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Speech by Robert Ophèle, AMF Chairman - Banque de France/University of Orléans conference: "Crypto-assets and cybersecurity: innovations and issues - Challenges facing the regulation of crypto-assets" (University of Orléans) – 15 October 2021

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The rise of crypto-assets is a major phenomenon that I think is just in its early days. And yet, it is an area that is very poorly regulated and where there are huge risks. Over and above the questions surrounding their valuation, its level and volatility, we know that they constitute a breeding ground for:

- money laundering and the financing of illegal activities, with software that proposes to erase all traces of your transactions,
- vulnerabilities linked to technical architectures, including during attempts to develop interoperability between them,
- abusive and often totally fictitious marketing to gullible savers.

Yet at the AMF, we realised very early on that the digitalisation of assets and use of distributed ledger technology were major sources of innovation that needed to be supported and even encouraged.

Tonight, there are blockchain technology experts here, so my remarks will focus more on the challenge that the rise of crypto-assets represents for regulators.

When we started to work seriously on the subject at the AMF in 2017, the first question we asked ourselves was totally existential. Would it make sense to draw up regulations in a fast-changing field where there are many innovations, to draw up national regulations on products for which the notion of borders has no meaning, and is sometimes even a concept that the product seeks to abolish?

Whenever we have doubts, we seek external advice, and so in 2017 we carried out an initial legal analysis of the phenomenon and consulted the marketplace on a possible regulatory framework for crypto securities and service providers on these crypto-assets.

We concluded that even if a purely national approach did have obvious limits in this field, it was necessary to move forward on the subject without waiting for the European Union, and that this would make it possible to accelerate the European process, which could then draw inspiration from our approach. However, we found that while there was a space in the European Union for national regulation of digital assets not representing financial securities, when it came to financial securities, and in particular financial securities listed and traded on organised markets, European regulations alone were relevant.

We also considered that it was premature to be too prescriptive, that we were not ready to separate the good from the bad, for example by treating public blockchains and private blockchains more favourably, in a vibrant ecosystem; we did not have the technical competence to measure all the consequences and did not wish to curb innovation.

Based on this, we participated actively in the drafting of the PACTE bill, which in 2019 included an important chapter on the subject by establishing:

- an optional AMF approval for ICO projects. This approval is granted when a certain number of conditions are met: the quality of the white paper, which is the crypto-asset equivalent of the prospectus for financial securities, as well as the fundraising process,
- mandatory registration with the AMF after a favourable opinion from the ACPR on the anti-money laundering and anti-terrorist financing measures for digital asset service providers (DASPs),
- optional authorisation of these DASPs by the AMF, which is more stringent, particularly in terms of equity capital, but allows them to carry out direct marketing.

The AMF and the Legal High Committee for Financial Markets of Paris (HCJP) have conducted extensive joint analysis of digital financial securities, i.e. security tokens, which are registered on a distributed register 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 prevails, 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 European legal obstacles to the development of financial instruments on the blockchain and have led to proposals.

Where do things stand today?

The implementation of the mandatory registration requirement of the Pacte Law has led to the registration of 23 DASPs to date, and with the applications currently in the pipeline, there will be some thirty registered providers by the end of the year. We have compiled a white list to which we refer investors to protect them from the many solicitations they receive from unregistered, or even totally phantom, platforms usually located in third countries, often exotic ones like St Vincent and the Grenadines and Vanuatu, as well as the United Kingdom. These fraudulent solicitations are recorded in a blacklist and are followed by warnings and requests to the Paris judicial court for the closure of websites, which are then transmitted to the operators of the websites.

Voluntary registration of DASPs has not been successful as interested providers have in fact put their applications on hold pending the implementation of the European regime under the draft MICA Regulation. We do not see this as a failure of French regulation since registration, which should become compulsory in the European regime, is largely based on the regime provided by French law. I'll come back to this later.

The AMF's optional approval for ICOs has been a success for two reasons: the decline in popularity of utility tokens, which provide digital access to a good or service available on the DLT and are only accepted by the issuer of the token, and the AMF's level of requirements for its approval. In fact, it is currently the issuance of unique, non-fungible crypto-assets, NFTs, that is gaining traction. But here again, we do not see this as a failure, since the European project largely replicates the French system and makes it mandatory.

With regard to financial securities, which I must admit is for us the most promising area for the deployment of distributed ledger technology (DLT) in the financial sector, our proposals have taken off and have led the European Commission to propose a regulatory framework allowing the experimentation of the tokenisation of securities throughout the market chain,

from their issuance, to their trading and the settlement and delivery of transactions. This is the DLT Pilot Project.

In the middle, between these utility tokens and security tokens, there is the area of tokens that are more or less payment instruments and alternatives to official currency. This ranges from assets that are completely disconnected from any other real or financial asset, such as bitcoin, to stablecoins that aim to identically replicate the value of a currency, a basket of currencies, or other assets. To some extent, central bank digital currencies are the purest illustration of this.

I have placed them between utility tokens and security tokens because these tokens make it possible to facilitate transactions on utility tokens or security tokens: it is clear that in order to manage the settlement-delivery cycle of security tokens that I mentioned just now entirely on blockchain, the fact of being able to integrate a token, a stablecoin of very good quality, and if possible, representative of central bank money, is a decisive element.

The draft MiCA Regulation (Market in Crypto-assets), which covers crypto-assets that do not fall under the existing Financial Instruments Regulations, distinguishes three categories of tokens:

- utility tokens, which I mentioned earlier,
- asset-based tokens: a type of crypto-asset that aims to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or more commodities or one or more crypto-assets, or a combination of such assets,
- electronic money tokens: a type of crypto-asset whose main purpose is to be used as a medium of exchange and which aims to maintain a stable value by referring to the value of a fiat currency that is legal tender.

Issuers of tokens would be subject to an appropriate prudential framework, which would be strengthened for the last two categories when crypto-assets are considered to be of systemic importance.

The regulation also covers the provision of crypto-asset services by providers and the prevention of crypto-asset market abuse.

As with all regulations, the same questions arise: is it appropriate? Who is responsible for enforcing it? The first is, of course, the most fundamental, but the second is of particular significance in Europe, where the numerous national authorities are in "competition" with the European-level authorities. The AMF believes that it is the European authorities that

should exercise supervision in this new area. This would make us more effective in a sector that, more than any other, cannot be confined by national borders.


The relevance of regulation is always difficult to assess ex ante in a sector that is still largely in the making, and it is therefore necessary in any case to provide for a capacity to adapt it rapidly. At this stage, my main concern is to ensure that products with similar purposes, in this case stablecoins, are treated in the same way as funds of the same type, for example, money market funds, which have a more or less constant net asset value, even if they cannot be used as a means of payment, or index ETFs that replicate the value of a particular commodity. Let us say that, at this stage, this equal treatment has not been established.

There is no doubt that the completion of these projects will be one of the priorities of the French Presidency of the Union, scheduled for the first half of 2022.

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