

AMAFI'S RESPONSE TO THE UNIDROIT CONSULTATION ON DIGITAL ASSETS

Association française des marchés financiers (AMAFI) is a 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, 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.

Unidroit conducted a public consultation on their [principles on digital assets and private law](#). AMAFI wishes to make the following comments on this project.

These principles have been developed without the participation or invitation of all Member States. This is a critical governance issue, in particular considering the Unidroit's foundational principles according to which Member States are to be consulted and shall participate and contribute. AMAFI deems that this deprives the proposed principles of any legitimacy, and these principles should not find their way into applicable European legislation. It appears therefore highly inappropriate to expect States to adapt their legislation to comply with these principles.

On the substance itself, our general view, as an association representative of capital markets, is that there is no clear view on the type of assets that may be captured by these principles whose key concepts are neither clearly defined nor aligned with existing notions, making it impossible to assess their consequences. The interdependencies of these principles with private and securities law are so important that it is absolutely critical to consider, in an appropriate manner, the collateral effects any such changes may have.

In particular with regards to the notion of digital assets, there is no clear view on the type of assets that may be captured, as the notion is merely based on the recording of any such asset (by electronic means) and the concept of "control. No material distinction is made based on the rights attached to the asset, whether they are securities such as shares or bonds (already subject to carefully calibrated legislation), cryptocurrencies or other non-security types of assets (where legislation is in the making). Elements other than the mere electronic registration should be considered in order to differentiate the various types of digital assets (securities, asset referenced tokens, utility tokens, e-money tokens).

For these very fundamental reasons we have a strong opposing view on these principles whose structure is so remote from current legislation and policy objectives and we do not deem it necessary to comment any further.

