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How can the EU take full benefit from the development of blockchains and smart contracts?

With distributed ledger technologies and smart contracts, we are moving to the next level of Internet: the «Internet of Value». What the Internet has made possible for information transfers now seems possible for value transfers, i.e.: virtually free, almost instantaneous, anytime, cross-border, secure exchanges of any type of value: virtual currencies, loyalty points, coupons for future services, representation of physical goods. In recent months, we noticed a growing interest in the representation and transfer of securities.

DLT present a number of benefits for the competitiveness and integration of EU securities markets. On the issuance side, digitalisation or «tokenisation» could reduce the total cost of the transaction and facilitate the exchange of illiquid assets. It could also allow the emergence of new asset classes and facilitates cross-border trading. On the secondary market side, the use of DLTs and self-executing contracts (smart contracts) eliminates the need for reconciliation, which can reduce back office costs by a factor of up to 3. Finally, the direct publication of financial information on the blockchain network makes it possible to carry out almost instantaneous transactions between two counterparties compared to the two business days required for traditional settlement. Automation of back-office processes (settlement, cash flow payments, etc.) would also be possible for repurchase agreements, margin calls on derivatives and the exercise of options, thanks to the use of smart contracts.

As a regulator, it is our duty to be aware of these changes and possibilities and to ensure that our regulatory frameworks remain appropriate. These frameworks must allow us to manage risks and protect users effectively, without losing the benefits of innovation. Against that background, the AMF examined the legal obstacles to the development of security tokens that mainly stem from EU regulation and presented its analysis in a recent paper¹.

To overcome these obstacles, we recommend the creation of an « EU digital lab » allowing national competent authorities (NCAs) to remove, in return for appropriate safeguards, certain requirements imposed by European regulations and identified as incompatible with the blockchain environment, provided that the entity benefiting from this exemption respects the key principles of the regulations and that it is subject to increased oversight by

its NCA. The AMF also published a position to clarify the notion of trading platforms and bulletin boards.

Where tokens do not qualify as financial instruments, pending the creation of an EU framework, the French “PACTE law” adopted in 2019 introduced in France an optional visa regime for fundraising in crypto-assets (ICOs) and an optional license regime for digital assets service providers (DASPs) supplemented by a mandatory regime that imposes to DASPs due diligence in the fight against money laundering and the financing of terrorism. Only crypto-assets that are not considered as financial instruments are eligible to these regimes. The creation of these new regimes and interaction with numerous professionals for two years before the law was passed has helped us improve greatly our understanding and develop specific and more tailored requirements. As for the implementation, the AMF gave its first optional visa for an ICO in December 2019, and some players have expressed interest in the DASP optional framework. The two first DASP registrations were granted mid-March. It is too soon to learn all the lessons, but we are convinced that only a bespoke, flexible and attractive framework can work at this stage for the European Union. ●

¹ See : <https://www.amf-france.org/en/news-publications/news/legal-analysis-application-financial-regulations-security-tokens-and-precisions-bulletin-board>