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Opening Address by Dr. Conrad Portanier, Partner, GANADO Advocates

1. *Introduction*
2. *Key Trends and Global Issues*
3. *EU Regulatory Developments*
4. *Maltese Context*
5. *Conclusion*

1. Introduction

Good afternoon. Ladies and gentlemen, esteemed colleagues, and distinguished guests, welcome to the 10th Annual Banking and Payments Law Seminar. It is indeed an honour to address this distinguished gathering for the tenth time.

Our goal has remained consistent - to bring together the legal and regulatory community for an afternoon to discuss key banking and payments issues.

Key Trends and Global Issues

Government Tectonic Shifts

The end of 2024 and the year 2025 have been characterized by several pivotal events that have significantly impacted the global landscape.

Besides ongoing military conflicts, national elections in numerous countries have resulted in significant changes in government (including the US, UK and Germany). These political shifts are bringing about new policies and governance styles and have impacted national strategies across various domains, including economic management, foreign policy, defence spending, and national budgets.

The Atlantic Divide

We are seeing an ever increasing divergence in strategic approach between the USA and the EU on a number of matters, including:

- a more isolationist "America First" policy, which contrasts with the EU's emphasis on multilateralism and cooperation
- the US has ordered significant reversals in its stance on sustainability and ESG policies, leading even the EU to scale back on some of its prior commitments in order to promote competition
- Due to America's isolationist approach, where Trump decided to withdraw from the World Health Organisation, the Paris Agreement on Climate Change, and even threatened to withdraw from the World Trade Organisation and NATO, the EU has been left scrambling to defend itself alone.
- The US (under the Trump administration) has adopted a more permissive stance on blockchain technology. The U.S. Securities and Exchange Commission (SEC) is undertaking a full-scale retreat from much of the major crypto litigation started under former Chair Gary Gensler and it has also set in motion the creation of a strategic crypto federal reserve.

- In contrast, the EU has established a comprehensive regulatory framework for cryptocurrencies through the Markets in Crypto-Assets Regulation (MiCAR), which aims to ensure financial stability and consumer protection, and has focused its attention on the creation of a Digital Euro by way of a central bank digital currency (CBDC).

These differences reflect broader philosophical and policy divergences between the US and the EU, impacting their approaches to global challenges and economic strategies.

2. EU Regulatory Developments

The European Union is actively adapting its regulatory landscape to balance competitiveness with sustainability.

In a landmark report on how to stem the Continent's economic decline, the former European Central Bank president Mario Draghi said Europe needed to invest an additional €800 billion a year to drag itself out of a trough of low productivity and feeble growth that's pushing it behind the United States and China in the international pecking order. He called it an "existential challenge."

On the ground, we expect 2025 to give us more clarity into how the new EU AML authority "**AMLA**" (based in Frankfurt) will work. We anticipate a growing regulatory spotlight on 'private capital' and look forward to more detailed plans in relation to the proposal to achieve a Savings & Investment Union (alongside a Capital Markets Union and Banking Union).

Europe's fragmented investment market is, in fact, one reason that top European start-ups cite as why they go public in the United States. For example, in what's expected to be one of the year's hottest initial public offerings, the Stockholm-based lender Klarna will list on the New York Stock Exchange in the coming weeks, instead of one of the EU's stock exchanges.

Consumers are increasingly holding more of their money at non-bank tech firms. And the prospect of a new breed of stablecoin wallets offered to the mass market raises urgent questions around the future of banking.

In a speech by Philip R. Lane, Member of the Executive Board of the ECB, on the 20th March 2025, Mr. Lane explained that, in the absence of attractive pan-European digital payment solutions, Europe's reliance on foreign payment providers has reached striking levels. International card schemes such as Visa and Mastercard now process 65% of euro area card payments. In 13 out of the 20 euro area countries, national card schemes have been entirely replaced by these international alternatives. In addition, mobile app payments, dominated by non-European tech firms (such as Apple Pay, Google Pay and PayPal), now account for nearly a tenth of retail transactions and are showing double-digit annual growth.

This dependence exposes Europe to risks of economic pressure and coercion and has implications for our strategic autonomy, limiting our ability to control critical aspects of our financial infrastructure.

The digital euro is a promising solution to counter these risks and ensure the euro area retains control over its financial future.

Maltese Context

This year, I would like to highlight very briefly three aspects of Malta's legislation:

Conduct of Business Rulebook

As you might be aware, on the 28th February 2025 the MFSA published the Conduct of Business Rulebook for credit institutions, a first in many respects. The Rulebook aims to enhance consumer protection in the provision of banking products and services by credit institutions. Some of these provisions will come into force as from 1 March 2026, whereas other provisions will come into force at a date yet to be announced.

Maritime Law Reforms

In a prime example of what can be achieved through public-private collaboration, Malta introduced sweeping reforms to the Merchant Shipping Act through Act 1 of 2025. Through a collaboration between the Malta Maritime Law Association (MMLA) and the Merchant Shipping Directorate within Transport Malta, ground-breaking reforms were introduced to our shipping statute books, providing financiers with greater legal certainty when it comes to finance charters.

It must be added that this is in contrast to proposed amendments to the Arbitrator for Financial Services Act, currently being debated in Parliament, as part of the Budget Measures Implementation Bill, which amendments might prove to be very consequential to the industry, but which have unfortunately been pushed through without any consultation with the industry.

In Genere Inquiries (Inkjesti)

Allow me a few words on the law dealing with Inkjesti (Inquiries). Bill No. 125 tabled in Parliament by the Government seeks to amend various articles of the Criminal Code regarding so-called 'In genere' inquiries (inkjesti). The Bill contains a number of very positive elements, including:

- Having a pool of Magistrates focusing solely on carrying out such inquiries;
- Giving the victims subject of a Magisterial inquiry the right to be informed of the stage of the proceedings;
- Giving the relatives of victims of accidents the right to request a copy of the process-verbal and others.

However, we do express concern with certain other aspects of the Bill which, in our view, represent a step backward in our rule of law framework. In particular:

- Whereas currently a private citizen may request a Magisterial inquiry directly, this right is being removed and a private citizen must first approach the Executive Police and can only request the opening of a Magisterial inquiry after 6 months from making the report to the Police. We prefer the current system which acts as a shield against Police inertia and trust our judiciary to dismiss any baseless claims.
- The Bill also requires the person lodging the request to submit evidence which goes beyond *prima facie* evidence and which is the same degree of evidence used in a court of law. This is obstructive by design, since the private citizen would never have such resources and it is the role of the inquiring magistrate to determine what evidence needs to be sought and to instruct the Police accordingly.

3. Conclusion

It is going to be very interesting to see how the US – EU relationship evolves and how this will impact the EU's outlook to regulation generally. Sir Keir Starmer, Britain's Prime Minister has been quoted as saying last week that he will cut regulation and "*unleash the animal spirits of the private sector.*" I would anticipate that whilst the EU will not go down the same road of rapid de-regulation, it will go through a deep soul searching exercise where a better cost-benefit analysis will be made to ensure that the EU's regulatory framework does not stifle innovation and competitiveness. As the 2024 Draghi report on the Future of European Competitiveness submits, the regulatory burden on European companies is high and continues to grow, but the EU lacks a common methodology to assess it.

The Draghi report gives us some interesting insights as to possible innovative solutions. He suggests that:

- (i) ESMA should transition from a body that coordinates national regulators into a single common regulator for all EU security markets, similar to the US Securities and Exchange Commission;
- (ii) To create a 'separate' jurisdiction for European banks with substantial cross-border operations that would be "country blind" from the regulatory, supervisory and crisis-management viewpoints.

To conclude, we are going to be witnessing the EU performing a tight-rope balancing act between streamlining and simplifying regulation, whilst seeking to maintain standards and protecting stakeholders' interests. We're in for an extremely interesting ride over the next couple of years !

Thank you for your kind attention. I now pass the word to Kenneth Farrugia, Chair of the Malta Bankers' Association, for his opening address.