EC CONSULTATION on the review of the MiFID2/MiFIR regulatory framework
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AMAFI answer

Association française des marchés financiers **(AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. AMAFI members consist of investment firms and credit institutions (French, European and global firms), operating in and/or from France (corporate and investment banks (CIBs), brokers-dealers, exchanges, and private banks). AMAFI is deeply involved in all regulatory matters that concern financial instruments (MiFID, PRIIPs, intervention measures and product bans, AMF framework on product complexity, etc.). As far as financial products are concerned, we mostly represent all issuers/manufacturers of products (CIBs) and, through our private bank members, distributors as well. AMAFI has more than 150 members operating in equities and fixed-income and interest rate products, as well as commodities, derivatives and structured products for both professional and retail clients.

For more than two years, AMAFI gained highly valuable expertise in working with its members towards full compliance with this heavy and complex legislation and through this work has identified certain areas it considers should be re-evaluated (*AMAFI / 20-03*). AMAFI therefore welcomes the opportunity to provide feedback to the European Commission's consultation on the review of the MiFID2/MiFIR regulatory framework. Please note that for a number of topics (establishment of an EU consolidated tape, commodity markets, derivatives trading obligation, multilateral systems, double volume cap, non-discriminatory access, foreign exchange) AMAFI has joined forces with the French Banking Federation, with whom it shares many members, which explains why answers are identical.

While the publication of the MiFID2/MiFIR review legislative proposal was originally scheduled for September 2020, the massive financing needs that have emerged as a result of the covid-19 crisis require to amend these legislations quickly to ease the Union's economic recovery. To that end, if we were pleased to learn the European Commission is reflecting on adopting a recovery package in the area of securities markets, we are doubtful that alleviating some investor protection rules could act as a game changer in the short term. We consider the scope of issues should be broadened and would encourage the European Commission to also consider reviewing investment research rules for SMEs and to include the Share Trading Obligation and the Derivative Trading Obligation in a Brexit context.

In fact, with the UK, the EU's main financial center, about to leave the Union, it is crucial to rethink the way the EU-27 finances its economy and the role of financial markets to that end. This reflection is directly linked to the various works previously or currently undertaken in order to revive the Capital Markets Union project which was launched in 2014 at a time where no one thought the City could become offshore.

Taking into account the necessity to relaunch the CMU project, AMAFI believes that the review of MiFID 2/MiFIR should aim at achieving two main objectives:

i) Ensure EU-27 financial markets have the capacity to contribute to the financing of the EU economy, so it does not exclusively rely on third country resources in terms of expertise, capital and liquidity. It requires to preserve and to strengthen the competitiveness of financial market actors operating in the EU-27;

ii) Introduce more proportionality to better reflect the specificities of the wholesale market and of the most simple products (such as ordinary shares and bonds that directly finance the economy) for which a better integration at EU level is critical and should take place in the short term.

In light of these objectives, AMAFI remains at the disposal of the European Commission's services to contribute to its current and future work on the review of MiFID2/MiFIR and to bring any clarifications to its answers to the consultation.

SECTION 1. GENERAL QUESTIONS ON THE OVERALL FUNCTIONING OF THE REGULATORY FRAMEWORK

Question 1 - To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?

☐ Very unsatisfied
☐ Unsatisfied
☒ **Neutral**
☐ Satisfied
☐ Very satisfied
☐ Don't know/no opinion/not relevant

Question 1.1 - Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements (5000 characters maximum):

While AMAFI's members are rather neutral when it comes to the implementation of the MiFID II/MiFIR framework, we consider that with the UK, the EU main financial center, about to leave the EU, it is crucial to rethink the way EU financial markets operate in financing EU-27 economies. The review of MiFID2/MiFIR feeds into that reflection and appears critical as the legislation was originally designed with the City as the EU main financial center.

We consider there are five main areas which would require to be reviewed.

First, with regards to investor protection issues, it is necessary to put in place simpler cost and charges disclosure requirements by reintroducing more proportionality according to investor categorization (in particular relief for wholesale) and the nature of financial instruments (see our answers to questions 32.1, 34 and 34.1). Besides, we consider crucial to introduce a more proportionate approach to product governance rules by reintroducing more proportionality for simple financial instruments, by excluding investment firms advising corporate issuers on the primary market and clarifying the Distributor concept to exclude "passive" / "broad" distribution and by excluding from the Product Governance field negotiations between eligible counterparties (see our answers to questions 32.1, 47 and 47.1).

Another issue revolves around the territorial application of MiFID2/MiFIR. In a post-Brexit regulatory environment, one can expect the UK STO and DTO to differ from those foreseen in MiFIR and that trading venues are expected not to be recognized by both EU and UK authorities creating a conflict of law. AMAFI considers that in such a context, the EU STO and DTO should not apply to third country branches of EU-27 investment firms. The application of these rules would not contribute to the protection of investors or the integrity of EU markets and would have a detrimental impact on the competitiveness of EU third country branches, it is hence better to apply local rules only.

Additionally, EU branches face a competitive disadvantage with their competitors especially in the US and Asia as the EU transparency regime is more stringent. When it comes to the UK, with a Brexit perspective, and even before considering the risk of a divergence in rules that would have a detrimental impact on the competitiveness of UK branches of EU firms, imposing a double transparency obligation to them would impair the quality of the data consolidation performed by data vendors. AMAFI calls for an exoneration of transparency obligations for third country branches of EU firms so they can remain competitive.

Another critical issue to improve the functioning of EU financial markets revolves around the cost of market data which play a central role in the investment decision making process of financial market actors. As things currently stand, trading venues have a monopoly on the market data coming from their trading platform both in terms of supply and price which is even more of a problem given market data are unique for each trading venue and therefore cannot be substituted. As a way forward, AMAFI believes it is

important to enable the enforcement of the reasonable commercial basis concept by a simplification and harmonization of tariff grids, contracts and audit procedures of trading venues. We consider this initiative should first be market driven and not result in further legislation.

A fourth topic for which we consider reforms are needed is the OTC derivatives and reference data regime where we consider it is essential to alleviate the obligations that restrain the efficiency of transparency provisions in order to remove investment firms requirements to supply reference data for Utotv instruments while leaving some freedom to investment firms already compliant so they do not have to proceed to expensive and heavy investments in terms of human resources.

Finally, as MiFID2/MiFIR has considerably modified the economic model of financial analysis for equity markets by prohibiting the former and largely used "bundled model". There is a large consensus among issuers, asset management companies and research providers in at least three major markets (Italy, Germany and France) that, given the new rules, the total amount paid for research has dramatically diminished and will likely continue to fall in the coming years. In light of the current covid-19 crisis, it appears crucial to review the existing rules to enable markets to contribute to the economic recovery of the Union. We consider that more proportionality should at least be introduced in the inducement regime for SMEs research. Besides, the development of issuer-sponsored research could constitute a credible alternative to SMEs research. That is why it is necessary to identify obstacles in MiFID II provisions of such development and modify accordingly, if relevant. Notably, it is crucial to be able to qualify issuer-sponsored research as "investment research" and not marketing communication (see our answers to questions 58 to 68).

Question 2 - Please specify to what extent you agree with the statements below regarding the overall experience with the implementation of the MiFID II /MiFIR framework?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
The UE intervention has been successful towards its MiFIDII/MiFIR objectives (fair, transparent, efficient and integrated markets)			X			
The MiFIDII/MiFIR costs and benefits are balanced (in particular regarding regulatory burden)	X					
The different components of the framework operate well together to achieve the MiFIDII/MiFIR objectives				X		
The MiFIDII/MiFIR objectives correspond with the needs and problems in EU financial markets				X		
The MiFIDII/MiFIR has provided EU added value				X		

Question 2.1 - Please provide qualitative elements to explain your answers to question 2 (5000 characters maximum):

Please find below some concrete examples to explain our answers to question 2.

Regarding the question on whether the EU intervention has been successful towards MiFIDII/MiFIR objectives, we believe the efficiency can be improved especially with regards to investor protection rules (on that general point, see our answer to question 31.1). The cost and charges disclosure regime is highly complex and generates flows of information which are of limited use by clients, especially for wholesale

ones. AMAFI fully supports the obligation to inform investors, and in particular retail ones, of the costs and charges incurred. However, this obligation is difficult to implement given the complexity caused by the number of parameters to be taken into account in identifying the obligation applicable to each situation. It does not take sufficient account of the principle of proportionality and the very heterogeneous degrees of knowledge between eligible counterparties, professional clients and retail investors. This obligation, which has been complicated to implement for investment firms and which has not yet been stabilised, as evidenced by numerous ESMA question-and-answer publications, is, in AMAFI view, one of the priority topics for the review of MiFID II investor protection rules.

We also consider MiFIDII has not yet delivered on its objective to lower the prices of market data as participants are facing increased costs in the acquisition and management of data as well as the compliance to complex audit procedures. The main reasons are listed below:

- Unit prices of market data have not decreased and in some cases have continued to rise in a small proportion.
- Trading venues have added several items to their pricing list in order to provide data separately and have transformed existing licences. For instance, many trading venues have introduced new market data fees to cover usage of their data by Systematic Internalisers or other Trading Venues.
- Market data agreements proposed by trading venues are becoming more and more complex and difficult to understand and to comply with. This translated into a significant increase in resources required to monitor the use of market data.
- Audit procedures imposed are also more and more costly.
- Trading venues are not encouraged to lower their prices because each trading venue, notably each Regulated Market, provides indispensable datasets that cannot be replaced.

Therefore, market participants face increased costs in the acquisition and management of data and the compliance to complex auditing procedures. It is essential to enable the enforcement of the reasonable commercial basis concept.

A central objective which should be taken into account especially at a time where the UK is leaving the EU and was not central when MiFIDII/MiFIR was designed is the competitiveness of EU actors. To improve the competitiveness of EU-27 investment firms, we consider it is necessary to review the territorial application of the share trading obligation (STO), derivative trading obligation (DTO) as well as transparency obligations. At a time when there is a widespread consensus that financial markets and investment firms are to be given a greater role in the financing of the EU's economy, we consider that the EU STO/DTO and transparency obligations should not apply to third country branches of EU-27 investment firms.

Question 3 - Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

☐ Not at all
☒ **Not really**
☐ Neutral
☐ Partially
☐ Totally
☐ Don't know/no opinion/not relevant

Question 3.1 - Please explain your answer to question 3 (5000 character maximum)

We do not see impediments to the effective implementation of MiFID II/MiFIR arising from the French legislation or existing market practices.

Nevertheless, MiFID II is a Directive which by essence leads to different transposition from a Member State to another which could be detrimental to the integration of EU financial markets even if, at this stage, AMAFI has not identified a fundamental issue.

In that context, we are supportive of enhancing supervisory convergence and consider that ESMA powers with regards to supervisory convergence should be strengthened. We believe it is essential in order to strengthen the efficiency of EU-27 capital markets.

Question 4 - Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?

☐ Not at all
☐ Not really
☐ Neutral
☒ **Partially**
☐ Totally
☐ Don't know/no opinion/not relevant

Question 4.1 - Please explain your answer to question 4 (5000 character maximum)

AMAFI would like to reiterate that while market transparency is an important element for the smooth operation of markets, other elements must be taken into account to ensure its quality: in particular, the ability of market participants to ensure liquidity, which may be contradictory with excessive transparency. The regulatory objective must be to strike the right balance between the two.

In the equity market, MIFIR did not bring any fundamental change to a market that was already largely transparent, but it did bring complexity to the system, for example with the introduction of the DVC regime (see our answer to questions 82)

With regards to non-equity instruments, it is fair to recognize that MiFID II/MiFIR has improved transparency of the market. However, if the post trade transparency regime is well calibrated, the pre-trade transparency one for Request For Quotes systems is more questionable. We have noticed that in practice, only the clients requesting a quote to a financial intermediary use the pre-trade transparency and are interested in executing a transaction with the latter. Therefore, we call for the simplification of the current regime to pre-trade transparency obligations for liquid and illiquid non-equity instruments.

Question 5 - Do you believe that MiFID II/MiFIR has levelled the playing field between different categories of execution venues such as, in particular, trading venues and investment firms operating as systematic internalisers?

☐ Not at all
☐ Not really
☐ Neutral
☐ Partially
☒ **Totally**
☐ Don't know/no opinion/not relevant

Question 5.1 - Please explain your answer to question 5.

MiFID II/MiFIR clarified the framework applying to the different categories of execution venues whether we consider trading venues or investment firms operating as systematic internalisers (Sis) and especially when it comes to shares and equity like instruments.

Nevertheless, we would like to emphasize that multilateral trading facilities and SIs cannot be compared. The business models of SIs means they have to invest and bear the risk on their own funds while multilateral trading facilities do not bear any risks for transactions executed on their own platform. Therefore, the issue of a level playing field does seem relevant.

With regards to the SIs regime, we believe it application to non-TOTV instruments and the requirement to supply reference data for uTOTV imposes major burdens. Furthermore, assigning ISIN codes to Utotv instruments creates difficulties in terms of transparency, efficiency and costs for both regulators and investment firms.

Therefore, we believe it is essential to alleviate the obligations that restrain the efficiency of transparency provisions in order to remove investment firms requirement to supply reference data for Utotv instruments while leaving some freedom to investment firms already compliant so they do not have to proceed to expensive and heavy investments in terms of human resources.

Question 6 - Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

☐ Not at all
☐ Not really
☒ **Neutral**
☐ Partially
☐ Totally
☐ Don't know/no opinion/not relevant

Question 6.1 - Please explain your answer to question 6 (5000 characters maximum)

As developed in our answers to questions 46 and 46.1, AMAFI considers that the product governance regime generally operates satisfactorily (especially for packaged/structured products) and does not prevent retail clients from accessing products that would be appropriate to them. However, several aspects of product governance requirements could lead to be detrimental for accessing products that would in principle be suitable for retail clients. Distributors could be induced to limit their offer and not sell suitable products every time they would feel at a higher regulatory risk because of product governance requirements:

- Products for which target market identify a risk tolerance higher than none: many retail clients are profiled with a low risk tolerance that could prevent distributors to make them access to riskier product, in accordance with product governance logic. If such approach is safe, retail clients could however be prevented from accessing to the most performing products or in the long run that turned out not so risky (like ordinary shares and bonds) and which are useful to diversify their investments.
-Similar risk with complexity feature that could automatically disqualify some products even though they could not be risky at all (with capital protection or guarantee).

SECTION 2. SPECIFIC QUESTIONS ON THE EXISTING REGULATORY FRAMEWORK

I.The establishment of an EU consolidated tape

Question 7 - What are in your view the reasons why an EU consolidated tape has not yet emerged?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
Lack of financial incentives for the running a CT					X	
Overly strict regulatory requirements for providing a CT					X	
Competition by non-regulated entities such as data vendors			X			
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers				X		
Other					X	

Please specify what are the other reasons why an EU consolidated tape has not yet emerged?

The creation of a CT at least for equities was a strong demand from part of the industry during the Level 1 discussions prevailing at the adoption of MiFID II MiFIR. The choice to leave the realisation of such a scheme to private initiative did not produce the expected results for the two main reasons below:

There has been no in-depth discussion so far within the industry and with regulators on the precise outline of a potential CT in Europe (list of securities concerned, real-time or batch CT, pre-trade data, post-trade data, etc.).

There is no viable business model for a private operator to implement a CT as long as it has to acquire licenses from trading venues and APAS.

Question 7.1 Please explain your answers to question 7:

- Lack of financial incentives for the running a CT

The strong regulatory constraints put on the CTP by MiFID II make it difficult for a provider to match its regulatory obligations while operating on a profitable or viable business model. A CT operator would have to integrate data from about 400 trading venues and 20 APAs.

The cost of such an infrastructure would be impossible to pass on to customers. Indeed, some customers will in any event be obliged to continue to acquire pre- and post-trade data from the trading venues.

- Overly strict regulatory requirements for providing a CT

The obligation to cover 100% of a large list instruments make it impossible to be a CT operator. A more proportionate and step by step approach should be envisaged.

- Competition by non-regulated entities such as data vendors

AMAFI does not believe that CT had not emerged because of the competition of data vendors even if they deliver consolidation of market data but at very high costs. As stated above, the main problem is the price and the format at which market data are sold by trading venues and APAs.

- Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers

Data quality is a real issue, but it is not the reason why at CT has not emerged yet. However, the proper functioning of a CT is conditioned by the improvement of the quality of the data. In particular

For equities: put in place additional flags in order to have a common view on what transactions are price forming and/or addressable.

For non-equities markets there are a large number of investment firms reporting off-venue trades via a broad number of APAs. This information is currently published in different formats by the APAs and the trading venues and is not always published in a harmonised, machine-readable format. Post-trade data standardisation would be very welcome in order to help the consolidation of all the information already available to the public

More broadly, it is important to find a technical solution in order to detect double reporting by, for instance imposing an ID number for OTC transactions.

Question 8. Should an EU consolidated tape be mandated under a new dedicated legal framework, what parts of the current consolidated tape framework (Article 65 of MiFID II and the relevant technical standards (Regulation (EU) 2017/571) would you consider appropriate to incorporate in the future consolidated tape framework?

AMAFI considers that the CT regulation should be included in MiFIR because it is essentially a question of the functioning of the markets. Having an ad hoc text is not necessary and would run the risk of inconsistencies between the different pieces of legislation.

However, before determining which changes to the current legislation are necessary, it is essential to agree on the outline of the CT, the needs it is to cover and those it is not intended to cover, and its organisation.

For AMAFI, a CT could be envisaged around the main principles below. It must be noted that it is a first approach and that a lot of further analysis will be necessary. More detail information is provided in the responses to specific questions.

- A CT could be a useful tool to meet certain needs of market participants.

The purpose of the CT would be to meet the needs of some (but not all) market participants. Indeed, those which use so-called level 2 data (mainly display data) such as asset managers, retail clients, small brokerage entities or CIB may find an interest in the setting up of a CTP. The first user case would be probably in a real time post-trade transparency for equities and bonds. Pre-trade transparency arrangement for equities could also be usefully envisaged.

- Limits of a CT

Some market participants will in any case be obliged to continue to have direct access to level 1 data produced by trading systems because they will still need access to the depth of the market and the lowest possible latency (Wholesale trading, Electronic trading systems and smart order routers)

The CT should therefore not be the sole mean of resolving the issue of the cost of market data, which will remain crucial for these participants. Moreover, for them, the additional costs of a CT should be marginal.

Furthermore, the CT should not aim to make major changes to the existing regulatory corpus such as best execution, market transparency regime or the role of systematic internalisers. This does not mean that the CT will not provide any positive outcome in the management of these rules. For instance, regarding best

execution the CT could be a useful tool for the documentation and controls of the effectiveness of best execution policies.

- Governance and funding of a CT.

AMAFI proposes that the CT providers should be self-regulating organizations which represent the interests of all stakeholders (market data vendors and consumers).

This organization should dispose of enough resources to develop and maintain the IT systems and to cover overhead expenses. This could be done through a mandatory adhesion of all market participants (investment firms and asset management compagnies).

Question 9. Do you agree with the above targeted amendments recommended by ESMA to address market data concerns?

AMAFI agrees with some of the above targeted amendments

- Add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information

AMAFI fully agrees with this proposal which should also include (1) the harmonisation of the format and terminology of fee schedules in order to ease their comparability, (2) the simplification of market data agreements and audit procedures, in order to stabilise them and lift contractual uncertainties that are faced by data users. Moreover, the regulatory framework applied to market data providers should be able to capture data vendors, currently out of the scope of the current regulation.

- Move the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text

AMAFI considers that moving the provision to provide market data on the basis of costs would be very difficult to implement

- Add a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the actual costs of producing and disseminating market data as well as on the margins with CAs and ESMA together with an empowerment to develop Level 2 measures specifying the frequency, content and format of such information

AMAFI considers that this type of rules does not belong to market authorities and therefore disagrees with this provision. Moreover, AMAFI is not in favour on any regulation based on margin control.

- Delete Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users

AMAFI believes that market data providers should not be able to charge users depending on how valuable it is to each individual user. It should however be possible to differentiate prices based on client profile.
Besides that, AMAFI suggest that a review the Intellectual Property rights and licenses on public data provided by investment firms and corporates be seriously envisaged by the European Commission

Question 10. What do you consider to be the use cases for an EU consolidated tape?

Transaction cost analysis (TCA) (fully agree)

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
Transaction cost analysis (TCA)				X		
Ensuring best execution	X					
Documenting best execution				X		
Better control of order & execution Management				X		
Regulatory reporting requirements			X			
Market surveillance				X		
Liquidity risk management						X
Making market data accessible at a reasonable cost				X		
Identify available liquidity	X					
Portfolio valuation				X		
Other				X		

Please specify what are the other use cases for an EU consolidated tape that you identified?
Other use cases identified by AMAFI members are.

- Risk assessment
- Detecting market abuse
- Back-testing models

Question 10.1 Please explain your answers to question 10 and also indicate to what extent the use cases would benefit from a CT:

For instance, considering best execution. AMAFI does not see the CT as a means to ensure best execution under the assumption that it is unlikely that the CT would be able to deliver market data as fast and as complete as flow currently used for algorithmic trading.
The tape could however prove useful for some aspects linked to documentation and controls of the effectiveness of best execution policies and has the potential to become a common references across the industry, especially if better post trade flagging is introduced to reflect the nature of transactions (such as differentiating technical from other non price forming transactions).

Question 11. Which of the following features, as described above, do you consider important for the creation of an EU consolidated tape?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
High level of data quality					X	
Mandatory contributions					X	
Mandatory consumption	X					
Full coverage	X					
Very high coverage (not lower than 90% of the market)				X		
Real-time (minimum standards on latency)			X			
The existence of an order protection rule	X					
Single provider per asset class	X					
Strong governance framework					X	
Other						

Please specify what other feature(s) you consider important for the creation of an EU consolidated tape?
AMAFI does not answer to this question

Question 11.1 Please explain your answers to question 11 and provide if possible detailed suggestions on how the above success factors should be implemented (e.g. how data quality should be improved; what should be the optimal latency and coverage; what should the governance framework include; the optimal number of providers):

- High level of data quality

As stated above (see our answer to question 7.1), insufficient data quality is a real issue and improvement is a condition for the proper functioning of a CT. It must be noted that large progresses have been made over the last two years, and continue to be made

- Mandatory contributions

Mandatory contribution is a key element for a CT. Trading venue, APAs and investment firms should be obliged to send their data, free of charge to the CT providers.

- Mandatory consumption

AMAFI considers consumption should not be mandatory. However, a mandatory funding by all market participants, investments firms and asset management companies should be put in place.

- Full coverage/ 90% of the market

A 90 to 100% coverage should be a goal in a medium run. It could also be envisaged that new incumbents (trading venues, APAs or investment firms) are exempted from a contribution to the CT for a certain period.

- Real-time (minimum standards on latency)

For AMAFI, the minimum latency is a latency that is meaningful for a human consumer. That being said, it must be recalled that a step by step approach is highly desirable. First for post trade information for equity, then pre-trade information for equity and lastly post trade information for non-equity. However, it is important that the CT respects the MiFID II/R deferred publication regime, such that trades which benefit from deferred publication are not published on the tape until after the deferral period has expired.

- The existence of an order protection rule

AMAFI totally disagrees with this assumption. The order protection rule is a US for equities where the market structure is totally different than the EU one. For instance, post trade infrastructures are more integrated in the US than in the EU. The current best execution regime fit the EU market and should not be dramatically changed.

- Strong governance framework

The governance framework is probably the most important (and difficult) issue to achieve a CT in the EU.

AMAFI considers that the CTP should be formed of a well-balanced partnership between regulators and a private firm, with deep industry involvement. The governance should be based on the following:

a) led by regulators, with deep industry involvement (TV, APAs, Investment Firms…) for data validation, architecture,
b) IT infrastructure implemented by IT specialists / private firm with expertise in financial markets,
c) contributors to provide data for free with CT revenue redistribution,
d) a mandatory funding by market participants

Question 12. If you support mandatory consumption of the tape, how would you recommend to structure such mandatory consumption? Please explain your answer and provide if possible detailed suggestions on which users should be mandated to consume the tape and how this should be organised:

The consumption of the tape should not be mandatory. However, the funding of the tape as soon as the amount is reasonable should be mandatory for investment firms and asset management companies. It could be envisaged that the EU NCAs collect the fees.

Please explain your answer and provide if possible detailed suggestions on which users should be mandated to consume the tape and how this should be organised:

See our answer to question 12

Question 13. In your view, what link should there be between the CT and best execution obligations?

See our answer to question 10.

Please explain your answer and provide if possible detailed suggestions (e.g. simplifying the best execution reporting through the use of an EBBO reference price benchmark):

The use of an EBBO reference price benchmark is not the only mean to provide best execution.

Question 14. Do you agree with the following features in relation to the provision, governance and funding of the consolidated tape?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
The CT should be funded on the basis of user fees						
Fees should be differentiated according to type of use						
Revenue should be redistributed among contributing venues						
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades						
The position of CTP should be put up for tender every 5-7 years						
Other						

Please specify what other important feature(s) for the funding and governance of the CT you did identify?

AMAFI is not responding to this question

Question 14.1 Please explain your answers to question 14 and provide if possible detailed suggestions on how the above features should be implemented (e.g. according to which methodology the CT revenues should be redistributed; how price forming trades should be rewarded, alternative be redistributed; how price forming trades should be rewarded, alternative funding models):

Given the diversity of AMAFI membership with different views, AMAFI is not able to answer this question

Question 15. For which asset classes do you consider that an EU consolidated tape should be created?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
Shares pre-trade				X		
Shares post-trade					X	
ETFs pre-trade	X					
ETFs post-trade				X		
Corporate bonds pre-trade	X					
Corporate bonds post-trade					X	
Government bonds pre-trade	X					
Government bonds post-trade					X	
Interest rate swaps pre-trade	X					
Interest rate swaps post-trade			X			
Credit default swaps pre-trade	X					
Credit default swaps post-trade			X			
Other						

Please specify for which other asset classes you consider that an EU consolidated tape should be created?

AMAFI considers that there is as for today no other asset classes which requests a CT.

Question 15.1 Please explain your answers to question 15:

There is a need to distinguish between asset classes that have mainly an order driven market (equity) from others.

For equities, the CT should provide both pre-trade and post-trade data the priority being the provision of post trade data. The scope of the pre-trade transparency regime needs nevertheless further assements.

For others asset classes, bonds and ETFs for which the trading mainly occurs on request for quotes arrangements, only post trade data are required.

For IRS and CDS, AMAFI considers that it is necessary to assess whether a post trade CT could be envisaged.

Question 16. In your view, what information published under the MiFID II / MiFIR pre- and post-trade transparency should be consolidated in the tape (all information or a subset, any additional information)?

Please explain your answer, distinguishing if necessary by asset class and pre- and post-trade. Please also explain, if relevant, how you would identify the relevant types of transactions or trading interests to be consolidated by a CT:

For AMAFI, the information should be aligned. AMAFI would like to highlight the following points.

It is very desirable, that the CT distinguishes addressable versus non addressable liquidity in order (i) to have a clear view on what is price forming and what is not (ii) manage algorithm calibration and risk management.

It is also desirable to find a technical solution in order to detect double reporting by, for instance imposing an ID number for OTC transactions.

Question 17. What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
Shares admitted to trading on a RM					X	
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State					X	
Other						

Please specify what other shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?
AMAFI is not responding to this question.

Question 17.1 Please explain your answers to question 17:

AMAFI considers that the scope of the CT should be based on shares with a primary listing in the EU and on MTFs with a prospectus. This would exclude a large part of securities traded without any primary listing in the EU.

Question 18. In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid shares) to capture the relevant subset of shares traded in the EU for inclusion in the consolidated tape ?

See our answer to question 17.1

Question 19. What flexibility should be provided to permit the inclusion in the EU consolidated tape of shares not (or not only) admitted to an EU regulated market or EU MTF?

See our answer to question 17.1

ETFs, Bonds, Derivatives and other financial instruments

Question 20. What do you consider to be the most appropriate way of determining the Official List of ETFs, bonds and derivatives defining the scope of the EU consolidated tape?

AMAFI considers that the scope of the CT for ETFs bonds and derivatives should be aligned to the scope of the transparency regime. Otherwise, EU markets will become more and more complex.

Question 21. What is your appraisal of the impact of the share trading obligation on the transparency of share trading and the competitiveness of EU exchanges and market participants? Please explain your answer:

AMAFI understands that the aim of the STO was to ensure that trades take place in an EU venue or a venue in an equivalent jurisdiction. AMAFI acknowledges that this objective has been achieved and therefore considers that the STO has had positive outcomes although it should now be adjusted.

In fact, AMAFI has been concerned by the impact of the loss of equivalence for the Swiss market as well as by the risk of a no deal Brexit and the absence of equivalence for the UK market. Besides, in anticipation to a potential no deal Brexit, ESMA has been looking at different means to narrow this obligation to EEA ISINs only. This shows that the STO's impact goes beyond its initial aim and in several cases is now in contradiction with Best Execution and does not serve the competitiveness of EU Investment Firms. It is not in the interest of an EU investor, including Retail ones, to be banned from trading LafargeHolcim in Zurich or an Irish dual listed instrument in London (after the Transition Period in the event of a no deal Brexit for Financial Services), when the main or at least a significant source of liquidity is in these third country markets.

Where there is no equivalence, the STO should only apply to shares which are only primary listed, at the request of the issuer, in the EU. In case of dual listing, where the issuer has chosen to have a primary listing both in the EU and outside the EU, trading in that listing should remain accessible to EU investment firms and EU investors.

AMAFI is also concerned by the impact of potential conflicting STOs between EU27 and the UK after the Transition Period for UK based branches of EU27 Investment Firms. In fact, Regulators have said that the purpose of branches is to service customers domiciled in the country of the branch. Therefore AMAFI thinks that such branches should be exempted from the EU STO as long as they do not service EU customers.

The absence of these solutions could have a significant impact on EU investment firms in terms of competitiveness, costs, transparency, etc. and therefore AMAFI would modify its position regarding its appraisal of the STO.

Question 22. Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?

☐ Not at all
☒ **Not really**
☐ Neutral
☐ Partially
☐ Totally
☐ Don’t know/no opinion/not relevant

Question 22.1 Please explain your answer to question 22:

See our answer to question 21.

Question 23. What is your evaluation of the general policy options listedbelow as regards the future of the STO?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
Maintain the STO (status quo)	X					
Maintain the STO with adjustments (please specify)					X	
Repeal the STO altogether		X				

Question 23.1 Please explain your answers to question 23:

See our answer to question 21.

Question 24. Do you consider that the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited and how?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
SIs should keep the same current status under the STO					X	
SIs should no longer be eligible execution venues under the STO	X					
Other						

Please explain in what other way(s) the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited:

AMAFI does not believe it should be revisited

Question 24.1 Please explain your answers to question 24:

AMAFI is totally opposed to the exclusion of systematic internalisers from the scope of trading venues eligible for the STO. This would de facto mean abolishing the status of Systematic Internalisers for equities, in contradiction with what was agreed during the MiFID II legislative process. MiFID II regime has dramatically improved the previous one by putting in place quantitative thresholds, eliminating the former Banking Crossing Network (BCN) and forbidding SI's networks. In addition to that IFR has extended the tick size regime to systematic internalisers.

Systematic internalisers managed by brokers or banks play an important role in the market insofar as, by committing their capital, they make it possible to process large orders that would not find sufficient liquidity

on multilateral trading platforms. Moreover, they offer different execution services which fulfils the need of various clients such as high touch trading or program trading.

This risk offering activity, which currently happens under the SI regime, should not be thought of as an activity which removes trading volume from Primary markets and lit MTFs but it rather helps to speed-up institutional trading and, whilst risk positions can be unwound by trading in the opposite direction with other clients, often positions are managed by feeding liquidity into the lit markets more quickly than might otherwise been the case if the institutional investor had accepted a longer timeline for the execution of their trade.

The practice of demanding risk capital by Institutional clients has been well established for decades and is unlikely to go away with the removal of the Systematic Internaliser status from the STO and might, instead, move this activity outside of the EU.

Besides that, systematic internalisers managed by Electronic Liquidity Providers play also an important role, by providing additional liquidity with improved execution quality and better mark-outs across a large population of stocks.

Consequently, the removal of the SI status from the STO will entail an immediate and significant change of business model for investment firms and their clients.

AMAFI notes that no market failure has been observed or proven which would justify calling into question the system of systematic internalisers.

Question 25. Do you consider that other aspects of the regulatory framework applying to systematic internalisers should be revisited and how?

For equities, it is important to continue work to better distinguish in post-trade transparency what is, for a given institution, IS activity from technical transactions or transactions that are not involved in the price formation process (give-ups and give-ins, intra-group transactions for risk management purposes...). AMAFI believes that today a large number of transactions are reported with an SI flag when they should not, thereby gives a false picture of the market.

For non-equities (bonds and derivatives) AMAFI considers that some obligations of article 18 of MiFIR which require SI to make the firm quotes “available to other clients” (article 18(5)) and ‘enter into transactions’ under the published conditions with clients to whom the quotes are made available (Article (18(6)) should be deleted.
For derivatives an SI in a given asset class should not be obliged to populate the FIRDS data base when it trades an OTC transaction in this class.

Question 26. What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers?

It must again be recalled that there is a fundamental difference between the SI framework and that of trading venues. Therefore, the concept of level playing field between this kind of execution is not appropriate.

Nevertheless, when there are obvious regulatory loopholes, modifications of the regulatory framework are welcome.

Therefore, AMAFI has supported the change to the tick size regime introduced under the Investment Firms Regulation (IFR).

And AMAFI suggest deleting articles 18(5) (make the firm quotes “available to other clients”) and 18(6) (“enter into transactions under the published conditions with clients to whom the quotes are made available” of MiFIR which imposes additional obligations to SI than those of multilateral execution venues.

Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading?

AMAFI is not responding to this question

Question 28. Do you believe that the scope of the STO should be aligned with the scope of the consolidated tape?

☒ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☒ **4 – Rather agree**
☐ 5 – Fully agree
☐ Don’t know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28:

AMAFI considers that the scope of the CT should be aligned with the scope of the STO

Question 29. Do you consider, for asset classes where a consolidated tape would be mandated, that the scope of financial instruments subject to pre- and post-trade requirements should be aligned with the list of instruments in scope of the consolidated tape?

☐ 1 – Disagree
☐ 2 – Rather not agree
☒ **3 – Neutral**
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don’t know / no opinion / not relevant

Question 29.1 Please explain your answer to question 29:

AMAFI considers that the scope of the CT should be aligned with the scope of the STO for equities and the scope of the transparency regime for other financial instruments.

Question 30. Which of the following measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
Abolition of post-trade transparency deferrals	X					
Shortening of the 2-day deferral period for the price information	X					
Shortening of the 4-week deferral period for the volume information	X					
Harmonisation of national deferral regimes				X		
Keeping the current regime					X	
Other						

Please specify what other measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

AMAFI is not responding to this question

Question 30.1 Please explain your answer to question 30:

AMAFI believes that the establishment of the TC should not be an opportunity to call into question the post-trade transparency regime for bonds.

The current regime, which was the subject of lengthy political discussions is well calibrated. It meets the general objective of market transparency while preserving the ability of risk takers to provide the necessary liquidity to the market.

Furthermore, it is worth recalling the role of ESMA in the gradual implementation of the framework. ESMA is calculating and updating a list of liquid instruments on a quarterly basis, and the SSTI and LIS thresholds on an annual basis. Moreover, ESMA is continuously assessing the impact of transparency and will initiate moves to the next levels of transparency (Stages 2-3-4 corresponding to 40-50-60 percentile) when deemed appropriate, in terms of data quality and market environment.

Nevertheless, harmonisation of MiFID II deferral regimes across the EU should be considered in order to avoid fragmentation and ensure a level playing field for all EU market participants. That harmonisation should be based on the most appropriately calibrated regimes in Europe, currently demonstrated by 10 NCAs including Germany, Italy and France.

II. Investor protection

Question 31 – Please specify to what extent you agree with the statements below regarding the experience with the implementation of the investor protection rules?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
The EU intervention has been successful in achieving or progressing towards more investor protection					X	
The MiFID II / MiFIR costs and benefits are balanced (in particular regarding the regulatory burden)	X					
The different components of the framework operate well together to achieve more investor protection				X		
More investor protection corresponds with the needs and problems in EU financial markets				X		
The investor protection rules in MiFID II/MiFIR have provided EU added value				X		

Question 31.1 – Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Qualitative elements for question 31.1 (5 000 characters maximum)

MiFID II / MiFIR, its associated Level 2 and Level 3 regulations and the related regulations such as the PRIIPs Regulation have resulted in a huge increase of requirements. This has not only resulted in substantial one-off implementation costs. The ongoing organisational burden on a day-to-day basis has also increased considerably. These sets of rules have led to a significant increase in the number of rules. In addition, ESMA regularly publishes several guidelines and many Q&As updated on an ongoing basis. At the national level, implementing rules and orders as well as many supervisory publications must be taken into account. Against this background, it is a challenge to follow current developments, not to mention their implementation.

If globally the MiFID II framework achieved his goal to better protect investors, it is also clear from the feedback from clients that the new requirements are often perceived as too prescriptive, in particular for eligible counterparties and professional clients, and also lead to an information overload of clients.

In AMAFI 's view, there is no need to foster the rules on this topic as clients are well protected. However, it seems essential to better calibrate some requirements to the knowledge and the expertise of professional clients and eligible counterparties.

Easier access to simple and transparent products

Question 32 – Which MiFID II / MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

	Yes	No	N.A.
Product and governance requirements	X		
Costs and charges requirements	X		
Conduct requirements		X	
Other		X	

Please specify which other MiFID II / MiFIR requirements should be amended (5 000 characters maximum)
Not applicable.

Question 32.1 – Please explain your answer to question 32 (5 000 characters maximum)

AMAFI considers that the new set of investor protection rules constitute a major improvement and is globally satisfactory. However, we believe that some amendments aiming at simplifying the regime could help achieve a smoother functioning.

(i) Product governance

For **ordinary shares and corporate bonds** (hereafter "**Vanilla products**"), product governance requirements apply because those products are considered as "manufactured" by ISPs. In AMAFI's point of view, this application is not appropriate as those requirements were primarily designed for "investment products". Thus, AMAFI believes that the following changes should be made.

(1) An ISP that advises an issuer should not be considered the manufacturer of a Vanilla product

Recital 15 of the MiFID II DD considers that the issuer's ISP adviser in connection with an issue of Vanilla products is the "manufacturer" of such products for product governance purposes. However, the advice provided by the ISP in this context does not concern the product as such or its functioning but, rather, the characteristics of the issuance (terms and conditions, timetable, etc.). Moreover, it is complicated to articulate identification of target markets, for product governance purposes, with the type of investors targeted for a given transaction in accordance with Prospectus Regulation. Lastly, such approach provided no added value apart from a purely formal exercise to identify a target market that, by its nature, is very broad and identical for the same type of financial instrument (see Recital 18 of MiFID II DD, which clarifies: "[…] *such products would be compatible with the needs and characteristics of the* ***mass retail market***".)

(2) More proportionality for Vanilla products

The current regime fails to sufficiently apply the principle of proportionality, regarding the following requirements and considering the nature of these products:

- Identification of the positive target market: such products should have a mass retail market target market.
- Identification of the negative target market: the need to identify a negative target market should be acknowledged to be rare or non-existent.
- Costs: by nature, Vanilla products do not incur a product "manufacturing" cost. Therefore, the obligations to verify the compatibility of these costs and charges should be exempted.
- Regular reviews: given the nature of these products, AMAFI considers that it is disproportionate, and perhaps impossible to conduct regular reviews.

(3) Product governance requirement should be adapted for "broad" or passive distribution.

"Broad or passive distribution" concerns firm, today considered as distributor, but that only provides execution services (through execution only regime or appropriateness one) enabling their clients to process financial instruments available on the market. Even if he receives an order "passively" (i.e. not preceded by a marketing campaign, recommendations or advice, etc.) for a product to which it has no ties (he does not know the manufacturer and receives no remuneration from him), ESMA[1] considers that such firm is a distributor. But what benefit from identifying target market, that we know at the end would most likely be compatible with mass retail)? Similarly, requirements on reviews and feedback are of limited utility in that context whereas have significant costs. It is very complicated for distributors to exchange information with a multitude of manufacturers with whom they do not have a relationship and considering the number of financial instruments concerned potentially unlimited.

For those reasons, AMAFI propose to amend the definition of "distributor" to target entities that "(actively) market or recommend" financial instruments but not those which merely "offer" or "propose" the said financial instruments.

(ii) Costs and charges disclosure requirements

The current regime is applicable to all types of clients without differentiation according to the service provided or the product. In order to guarantee an effective protection for the different categories of clients without imposing requirements with no added value, AMAFI wishes to introduce greater proportionality. Wholesale clients have the expertise and the necessary sources of information to make informed decisions. Accordingly, they do not need and do not want, this form of "protection"[2]. Therefore, they should not be forced under a regime which for them is burdensome and useless. For retail investors, disclosures should be relevant and proportionate considering the features of the product.

Question 33 – Do you agree that the MiFID II / MiFIR requirements provide adequate protection for retail investors regarding complex products?

☒ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☒ **4 – Rather agree**
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 33.1 – If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR: (5 000 characters maximum)

Not applicable

[1] *" Distributors should also decide which products will be made available to (existing or prospective) clients at their own initiative through execution services without active marketing, considering that in such situations the level of client information available may be very limited."* (*ESMA35-43-620*, *"ESMA Guidelines", § 31*).
[2] See section 4.2 on page 4 of the European Fund and Asset Management Association (EFAMA's) response to ESMA's call for evidence on the impact of the inducements and costs and charges disclosure requirements under MiFID II, available here.

Question 33.1 – Please explain your answer to question 33 (5 000 characters maximum)

AMAFI believes that retail investors receive adequate protection when purchasing products considered as complex through general information duties, investment advice (that is more likely to take place for complex products, thanks to product governance regime) and related suitability information, but also costs and charges disclosure. Complex products sold to retail implies the provision of a KID PRIIPs as well. It is also worth mentioning that the industry designed useful tools for exchanging data between manufacturers and distributors (such the European MiFID Template – EMT – designed by FinDaTex) that contributes, at the end, to a better protection of final retail clients.

Our answer is "rather agree" because there is still an issue on the costs' disclosure more precisely regarding the inconsistency between MiFID II costs disclosure and PRIIPs KID presentation of costs. With the reduction in yield methodology within PRIIPs, presentation of costs is not consistent with MiFID II costs disclosure requiring an addition of all costs (TER methodology). We consider this should be addressed through the PRIIPs revised RTS, which would align the PRIIPs KID costs disclosure to the MiFID II one.

Another issue lays into the different national regulations on complexity of products that are gold plating measures of MiFID II and PRIIPs and is detrimental to a full harmonised European protection of retail clients.

Also, AMAFI wishes to outline that complex products should not be presumed not compatible with retail investors without prevent them to access a wide range of investments with interesting features of specific investment objectives and/or performance or capital protection. MiFID II protection rules as whole have efficiently reduced risks of mis selling for retail clients.

Finally, in any case the question whether products classify as "complex" or "non-complex" under MiFID II does not provide an appropriate basis for deciding about potential additional requirements nor does it justify a general distinction in the regulatory approach regarding investment products. Indeed, too many investment products are considered as complex under MiFID II whereas so-called "complex" products could be perfectly suitable and well sold to retail clients.

Relevance and accessibility of adequate information

Question 34 – Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?

	Yes	No	N.A.
Professional clients and ECPs should be exempted without specific conditions	X		
Only ECPs should be able to opt-out unilaterally		X	
Professional clients and ECPs should be able to opt-out if specific conditions are met.	X		
All client categories should be able to opt out if specific conditions are met.		X	
Other	X		

Please specify what is your other view on whether all clients, namely retail, professional clients per se and on request and ECPs should be allowed to opt-out unilaterally from ex-ante cost information obligations? (5 000 characters maximum)

For AMAFI, none of the proposals in the table meets perfectly our demand and propositions for amending disclosure on costs and charges.

AMAFI considers that MiFID II disclosure on costs and charges requirements should be amended to simplify the regime and make it more proportionate according to the category of clients and the nature of financial instruments.

Our proposition is as follows:

For ex-ante information, AMAFI proposes to distinguish only **two regimes**:

- "**Full regime**": disclosure on both product costs and service costs on a trade-by-trade basis.

- "**Proportionate regime**": disclosure only on service costs through cost grids. This cost grid should be built specifically per asset class, the amounts indicated may be fixed amounts or, where applicable, ranges or maximum amounts (provided that the latter reflect as closely as possible the economic reality of the costs). This grid, which is sufficiently granular according to the activities of the investment firm, must be communicated at the time of entering a relationship or at the first operation. It is updated at least annually and made available all times to clients.

These regimes would be applicable according to the types of customers and products involved:

- **Eligible counterparties: "exemption" by default or proportionate regime if requested** : meaning switch off completely the costs and charges disclosure requirement (no requirement to provide information on costs and charges (neither in *ex-ante* nor in *ex-post*) unless the eligible counterparty so requests. In this latest case information would be provided under the "Proportionate regime" (through cost grids).

- **Professional clients: "Proportionate regime" by default or "more/full regime" if requested**, meaning application of the "Proportionate regime"; e.g. communication of costs and charges in *ex-ante* using cost grids. When requested by the professional client, more detailed information will be communicated to this client.

- **Retail clients**: application of either the
  - "**Full regime**": like today (i.e. no change of the current regime*) when the product is a **packaged product** within the meaning of the PRIIPs Regulation, whatever the service provided.
  - "**Proportionate regime**": when the product is **not a packaged product** within the meaning of the PRIIPs Regulation, regardless of the service provided unless the client requested more detailed information.

In that context, it should be added that professional clients means here, equally, professional per se and professional on request (with *opt in* procedure amended like explained in our answers to Questions 40 to 45 meaning including sophisticated retail clients upgraded as professional clients).

Ex-post information would be provided to professional and retail clients who have been in an "ongoing relationship" with the investment firm over the past year. Taking into account the feedback on this topic, it also seems important to clarify the scope of the "ongoing relationship" to limit it to the provision of genuine "ongoing" investment services : the safekeeping service (Section B(1) of Annex I of MiFID II), the portfolio management service (Section A(4) of Annex I of MiFID II) or a service that involves providing a periodic assessment of the suitability within the meaning of Article 24(4) of MiFID II and Article 52 of MiFID II DR.

* it is worth mentioning that the current regime of disclosure of costs and charges for packaged products has been fully integrated in the EMT we referred to in answer to question 33.1.

Question 34.1 Please explain your answer to question 34 and in particular the conditions that should apply: (5 000 characters maximum)

AMAFI globally supports the statement that professional clients and ECPs should be exempted without specific conditions. This statement is particularly relevant for ECPs.

AMAFI globally supports the statement that professional clients and ECPs should be able to opt-out if specific conditions are met. But:
- **for ECPs**, **exempt without specific conditions**
- **for professional clients**, **set up a proportionate regime by default** where disclosure is provided but in a simpler way (use of cost grids), like explained in our previous answer to Question 34.

Question 35 - Would you generally support a phase-out of paper-based information?

☐ 1 – Do not support
☐ 2 – Rather not support
☐ 3 – Neutral
☐ 4 – Rather support
☒ **5 – Fully support**
☐ Don't know / no opinion / not relevant

Question 35.1 – Please explain your answer to question 35 (5 000 characters maximum)

Article 3 of MiFID II DR considers that the rule should be the use of paper unless the client, amongst other conditions, formally decides otherwise. This requirement, which dates back to the inception of MiFID, in the early 2000's, is no longer suited to the reality of the relationships between investment firms and clients and, first and foremost, goes against the Union's sustainable growth objectives, without providing better information to the said clients.

For those reasons, an **amendment to Article 3 should be made for a phase-out of paper based information.**

Digitalisation, driven by ever-changing technologies and increasingly demanding clients, has been a reality for many years, including in the financial sector. The **choice of paper as the default option for the provision of information to clients is no longer appropriate**: it is inconsistent with investment firms' economical requirements of **digitalisation**. Any massive use of paper is irreconcilable with objectives of **sustainable finance** that is one of the EU's priorities.

There is no evidence that the provision of paper-based information has **any bearings on the quality of information delivered to the client**. Sending paper documents can actually prove to be ineffective in that regard: incorrect recipient or department, obsolete address, difficulties in updating clients' contact details, loss of documentation with a strong risk that clients do not consider or process the said documentation. Investment firms have further noticed a low feedback rate even where a formal response is required. In addition to its benefits in terms of real access to clients, a digital document addresses two key concerns: **storage and ease of retrieval** allowing a swift access to items which the client may wish to refer to. Furthermore, building a framework around the use of digital mediums guarantees a level of protection at least equivalent to that of paper.

To conclude, AMAFI proposes to proceed to a phase-out of paper based information wherever it is relevant to do so. This phase-out should be possible for all firms and clients whenever it is appropriate to do so but with leaving some flexibility for firms (notably smaller firms) to proceed or not such general phase-out.

Question 36 – How could a phase-out of paper-based information be implemented?

	Yes	No	N.A.
General phase-out within the next 5 years	X		
General phase-out within the next 10 years		X	
For retail clients, an explicit opt-out of the client shall be required		X	
For retail clients, a general phase out shall apply only if the retail client did not expressively require paper based information	X		
Other			X

Please specify in which other way could a phase-out of paper-based information be implemented? (5 000 characters maximum)
Not applicable

Question 36.1 – Please explain your answer to question 36 and indicate the timing for such phase-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it: (5 000 characters maximum)

Please see our answer to Question 35.1.

In addition, it should be outlined that such phase out should be proceed with as little operational constraints as possible and with limiting repapering issues (especially avoiding any request for formal / express / in writing only / consents from clients which is always very difficult to achieve in practice).

Question 37 – Would you support the development of an EU-wide database (e.g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

☒ **1 – Do not support**
☐ 2 – Rather not support
☐ 3 – Neutral
☐ 4 – Rather support
☐ 5 – Fully support
☐ Don't know / no opinion / not relevant

Question 37.1 – Please explain your answer to question 37 (5 000 characters maximum)

First, this proposition raises a lot of questions: why such EU wide database would be needed? For what purposes exactly? What would be its exact scope? Without those elements, it is not easy to assess properly such proposal.

At first sight thought, **it raises a lot of serious concerns and doubt on the legitimacy and usefulness of such database:**
- the experience on KID PRIIPs tends to show the limits of comparison even with a standardised document. Considering the ongoing revision on PRIIPs, would that wise and reasonable to add such a change in the regulatory framework?
- in practice, what data, who and how to upload it into the database? Considering that many data will have to be up to date, how to ensure that the information will be accurate and up to date? Would that mean that firms will be required to register their product in the database before marketing? How we would deal with products that are not marketed in all the EU?
- How ensuring the reliability of the data? Who shall update and oversee updating of the data and will they be able to update as fast as needed?
- Who will endorse such responsibility?
- For how much costs? Financed how? Considering the huge amount of efforts, costs and work done on MiFID II target markets and PRIIPs KID, would be that be reasonable to add even more costs?
- considering the large number of products available in EU, would that be even feasible to have such database?

In addition, we have **trouble with identifying who exactly would benefit from such database**. If the rationale is to help retail investors, we have serious doubt that a database would well fit that purpose. We wonder if that would effectively allow comparison between different types of investment by retail investors: would they be able to accurately do such comparison? On the contrary, we believe that distributors are better equipped to present in a more appropriate way – including using comparison - suitable products to their clients. Precisely thanks to MiFID II product governance, distributors can rely on target markets (for which the industry has been working very hard to implement and in a convergent way thanks to template developed within trade bodies and working groups).

As a whole, we believe that this proposal raises serious issues notably in terms of costs without any real benefit.

Finally, one may point out that aggregating and providing data are services provided today by private companies whom experience and technical expertise ensure a valuable service.

Question 38 – In your view, which products should be prioritised to be included in an EU-wide database?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
All transferable securities	X					
All products that a PRIIPs KID / UCITS KIID	X					
Only PRIIPs	X					
Other	X					

Please specify what other products should be prioritised? (5 000 characters maximum)
Not applicable

Question 38.1 – Please explain your answer to question 38: (5 000 characters maximum)

Like explained in our previous answer, we do not support the proposal to develop such a tool for all products.

Question 39 – Do you agree that ESMA would be well placed to develop such a tool?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 39.1 – Please explain your answer to question 39: (5 000 characters maximum)

Like explained in our previous answer, we do not support the proposal to develop such a tool. Therefore, we disagree with ESMA being in charge and further believes that goes beyond its role and purpose anyway.

Client profiling and classification

Question 40. Do you consider that MiFID II/MiFIR can be overly protective for retail clients who have sufficient experience with financial markets and who could find themselves constrained by existing client classification rules?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☒ **4 – Rather agree**
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 40.1 – Please explain your answer to question 40: (5 000 characters maximum)

AMAFI agrees with the statement made by some stakeholders that **within the MiFID II "retail clients" category there is a large diversity of clients' profiles**: on one hand some clients are wealthy and have a very good knowledge of financial markets while on the other hand some do not have a lot of resources and / or a very limited knowledge of financial markets. This **heterogeneity raises several issues**.

Firstly, the current categorisation may **prevent, in some limited cases, access to some products** (which are dedicated to professional clients and eligible counterparties). This is the case for wealth management clients who can have a good knowledge of financial markets and a significant amount of money to invest (for diversifying their portfolios) but cannot access to sophisticated products (such as **private equity funds** or hedge funds). Secondly, this situation also raises some issues with some corporate clients (which do not fall within the criteria of professional clients *per se*) but perform sometimes a lot of transactions, notably for hedging purposes. As they are considered as "retail clients", for instance, investments firms have to provide them "suitability report" according to the Article 25(6) of MiFID II, for each and yet very similar transactions which is time consuming.

More globally, MiFID II client protection rules for retail are quite heavy and if globally well fit for retail clients with low to intermediate knowledge **are considered too burdensome and excessively constraining for those sophisticated "retail" clients.** To tackle those issues, **AMAFI does not support the proposal to create a new category of "semi-professional" but rather suggests modifying the "opt in" process** as in Annex II of MiFID II regarding "*clients who may be treated as professionals on request*" to facilitate the opt in of sophisticated retail clients as professional clients. Our suggestion is developed in our answer to question 41.1 and 45.

AMAFI also proposes **to generalize the possibility**, granted by some Member States, **for retail investors to access financial instruments dedicated to professional clients as soon as they invest at least 100,000 EUR.** Enrolling this possibility at European level would allow better harmonization and the deletion of current competitive distortions.

Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 41.1 – Please explain your answer to question 41: (5 000 characters maximum)

In AMAFI's view the **issue is not raised by this threshold**. In our view, "opt-in" possibility should be dedicated to a specific type of retail clients who have the sufficient knowledge and a significant amount of money to invest to be able (i) to understand the transaction they perform, (ii) to diversify their portfolio and (iii) to cope with the potential loses – here called "sophisticated retail clients". That is why we are in favour **to keep the threshold of the client portfolio as it is** (*i.e.* at EUR 500 000). Nevertheless, we propose to **add within the scope** of the portfolio the assets held by the clients **in other financial envelopes such as life insurance, employee savings plans, etc**.

AMAFI proposes to modify the **two other criteria** set up in Annex II of MiFID II for opt-in retail clients as professionals on request: **(i) the number of transactions** that should have been carried out and **(ii) the work within the financial sector**.

(i) the number of transactions

The first criterion requires the completion of, at an average frequency, 10 transactions of significant size per quarter during the last year. Question-answer 11.4 of the ESMA Q&A suggests that those transactions must have been performed on the financial instrument for which the investor wishes to be treated as a professional client.

First, this prevent the possibility of being treated as a professional client **on "new" category of products**, and so the possibility for those sophisticated retail investors to access to products limited to professional clients. It creates a **chicken and egg situation**: to access to those financial instruments, investor should be considered as professional client but to be considered as professional client, investor should have already performed transactions on those same financial instruments. Second, for some financial instruments (such as private equity funds) **the number of transactions requested (40 per year) is totally disproportionate**.

Therefore, AMAFI proposes to adapt the number of transactions according to the nature or category of financial instruments and to allow new type of financial instruments.

(ii) the work within the financial sector

The third criterion requires that the client works in the financial sector. AMAFI considers that this criterion is **too limitative**. Indeed, (i) within the industry sector some positions also required to have a good knowledge in finance –as companies' financial directors – and (ii) strong educational background can also provide clients sufficient knowledge. Thus, AMAFI proposes to modify this criterion to capture such individuals considering they have a sufficient financial knowledge or experience.

Alternatively, AMAFI could suggest replacing such criteria with requiring investment firms **make clients pass a formal test to ensure that they have sufficient knowledge or experience** to be considered as" professional clients (see below). This test should be designed in accordance with the products and services provided by each investment firms.

AMAFI also proposes to modify the "opt-in" procedure to **allow investment firms to offer this possibility** to their clients. Indeed, most of the time, clients do not know well enough the regulation to request at their sole initiative to be treated as professional clients. Allowing investment firms to offer this possibility will make clients aware that it exists and then, regarding pro and cons, make their own decision.

Finally, current opt-in mechanism is often of a limited use for investment firms and such sophisticated clients since **MiFID II often considers that "professional on request" clients should not be assimilated to "professional per se" clients. In practice, such distinction is difficult to manage and creates additional legal and regulatory risks for firms that are deterrent.**

To conclude, **to solve the issue raised by the diversity of retail clients, AMAFI proposes to review the opt-in mechanisms (rather than creates a new category)** as follows:

(1) to allow investment firms to propose to their relevant clients to be treated as professional.
(2) to allow investment firms to treat a professional client "on request" as a professional client "*per se*".
(3) to **modify the 1st and the 3rd criteria of opt-in procedure** from Annex II of MiFID II:
- to **adapt the number of transactions** to the nature and category of financial instruments.
- to **allow individuals who works in financial related fields** / **with financial educative background or** allow firms to make clients passing a formal **stricter financial knowledge test**.

See our table as well in answer to question 45.

Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 42.1 – Please explain your answer to question 42: (5 000 characters maximum)

AMAFI is against the creation of a new category of "semi-professionals" clients.

Indeed, as mentioned in our answer to Question 40.1, AMAFI does not believe that the creation of a new client category is the best solution. Conversely, we think that **it would be preferable to modify the conditions of *opt in* procedure**, allowing sophisticated retail investors to be treated as professional clients, and to apply to professional clients "on request" the same level of protection as for professional clients "*per se*".

Today, it is impossible to identify all the side effects that would result from the creation of a new category of clients, but we can at least list those negative effects:
- the costs to implement changes will be extremely high: IT systems would be totally reviewed as well as all firms' documentation, repapering, product governance's target markets, etc., which have already been modified by MiFID II.
- both investment firms and clients need as much as possible regulatory stability: the current three clients' categories have been implemented since MiFID I. Creating a new one today would be very disruptive and confusing for everyone and would require new training of staff and distributors.

Creating a new category would be too disruptive, costly and confusing, including for clients who will need to be re-interviewed.

Question 43 – What investor protection rules should be mitigated or adjusted for semi-professionals clients?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Suitability or appropriateness test	X					
Information provided on costs and charges					X	
Product governance		X				
Other				X		

Please specify what other investor protection rules should be mitigated or adjusted for semi-professionals clients? (5 000 characters maximum)
Not applicable, since **AMAFI does not support the proposal of a new category of semi-professional clients**.

AMAFI answers to this question is not on the proposal to create a new category but on its alternative solution to review opt-in procedure. Another positive outcome of our solution would be that, thanks to changes of opt-in procedure as suggested by AMAFI, retail but sophisticated clients would be considered as professional clients and as such would access products appropriate for them but whom Prospectus target only professional clients (typically private equity funds and hedge funds).

Question 43.1 – Please explain your answer to question 43: (5 000 characters maximum)

AMAFI disagrees with creating semi-professional category but supports the underlying acknowledgement that some so called retail clients are too sophisticated to benefit from all investor protection rules designed for retail.

In particular those sophisticated clients – that should be upgraded more easily into professional category – should be applied mitigated rules on notably costs and charges.

However, the proposal to create a whole new formal category is too disruptive and would require costly implementation changes in current process.

That is why, instead of creating a new category, as mentioned in our answer to Question 41.1, we propose to (i) modify the conditions allowing retail investors to be treated as professional clients and (ii) apply to professional clients "on request" the same obligations as those relating to professional clients "per se".

Question 44 – How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution process?
Please specify which changes are one-off and which changes are recurrent:

The costs to implement this new category will be extremely high: IT systems would be totally reviewed as well as documentation, product governance's target markets, etc., which have already been modified by MiFID II. Considering those drawbacks **AMAFI is against the creation of a new clients' categorisation and conversely proposes to adapt the "opt-in" rules** as developed in our previous answers.

Question 45 – What should be the applicable criteria to classify a client as a semi-professional client?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).					X	
Semi-professional clients should be identified by a stricter financial knowledge test.					X	
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.					X	
Semi-professional clients should be subject to a one-off in-depth suitability test that would not need to be repeated at the time of the investment.	X					
Other					X	

Please specify what other criteria should be the one applicable to classify a client as a semi-professional client: (5 000 characters maximum)
Again, AMAFI does not support the creation of a new client's category of semi-professional. We answer this question having in mind what criteria from opt-in procedure should be modified.

As already outlined, the idea to **require a stricter financial knowledge test is very relevant** in our view and could be an alternative to the use of the criteria "work in financial sector".

On the contrary, **we do not believe that a one-off in-depth suitability test could be useful in that context**. Suitability test is not only about knowledge and experience but also to assess the objectives and needs of a client that do not have direct relationship with its categorisation. It also requires providing investment advice that (i) could not be systematically the case and (ii) at the stage of categorisation of clients (i.e. when on-boarding the client), is too early anyway to identify.

Question 45.1 – Please explain your answer to question 45 and in particular the minimum amount that a retail client should hold and any other applicable criteria you would find relevant to delineate between retail and semi-professional investors: (5 000 characters maximum)

Again, our answer to Question 45 does not refer to criteria to classify a client as a semi-professional but seek to identify which conditions of the current opt-in procedure should be looked into to make it more efficient and more suitable to operational conditions.

In our point of view, several changes should be made regarding the opt-in procedure like developed in our answer to Question 41.1 and that could be sum it up as follows:

(1) to allow investment firms to propose to their relevant clients to be treated as professional (the final decision should still be taken by the client itself).

(2) to allow investment firms to treat a professional client "on request" as a professional client "*per se*".

(3) to **modify the 1st and the 3rd criteria of opt-in procedure** from Annex II of MiFID II:

- to **adapt the number of transactions** to the nature and category of financial instruments.
- to **allow individuals who works in financial related fields for other sectors than the financial sector** and **those with financial educative background or** allow firms to make clients passing a formal **stricter financial knowledge test**.

Criteria for Opt-in	MiFID II Annex II	AMAFI's proposals
1) Client portfolio - threshold amount in euros - scope	 - EUR 500 000 - Investments in financial instruments	 - EUR 500 000 - Investments in financial instruments and insurance life products and employee and retirement savings plans
2) Number of transactions that should have been carried out	10 transactions of significant size per quarter during the last year	- Relevant number of transactions during the last year, depending on the nature/category of financial instruments
3) Work within the financial sector	the client works (or has worked) in the financial sector	- the client works in the financial sector or holds a position with financial related fields in other sectors or individuals with financial educative background - alternatively, any individual who successfully passed a stricter financial knowledge test
Number of criteria to be met	2 out of 3	2 out of 3

Product Oversight, Governance and Inducements

Question 46 – Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

☐ 1 – Disagree
☒ **2 – Rather not agree**
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 46.1 – Please explain your answer to question 46: (5 000 characters maximum)

As explain above AMAFI considers that the product governance regime generally operates satisfactorily (especially for packaged/structured products) and does not prevent retail clients from accessing products that would be appropriate to them.

However, several aspects of product governance requirements could lead to be detrimental for accessing products that would in principle be suitable for retail clients.

Distributors could be induced to limit their offer and not sell suitable products every time they would feel at a higher regulatory risk because of product governance requirements:
- Products without an identified MiFID II manufacturer with whom to share the liability. That is the case for all ordinary shares and bonds negotiated on the secondary market (contrary to structured products manufactured by investment firm).
- Products for which target market identify a risk tolerance higher than none: many retail clients are profiled with a low risk tolerance that could prevent distributors to make them access to riskier product, in accordance with product governance logic. If such approach is safe, retail clients could however be prevented from accessing to the most performing products or in the long run that turned out not so risky (like shares) and which are useful to diversify their investments.
-Similar risk with complexity feature that could automatically disqualify some products even though they could not be risky at all (with capital protection or guarantee).

Also, another issue comes from PRIIPs since many firms have decided to define target market as for professional clients only (and using selling restrictions to disclose that), even for corporate / ordinary bonds to avoid falling into PRIIPs scope and be required to draft a KID.

Question 47 – Should the product governance rules under MiFID II/MiFIR be simplified?

	Yes	No	N.A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).		X	
It should apply only to complex products.	X		
Other changes should be envisaged – please specify below.	X		
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.		X	
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.		X	
The regime is adequately calibrated and overall, correctly applied.			X

Question 47.1 – Please explain your answer to question 47: (5 000 characters maximum)

As a preliminary remark , AMAFI understands here that notion of **complex products** in this table should not be understood as ESMA Guidelines on complex debt instruments for the purposes of Article 25(4) MIFID II but actually **retail investment products that fall under the definition of a PRIIPs**.

AMAFI believes the rules should be simplified by applying more proportionality for the following cases:

(1) Simplification for Vanilla products (ordinary shares and corporate bonds).

Like detailed in our answer to Question 32.1, rules should be changed as to:
- define better the notion of distributor (to **exclude broad or passive distribution** and better protect open architecture model).
- **exclude or alleviate substantially rules for Vanilla products such as ordinary shares and corporate bonds only**.
- **no longer consider investment firm advising corporate for primary issue of ordinary shares and bonds as manufacturers**.

(2) Excluding transactions between eligible counterparties, made outside of any distribution channels.

When an eligible counterparty trades a financial instrument for its own account without any intention of immediately reselling it to its own clients, the counterparty does not act as a distributor for product governance purposes. The eligible counterparty is the firm's only "client" for that specific transaction. Both counterparties have similar roles: each one is both a client and a supplier, and no other "end client" can be considered to be a target. Therefore, **product governance requirements should not apply to negotiations conducted exclusively between eligible counterparties**. Transactions that involve only eligible counterparties, who do not subsequently redistribute the products to end clients, do not require providing all information intended for less sophisticated clients. Concerning the information about products, since eligible counterparties are both knowledgeable and experienced and their knowledge and experience is equivalent, why should one counterparty be required to provide this information to the other? Which of the two counterparties should submit a report to the other? With respect to the obligation to regularly review those products, in the case of eligible counterparties, for what purpose? Product governance requirements should not apply in these cases.

(3) Simplifying reports of sales outside the Target Market

Distributors are required to provide manufacturers with information on sales made outside the target market. From experience, the scope of the sales to be reported is over complicated and lack of proportionality. AMAFI suggest simplifying the reporting by focusing on sales made within the negative target market and/or giving distributors certain discretion to determine the need to report such sales to the manufacturer.
Feedback received tends to show that manufacturers generally receive few reports from distributors on this subject. On average, AMAFI manufacturers generally report a relatively small reporting rate from all their distributors, with a significant exception of French distributors. From a qualitative point of view, most manufacturers agree that in several cases the information does not really enable drawing reliable conclusions as to whether the definition of the target market needs to be revised. Many distributors also point to operational obstacles – chief among them, information systems and IT tools – that make the task as currently required by the laws in force extremely complex, difficult and burdensome.

Question 48 – In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

☐ Yes
☒ **Yes, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product, nevertheless.**
☐ No
☐ Don't know / no opinion / not relevant

Question 48.1 – Please explain your answer to question 48: (5 000 characters maximum)

That issue is already clarified in ESMA Product Governance Guidelines in § 71 and 72.

Investment firm should be allowed to sell a product to a negative target market if the client insists, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product, nevertheless.

It is important to note that, at least in France, "*without legitimate reasons*" (*Consumer Code, art. L. 121-11*), the distributor may not refuse an express request from a client to invest in a product. In AMAFI's view, the mere fact that the client is outside the target market would not appear to constitute a "legitimate reason". **In any event, the objective must be to inform the client as clearly as possible, and not to substitute for him in the decision-making process.**

Question 49 – Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☒ **4 – Rather agree**
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 49.1 – Please explain your answer to question 49: (5 000 characters maximum)

AMAFI's answer is justified by the fact that this general question may have very different answers depending on the nature of the so-called "inducement".

In relation to **commercialization and distribution of financial instruments**, current rules are already quite demanding and, in our view, **sufficiently protective of the clients' interest**. MiFID II strengthened the previous inducement regime and make sure that the client is informed precisely and properly of any inducement and require a quality enhancement test that ensure that firms act in the best interest of their clients.

In that context, financial advisors or any other distributors MiFID II compliant could not push more products for which they receive high commissions from manufacturers if those are not suitable since (i) they must recommend only suitable product anyway and (ii) justify that those commissions enhance the quality of the service provided. To avoid this risk of suspicion, **MiFID II created the independent advisor** who investor can relate to if they refuse all inducement. But such business model implies a higher cost of advice service for investor to still make it profitable for advisors, to compensate the lack of income from manufacturers. That is why it cannot be mandatory and **both advisors and investors should be free to choose the most suitable model**.

Finally, the current inducement rules, especially those related to the distribution of financial instruments are now understood by clients and distributors.

For all the above reasons, and for the sake of regulatory stability, **Inducement rules do not need to be changed in relation to commercialisation of financial instruments.**

On other issues or activities, the answer would be different. Inducement rules had **negative effects on ECM and DCM activities**. AMAFI's aim is to alert the Commission on the damaging effect on fair competition within the EU and on the attractivity of EU capital markets international level, of the reading made by certain Member States of Article 24(9) of MiFID II to placing activities, in relation to equity or debt capital market activities. It appears that **diverging approaches** have been taken by EU regulators on the treatment of the remuneration received by placing agents from issuers (or sellers as far as the secondary market is concerned) and that some of them qualifying such remuneration as inducement:

- Certain Member States either consider that Article 24(9) does not apply because no investment service is provided to investors, and/or that, if one is, there is either no requirement to disclose the exact fee received or no disclosure imposed at all.
- Others have however argued that the activity of finding investors for the issuer also constitutes a service provided to the investor. Following this line of reasoning and adding that there is a connecting between the two services, the remuneration received by the placing agent from the issuer becomes an inducement subject to disclosure to the investors in accordance with Article 24(9).

As a consequence of the above, placing agents across the EU, in theory subject to the same set of rules, end up being treated differently, one more harshly than its neighbour, depending on the Member State it is based in, with important consequences from a competitive point of view in terms of service offers to issuers.

Finally, **qualifying research as inducement, created several damages to the European eco system, in particular in relation to smaller investment firms and for the coverage of SME corporates**.

Question 50 – Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 50.1 – Please explain your answer to question 50: (5 000 characters maximum)

Like explained above, independent investment advice is already in the current framework and precisely because it implies a total ban of inducements, many advisors did not or could not opt for it. Independent advice would be more expensive for clients to stay profitable so the risk with a total ban is to reduce significantly the offer of advisors and consequently, it might result in further reduction of the products offered.

Question 51 – Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☒ **4 – Rather agree**
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 51.1 – Please explain your answer to question 51: (5 000 characters maximum)

AMAFI sees merits in setting up certification requirement for staff providing investment advice and other relevant information if such certification is considered as an **appropriate way to comply with the requirement to assess knowledge and competence of staff** providing investment advice and other relevant information as defined in Article 25(1) of MiFID II.

It is the case in France. Indeed, the French NCA (*Autorité des marchés financiers* **- AMF) already set up and put in place, since July 2010, a certification** mechanism aiming at checking the minimum level of knowledge of current and prospective employees of investment service providers. This exam certified by AMF constitutes a tangible recognition of a core of professional knowledge and strengthens the quality and consistency of the investment advice given to clients in France.

It should be outlined that a European certification requirement despite the merit of foster convergence in that matter would probably result in further costly implementation and regulatory changes for the industry and therefore should be carefully assessed beforehand.

Thus, if the advantages of setting up a European certification requirement are confirmed, AMAFI would recommend the Commission to have a close look at the AMF framework in that matter even if other NCAs have taken upon similar but different initiatives.

Question 52 – Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☒ **4 – Rather agree**
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 52.1 – Please explain your answer to question 52: (5 000 characters maximum)

Considering AMAFI's previous answer and particularly the fact that the AMF has already put in place a certification mechanism assessing knowledge and competence based on an exam certified by the AMF itself; AMAFI would consequently rather agree with the setting up of a EU wide framework for such certification based on an exam.

However, AMAFI suggests the EC when providing the broad outline of this EU certification exam to be attentive as it should be sufficiently **reasonable** and not too much demanding for professionals. Thus, that exam should be defined in closed consultation with professionals (*i.e.* professional associations as AMAFI). Furthermore, given the French situation outlined above, AMAFI invites the EC to draw this new EU certification from the AMF certification, regarding its content as well as its format.

Moreover, if this approach is the one adopted, AMAFI considers it is essential that this new EU certification would **benefit from an European passport**, i.e. once recognized to an individual (current and prospective employee of an investment firm) in a given Member State, it needs to be acknowledged in any other Member State without the need for the individual to re-pass the exam or to be subject to any kind of examination of equivalence.

Also, it is necessary, for logical and practical reasons, to provide a **grandfathering clause** applying to current employees of investment service providers whose knowledge and competence have been certified.

Distance communication

Question 53 – To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☒ **5 – Fully agree**
☐ Don't know / no opinion / not relevant

Question 53.1 – Please explain your answer to question 53: (5 000 characters maximum)

The combined reading of Articles 46(3) and 50 of MiFID II DR requires investment firms to provide *ex-ante* information before the transaction and on a durable medium. However, in the context of providing an execution service by telephone, this *ex-ante* communication on a durable medium requires delaying the execution of the transaction, which is not compatible with best execution obligations.

That is why, without prejudice to the changes that AMAFI would recommend of the current regime of costs disclosure, we think that an exception to the obligation to provide information on a durable medium prior to the transaction should be granted, in all cases, for orders placed by telephone when the investment firm cannot communicate a cost grid to fulfil is ex-ante disclosure obligation. This could consist in providing information by telephone at the time of the transaction, followed by sending the information on a durable medium to the client.

For AMAFI, the answer provided by ESMA in its latest Q&A 28 is not satisfactory because it requires to provide to the client the durable medium simultaneously (and not "immediately after") to the communication over the phone which is very difficult to implement and to comply with. Moreover, legally speaking, it seems essential to have this exemption in Level 1 or Level 2 rather than in a Q&A. It is worth mentioning that such exemption is already granted for distant suitability reports (article 25.6 of MiFID II) and for KID PRIIPs (article 13.3 of PRIIPs).

Question 54 – Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

☐ 1 – Disagree
☐ 2 – Rather not agree
☒ **3 – Neutral**
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 54.1 – Please explain your answer to question 54: (5 000 characters maximum)

AMAFI neutral answer is justified by the fact that MiFID II texts already impose taping and record keeping requirements and particularly under Articles 16(6) and 16(7) of MiFID II, further specified in MiFID II DR, for investment firms which execute transactions in financial instruments. These requirements are useful and necessary to **enable investment firms to monitor their compliance with MiFID II requirements but also monitoring activities as for market abuse purposes.**

If these requirements are useful tools to answer and manage the risks encountered by investment firms, **AMAFI is more doubtful about their role in reducing specifically the risk of products mis-selling** over the phone. Even more, this requirement raised several concerns and issues for staff providing advice without receiving orders nor performing transactions even though welcome clarifications have already been provided by NCAs and ESMA in that matter.

Consequently, AMAFI suggests to **not modify these requirements and to keep regulatory stability** in that matter.

Reporting on best execution

Question 55 – Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 55.1 – Please explain your answer to question 55: (5 000 characters maximum)

Best execution reports established by investment firms in compliance with the Delegated Regulation 2017/576 ("*RTS 28*") are required "*to enable the public and investors to evaluate the quality of an investment firm's execution and practices and to and to identify the top five execution venues in terms of trading volumes where investment firms executed client orders in the preceding year*" (*RTS 28, Recital 1*).

Considering practical and operational feedbacks, AMAFI observes that these best execution reports are not really taken into account by clients of investment firms. We do not believe that best execution reports are "useful information" for investors as they would not even take them into consideration (*i.e.* wholesale – in particular larger firms - actually have their own tool of transaction cost analysis (TCA) to make their own analyses; and considering retail clients, these reports seem to be too technical to be understandable and useful for them).

Question 56 – What could be done to improve the quality of the best execution reports issued by investment firms?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Comprehensiveness	X					
Format of the data			X			
Quality of the data	X					
Other	X					

Please specify what else could be done to improve the quality of the best execution reports issued by investment firms: (5 000 characters maximum)
In AMAFI's view, best execution reports issued by investment firms should at the very least, be simplified in order to be more intelligible and relevant for clients (and more especially for retail clients).

AMAFI would like to bring to the EC attention that if these requirements are modified in that way it would generate complementary implementation costs and thus, before trying to modify them (if not remove completely) AMAFI invites the EC to realise a costs analysis and testing in order to ensure that what would be decided will be really qualitative, efficient and effective. The EC should obviously also consider buy-side inputs on the subject.

Question 56.1 – Please explain your answer to question 56: (5 000 characters maximum)

Like said in our answers to questions 55.1 and 56, best execution reports issued by investment firms in compliance with RTS 28, appear to be difficultly intelligible and therefore irrelevant for investors (specifically retail clients).

There is no issue of comprehensiveness nor a quality of data from sell-side activities but to the practical utility of such best execution reports for: (i) wholesale clients (in particular, larger firms) who do not value those and rely on their own TCA tools, and (ii) retail clients who have difficulties in understanding these reports.

Question 57 – Do you believe there is the right balance in terms of costs between generating these best execution reports and the benefits for investors?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 57.1 – Please explain your answer to question 57: (5 000 characters maximum)

AMAFI disagrees with the fact of saying that there is a right balance in terms of costs. Indeed, in AMAFI's view, these **best execution reports generate significant costs and, again, with very little if no value at all for investors**.

III. Research unbundling rules and SME research coverage

Question 58 - What is your overall assessment of the effect of unbundling on the quantity, quality and pricing of research?

AMAFI would like to point out that the MiFID II rules on research, which had neither been the subject of political discussions by the co-legislators nor been the subject of serious impact studies, have had a negative impact on the production of research in Europe, particularly for SMEs. It can be considered that this piece of legislation was not introduced in a proper manner.

AMAFI recognizes that the decline in SME coverage was a pre-existing trend to the implementation of MiFID II / MiFIR and that there are geographic divergences about the way investment research is produced and displayed in the UE.

It is assessed in many EU markets major markets that MiFID 2 has had a negative impact[3], in number and in quality on the SME coverage. It is not easy to give today quantitative evidence of the decline of the coverage.

[3] Fang, B., Hope, O.-K., Huang, Z. and Moldovan, R. (2019), 'The Effects of MiFID II on Sell-Side Analysts, Buy-Side Analysts, and Firms,' *Rotman School of Management Working Paper No. 3422155*, http://dx.doi.org/10.2139/ssrn.3422155, accessed 10 September 2019. See also for example the report issued by Assosim in June 2019 : 'The Financial Research in Italy under the MiFID II' . Admittedly, the Financial Conduct Authority (FCA) has published mid-September multi-firm review findings indicating the Markets in Financial Instruments Directive's (MiFID II) research unbundling rules have improved asset managers' accountability over costs, saving millions for investors (lien). It is surprising, however, that those findings, published by those who actively supported the

On this topic, AMAFI performed, mid 2018 a study on the coverage of French shares by investment analysts between 2005 and 2017. This analysis highlights as well **several weaknesses** in the supply of financial analysis for small and medium capitalisations:

- The supply is mainly provided by local players, while international players have disengaged from this market segment during the period of observation.
- The supply is more concentrated, creating greater risk of attrition, considering that the 3 more active providers represent 40% of the supply on the capitalisations smaller than 1 Bn €.
- The evolution of this supply appears to be largely dictated by a process of creative destruction leading to the emergence of new players replacing those who disappear rather than a mechanism of elasticity by virtue of which the « stable » players increase or decrease their coverage.

In this environment, the new economic conditions introduced by MiFID II for the financial analysis business pose great risks for the prevalent « Schumpeterian » trend that has prevailed for the last decade. In this case, the disappearance of existing players would not be compensated by the emergence of new players, considering the growing weakening of their business model.

Increase the production of research on SMEs

Question 59 - How would you value the proposals listed below in order to increase the production of SME research?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Introduce a specific definition of research in MiFID II level 1	X					
Authorise bundling for SME research exclusively					X	
Exclude independent research providers' research from Article 13 of delegated Directive 2017/593	X					
Prevent underpricing in research		X				
Amend rules on free trial periods of research					X	
Others					X	

Please specify what other proposals you would have in order to increase the production of SME research

In addition to the measures proposed in question 59, it must be noted that the development of issuer-sponsored research is an important alternative way for SMEs research. That is why it is necessary to identify obstacles in MiFID II provisions of such development and modify accordingly, if relevant. Notably, it is crucial to be able to qualify issuer-sponsored research as "investment research" and not marketing communication (as per article 36 and 37 of MiFID II delegated regulation 2017/565) provided that the

new regime, has not been confirmed by these other studies, nor by the feeling of players in the French market : buy-side, sell side and small and mid-issuers. On this issue, see also Q 59 and 59.1 and the reasons why sponsored research is developing today.

research provider strictly comply with the current MiFID II and MAR rules (see our answer to questions 65 to 67.1).

Question 59.1 - Please explain your answer to question 59 and in particular if you believe preventing underpricing in research and amending rules on free trial periods of research are relevant:

Introduce a specific definition of research in MiFID II level 1

AMAFI considers that there is no need to introduce a specific definition of research in MiFID II Level 1. Indeed, research covers various and varied services which moreover evolve over time.

For example, we are now witnessing the development of research on sustainable finance, which did not exist a few years ago. It is therefore not appropriate to fix in a Level 1 text a definition of a service that is first and foremost a matter of the commercial relationship between a research producer and its clients.

Authorise bundling for SME research exclusively

AMAFI considers it essential to introduce proportionality into the MiFID II rules on research.

This proportionality should be introduced on the basis of the company's capitalisation (below EUR 1 billion) and the size of the management company (depending on the amount of commissions (execution + research) paid by the management company, for instance an annual amount of EUR 500,000).

In these situations, bundling of some activities should be authorised. It should be recalled that before MIFID II, brokerage commissions paid for execution services on the one hand, investment/trading decision support services on the other hand.

Execution services notably encompassed:
- the supply of explanatory or forward-looking information about market movements
- order execution, in any form (DMA, algorithm, discretionary, natural crossing, etc.)
- follow-up services, e.g. order confirmation, reporting, settlement
- ….

Investment/trade decision support services notably encompassed:
- research
- financial analysis
- advice and sales services
- access to companies and their management
- trade analysis
- the supply of market information, depending on the situation
- …

Some jurisdictions, such as France and the UK, had introduced Commission Sharing Arrangements (“CSA”) that allowed the remuneration of execution services to be separated from that of other services. This scheme could be put in place again for SMEs.

Exclude independent research providers’ research from Article 13 of delegated Directive 2017/593

AMAFI totally disagrees with this proposal which would create a non-level playing field between sell-side research providers and independent ones.

Prevent underpricing in research

AMAFI considers that the concept of underpricing will be very difficult to prove, as the current discussions at European level on the cost of market data reveal. Indeed, it is not because a service is sold at a low price that its production costs are not covered if the number of customers is large.

This subject must be examined primarily in the light of the rules of competition law.

Amend rules on free trial periods of research

The rules on free trial periods should be amended in order to:

- be implemented at the level of each asset class (equities, bonds, derivatives...)
- allow free trials for a period of 6 months in order to consider the pace at which the research recipients revise their purchasing policies for the services they subscribe to.

Question 60 - Do you consider that a program set up by a market operator to finance SME research would improve research coverage?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 60.1 - If you do consider that a program set up by a market operator to finance SME research would improve research coverage, please specify under which conditions such a program could be implemented:

No, AMAFI does not consider that such program would improve research coverage.

Question 60.1 - Please explain your answer to question 60:

AMAFI does not believe that sustainable and relevant business models consisting in having research fully or partially funded by third parties, market operators or public money can be implemented. The economic balance must be struck between stakeholders which have an interest in developing financial research: investors on one side, issuers on the others.

Moreover, adding a new intermediary in the value chain does not go in the right direction in a deflationary market.

However, market operators could be encouraged to make the admission of securities to their market conditional on the company being able to demonstrate that its security will be subject to research coverage for a period of at least three years.

Question 61 - If SME research were to be subsidized through a partially public funding program, can you please specify which market players (providers, SMEs, etc.) should benefit from such funding, under which form, and which criteria and conditions should apply to this program:

See our answer to question 60.1.

Question 62 - Do you agree that the use of artificial intelligence could help to foster the production of SME research?

☐ 1 – Disagree
☒ **2 – Rather not agree**
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 62.1 - If you agree, which recommendations would you make on the form that such use of artificial intelligence could take and do you see risks associated to the development of AI-generated research?

Question 62.1 - Please explain your answer to question 62:

Artificial intelligence and machine learning are probably ways of making the production of research more efficient and less costly. However, we do not believe that at this stage of its development AI has the capacity to implement the processes to produce quality research that creates added value for investors. This may possibly be of assistance to the analyst, but it will take many more years before he/she can be eliminated.

Question 63 - Do you agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 63.1 - If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate:

Question 63.1 - Please explain your answer to question 63:

AMAFI believes that the creation of a European database providing a certain amount of data on companies issuing on the markets would be undeniably useful. However, the contribution of such a database should not be overestimated. In addition to the fact that numerous data is already available to those who know how to look for it, a quality research is not based on raw data but also on contacts with managers, visits to business premises, etc. and, in fine, on the reasoning that will be drawn from the juxtaposition of these various elements. This is what is important for investors.

In any case, it is important to ensure that the cost/benefit ratio of the implementation of such a database remains reasonable.

Question 64 - Do you agree that ESMA would be well placed to develop such a database?

☐ 1 – Disagree
☒ **2 – Rather not agree**
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 64.1 - Please explain your answer to question 64:

The data in question are more of an accounting nature, and it is not clear that ESMA is in the best position in this respect. In any event, it should not be a means of creating new red-tape on companies.

Financial research is not a right for investors. It is an intellectual service which, within the limits set by MAR, creates added value in relation to information that must be publicly accessible and must be remunerated as such.

Question 65 - In your opinion, does issuer-sponsored research qualify as acceptable minor non-monetary benefit as defined by Article 12 of Delegated Directive (EU) 2017/593?

☐ 1 – Disagree
☒ **2 – Rather not agree**
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 65.1 - Please explain your answer to question 65:

We consider that this question is not entirely relevant. According to AMAFI, the approach to issuer-sponsored research should follow the following reasoning:

- Issuer-sponsored research provided that the research provider strictly complies with the current MiFID II and MAR rules can be qualified as investment research (see our response to question 66). Notably, the nature "issuer-sponsored" of the research should be clearly disclosednder these conditions, if the issuer-sponsored research is made available at the same time to any investment firm wishing to receive it or to the general public, then it can be qualified as an acceptable minor non-monetary benefit.
- This does not mean that, as investment research, it should necessary be the case nor should it be qualified as an acceptable minor non-monetary benefit under all circumstances. It should be kept in mind that Issuers, in most cases only take in charge part of the production cost of the sponsored research. Against this background, most research producers specializing in Small & Midcaps would see their economic situation deteriorate further if they made their research freely available.
- Indeed, issuer sponsored research should be distributed through the same channels than non-sponsored research, as agreed between the producer and its clients (i.e., either the regime of acceptable minor non-monetary benefit as provided by article 12 **OR** the regime of research payment agreement as provided by article 13). It is worth mentioning as well that all clients are not subject to the ban of inducement and as such, outside the scope of article 12 and 13 of Delegated Directive

Question 66 - In your opinion, does issuer-sponsored research qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☒ **5 – Fully agree**
☐ Don't know / no opinion / not relevant

It is absolutely essential for issuer-sponsored research to be qualified as "investment research" as defined in MiFID 2. Were this research to be treated as "marketing communication" under the provisions of the directive, the effect would be particularly damaging. First of all, for issuers, such a qualification would only lessen the interest of the research. The sums that they pay for this coverage only make sense if they receive a quality service in return. Then for investors, the research would be deemed of lower quality and therefore of less interest to investors.

Given that the various rules resulting from the MAR and MiFID 2 apply in full to sponsored sell-side research, there are no legal or practical grounds to consider that this research could not be identified as "investment research". The fulfilment of MAR and MiFID 2 requirements is a guarantee that the research has been produced under objective and independent conditions.

Notably, Article 37 of the MiFID 2 DR ("Art. 37") specifically sets out strict organisational requirements intended to prevent and avoid any conflict of interest. In particular, the personal transactions of financial analysts are highly regulated. There must also be information barriers between the financial analysts and other persons whose responsibilities may conflict with their interests. **They must not accept "*inducements*"** or promise issuers favourable research coverage. Lastly, they must not submit their research to issuers prior to publication without first removing the recommendation and the target price.

Compliance with Art. 37 is necessary to qualify sponsored research as "investment research". Otherwise, it would have to be treated as "marketing communication" (MiFID 2 DR, Art. 36).

The issue with sponsored research is the requirement of Art. 37 (d) to "*not accept inducement*". Hence the question: **"Should the remuneration received by the investment firm form the issuer for producing the sponsored research be considered an "inducement"?** Bearing in mind that the notion of "inducement" in MiFID 2 is a broad concept, various elements nevertheless argue to answer **no**.

Sponsored research should be considered as a service provided to the issuer. As a result, while the remuneration received by the investment firm is linked to the provision of an ancillary service, this remuneration is in fact **paid directly by the client, disqualifying it as an inducement**.

However, research is a service that can also be considered as being provided to investors. From this angle, the payment received – possibly an inducement – must be "*designed to enhance the quality of the relevant service to the client*", and "*not impair compliance with the investment firm's duty to act honestly, fairly and professionally*". Research necessary leads to an improvement in the service provided to the client. As for the second condition, investment firms producing sponsored research necessarily fulfil both the conditions laid down by the MAR – and in particular the fact that its "sponsored" quality is clearly disclosed in the research document – and all the other conditions laid down by Art. 37. We cannot presume that the mere fact of being remunerated by an issuer to produce research prevent the investment firm from acting "*honestly, fairly and professionally*". Therefore, **the remuneration received by the investment firm – and provided that it is clearly disclosed to investors (in compliance with MAR anyway) - is compliant with MiFID inducement regime**.

Lastly, one may argue that a **more literal meaning of the term "*inducement*" used in Article 37 (d) should be applied here**. The aim of this provision is, in fact, not to deprive the investment firm of any

remuneration from the issuer but more likely to prohibit the receipt of benefits by the analyst (probably rather gifts or other non-monetary benefits) that could **undermine the production of impartial research**. The issue of impartiality is so central to the credibility of research (regardless of whether or not it is sponsored) that most of the compliance procedures in that matter provide that analysts must not accept gifts (including invitations to events) from issuers.

To conclude, all those elements **support the analysis that sponsored research could be considered as compliant with Article 37 and therefore qualifies as investment research.** More generally speaking, and as long as it meets the same independence and impartiality requirements as non-sponsored research and produced in compliance with both MAR and MIFID, **there is no reason to treat sponsored sell-side research any differently.**

Question 67 - Do you consider that rules applicable to issuer-sponsored research should be amended?

Considering our answer to question 66, under the conditions exposed at question 65.1, both that (*i*) it is absolutely necessary that issuer-sponsored research is qualified as investment research and (*ii*) to avoid unnecessary legal and regulatory risks that could prevent that; AMAFI proposes to slightly amend Article 37 (d) of MiFID 2 DR like below:

> *d) the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research do not accept ~~inducements~~* ***non-monetary benefit that may undermine the production of impartial research****, from those with a material interest in the subject-matter of the investment research; (…)*

Question 68 - Considering the various policy options tested in questions 59 to 67, which would be most effective and have most impact to foster SME research?

	1 (least effective	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 most effective)	N.A.
Introduce a specific definition of research in MiFID II level 1	X					
Authorise bundling for SME research exclusively					X	
Exclude independent research providers' research from Article 13 of delegated Directive 2017/593	X					
Prevent underpricing in research		X				
Amend rules on free trial periods of research					X	
Create a program to finance SME research by market operators	X					
Fund SME research partially with public money	X					

Promote research on SME produced by artificial intelligence						X
Create an EU-wide database on SME research	X					
Amend rules on issuer-sponsored research					X	
Others						

Please specify which other policy option would be most needed and have most impact to foster SME research:

Question 68.1 - Please explain your answer to question 68:

See our answers questions 58 to 67.

IV. Commodity markets

Question 69 - Please specify to what extent you agree with the statements below regarding the experience with the implementation of the position limit framework and pre-trade transparency?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.				X		
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).			X			
The different components of the framework operate well together to achieve the improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility.				X		
The improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility correspond with the needs and problems in EU financial markets.				X		

The position limit framework and pretrade transparency regime for commodity markets has provided EU added value.		X				

Question 69.1 - Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

We believe that The MiFID II/MiFIR regulatory framework globally served its goals regarding transparency orderly pricing of commodity derivatives. However, we consider that settlement prices cannot not be determined by open positions, contrary to the premise set by the MiFID II framework. As for the functioning of commodity markets, the measures put in place have impacted the development of illiquid and nascent contracts by imposing a position limit on a very large scope of instruments, and have restricted the growth of numerous contracts. Our opinion is that this regime, in its current scope, has affected the competitiveness of the European commodity derivatives markets, and should be reviewed in order to match its initial goal, which is preventing commodity derivatives contracts from influencing the pricing of the underlying commodities. We recommend that the authorities amend this regime in order to narrow it to a list of critical contracts subject to position limits.

We believe that the current regime of position management controls is fairly adequate and does not need to be reviewed.

As for the exemptions to the positions limit regime provided by the regulatory framework, we believe that an extension of the current hedging exemption to financial counterparties, and the implementation of a position limit exemption for both financial and non-financial counterparties under mandatory liquidity provision obligations. We believe that these measures would help bring liquidity necessary to the development of new contracts, and that hey would encourage financial counterparties to increase their key role in granting market access to small commercial entities through their hedging activities.

Finally, we believe that the pre-trade transparency regime could be reviewed regarding the methodologies for liquidity determination and the calculation of LIS thresholds, in order to better match an accurate representation of contracts with a liquid market, and provide for a better use of the transparency waivers set by the regulatory framework.

Position limits for illiquid and nascent commodity markets

Question 70 - Can you provide examples of the materiality of the above mentioned problem?

AMAFI is not responding to this question

Question 71 - Please indicate the scope you consider most appropriate for the position limit regime:

	1 (Most Appropriate)	2 (neutral)	3 (Least Appropriate)	N.A.
Current scope			X	
A designated list of 'critical' contracts similar to the US regime	X			
Others	X			

AMAFI believes that the scope for the position limit regime should be narrowed to important benchmark contracts. It is important that only contracts that influence the pricing of the underlying commodity and other commodity derivatives and are undergoing price formation are subject to the position limit regime.

Question 71.1 - Please explain your answer to question 71:

It is now clear that even with the derogation set out by article 15 of Commission delegated regulation (EU) 2017/591 for new and illiquid contracts, the enforcement of the position limits regime is detrimental to the development of illiquid and nascent contracts. This is mostly due the low thresholds applied by NCAs on these contracts from day 1. ESMA's Q&A on commodity derivatives opens the possibility for the use of different derogations. However, these derogations proved to be difficult to apply in practice, and are not sufficient to counter the negative effects of low positions.
Taking these arguments into consideration, we believe that ESMA should be mandated in order to define critical contracts that should be subject to position limits.

Question 72 - If you believe there is a need to change the scope along a designated list of 'critical' contracts similar to the US regime, please specify which of the following criteria could be used. For each of these criteria, please specify the appropriate threshold and how many contracts would be designated 'critical'.

X	Open interest
X	Type and variety of participants
X	Other criterion: Underlying commodity
	There is no need to change the scope

Open interest: Several trading venues estimated a potential new threshold at 300 000 lots. Estimates by trading venues expect around 20 contracts would be deemed "critical" following this threshold.

Type and variety of participants: Rather than the type of participants, we believe the number of participants could be a more appropriate parameter, even though it is strongly correlated with the open interest. In order to match the proposed open interest threshold, we believe that the minimum number of participants should range between 20 and 50 participants.

Underlying commodity: Some contracts with no associated deliverable supply are subject to the position limits regime. We believe that such contracts should not be subject to this regime considering that the main goal of the position limits regime is to prevent commodity derivatives contracts pricing from influencing the price of the underlying commodity. It is also important that commodity contracts with an underlying that qualifies as food intended for human consumption are regarded as critical by nature, considering the importance of preventing speculation activity on these contracts. In that matter, articles 9 and 14 of Commission delegated regulation (EU) 2017/591 already set derogations to the position limits regime regarding this specific type of contracts.

Question 72.1 - Please explain your answer to question 72:

While it is difficult to make a precise assessment of the number of contracts that would be considered as critical with the combined use of all the above mentioned criteria, the strong correlation between open interest and the number of active participants would suggest around 20 contracts through the Union would be subject to the position limits regime, re-focusing the use of this regime on the important benchmark contracts that have an actual impact on the pricing of the underlying commodities, and allowing for nascent and illiquid contracts to develop. This would also set a comparable regime to that set in the U.S, allowing the European commodity derivatives market to gain competitivity.

Question 73 - Do you agree that there is a need to foster convergence in how position management controls are implemented?

☒ **1 – Disagree**
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 73.1 - Please explain your answer to question 73:

We believe that there is no need for a new set of rules aiming at fostering convergence in the implementation of position management controls. Such a measure could push some trading venues to converge towards a regime that is not fit for its participants and their trading activity. We believe that the implementation of position management controls should continue to be enforced by trading venues, through a continuous dialogue with position holders, and a constant adaptation of each regime depending on the evolution of the trading activity in each venue.

Question 74 - For which contracts would you consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations?
This exemption would mirror the exclusion of the related transactions from the ancillary activity test.

	Yes	No	N.A.
Nascent	X		
Illiquid	X		
Other			X

Question 74.1 - Please explain your answer to question 74:

We believe that such an exemption would be appropriate for Nascent and illiquid markets and allow them to attract more liquidity, especially considering the disproportionately low threshold set by the position limits regime. However, we believe that the difficulty to attract liquidity providers for this type of contracts should be taken into consideration, by allowing non-financial counterparties to benefit from such an exemption as well.

Question 75 - For which counterparty do you consider a hedging exemption appropriate in relation to positions which are objectively measurable as reducing risks?

	Yes	No	N.A.
A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	X		
A financial counterparty	X		
Other			X

Question 75.1 - Please explain your answer to question 75:

We support the extension of the hedging exemption for financial counterparties, considering that they already perform hedging activities in commodity derivatives markets under the position limits regime.

Financial counterparties play a key role in providing market access to small commercial entities, and should therefore be able to use the hedging exemption under the same conditions set by article 8 of MiFIR or article 57 of MiFID II for non-financial counterparties.

Pre-trade transparency

Question 76 - Do you consider that pre-trade transparency for commodity derivatives functions well?

☐ 1 – Disagree
☒ **2 – Rather not agree**
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

If you do not consider that pre-trade transparency for commodity derivatives functions well, please (1) provide examples of markets where the pre-trade transparency regime has constrained the offering of niche instruments or the development of new and/or fast moving markets, and (2) present possible solutions including, where possible, quantitative elements:

We believe that key indicators calculated for the use of pre-trade transparency waivers are currently using methodologies that lead to an inaccurate representation of contracts with a liquid market, and a rather high pre-trade LIS threshold for illiquid contracts:

- Liquidity determination: The current methodology set out in Commission Delegated Regulation (EU) 2017/583 to determine if a commodity derivative contract is deemed to have a liquid market relies on the average daily notional amount (ADNA) and the average daily number of trades (ADNT) (See Table 7.1 of Annex III of Commission Delegated Regulation (EU) 2017/583). It also relies on qualitative criteria that differ through the different sub-asset classes. While the table details different relatively appropriate qualitative segmentation criteria for the determination of contracts with a liquid market, it sets a unique threshold for the quantitative criteria, set at an ADNA=10 million euros, and an ADNT=10. For certain sub-asset classes, an ADNT set at 10 might be too low, and lead to wrongly classify some contracts as having a liquid market, thus constraining the development of new contracts in these classes.

- Level of pre-trade LIS threshold: The current methodology for the calculation of pre-trade LIS thresholds produces a rather adverse effect from the one initially expected by the regulation. As a matter of fact, data shows that LIS thresholds are higher for less liquid contracts and lower for liquid contracts. This paradox is partly due to the flawed qualitative segmentation criteria, leading to a mix of liquid and less liquid instruments in the same sub classes, and partly due to the quantitative metrics used to assess liquidity, as the ADNA is correlated with the price and might increase following a price increase, and give the impression of more liquidity. As for the ADNT, it might categorize a market with numerous transactions as liquid, not taking into account that the transactions might be small and not representative of more liquidity, and vice versa.

V. Derivatives Trading Obligation

Question 77 - To what extent do you agree with the statements below regarding the experience with the implementation of the derivatives trading obligation?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.			X			
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).			X			
The different components of the neutral framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.			X			
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.			X			
The DTO has provided EU added value.			X			

Question 77.1 - Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organizational arrangements, HR, etc.

AMAFI is supportive of the Derivatives Trading Obligation (DTO) which was a G20 commitment following the 2008 crisis. Besides, our members have been fully complying with its requirements under MiFIR.

However, AMAFI remains rather neutral regarding its implementation. Indeed, the main DTO implementation concern remains the on-going threat of a Brexit no-deal scenario in the absence of full equivalence between EU and UK trading venues or, at least, of non-overlapping application of the UK/UE DTO requirements to third countries branches of UE firms (see hereunder response to question 78).

The absence of one of these solutions could have a significant impact for EU investment firms in terms of competitivity, costs, transparency, etc. and therefore modify its position regarding the implementation of EU DTO requirements.

Question 78 - Do you believe that some adjustments to the DTO regime should be introduced, in particular having regards to EU and non-EU market making activities of investment firms?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☒ **5 – Fully agree**
☐ Don't know / no opinion / not relevant

If you do believe that some adjustments to the DTO regime should be introduced, please explain which adjustments would be needed and with which degree of urgency:

In the context of Brexit, we believe that it is urgent to issue several equivalence decisions in order not to disrupt the efficient provision of financial services after the Withdrawal Agreement transition period. One of the areas for which an equivalence decision is urgently needed is that of the securities and derivatives trading venues.

We would therefore welcome a full equivalence between EU/UK trading venues similarly to what has been granted with US CFTC SEF and MAS Trading Venues in Singapore.

In the absence of such equivalences, it is likely that after a certain period of time UK DTO requirements will differ from those of the EU and that certain EU or UK trading venues will then not be recognized by both the UK and EU authorities for the purpose of their respective DTOs. These situations may create conflicts of laws, which would be impossible to comply with by the UK branches of EU firms.

Within this context, it is crucial to avoid any concomitant application of EU and UK rules or even a systematic application of the most stringent regulations, which would be unbearable for EU financial firms and detrimental to their competitiveness.

Therefore, we would, at the very least, welcome the amendment of the current MiFID II/ MiFIR rules to make clear that the EU DTO requirements will not apply to transactions carried out by third countries branches of EU firms since they are not providing investment services or core services to EU clients, whether directly or via reverse solicitation.

In addition, as recently recommended by ESMA (see Consultation paper on the transparency regime for non-equity instruments and the trading obligation for derivatives, p. 104), we also see the benefits of introducing a self-standing suspension mechanism for the DTO. Such mechanism should be modelled on the one introduced by EMIR Refit for the clearing obligation and should allow to suspend the DTO in situations in which: (i) a specific class of OTC derivatives is no longer suitable for the DTO or (ii) there is a serious threat to the orderly functioning of the EU financial markets.

Question 78.1 - Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?

Please refer to the answer above.

Question 79 - Do you agree that the current scope of the DTO is appropriate?

☐ 1 – Disagree
☒ **2 – Rather not agree**
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 79.1 - Please explain your answer to question 79:

AMAFI considers that it would make sense to clarify that the DTO regime is a client protection measure (i.e.: trading in trading venues where pricing and reporting environment can be considered as optimal for the clients), which means that only the DTO regime applicable to the clients, depending of their place of trading/incorporation, would have to be fulfilled.

Question 80 - Do you agree that there is a need to adjust the DTO regime to align it with the EMIR Refit changes with regard to the clearing obligation for small financial counterparties and non-financial counterparties?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☒ **5 – Fully agree**
☐ Don't know / no opinion / not relevant

Question 80.1 - Please explain your answer to question 80:

We fully agree with ESMA's following statement (see the abovementionned Consultation paper): "(..) ESMA notes that as per the draft RTS the provisions that apply to the clearing obligation also apply to the trading obligation for derivatives, therefore if an exemption is given under EMIR, that same exemption also applies to the trading obligation."

AMAFI therefore supports the alignment of the DTO regime with changes introduced by EMIR Refit with regard to the clearing obligation for small financial counterparties and non-financial counterparties.

VI. Multilateral systems

Question 81 - Do you consider that the concept of multilateral system under MiFID II/MiFIR is uniformly understood (at EU or at national level) and ensures a level playing field between the different categories of market players?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☒ **4 – Rather agree**
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

While we consider that the the MiFID II/MiFIR framework provides a clear definition of the notion of "multilateral system", we believe that some systems operating in the fixed income markets can be open to different interpretations regarding their fitness for this definition, thus distorting competition among trading venues.

AMAFI believes that it is necessary to implement supervisory convergence on this issue, and calls on ESMA to issue a clarification to set a unique approach by publishing a Q&A.

VII. Double Volume Cap

Question 82 - Please specify to what extent you agree with the statements below regarding the experience with the implementation of the Double Volume Cap?

	1 (Disagree)	2 (Rather not agree)	3 (Neutral)	4 (Rather agree)	5 (Fully agrees)	NA
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.			X			
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden)		X				
The different components of the framework operate well together to achieve more transparency in share trading	X					
More transparency in share trading correspond with the needs and problems in EU financial markets	X					
The DVC has provided EU added value	X					

Question 82.1 - Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

The establishment of the DVC mechanism was underpinned by the idea that the quality of the price-formation mechanism depended almost exclusively on the transparency of the markets and on pre-trade transparency of open central lit order books (CLOBs).

While it is undeniable that pre-trade transparency is an important element in the price formation process, it is not the only factor. Among others, post-trade transparency, which indicates the volume and price of the latest transactions, is a key element in the price formation process.

Furthermore, AMAFI does not consider that there is a real market structure problem for equities in EU, on the contrary, the current period shows that markets are resilient in highly disturbed and volatile markets.

The DVC mechanism has several drawbacks whereas it has not been shown to bring significative beneficial to the European market structure.
On the one hand, it is very costly to implement by both regulators and investment firms. It is very complex and therefore difficult to understand for investors both in Europe and beyond.

On the other hand, it did not really improve the quality of the market structure at a time of low volatility, as shown in the study[4] conducted by AMAFI on the impact of the double volume cap mechanism on the microstructure of the European equity markets.

- Our study focused on the first wave of suspensions under the Double Volume Cap, implemented from 12 March to 12 September 2018. For the shares suspended under the DVC, we analyzed the impact on the market micro-structure, through the evolution of the bid-offer spread and of the size of the available interest at the best limit on the main lit market for each share, keeping in mind that the suspension period was also a period a lower volatility in 2018. We then analyzed a sample of orders provided by an individual member, to assess whether the suspension under the DVC has an effect on the market impact of such orders.

- Our study tends to indicate that the DVC statistically has a positive but very limited impact on the lit market micro-structure for the targeted shares, through the decrease of the bid-offer spreads and the increase of size of the available interest at the best limit. This effect however is of a secondary order relative to the impact of the general level of volatility in the market during the observation period.

- For an "average" user of dark trading (eg for whom the use of dark pools is in line with their global market share), there is no obvious effect of the DVC on the market impact of orders, which appears to be mostly driven, again, by the level of volatility in the market.

In this context, AMAFI considers that the DVC mechanism did not prove useful during the period of low volatility following its implementation.

Finally, should the DVC mechanism be retained, we would support removing the 4% TV threshold as we feel that it does not count among the factors determining the quality of price discovery. However, we think there is room for the 8% threshold to be brought lower, as a mean to incentivise lit trading.

Also, the current DVC mechanism results in a "6-months on, 6-months off" situation in relation to dark trading. There is no doubt that this measure can be improved and dynamized. Instead of looking at the previous 12 months of trading, the regime should look at the previous 12 months of trading that included dark trading. Once a cap is hit, dark trading should be banned for 6 months. After being re-activated, dark trading should be evaluated monthly – covering the last 12 months of trading that included dark trading. If the threshold is hit, then dark trading should be suspended for six months. This would bring the long-term average closer to the limit.

Quantitative elements for question 82.1:

AMAFI is not in a position to answer this question.

[4] *"Impact of the MIFIR volume CAP mechanism on the microstructure of european equity markets"*, AMAFI / 19-103, November 2019.

VIII. Non-discriminatory access

Question 83 - Do you see any particular operational or technical issues in applying open access requirements which should be addressed?

☐ 1 – Yes
☒ **2 – No**
☐ Don't know / no opinion / not relevant

Question 83.1 - If you do see any particular operational or technical issues in applying open access requirements which should be addressed, please specify for which financial instrument(s) this would apply and explain your reasoning:

We do not see any particular operational or technical issues in applying open access requirements which should be addressed.

Question 83.2 - Please explain your answer to question 83:

Regarding the implementation of open access requirements of articles 35 and 36 of MiFIR, we believe that there are no operational or technical issues ought to be addressed. However, an issue was earlier raised in MiFIR about the possibility of excluding ETDs from the scope of application of these requirements.

As a matter of fact, article 52(12) of MiFIR required the Commission to present a report to the European parliament and the Council by July 2016, assessing the need to temporarily exclude exchange traded derivatives (ETDs) from the scope of the open access requirements set on articles 35 and 36 of MiFIR. For that purpose, the Commission mandated ESMA to carry out a risk assessment to identify risk factors and their potential effects on the stability and the orderly functioning of the financial markets in the Union.

ESMA carried out a risk assessment and consulted with the ESRB on that matter, identifying two main potential risks pertaining to the inclusion of ETDs in the scope of articles 35 and 36 of MiFIR, *i) the concentration of the trading and the clearing activity in vertically integrated groups, and (ii) the potential multiplication of interoperability arrangements that would substantially raise the level of complexity in the overall risk management of interoperable CCPs.*

After examination of these risks, the Commission report came to the conclusion that the MiFIR and EMIR regulations appropriately addressed these concerns. In addition to the standards and rules set by EMIR for CCPs, level 2 MiFIR legislation opens the possibility for CCPs, trading venues and relevant authorities to deny access to the relevant infrastructure, in case they were put at risk (Commission Delegated Regulation 2016/3807).

On a more general scale, AMAFI believes that the MiFID II/MiFIR regulatory framework provides a coherent set of rules balancing the risks and benefits pertaining to the implementation of Open access requirements. We believe that there are no other operational or technical issues that ought to be addressed and support the full entry into force of the open access regime on July 2020.

Question 84 - Do you think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☒ **5 – Fully agree**
☐ Don't know / no opinion / not relevant

Question 84.1 - If you do think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas, please indicate the specific areas (such as type of specific financial instruments) where, in your opinion, open access could afford most cost efficiencies or other benefits when compared to the current situation:

AMAFI believes that open access to trading and clearing infrastructure will foster competition and provide market participants with choice, therefore pushing for lower costs, deeper pools of liquidity and higher service quality. Greater competition would also encourage innovation among service providers, and lead to concrete transformations of the trading landscape:

- Open access could introduce cost efficiencies for market participants who were previously unable to nett their exposures, being forced to clear the transactions executed in certain venues on pre-defined CCPs. These firms could then avoid paying extra-margin by clearing instruments traded on different trading venues on a single CCP.
- Removing extra margin payments would also mean that execution venues offering lower cost execution are now in a better position to challenge exchanges that attracted more market participants due to their size advantage. Without open access, lower execution costs are met with higher margin payments and lose any competitive advantage, leading to a concentration of big exchanges with dominant positions on the trading activity and little incentive to improve efficiency or foster innovation.

Question 84.2 - Please explain your answer to question 84:

Question 85 - Are you aware of any market trends or developments (at EU level or at national level) which are a good or bad example of open access among financial market infrastructures? Please explain your reasoning and specify which countries:

AMAFI is aware of several experiences led by clearing houses that implemented an open access strategy as their business model. One sparking example is the wide range of solutions developed by LCH following this strategy.

On this matter, LCH has developed open access solutions among market infrastructures for multiple instrument classes, attracting more business due to their integrated approach on the markets they operate. Examples of the solutions proposed by LCH like Equityclear, offering clearing services for cash equities on an extensive number of venues, Repoclear for fixed-income, Swapclear for OTC swaps, etc.

These activities, across the financial instruments spectrum, covering a wide range of venues, provided LCH with a solid business model and offered the demonstration that the open access model, when appropriately set-up, can be beneficial to market participants, trading venues and CCPs alike.

IX. Digitalisation and new technologies

Question 86. Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more cooperation between traditional regulated entities and new entrants or other?

For several years now we have been observing a growing appetite for the issuance of securities and their trading on the basis of blochain technology. These are either new forms of securities (utility tokens, payment tokens) or financial securities (security token).

Several European countries, including France, have begun to amend their legislation to take account of this new situation.

Thus, in France it is now possible to issue securities (non-listed equity/debt securities, negotiable debt securities, units or shares in collective investment undertakings) on a distributed ledger technology.

Moreover, a new optional regime has been put in place for crypto assets providers. Insuance, trading, safe-keeping … of utility tokens.

These developments present opportunities for the financial markets as they will ultimately lead to efficiency, security and cost reduction.

Question 87. Do you think there are particular elements in the existing framework which are not in accordance with the principle of technology neutrality and which should be addressed?

AMAFI fully has identified in various piece of EU legislation where some modification should be made in order to allow the development of security tokens.

Identified obstacle	European regulations
Identification of a trading platform manager, incompatible with decentralized or hybrid platforms	MiFID II Article 5 (conditions of authorisation) Article 4.1.1 (definition of investment firm)
Identification of a securities settlement system manager for the purpose of authorization by the central securities depository, incompatible with decentralized platforms or platforms operating on a public blockchain	CSDR Article 2 1. 1) of the CSDR (definition of CSD)
Obligation of intermediation to take part in a securities settlement system	Settlement Finality Directive Article 2 f) (definition of participant in an SSS)
Cash settlement in a securities settlement system	CSDR Article 40

To solve these issues, AMAFI suggests that an experimental period be set up in Europe during which NCAs in coordination within ESMA could grant derogations to given projects. The projects eligible to the experimentation should be limited in size of insurance and number or volume of transaction in order to avoid any systemic risks and AML/FT rules should apply to them.

Question 88. Where do you think digitalisation and new technologies would bring most benefits in the trading lifecycle (ranging from the issuance to secondary trading?

AMAFI is not responding to this question.

Question 89. Do you consider that digitalisation and new technologies will significantly impact the role of EU trading venues in the future (5/10 years time)?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☒ **Don't know / no opinion / not relevant**

Question 89.1 Please explain your answer to question 89:

AMAFI is not responding to this question.

Question 90 – Do you believe that certain product governance and distribution provisions of the MiFID II/MiFIR framework should be adapted to better suit digital and online offers of investment services and products?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☒ **Don't know / no opinion / not relevant**

Question 90.1 – Please explain your answer to question 90: (5 000 characters maximum)

Rules should be technology neutral in terms of product governance and distribution to ensure a full and convergent protection of investors.

Question 91. Do you believe that certain provisions on investment services (such as investment advice) should be adapted to better suit delivering of services through robo-advice or other digital technologies?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☐ 5 – Fully agree
☒ **Don't know / no opinion / not relevant**

Question 91.1 Please explain your answer to question 91:

AMAFI is not responding to this question.

X. Foreign exchange (FX)

Question 92 – Do you believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☒ **4 – Rather agree**
☐ 5 – Fully agree
☐ Don't know / no opinion / not relevant

Question 92.1 – If you do not believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions, which recommendations would you make to improve the robustness of the regulatory framework?

N/A

Question 92.1 – Please explain your answer to question 92:

In AMAFI's view the current regulatory framework is rather adequately calibrated to prevent misbehaviours in the area of spot FX transactions.

Indeed, consistent with AMAFI's response to ESMA Consultation on MAR Review (*AMAFI / 19-113*), and considering FX specificities, we wish to outline that a FX Global Code of Conduct was designed especially for FX activities and in line with MiFID II/MiFIR [and MAR] main obligations.

The FX Global Code of Conduct was developed by central banks and market participants to promote higher standards in the wholesale FX market and is today applied by many market participants (included most of AMAFI's members). Moreover, and considering ESMA developments in its Consultation paper on MAR Review (see paragraphs 15 to 23), the spot FX market does not currently have the characteristics which would enable it to fit within and meet MiFID II/MiFIR's framework and requirements (*i.e.* the Spot FX market is predominantly an OTC market, where most of the existing trading platforms do not meet the requirements regarding systems and controls, transparency, conduct requirements, and reporting obligations to be considered as MiFID II trading venues).

Moreover, if the EC decided to apply MiFID II/MiFIR requirements to spot FX contracts – inclusion to which AMAFI is opposed – important changes should be done into MiFID II/MiFIR to adapt requirements to FX specificities as well as introducing a proper lever of proportionality for those instruments. If such an amendment would be made, this would imply that spot FX contracts are financial instruments which would have huge and totally undesirable effects on MiFID II/MiFIR scope (which is not applicable to such contracts but only applies to financial instruments).

Finally, there is an upcoming review of this Global Code of Conduct in 2020 by the Global FX Committee (https://www.globalfxc.org/press/p190710.htm) which implies to wait for the Code to be more deeply

embedded into the market and for those further developments to unfold before promoting any modification of MiFID II.

In any event, while the City has a largely dominant position in the FX market and considering Brexit situation, any evolution of the current framework must carefully consider the competitive challenges that this implies for EU market players.

Question 93 – Which supervisory powers do you think national competent authorities should be granted in the area of spot FX trading to address improper business and trading conduct on that market?

In AMAFI's view and consistent with its answer to questions 92 and 92.1, no supervisory powers should be granted in the area of spot FX trading to address improper business and trading conduct on that market as FX transactions are not financial instruments which does not enable spot FX trading to fit within and meet MiFID II's framework and requirements.

AMAFI considers that the only powers that might be granted to competent authorities would be checking the compliance of market participants in spot FX trading with the FX Global Code of Conduct or even oblige market participants which trade significatively on spot FX market to join and apply this Code and then check the adherents compliance with its principles.

SECTION 3 – ADDITIONAL COMMENTS

You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above.
Please, where possible, include examples and evidence. (5 000 characters maximum)

(i) Intervention measures

Pursuant to Article 40 of MiFIR, ESMA may take temporary intervention measures to prohibit or restrict the marketing of certain financial instruments. These restrictions are meant to be "temporary" and may be imposed for a maximum period of three months. However, these measures are renewable, and no limit is set on the number of possible renewals (ESMA's website states: *"There is no limit to the number of times ESMA could renew product intervention measures"*). In parallel, competent authorities also have the possibility to take intervention measures to prohibit or restrict the marketing of certain financial instruments (*MiFIR, Article 42*).

Therefore, **an investment firm may be subject to two similar but not totally identical measures**: a measure adopted by ESMA and a measure adopted by the regulator of the Member State in which it markets its products.

AMAFI acknowledges that the principle of adopting intervention measures is legitimate and beneficial in order to properly protect retail investors, especially in light of the very aggressive marketing practices that have developed in recent years with respect to certain particularly risky products. Nevertheless, it also considers that the fact that different intervention measures may potentially coexist indefinitely is not justified and creates legal uncertainty for financial operators.

Accordingly, AMAFI proposes that **if a Member State has implemented national measures** equivalent to measures that ESMA has published and recognised, **ESMA's measures should cease to apply in that Member State**, thereby avoiding the coexistence of divergent measures.

Moreover, given the temporary and exceptional nature of this power of intervention granted to ESMA, it seems necessary that ESMA consults the various stakeholders affected by its intervention measures before implementing them or deciding to renew them.

(ii) Extra-territorial scope of MiFID

The extent to which MiFID requirements apply if a MiFID investment firm does business outside the EU appears to be rather unclear (e.g. do MiFID product governance provisions or information requirements apply if a MiFID firm deals with non-EU clients abroad?). Further clarification on the scope of MiFID in such cases at level 1 should be considered.

In AMAFI's view, **investor protection MIFID rules should not apply on to non-EU based clients** as they might be redundant or worse, inconsistent with their local regulation. It is not for the EU to seek to protect through measures imposed on ISPs that it has licensed from persons other than EU citizens.

Question 94. Have you detected any issues beyond those raised in previous sections that would merit further consideration in the context of the review of MiFID II/MiFIR framework, in particular as regards to the objective of investor protection, financial stability and market integrity?

N/A