# BUILDING A SAVINGS AND INVESTMENTS UNION

## AMAFI'S POSITION

*AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.*

In a tense and uncertain geopolitical context, the European Union is lagging behind the United States and China in economic terms. While its construction is directly threatened by the rise of Eurosceptic parties, greater integration appears necessary to develop the Union's strategic autonomy in key sectors. In particular, it is critical to strengthen the competitiveness and attractiveness of EU's capital markets to make them deeper and more liquid, so they are in a capacity to finance the 5 transitions facing the Union, in the digital, defense, decarbonization, deglobalization and demographics areas.

The amounts to finance these transitions are enormous. For the green transition alone, an annual additional investment of €700 billion by 2030 is necessary[1]. With several Member States facing excessive deficits[2], the Union cannot only rely on public funding.

In such context, AMAFI welcomes the strong political momentum materialized by the various publications in the past months[3] to build a Saving and Investment Union.

Following up from AMAFI's report[4] published in January 2024, the purpose of this note is to refine the Association's priorities based on the numerous discussions it had with representatives from public authorities of EU Member States as well as of EU institutions. It also aims at taking into account reforms proposed in the recent reports and recommendations.

[1] Keynote speech by Executive Vice-President Šefčovič at the European Investment Bank Group Forum, February 2024
[2] https://www.consilium.europa.eu/en/press/press-releases/2024/07/26/stability-and-growth-pact-council-launches-excessive-deficit-procedures-against-seven-member-states/
[3] Council conclusions ; Eurogroup statement ; E. Letta report ; C. Noyer report ; ESMA report
[4] Report, A new impetus for capital markets to meet the financing needs of the Union, January 2024

This paper is divided in two parts, the first one is dedicated to a necessary change of approach in the elaboration of EU legislation and the second one to three legislative reforms we consider as instrumental to build a Saving and Investment Union.

# I. A CHANGE OF MINDSET IN THE ELABORATION OF EU LEGISLATION

## A. INTEGRATING COMPETITIVENESS AT THE CORE OF THE EU LEGISLATIVE PROCESS

The competitiveness of the EU economy, markets and actors in the world should be considered from the outset of each new EU legislation and included in the impact assessment.

Building from the Opinion[5] of the European Economic and Social Committee in 2021 which recommended adding an ad hoc competitiveness test in the impact assessment of any new legislation, the European Commission added such test (*tool 21*) in 2023 as part of the toolbox[6] of Better Regulation.

It is critical that this new tool is used systematically for each new legislation. It should enable to demonstrate that the proposed text will have positive effects on the competitiveness of European financial markets and companies and that it is helping to strengthen the open strategic autonomy of the EU.

## B. A BOTTOM UP APPROACH AS A NECESSARY COMPLEMENT TO THE EU TOP DOWN

In the approach to develop EU financial markets, it is key to consider the interest of all Member States. Thus, we call for the development of bigger and smaller capital markets to take place in parallel and be complementary one to another. This approach would provide flexibility to continue develop useful national practices, particularly as EU financial markets have become multipolar.

With this in mind, it is important to acknowledge the role that **efficient national financial markets** can play, as they are the only one capable of responding effectively to the needs of small and mid-size companies whose contribution to growth and employment in the Union is central.

The development of these markets should be encouraged, while allowing their specific features to co-exist with the more standardised characteristics of larger pan-European wholesale markets. Maximum harmonisation should be pursued only where it is useful and beneficial, while allowing local markets to grow with their own specificities and hubs of expertise. We should encourage them to share their best practices with other domestic markets. The Listing Act is an example of such domestic initiative (best practices and codes of conduct) that could be fostered and adapted to other markets.

In parallel, "**coalitions of the willing**" must be encouraged to move forward on some important reforms before unanimity can be reached. Some of the reforms now needed to increase the depth and

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[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020AE4974
[6] https://commission.europa.eu/document/download/de79fb8e-4cc1-45a0-ac34-72f73a5147ca_en?filename=BRT-2023-Chapter%203-Identifying%20impacts%20in%20evaluations%20fitness%20checks%20and%20impact%20assessments.pdf

efficiency of EU capital markets are of such a structural nature that they are unlikely to be carried out, at least initially, in 27 Member States. The European Commission, the European Parliament and the Council must therefore encourage initiatives between Member States that will make it possible to create a core of willing countries, which will subsequently be able to attract other Member States.

# II. Instrumental legislative reforms

## A. Reinvigorating the EU securitisation market

The broad political consensus on the key role securitisation should play in the financing of the EU economy is a good signal. It is indeed a necessary tool to increase banks' ability to provide credit while offering investors a greater variety of investment opportunities. It is crucial for the growth and strategic autonomy of EU's capital markets and to meet the objectives of financing the transitions.

Currently, securitisation remains largely underdeveloped because of regulatory constraints. Therefore, we call on the European Commission to undertake ambitious full reviews of the Securitisation Regulation, CRR and Insolvency to:

- **Adjust the prudential treatment of securitization for banks and insurers**;
- **Upgrade the eligibility of securitisation in the LCR ratio**; and
- **Have diligence and disclosure requirement calibration more aligned with investors' needs i.e. in line with the nature of the transaction (private/public, collateral), seniority of the tranche…**

In addition, we call for the creation of a technical platform that would benefit to EU markets that are less familiar with securitisation practices.

## B. Reforming ESMA's mandate and governance

### 1. Adding competitiveness to the regulatory mandate

In light of the central role played by the European Supervisory Authorities in the elaboration and implementation of EU regulation, we consider that competitiveness should be added as a core objective of ESMA's regulatory mandate.

This is necessary for EU financial markets to be more competitive at the international level given such objective is already in the mandates of the CFTC and of the SEC in the US as well as of the UK FCA.

### 2. Increasing the independence of the governance

The current design of the Board of Supervisors (BoS), ESMA's main decision-making body, appears inadequate to develop supervisory convergence. The supervisory decision can be dependent on a majority of national competent authorities (NCAs) of countries in which the supervised entity has little or no activity, an evident misalignment of incentives that is bound to hamper supervisory effectiveness.[7]

As such, we advocate for two main reforms in order to strengthen ESMA's decision-making power:

- **Changing the decision making-process of the BoS**, as financial markets in Member States vary widely in size and complexity, we call for new voting arrangements to reflect the heterogeneous weight of financial markets as well as the different areas of expertise of each NCA. Moreover, as this is the case for simple majority voting, abstentions should never count as a vote for or against.
- **Replacing the existing Management Board by an Executive Board,** similarly to the upcoming governance of the Anti-Money Laundering Authority, an Executive Board composed of few selected members would enable ESMA to take more agile decisions.

### 3. Broadening the scope of no-action letters

The lack of reactivity of the EU legislative process – which is inherent to the EU institutional organization – hampers the competitiveness of its market's players vis-a-vis third country jurisdictions which are usually more agile from a legislative perspective.

The delay between the adoption of a proposal from the European Commission and its publication in the EU Official Journal can be detrimental to the business of EU market players when the matter at stake is time sensitive and affects their ability to provide services to clients. This can result in losing clients to competitors operating in a jurisdiction without such a restriction on their service offering.

To address this issue, especially when EU rules appear inadequate because of the evolution of the overall (regulatory and business) context, we propose to broaden the scope of the no-action letter that can be issued by ESMA, to come closer to the prerogatives of the SEC in the US.

### 4. Moving towards direct supervision of pan-European actors

Firms with pan-European activities encounter varying approaches from the different NCAs. This hampers their competitiveness, as it becomes more arduous to establish common processes and tools that would allow them to reduce the cost of their services and products for investors and issuers. There would be benefits, from a supervisory, business and level playing field perspective, to bring these actors under the single supervision of ESMA.

In the medium to long term, we consider that single supervision for pan-European actors must be the ultimate goal to make the Saving and Investment Union a reality. It is imperative to eliminate uncoordinated national exemptions and prevent domestic gold plating of EU law to enable the homogeneous implementation of the single rulebook.

[7] Report, Capital Markets Union: Ten Years Later, N. Veron, ECON Committee, March 2024

## C. Transforming EU savings into EU capital

The current allocation of EU savings is massively suboptimal: while significant amounts lie in banking accounts, the best part of the share exposed to risks moves abroad and mainly to the financing of the US economy [8] (EUR 300bn a year). Transforming EU households savings into EU capital is of the utmost importance.

To reach that objective, we believe that the Retail Investment Strategy is not the right approach: spontaneous investments by individuals are unlikely to grow, given the **ever-increasing administrative burden** for investors.

Contrarily to the US and to a smaller extent the UK, the EU does not have reliable pension systems which would enable massive investment in equities. As the development of pension funds remains mainly in Member States' remits, the European Commission has to find other ways.

Overall, it appears necessary to develop **incentives to long term investment in EU companies**. Given the necessity to move quickly on that topic and in order to avoid going through the entire legislative process, we support an inter-governmental approach which would aim at creating a new class of **European savings products based on a label**. Amongst the various features of this label, experience has shown in Sweden (ISK), in Italy (PIR) and in France (PEA) that the **tax incentives** will be an essential component.

[8] Report, Much more than a market, E. Letta