

Time to act

AMAFI's 16 Proposals for a New Deal with Finance

Feature



Brexit is a game changer for Europe's financial sector. At a time when markets are central to financing economic activity and when regulating them properly is a huge collective challenge, the industry cannot continue to rely on a financial centre that is soon to be outside Europe. The sector model has to be completely rethought to reflect this momentous event.

France can play a driving role in shaping Europe's financial industry of the future. In doing so, it should take the opportunity to make in-depth reforms to enhance its attractiveness and channel savings into businesses. Paris has been losing ground for 30 years, but Brexit has created a fresh chance.

This is the idea behind the 16 proposals sent by AMAFI to each of the declared candidates in France's forthcoming presidential election (see Feature). Reforms in the area of competitiveness need to target labour laws and taxation. The aim should be to concentrate on high wage-earners, who have no need of the safety net designed for the vast majority of employees, and to correct the most harmful levies, starting with the payroll tax. Savings-wise, the priority should be to encourage long-term investing, particularly in equities. This will involve changes to tax treatment but also a push to develop French-style pension funds.

Pierre de Lauzun
AMAFI Chief Executive

As the aftershocks of the UK's "Quit Europe" vote rumble on, other financial capitals are seeking to attract potentially footloose businesses. Paris is among the main contenders, with plenty to recommend it to Brexiters. But it also has some notable weaknesses that have undermined its international standing. With the French presidential election fast approaching, AMAFI has drawn up a suggested to-do list with some constructive ideas for the future administration.

The French have a reputation for being wary of finance, despite being the world's fifth-largest economy and home to a roster of globally recognised companies. That wariness has

a longstanding tradition that is both literary – the 19th century novelist Honoré de Balzac warned that behind every great fortune lies a forgotten crime – and political: the former candidate and now-president François Hollande once declared that his biggest enemy was finance.

But things can change. The time is ripe for France to reconsider its attitude to the financial industry, which is poised to undergo a major transformation owing to the decision by the UK to leave the European Union. ▶

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▶ The market reforms undertaken by the British government in the 1980s – planned over several years and implemented via the Big Bang in October 1986 – propelled the UK to the forefront of global finance. The accompanying legislation, which established a system of self-regulation with statutory oversight, bolstered London's position and attracted major firms from around the globe, notably the US (the fact that English had become the global lingua franca was a fillip). Trading volumes surged – from 4.5 billion dollars to more than 7.4 billion almost overnight – and a subsequent wave of mergers and acquisitions established London as a financial powerhouse.

France, too, undertook an ambitious package of reforms during the same period in order to create a market-based system that would meet the economy's financing requirements and entrench the independence of Paris as a financial centre. But that ambition of catering to domestic funding needs while seeking to attract foreign investors and issuers gradually ran out of steam and Paris slipped slowly down the rankings. The current situation is patently clear. According to the Global Financial Centres Index, a biannual survey by the consultancy Y/Zen, London is still No 1 while Paris has slipped from 11th to 29th place – behind the Caymans but ahead of Casablanca. Some of the lost ground has been clawed back in the past two years, but the current position is disconcerting given the size of the French economy and the many strengths that Paris can boast.

Brexit has brought a second chance.

Though many believe Brexit will not affect the UK financial industry unduly because the foundations of its infrastructure are too deep to be moved, the outlook is far from certain. Whatever the final outcome, the European financial landscape will change fundamentally and France will have a vital role to play in redrawing the contours. Equally important, it has an opportunity to make radical reforms in order to increase its attractiveness and to channel some of the vast pool of domestic savings into business financing.

With this in mind AMAFI has published 16 proposals across five strands, in preparation for France's presidential elections

in May 2017. Intended as a heads-up to the main candidates on both sides of the political divide, the document has also spotlighted some of the shortcomings that need to be recognised and tackled as quickly as possible.

Rethinking taxation

The two main thrusts of the AMAFI proposals are to make France more competitive and encourage long-term financing of the corporate sector through domestic savings. In terms of competitiveness, one of main bones of contention is taxation, not simply the rate of corporate income tax but also the levies charged on savings and investment. Tax rates are high and the system is often fiendishly complex. But more significantly, the underlying logic is at odds with the general interest. Savings invested in low-risk liquid products are lightly taxed, in contrast to long-term and venture-related investments. And the biggest brunt is borne by directly-held equities and bonds, with rates of up to 58 per cent for individual investors. The 2014 finance bill contained measures to redress the imbalance but the system as a whole is inefficient and dissuasive for share investors.

A rethink is definitely necessary.

Moreover, the tax structure needs to be adjusted so that long-term business financing – chiefly through equity but also via fixed-income investment – is recognised as a national priority. In particular, dividends and capital gains on securities should be subject to a flat-rate withholding tax in lieu of personal income tax and welfare contributions. At present, the laws governing the taxation of this type of investment income change frequently, the only certainly being a steady and seemingly unstoppable rise over the medium to long term. This needs to change. Without necessarily going so far as countries such as Luxembourg and the Netherlands, which do not tax capital gains in order to encourage equity investments, France must follow the lead of Germany and Italy, among others, by adopting a clear and simple system of withholdings.

Last but by no means least, the company tax rate needs to be aligned on the EU average. The government now seems to be aware that the existing rate is too high and

has announced plans to trim it to 28 per cent. But that is still well above the 22.8 per cent average in Europe in 2015, not to mention the fact that the UK plans to slash corporation tax, possibly bringing it below 15 per cent.

Relaunch personal investment and reactivate the FRR

A demonstrably effective way of encouraging personal investment is through simple tax-advantaged products. France already has two such schemes, the PEA savings account invested in European equities and the PEA-PME, targeted specifically at shares in small and medium-sized enterprises. But despite the tax breaks on both plans, neither has been as successful as originally expected.

To rekindle interest in popular equity investment, it is necessary to simplify the PEA and PEA-PME and review their tax incentives in order to encourage long-term investing.

Another important policy goal is to design investor-friendly products that meet critical needs and are managed with a long-term perspective, notably with regard to pensions.

There has long been concern that France's pay-as-you-go system is creaking and should be replaced by a fully funded structure. In 2001 the government of the day established a pension reserve fund, the FRR, that looked beyond the PAYG vs funded debate and was tasked with financing the pension system by investing and optimising the returns on assets entrusted to it by the public authorities. After a series of reforms in 2010 the fund's remit was changed, giving it an explicit nominal

► liability and no more inflows. In AMAFI's view, the initial purpose of the FRR should be reinstated to create a powerful investor with a very long-term horizon that can benefit the entire French economy.

A revitalised FRR would be permitted to manage not only individual and group pension funds but also the schemes currently operated by existing benefit funds and pension institutions. It would also help to counteract the withdrawal of insurance companies from equity investment, due to the prudential constraints in the EU's Solvency 2 directive.

Pay and protection

One of the main downsides of doing business in France, especially for companies in industries such as finance that are subject to sharp fluctuations, is the rigidity of the labour laws.

The French regime protects employees on the grounds that they are in a position of weakness relative to their employer. However, that weakness diminishes as the employee's salary increases and, beyond a certain point, the balance of power can tip in his or her favour because the remuneration is the price that a company pays to hold onto top-flight staff. From this perspective, maintaining the same level of protection for all employees, regardless of their pay grade, is a moot point.

Some salaries can reach nose-bleed levels, as the media is quick to point out. For employers, however, this is not necessarily a hurdle provided they have the possibility to adjust the workforce in a business cycle downswing. At present, this can be difficult for French-based companies, a factor that numerous firms take into consideration when planning to relocate and one that is crucial in the post-Brexit environment.

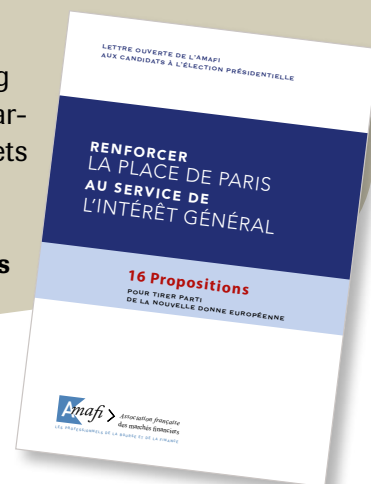
AMAFI recommends that measures should be taken to establish a special regime for employees who are remunerated above a certain level and, in some cases, that the provisions of the labour code be waived. This option is already being explored by the Frankfurt stock exchange in order to make it more attractive to firms wishing to quit the UK. France must follow suit.

THE FIVE STRANDS

The 16 proposals put forward by AMAFI are divided into five strands:

1. Recognise the importance of capital market activities when negotiations with the UK get underway
2. Ensure that the taxation of personal saving and investment is consistent with business funding needs
3. Channel new savings flows into long-term investment
4. Adjust the tax system to accommodate equity financing requirements
5. Seize the opportunities arising from Brexit by adopting a clear-sighted plan for capital markets in France

For full details see the **16 proposals** (in French)



Call to action

Among the other key proposals made by AMAFI are to eliminate the general payroll tax applicable to business not subject to VAT (or to waive it for new hires) and to withdraw from the EU plan to impose a financial transaction tax, which would have a devastating impact both on the financing of economic activity and the future of capital markets business in France.

The latter proposal is paramount in view of Brexit.

For AMAFI, the first order of priority is to prepare painstakingly for the negotiations over Britain's departure. Since capital markets activities are so important for France – much more so than for other leading European economies – it needs to play a key role in mulling the implications of Brexit and devising the solutions that will be adopted. In AMAFI's view, the EU must address all market-related issues firmly and astutely,

and France should make its own, independent analysis before entering into talks with its European partners.

That said, the 16 proposals are not simply aimed at attracting business away from London. They are a wake-up call for France to take a new and different view of finance. All of the issues raised by AMAFI must be tackled holistically and with political determination. France needs a strong financial industry that serves the country and its citizens through organised, well-run and properly regulated markets that are fit for purpose.

Now is the time to act.

Anthony Bulger

International



➤ **ICSA interim meeting London, 15 November 2016**

The International Council of Securities Associations (ICSA) gathered in London on 15 November. The previous day, an ICSA delegation, including Pierre de Lauzun, met in Madrid with Paul Andrews, the new

Secretary General of the International Organisation of Securities Commissions (IOSCO), to talk about potential risks to financial markets.

As well as covering the organisation's work programme, the ICSA gathering tackled cyber-crime, market liquidity and conduct. It also featured a discussion with representatives of the Fixed Income, Currency and Commodities (FICC) Markets Standard Board.

Véronique Donnadieu

➤ **Corporate bond market liquidity**

In early August, IOSCO began a consultation on a draft report on the liquidity of corporate bond markets. The report's key finding is that there is no objective evidence of a deterioration in corporate bond liquidity in recent months.

AMAFI, which has been looking at these issues for some time, argued that this finding did not represent the view of market participants, pointing out that the IOSCO report even admitted that 68% of buy-side respondents and 80% of sell-side respondents to the survey perceived liquidity to have decreased (*AMAFI / 16-44*).

AMAFI said that IOSCO report used some inappropriate data and cited a number of concerns, including observation periods (often before 2014), the excessive share

of data taken from the US market given cross-country differences in market structures, and the lack of data on trade velocity. Most crucially, though, the report fails to recognise the atypical nature of the market situation today owing to central banks' non-standard monetary policies. Particularly in Europe, these policies are creating a two-speed system with securities that are eligible for repurchase policies versus those that are not. Compounding these issues, the report considers liquidity only under normal market conditions and not when they deteriorate.

Finally, AMAFI stressed that although the question of liquidity is important, the real issue facing market regulators is the market model that Europe needs to finance its economy.

Emmanuel de Fournoux

Europe

➤ MiFID 2

Costs and charges

AMAFI continues to discuss the interpretation of rules on costs and charges disclosures, working in conjunction with other stakeholders, including market authorities (AMF and ESMA), its sister organisations in Europe and other professional associations at home. AMAFI and a number of other French associations also co-wrote a letter to ESMA underlining the need to involve the industry in the authority's discussions on Level 3 measures.

Product Governance Group

AMAFI is in the process of drafting a guide to implementing product governance require-

ments. At this stage, the guide offers a summary of the rules and regulations, proposed criteria for determining the target market plus a contractual document to make it easier to negotiate the agreements that need to be established between manufacturers and distributors.

At the same time, AMAFI is crafting a response to the consultation launched by ESMA in early October on its proposed product governance guidelines. While the proposals are in line with work done by the AMF in partnership with the Paris industry, AMAFI intends to keep a close watch on several points, including proportionate application of provisions that reflects the nature of the products and services provided, the possibil-

ity of maintaining hedging solutions and portfolio diversification practices, and appropriate application to wholesale markets. Feedback must be submitted by 5 January 2017.

MiFID 2 Territoriality Group

Work begun early in the year on clarifying the territorial reach of certain provisions of the MiFID 2 Directive and Regulation, and particularly how these provisions apply to the branches of investment firms located outside the European Union, is now drawing to a close. The note describing the legislative analysis conducted for each subject and the information presented in support of the proposed position are set to be published by the year's end.

Pauline Laurent, Sylvie Dariosecq

➤ Market abuse

Work by AMAFI

AMAFI is continuing its work on the new Market Abuse Regulation (MAR), which came into effect on 3 July. It finalised a document identifying the factors that underpin the definition of an investment recommendation (*AMAFI / 16-43*). The goal now is to address the issues raised by the introduction of Delegated Regulation No. 2016/958 on obligations relating to the presentation of investment recommendations. Also, the MAR Q&A (*AMAFI / 16-29*) will shortly be expanded to include new questions relating to market soundings, while the market abuse

guide to reporting suspicious transactions is currently being updated.

Meeting with ESMA

AMAFI met with ESMA on 7 November to talk about MAR implementation. Discussions covered topics ranging from investment recommendations to market soundings and insider lists, and provided an opportunity to share AMAFI's thinking on these issues.

Commodities

ESMA published guidance on the definition of information within the market abuse frame-

work, applied to commodities. Specifically, the guidance clarifies the notion of "information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets". Most of AMAFI's feedback (*AMAFI / 16-23*) to the consultation on the subject are taken up in the document. The chief difficulty for traders on these markets lies with the vast scope of information to consider, especially on physical markets.

Pauline Laurent, Véronique Donnadieu, Chloé Gonzalez

Europe

➤ PRIIPs

As AMAFI had repeatedly urged, it now looks as though entry into effect of the Packaged Retail and Insurance-based Investment Products (PRIIPs) framework will be pushed back. On 9 November, the European Commission proposed a one-year delay. AMAFI is continuing its efforts to support members on this dossier. An initial set of Q&A is on its way, and AMAFI is also holding discussions within working groups on the application of PRIIPs to certain product classes, such as OTC derivatives and convertible bonds.

**Pauline Laurent,
Blandine Julé**

➤ Benchmarks

Following publication of the Benchmarks Regulation in the OJEU on 29 June, ESMA is now required to send the European Commission its proposals for the regulatory technical standards that will make up Level 2 of the benchmarks framework. To that end, and building on its discussion paper from the start of the year (*AMAFI / 16-16*), ESMA held a consultation on a series of proposals concerning the supervisory function, information to be published on benchmark methodology and contributors' governance and control procedures. AMAFI stresses the need to ensure that the proportionality principle is properly applied so that requirements are precisely calibrated to reflect the importance of the benchmarks in question (*AMAFI / 16-50*).

**Pauline Laurent,
Blandine Julé**



➤ EFSA meeting Rome, 27-28 October 2016

The European Forum of Securities Associations (EFSA), an informal grouping of associations representing market activities in Denmark, France, Germany, Italy, Poland, Spain, Sweden and the UK, met in Rome on 20 and 21 October 2016. Much of the gathering was given over to talking about work within member associations on implementing Levels 2 and 3 of the MiFID 2, market abuse and PRIIPs legislation. Participants shared questions about costs and expenses, product governance, best execution, the regime for systemic internalisers and research in the MiFID 2 framework. Market abuse questions were concentrated on investment recommendations, market soundings and disclosure obligations relating to repurchase transactions.

Véronique Donnadieu

➤ Prudential regime for investment firms

At the European Commission's request and in accordance with Regulation (EU) No. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR), on 19 October the European Banking Authority (EBA) issued an opinion on the prudential treatment applicable to investment firms. EBA recommended that only investment firms identified as global systemically important institutions (G-SIIs) or other systemically important institutions (O-SIIs) should be subject to the full CRR/CRD IV regime. This opinion is consistent with AMAFI's long-held stance, which it reiterated in its response to the Commission's Green Paper on Building a Capital Markets Union (*AMAFI / 15-28*).

On 4 November, EBA also published a discussion paper on a new prudential regime for investment firms not presenting systemic risk, which AMAFI is currently reviewing.

Emmanuel de Fournoux

France

➤ Paying for research

The Commission Delegated Directive published on 7 April 2016 supplements MiFID 2 by establishing the conditions under which discretionary portfolio management activities are allowed to pay for external research services within the framework of the provisions covering monetary and non-monetary benefits. On 12 September 2016, the AMF began a public consultation aimed at clarifying the procedures for implementing the new MiFID 2 rules on paying for research.

While hailing the consultation paper's pragmatic and open approach, AMAFI said (*AMAFI / 16-49*) that in the current Brexit environment, the AMF should take advantage of the latitude offered by the delegated directive to implement a framework tailored to the specific features of the French ecosystem and to enable a sensible transition to the new standards. The aim should be to avoid unnecessarily disrupting affected participants, whether they be management companies or research providers, particularly given what is at stake in terms of the market's ability to play its role in providing financing for mid caps. AMAFI argued that introducing a principle of proportionality for small and mid-sized management companies would be an effective way to achieve these goals.

AMAFI also said that the Level 3 work being led by ESMA, which will result in a set of Q&A, must not contradict the guidance currently being drawn up by the AMF in conjunction with the industry.

Emmanuel de Fournoux

Taxation

➤ Financial transaction taxes

Parliament's review of the 2017 draft budget resulted in the adoption on first reading of two amendments aimed at widening the scope of France's financial transaction tax (FTT) to include intraday transactions and raising the rate of the tax from 0.20% to 0.30%. AMAFI pointed out in a news release that this represented a new levy worth half a billion euros on equity savings, which already suffer from harsh tax treatment despite their critical importance to business financing. Taxing intraday transactions, meanwhile, raises a fundamental problem in terms of France's ability to tax transactions conducted abroad by non-residents, since these do not result in a transfer of ownership as defined by national law.

At European level, AMAFI continues to keep a close watch on the work done by the ten Member States (Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain) that are engaged in an enhanced cooperation procedure to establish a European financial transaction tax (EU FTT). A new agreement reached on 10 October reaffirmed the principle of taxing derivative transactions and market making and specified some of the procedures. It called for further analysis of the tax's impact on the real economy and pension funds. The European Commission is currently drafting a new proposal that could be submitted to the Ecofin meeting in December, but it seems to have been decided that effective implementation will have to wait until at least the beginning of 2018.

In this setting, AMAFI had a hearing before France's Court of Auditors (*Cour des Comptes*), which is conducting an assessment of the French and European arrangements. These discussions provided an opportunity to highlight the sheer complexity of the FTT, illustrated in part by the implementation guide published and regularly updated by AMAFI (*AMAFI / 16-06*), and to stress the challenges associated with taxing intraday transactions (*AMAFI / 15-56*). With regard to the EU FTT, AMAFI underscored the destructive business impact that the tax would have if applied to derivatives (*AMAFI / 15-53*) and market making.

Eric Vacher



New Members

➤ **WiSEED** is an investment firm whose activities including investment advice and the placing of instruments without a firm commitment basis. Its senior managers are Stéphanie Savel (Chairwoman), Nicolas Séres (Chief Executive Officer) and Michel Kaluszynski (Deputy Chief Executive Officer).

➤ **Marigny Capital** is an investment firm offering professional clients investment advice and order reception and transmission services. Xavier Huttepain (Chairman and Chief Executive Officer) and Thomas Fonsegrive (Deputy Chief Executive Officer) are its senior managers.

Amafi Staff

➤ **Faustine Fleuret** joined AMAFI in early November as a market adviser. She holds a Masters in Banking and Finance from Paris 1 Panthéon-Sorbonne University and previously completed an internship in the AMF's Regulatory Policy and International Affairs Directorate.

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AMAFI documents quoted in this Newsletter and flagged with a reference number are on our website at

www.amafi.fr

Most of them, notably AMAFI's responses to public consultations, are freely available, but some are restricted to members only.

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