

European Commission Initiative Delegated Regulation on the minimum information content of the prospectus exemption document

AMAFI's contribution answer

About AMAFI. Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It mainly acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 150 members operating for their own account or for clients in equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI and its "Comité des opérations financières" welcomes the opportunity to give feedbacks on the European Commission proposed initiative regarding the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division. The Association would like to highlight one issue.

The Association questions the articulation between Article 2.2 of the European Commission's proposal for a Regulation and Article 1.5 of Regulation (EU) 2017/119 ("the Prospectus Regulation").

Pursuant to art. 1.5(a) and (b) of the Prospectus Regulation, the issuer is not obliged to publish a prospectus or an exemption document where (simplified quotations):

(a) the securities that are being admitted to trading on a market represent less than 20 % of the number of fungible securities already admitted to trading on that market, or

(b) in case of conversion or exchange, where the fungible resulting shares on a market represent less than 20 % of the shares already admitted to trading on that market.

Art. 2.2 of the proposal for a Delegated Regulation introduces a 10% threshold where securities offered in connect with "a transaction" (i.e. "any" transaction) are fungible with securities already admitted to trading on the market where the "new" securities are being offered.

We are under the impression that this art. 2.2 introduces an obligation to publish an exemption document including in cases where the Prospectus Regulation exempts the issuer entirely. In the Association's view, it is not conceivable that the exemptions from a prospectus *and* exemption document set out in Article 1.5 a) b) of the Prospectus Regulation could be partially undermined by this new delegated regulation.

