as well as a globally recognised level of expertise. These are all elements that constitute undeniable assets in the post-Brexit reshaping of the European financial markets. The active involvement of French legal professionals and consultation with the public authorities also played a major role. We will delve further into these topics with our two round tables and I am pleased to give the floor to the Chair of the HCJP, my predecessor at the AMF, Gérard Rameix, to talk about Brexit.

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