

EU Listing Act

Improving companies access to EU-27 financial markets

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AMAFI's position paper

In an unstable and unpredictable geopolitical environment, the Open Strategic Autonomy of the Union should be further developed and anchored around vibrant financial markets contributing to their full potential to the financing of the Union's economy. In this context, the relaunching and deepening of the CMU project is crucial to finance European companies: regional and local markets should be in a capacity to finance their companies but also to support the fight against climate change, the digitalisation of the Union's economy and its adaptation to the ageing of populations.

With regards to EU companies' financing needs, and especially SMEs, AMAFI agrees with the European Commission that unlike in the United States, they rely too much on bank credit, which could seem paradoxical considering the prudential constraints applying to banks. Encouraging the European economy's financing model to evolve towards a more intense use of the financial markets, both equity and debt, is therefore of the utmost importance to increase EU companies' access to funding and meet their financing needs in the years to come.

As such, AMAFI welcomed the recent editorial from Christine Lagarde, Ursula von der Leyen, Charles Michel, Pascal Donohue and Werner Hoyer calling for renewed efforts to make substantial progress towards the deepening of CMU¹.

In this context, AMAFI supports the objective of the Listing Act proposal which is: "*to make public markets more attractive to EU companies and facilitate access to capital for small and medium-sized companies (SMEs)*". This is particularly important that the upcoming legislation enables SMEs to access the depth that financial markets offer while supporting local specificities and allowing a proportionate approach. Beyond that, we consider that the proposed reforms in the Listing Act should also aim at reinforcing the competitiveness of EU actors and the attractiveness of EU financial markets for companies and investors.

The capacity of EU markets to attract investors into EU companies is of particular importance considering the intense competition between financial markets for capital. One illustration of this is the high ambitions set by the UK Authorities to simplify the capital raising process for companies and make the UK more attractive for IPOs, through the Edinburgh reforms and in particular the overhauling of the Prospectus regime².

With this in mind, AMAFI welcomes the European Commission's proposal³ and in this paper would like to highlight:

- (i) Its position on financial research/sponsored research which is a core priority for its members;
- (ii) Some aspects related to the reviews of MAR and Prospectus; and
- (iii) The need to introduce more proportionality in MiFID II Product Governance rules.

¹ <https://www.lesechos.fr/idees-debats/cercle/opinion-utiliser-lepargne-des-europeens-pour-la-croissance-1913456>

² For further details please refer to the [statement](#) made by the Chancellor of the Exchequer, Jeremy Hunt.

³ Please refer to AMAFI's answer to the EC Have your Say [consultation](#).

I. Enabling better market valuation and higher capitalisation of SMEs

a. Increasing the unbundling exemption threshold vs. total rebundling

We doubt that increasing the threshold of the unbundling exemption from 1 billion to 10 billion would in itself be sufficient to remove the barriers that currently prevent the production of an adequate coverage of SMEs by financial research. In fact, and no matter the level of the threshold, this exemption would not be sufficient in itself for two main reasons:

- i) From a commercial point of view, asset managers would have to come back to their clients and persuade them to pay for a service that they have not been charged for since MiFID II, which in practice would prove extremely difficult;
- (ii) From an operational point of view, asset management companies and brokers would have to run two parallel accountancy and invoicing systems able to accommodate whether the order sent by the asset management company to a broker concerns a share whose market capitalisation is below or above the threshold and for those who are below the threshold, whether it is a rebundled order or not. Moreover, from an operational point of view, this dual system is likely to generate many mismatches where one of the parties would believe that the order is bundled while the other would think the opposite. Having in mind that transaction fees differ according to the characteristics of the order and that the settlement process relies on the total cost of the transaction including transaction fees, the settlement efficiency could be seriously impaired, which goes against the objective of CSDR.

While we are not opposed to a partial rebundling, we consider that in practice such reform would only have a concrete positive outcome should the rebundling concern shares of all market capitalisation and be compulsory. At this stage, we doubt that such a political consensus could emerge.

In light of the above, the rebundling should not be considered as the one and only solution to encourage a better coverage of SMEs by research and therefore we believe that the development of sponsored research should be strongly encouraged.

b. Sponsored research as a necessary complement to traditional financial research

AMAFI is supportive of the approach proposed by the European Commission to develop sponsored research and considers that it would be a suitable and feasible solution to promote research on small and mid-caps.

To this end, we would support provisions recognising sponsored research as investment research providing it complies with a code of conduct endorsed by a competent authority or a market operator – as this is the case in France⁴, where more than one third (32,5% as of 20/04/23) of companies listed on Euronext with a market cap between EUR 10m and EUR 1bn resort to sponsored research (*see appendix below*). This demonstrates the significant value-added of sponsored research for SMEs, both for issuers and for research providers. Indeed, these codes of conduct set a clear legal framework, provide safeguards against conflicts of interest and promote independence and transparency as well as strict conditions for the payment and dissemination of research, so as to make sponsored research equivalent to non-sponsored investment research in terms of the reliability and quality of its content.

As negotiations develop in the Council, some Member States seem to favour the development of a common EU code of conduct. While we would definitely see benefits in some degrees Europeanisation of the approach to sponsored research, we consider it is important to keep a bottom-up approach when it comes to charters of good practices / codes of conduct, so as to leave room for adaptation at the national level to accommodate for the *modus operandi* and peculiarities of each market.

As such, we would first support a principle-based approach at level 1, which would be followed by an Opinion or some Guidelines by ESMA providing minimal expected provisions for a charter of good practices for sponsored research by opposition to a more prescriptive Delegated Act. We believe it is necessary to first

⁴ For further details, please refer to the French [code of conduct](#)

encourage the development of national markets so they can reach their maturity before considering a potential harmonization at EU level in a few years' time through a review. Such a bottom-up approach, compared to the top-down one adopted so far by the various CMU initiatives should be encouraged when the issue at stake is not linked to wholesales markets.

II. Removing unjustified costs and administrative burdens

a. Prospectus Regulation: maintaining high standards of investor information

AMAFI welcomes the exemptions to the obligation to establish a prospectus as proposed in the amendments to the Prospectus Regulation. They provide necessary flexibility and do not lower investor protection. Issuers may also establish a voluntary prospectus.

Furthermore, the Association supports the proposal that the prospectus be published at a minimum 3 working days before the end of the offer instead of the current 6 days.

However, AMAFI is not in favour of the proposals to limit to 300 the number of pages of the prospectus as well as to establish an order in the presentation of the different sections of the prospectus. These proposals do not meet the objectives of clarifying and simplifying the prospectus. In fact, they deprive drafters of any flexibility in the preparation of the document and prevent them from adapting it to specific situations that require it. Similarly, we are opposed to making incorporation by reference mandatory, it should remain optional.

Lastly, AMAFI does not support the proposal to add the obligation to publish a supplement to the prospectus when the final offer price differs by more than 20 % from the maximum price disclosed in the prospectus. Adding this requirement would imply a restriction on the terms of the offering, which does not fit with the simplification objective for all market stakeholders. The condition for publishing a supplement to the prospectus i.e. when there is a significant change to the information provided in the prospectus is sufficient.

b. Market Abuse Regulation: alleviating the insider list regime

AMAFI is broadly in line with the European Commission's proposals to amend the Market Abuse Regulation. In particular, AMAFI welcomes the clarification of the legal effects (safe harbour) of the provisions for market soundings.

However, the Association is opposed to certain proposals. We believe that the proposal to change the general condition for deferring publication of inside information to an exhaustive list of conditions is not desirable. This proposal would create rigidity in a process that needs to essentially apply on a case-by-case basis.

AMAFI is also concerned about the cumbersome process of replacing ex post communication to the competent authority with ex ante communication of the decision to defer disclosure of inside information.

Furthermore, the Association is strongly opposed to giving up the requirement to draw an exhaustive insider list encompassing both permanent and occasional insiders, considering that comprehensive insider lists are a useful tool to prevent and monitor possible market abuses and to protect the persons concerned. Instead, AMAFI proposes to simplify the obligation by adjusting the scope of the information required for the list.

III. Introducing a more proportionate approach for Product Governance rules

We welcome the alleviation of the product governance requirements for corporate bonds with no other embedded derivative than a make-whole clause and for bonds for eligible counterparties as per the [MiFID II Quick-fix](#) provisions.

However, while we understand these issues might be tackled through the upcoming Retail Investment Strategy, we would like to stress that all ordinary shares and plain vanilla bonds issuance are similarly important for the financing of companies, whereas product governance requirements currently constitute a hindrance to their distribution. Therefore, such instruments should be exempted from product governance rules based on the following arguments:

- (i) These products are not issued to serve (retail) investors' needs and objectives or address particular risk profiles unlike structured products for instance that offer solutions that can be adapted to the needs of each investor, particularly in terms of strategy, risk/return profile, maturity or nominal invested;
- (ii) The role of the investment firm in an IPO is not to define the objectives and investment needs of the targeted investors that the product is intended to meet, but rather to assist the issuer in structuring its introduction; this is all the more important with the upcoming implementation of ESG provisions in product governance as investment firms will soon have to analyse the "greenness" of a product according to the expectations of the final investors in this matter (target market) even though these provisions are inadequate given the investment service provider's role in an IPO.
- (iii) The added value of product governance requirements for vanilla products is very low or non-existent, especially in the primary market.

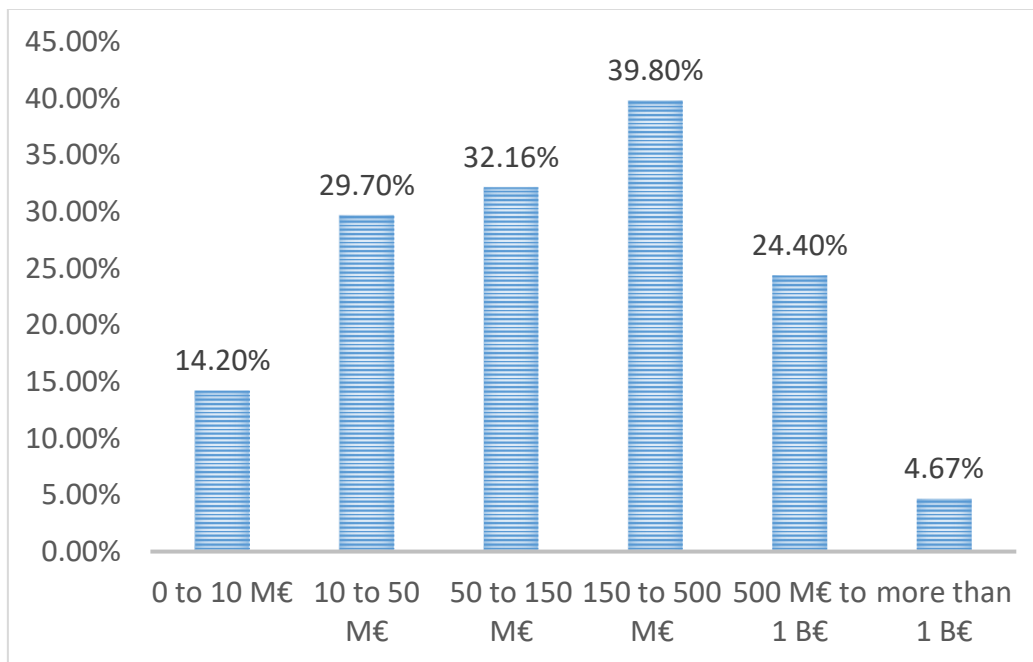


About AMAFI

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.

APPENDIX – STATISTICS ON THE FRENCH SPONSORED RESEARCH CHARTER

Percentage of issuers on Euronext Paris (+ Growth and Access) that are covered by at least one sponsored research contract, based on their market capitalisation



Statistics elaborated according to [Euronext cash monthly document](#) as of the end of February 2023

Close to **one third** of issuers with a market cap **between 10 Million € to 1 Billion €** are covered by a Charter-compliant sponsored research contract.

