RETAIL INVESTMENT STRATEGY
IMPROVING RETAIL INVESTOR'S ACCESS TO EU-27 FINANCIAL MARKETS
AMAFI's position

***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 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's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.

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The sanitary crisis and Brexit have underlined the necessity for the Union to develop and strengthen its open strategic autonomy globally and especially in the financial sector area. In this context, the relaunching and deepening of the CMU project has a central role to play to increase the competitiveness of EU financial markets in a new post-Brexit ecosystem[1].

The main objectives should be to enable EU markets to further contribute (i) to the economic recovery at national and European levels and (ii) to the financing challenges the Union is facing, in relation to the mitigation of climate change, the ageing of the population and the development of EU champions in strategic fields such as digital and sustainable finance.

In this context and as highlighted in the 2020 Capital Markets Union Action Plan, the Retail Investment Strategy is instrumental to strengthen retail investors' trust and confidence in capital markets so they can further contribute to the Union's core financing challenges.

While current and upcoming reforms, such as the ones that may derive from the Retail Investment Strategy, aim at consolidating financial stability, market integrity and investor protection in the Union, AMAFI considers that they should also intend to reinforce the attractiveness of EU financial markets and the competitiveness of financial market actors operating in the EU[2].

With this in mind, AMAFI welcomes the European Commission's initiative to consult on its upcoming Retail Investment Strategy which it understands should be published in Q2 2022 and in this paper would like to highlight the core priorities from its response[3] which focus on the reviews of (i) MiFID II and (ii) PRIIPs as well as on (iii) financial literacy and (iv) sustainable investing.

[1] For further details please see AMAFI-CEPS report on Completing Capital Markets Union.
[2] For further details on the necessity to consider the issue of competitiveness when reforming the EU regulatory and supervisory frameworks please see (*AMAFI / 21-38*).
[3] For further details please see (*AMAFI / 21-46*).

Overview of AMAFI's core priorities

File	Key message
MiFID II review	*Product Governance* Removing ordinary shares from the scope of the Product Governance regime. *Inducement* Introducing a ban on inducement would have a detrimental impact on the quality of services provided to retail clients. Full compliance with the current framework allows protection against conflict of interest and risks of mis-selling. *Disclosure* Simplifying and better rationalising disclosure requirements in MiFID II & PRIIPs *Opt-in & new category of client* Facilitating the opt-in of sophisticated clients rather than creating a new category. *Payment for Order Flaw & Zero-Commission Brokers* Undertaking at national level a supervisory review by NCAs of the retail order execution policies of the relevant firms under their supervision. Encouraging the development of Guidelines and best practices by industry associations.
PRIIPs review	*Autocollable products* Reviewing the methodology for autocollable products. *Cost presentation methodology* Replacing the current cost presentation methodology (Reduction in Yield) by the Total expense ratio approach. *Scope of PRIIPs Regulation* Excluding OTC derivatives for corporate clients from the scope of PRIIPs.
Financial literacy	Creating an EU label to certify that an action intended to enrich financial culture meets certain criteria, particularly in terms of neutrality, reliability, accessibility and free access.
Sustainable investing	Enabling a better integration over the long term of sustainability risks and preferences through for instance the elaboration of Guidelines reflecting the specificities of local markets.

I. MiFID II Investor protection regime: introducing simpler & more proportionate rules

The publication on 26 February 2021 of the MiFID II Quick Fix in the EU Official Journal[4] has brought several reforms that are consistent with the positions held by AMAFI[5]. However, certain areas remain subject to heavy investor protection provisions whose benefits have been too limited in light of the necessity to allocate more savings to the financing of the economy especially over the long term. This is particularly the case for the Product Governance regime which necessitates further reforms to be undertaken as highlighted by AMAFI and its European partners[6].

a. A more proportionate approach for Product Governance rules

As a matter of priority, we consider that ordinary shares should be removed from the scope of Product Governance (PoG) rules.

These rules were primarily designed for structured products making their application to ordinary shares difficult to understand in particular on the primary market. Even on the secondary market, given the inherent nature of these products, which must be accessible to as many people as possible, the current system appears unsuitable especially with regards to the identification of the positive and negative target markets as well as scenarios and reports of sales outside the target market.

As such we believe the current regime does not actually bring any concrete value to the retail investors' protection objective. To the contrary, it may discourage financial firms from distributing shares to retail investors (and notably with very low risk appetite) whereas (i) diversification of risks is the key for efficient investments and (ii) it is detrimental to limit retail investors from investing in shares, in terms both of the long term performance of their investment, and of the financing of the economy. It must be reminded that even without PoG protection, retail investors would still benefit from disclosure and information requirements as well as from appropriateness and suitability protection features.

While the activity of distributing plain vanilla products plays an important role in the financing of the economy, current PoG requirements place objective constraints on the distribution of ordinary shares to as many investors as possible which is a major issue in the current economic recovery context.

b. Preserving the value of the inducement framework

AMAFI believes that current rules related to the control of inducements are already quite demanding and sufficiently protective of the clients' interest. It should be reminded that, under MiFID II, financial advisors and distributors could not push products for which they receive high commissions from manufacturers if those are not suitable since they have to (i) recommend only suitable products and (ii) justify that those commissions enhance the quality of the service they provide.

In this context, French trade associations from the financial sector (AFG, AMAFI, AFPDB, FBF) together with Italian (Assogestioni, ABI, ASSOSIM, FEBAF) and Spanish (Inverco, ABE) associations are currently working on a study that compares the total cost of ownership bear by retail investors respectively under the "inducement model" and the "commissioned-based model"[7].

Preliminary findings indicate that in jurisdictions that have banned inducements (the UK and the Netherlands, where advice is provided under a "commission-based model"), the independent advisor business model has led to a higher cost of financial advice service for investors to compensate for the lack of income from manufacturers and the loss of costs' mutualisation between investors compared to Member States where the "inducement model" is in place. This situation has resulted in a significant portion of retail

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L0338&from=FR
[5] For further details please see *(AMAFI / 20-03 and AMAFI / 20-32)*
[6] It should be noted that AMAFI worked mainly in coalition with other organisations on the MiFID II Quick Fix, namely with several members of the European Forum of Securities Associations (EFSA) on Investor Protection matters (*AMAFI / 20-56*) and with German (DDV and DSGV) and French (FBF and AFPDB) associations on all issues addressed in the MiFID II Quick Fix.
[7] The final study should be available later in September/October 2021.

clients being excluded from the investment advice service, creating an "advice gap" that is detrimental to the quality of services provided to retail clients.

Therefore, introducing a ban on inducements or any measure that would make the perception of inducements more difficult would jeopardise the provision of investment advice to a large majority of retail clients in the Union, with no clear benefit in terms of investor protection.

This risk is all the more present as a survey of retail investors, as part of the above-mentioned study, suggests that a majority of retail investors in Europe value investment advice but would not be willing to pay upfront for it. This is because they do not consider it to be a service that requires remuneration, and the fee charged will either be too low to provide real added value or too high to be justified.

It is also important to note that a decrease of investment advice resulting from a ban on inducement would probably be detrimental to the distribution of ESG products due to the complexity of those features which makes challenging for a retail client to assess, by himself, products that are the most suitable according to its needs.

c. Simpler costs & charges disclosure requirements

While disclosure of costs is essential for investor protection purposes, we consider this obligation does not take sufficiently into account the very heterogeneous nature of financial instruments.

In order to further simplify the existing regime without damaging retail investors' protection, AMAFI considers appropriate to amend Article 50 of the MiFID II Delegated Regulation[8] to recognise the legitimacy of using tariff grids for simple financial instruments (*eg* not packaged products within the meaning of the PRIIPs Regulation). Where the financial instrument is a packaged product, a specific disclosure of the products costs should remain, based on the information provided in the PRIIPs KID.

d. Reviewing opt-in procedure vs. introducing a new category of client

AMAFI believes that, rather than introducing a new category of clients, the opt-in procedure of MiFID II categorisation of clients should be reviewed. The current categorisation of clients and in particular the "non-professional clients" category which covers a large variety of clients with very diverse knowledge of financial markets raises several issues.

Firstly, the current categorisation may in some cases prevent access to certain products (*i.e.* those designed for professional clients and eligible counterparties). Secondly, this situation may also be problematic regarding certain corporate clients who do not meet the criteria of professional clients *per se*, but sometimes carry out many transactions, particularly for hedging purposes.

Overall, retail investor protection rules under MiFID II are very restrictive and while they are generally well-suited for retail clients with little knowledge of financial markets, AMAFI considers them to be overly burdensome and restrictive for more sophisticated clients. The most appropriate solution to this issue would be the ability to treat these clients as "elective" professional clients.

However, feedback shows that the current opt-in procedure too often prevents this to happen, which is why AMAFI is proposing a review of the procedure. In a nutshell, AMAFI proposes to simplify the process for changing categories by enabling investment services providers to propose this option. Obviously, all clients must then be free to decide whether or not to request this different treatment.

[8] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN

e. Reducing the risks arising from Payment for Order Flow and Zero Commission Brokerage

AMAFI acknowledges the investor protection concerns that are linked to the payment for order flow (PFOFs), on the one side, and to zero commission brokerage (ZCB) or 'zero fee' on the other side where the broker receives free execution.

While AMAFI notes that the two situations may be distinct (a zero-fee campaign does not necessarily involve a PFOF scheme), it considers that, for both, it is crucial to ensure that Best Execution requirements are met. At the national level, a supervisory review by NCAs of the retail order execution policies of the relevant firms under their supervision could be an important step in addressing this issue as outlined in ESMA's public statement on the risks arising from payment for order flow and from certain practices by "zero-commission brokers"[9]. Besides, the efforts of industry associations in the development of guidelines and best practices in this area should be further encouraged.

II. The PRIIPs Regulation: ensuring regulatory stability

Overall, AMAFI considers that the current PRIIPs regime is globally satisfactory and calls for targeted adjustments only to ensure regulatory stability. The main issues revolve around (i) the approach for autocollable products which makes products less comparable, (ii) the methodology used to present cost in PRIIPs KID and (iii) the scope of the PRIIPs Regulation which captures OTC derivatives for corporate clients. AMAFI regrets that these changes have not been made via the RTS v2 agreed by the ESAs in February 2021[10] and that changes made do not sufficiently rely on consumer testing. As such and given the decision of the UK authorities to extend the PRIIPs' exemption for UCITS funds for five years[11], we consider that to ensure the competitiveness of EU-27 financial market actors there should be at least a twelve-month implementation period following the adoption of the RTS v2 *i.e.* new requirements should apply as of 31 December 2022 instead of 1 July 2022 as currently envisaged.

a. Reviewing the autocollable products methodology

AMAFI strongly disagrees with the specific methodology for autocollable products (in terms of performance scenarios and cost tables) that would result in a lack of information, reduce the comparability of KIDs between different products and hence create uncertainty for retail investors. To properly address the question of autocallable products, AMAFI would rather refer to the EUSIPA recommendations with respect to the asset class of autocallable products, setting out the industry view developed throughout a series of extensive technical workshops which suggests keeping a single format table for all products.

b. Facilitating retail investors' understanding of the cost presentation in PRIIPs KIDs

To ensure more consistency between MIFID II and PRIIPs, AMAFI considers that the methodology used to present costs in PRIIPs KIDs should be changed to a Total Expense Ratio (TER) approach. It would enable the aggregation of service costs, in lieu of the current PRIIPs methodology, based on the Reduction in Yield (RiY) which is a concept not well understood by retail investors.

c. Excluding OTC derivatives for corporate clients from PRIIPs

With regards to the scope of the Regulation, although AMAFI agrees that OTC derivatives intended for mass distribution should fall within the scope of the PRIIPs Regulation, those contracted for corporate clients should not because (i) they are not distributed to retail investors, (ii) there is no "investment opportunities" but the aim to hedge risks (rate or change), (iii) there is no repayable amount to the retail investor as stated in the definition of a PRIIP, and (iv) some derivatives exposed solely to an interest rate are similar to fixed-rate or variable-rate deposits, which are outside the scope of PRIIPS.

[9] https://www.esma.europa.eu/file/120201/download?token=zzknD951
[10] https://www.esma.europa.eu/sites/default/files/library/jc_2021_13_letter_to_the_european_commission_priips.pdf
[11] https://www.gov.uk/government/news/announcement-hm-treasury-to-extend-priips-exemption-for-ucits-funds-for-five-years

III. Improving EU citizens' financial literacy: creation of an EU label

AMAFI fully agrees with the importance of financial literacy and the need to increase knowledge that is too often notoriously lacking among the public[12]. But we also consider that the level of financial literacy varies greatly within the EU: the savings structure and the range of products available is often very different from one Member State to another, which means that financial literacy, beyond basic investment concepts, needs to focus on different types of investments or market segments with a higher priority in different Member States.

Actions that can be taken at European level must consider this diversity and not bind Member States into an unsuitable straitjacket. Faced with this reality, we believe that a first pragmatic step could be for the EU to design a label that could apply to the initiatives taken in this area, whether they are public or private. Following the example of the EDUCFI label in France, this would certify that an action intended to enrich financial culture meets certain criteria, particularly in terms of neutrality, reliability, accessibility and free access. This EU label, which should be linked to possible national labels, would strengthen investors' confidence when they refer to actions that enable them to increase their financial literacy.

The aim of these actions should be to provide retail investors with the tools to measure their expectations and needs as accurately as possible so that they can make an informed choice from among the various options available to them. In this respect, although the primary responsibility for financial education lies with Member States, the importance of private initiatives to make up for any shortcomings or malfunctions that may be observed from time to time should not be overlooked, and this accentuates the need for a label guaranteeing the objectivity of the media made available to the public.

IV. Sustainable investing: a better integration of sustainability risks & preferences

The implementation of regulations such as SFDR and the MiFID II Delegated Act[13] is a step towards a better integration of sustainable investment in the financial advice process and governance in general. Nevertheless, these legislations lack practical guidance on how to integrate sustainability risks and preferences in a practical manner. At this stage, this leads sometimes to very different approaches adopted by market players which may cause *in fine* dissymmetry of information and treatments regarding clients. This asymmetry of information is also experienced by advisors. It appears necessary to harmonise concepts feeding these regulations such as "sustainability risk" (for instance clarifying the underlying way of calculating sustainability risks and on how to render their results).

In the long-term, it will probably be necessary to have guidelines to assist financial advisers on overall ESG issues, since they present complex questions that are covered in different bodies of regulations. However, AMAFI believes that we first need to wait until the legal framework is sufficiently stabilised. The content of the guidelines should be determined, at least as a first step, by NCAs locally to be suited to the local market. Investment firms should be responsible to set up the appropriate sustainable investment training(s) according to their respective activities and offers.

[12] With this objective in mind, AMAFI has decided to expand its financial literacy activities to the general public: see "*Tout sur les marchés*", link.
[13] https://ec.europa.eu/finance/docs/level-2-measures/mifid-2-delegated-act-2021-2616_en.pdf