

AMAFI POSITION PAPER

INVESTMENT FIRM REVIEW

Given the importance of the subject for its members, AMAFI has closely followed the progression of the discussions on a new regime for investment firms at the European Banking Authority (EBA) level in the two years that led to the publication of the European Commission's (EC) proposal on 20 December 2017 (a proposal for a Directive on the prudential supervision of investment firms and a proposal for a Regulation on the prudential requirements of investment firms). In this respect, AMAFI attended various meetings organised by EBA and the EC as well as by the French supervisor (ACPR), and provided at various stages of the consultation process its input to the EBA and to the EC.

Overall, AMAFI supports the global framework proposed by the EC as it intends to meet regulatory principles of proportionality and fair competition. However, AMAFI would like to stress five points it considers key based on the EC proposal and the latest compromise amendments introduced by the European Parliament (EP):

1. Allow investment firm-only groups to have supervision on a consolidated basis

AMAFI strongly disagrees with the level of application of requirements for investment firm-only groups. Contrary to the CRD/CRR regime, the Proposal does not allow any possibility, except for the application of the group capital test, to have supervision on a consolidated basis only for the requirements laid down in Parts Two to Seven of the draft Regulation.

Indeed, AMAFI understands that one of the main principles of the CRD/CRR and the coming IFR regime is that credit institutions and investment firms have to comply with the requirements on a solo basis. Nevertheless, when there are requirements on a consolidated basis, the CRD/CRR regime authorizes National Competent Authorities (NCAs) to exempt firms to comply with these requirements on a solo basis if certain conditions are met.

As such, **AMAFI considers that this possibility should be introduced in the IFR framework to favour a level playing field on the exercise of supervision by competent authorities and to avoid distortion between systemic and non-systemic groups of investment firms.**

Besides, the impossibility to apply consolidated prudential supervision would increase complexity regarding the supervision of investment firms-only groups and require additional capital requirements not reflecting an increase in the level of risk of the group.

For all these reasons, AMAFI does believe that a provision equivalent to article 7.1 CRR should exist for non-systemic groups of investment firms in the future regime. This is even more necessary given the EP has introduced a compromise amendment to article 6 of the draft Regulation which authorizes under the CRR regime NCAs to exempt class 2 investment firms within a banking group from supervision on a solo basis. On this matter there is no understandable reason to have a different approach between the CRR/CRD and the IFR regimes.

2. Ensure a level playing field between EU and third-country class 1 investment firms

AMAFI strongly supports the compromise amendments proposed by the EP as regards to class 1 investment firms.

Regarding the quantitative threshold used in the definition of class 1 investment firms, the EP has introduced a compromise amendment to Article 60 of the draft Regulation precisising that the threshold has to be considered at the highest level of consolidation. Such a requirement aims to ensure a level playing field between EU class 1 investment firms and third-country ones that carry out the same activities.

Moreover, as class 1 investment firms would be considered as credit institutions by amending the definition of Article 4 of the Regulation (EU) No 575/2013, such a modification could create potential unintended consequences on other Regulations or Directives (banking resolution, deposit schemes...). To that end, AMAFI supports the compromise amendment to Article 59 of the draft Regulation introducing a review clause carried out by the EC to assess the potential negative effects.

Last but not least, a new Article 35 (ba) of the draft Directive has been introduced within the compromise amendments, giving, in case the total value of the assets of an undertaking is below EUR 30 billion and the undertaking is part of a third-country global systemically important institution (G-SII), the supervisory responsibility for that undertaking to be transferred from the NCA to the SSM. **AMAFI supports such an amendment since it aims to avoid any regulatory arbitrage by investment firms that could try to circumvent the regulation.**

3. An equal exposure regime between class 2&3 investment firms and credit institutions

From a general point of view AMAFI is not opposing the proposed definition of credit institutions and investment firms so long as it does not have inappropriate or unidentified effects on the CRD/CRR regime or other banking and financial regulations.

According to the proposed definition investment firms would no longer be classified as “institutions” but would fall into the “financial institution” category. **This change of classification should not end up with a modification of the calibration of the exposures required for credit institutions when dealing with investment firms subject to [Regulation (EU) ---/---][IFR]. This could create an unlevel playing field between credit institutions and investment firms which would be a negative outcome of the new regime.**

Given that, **AMAFI considers that the IFR regime should be deemed comparable to the CRR one in terms of robustness.**

4. Diversification of instruments for payment of variable remuneration

AMAFI would like to underline that certain investment firms do not issue share and / or do not issue additional tiers 1 or tiers 2 instruments. For example, in partnership situation, the shares are not listed and held by “partners” only. Paying compensation with those shares is an issue because employees receiving those shares would not necessarily meet the criteria for joining the partnership; the proposed new rules would therefore interfere with the governance in place, which is not desirable.

Therefore, **AMAFI considers that given the different legal structures an investment firm may have, those firms shall be authorised instead to include an ad hoc firm level of solvency and financial performance payment criteria in their differed compensation scheme.** On the condition the firm can demonstrate the objective of alignment with the firm’s risk profile is fulfilled. As such, AMAFI fully supports the compromise amendment introduced by the European Parliament in article 30 of the Directive which provides NCAs with the ability to approve the use of alternative arrangements.

5. A level playing field between trading venues and systemic internalisers

Finally, on amending Regulation (EU) No 600/2014 – MiFIR: 2017/0359 (COB), **AMAFI disagrees with the ECON draft report's amendment which aims to modify the tick size regime for systematic internalisers.** On the contrary, AMAFI agrees with the European Securities and Markets Authority (ESMA) proposal which establishes an actual level playing field between trading venues and systematic internalisers when pre-trade transparency is due and when competition occurs between all kinds of trading systems.

AMAFI considers this amendment raises serious issues. AMAFI would like to stress that imposing systematic internalisers to follow the tick size regime when dealing in all sizes could have negative effects for investment firms which deal large transactions for their clients. And above all, that was not the intent of the legislator to impose any kind of quoting obligation when the size of the trade is above the standard market size.

As such, this modification should be taken and assessed very seriously. **AMAFI suggests it would be more appropriate to amend MiFIR by introducing a review clause stating that the EC shall, after consulting ESMA, submit a report to the European Parliament and to the Council on this topic.**

About AMAFI

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.