

**MiFIDII investor protection topics linked
to digitalisation
ESMA'S DISCUSSION PAPER
AMAFI's comments**

Association française des marchés financiers (AMAFI) is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

AMAFI welcomes the opportunity to comment [ESMA's Discussion paper](#) (DP) on MiFIDII investor protection topics linked to digitalisation.

We will not provide any answer to the specific questions of ESMA's discussion document. However, we would like to point out the following general comments.

- First of all, we would like to warn ESMA on the fact that many of the practices targeted in this DP that are likely to become requirements (e.g layering, personalisation of information, marketing communications, use of affiliates and *finfluencers*) are currently being discussed under the RIS workflow at legislative level and should not be pre-empted by ESMA at level 3.
- Secondly, we are not convinced by the necessity to build specific requirements dedicated to investment services or information provided through digital means. In many instances, we are of the view that general principles stemming from current requirements are by far sufficient to characterise breaches of the rules. This is the case for instance for practices described under the first box on p 13 and 14, consisting in : not presenting "vital information" prominently, presenting unclear or misleading information through audio or video media. In this context, we are concerned that detailed prescriptive practices would be upgraded to requirements with the risk for such requirements to be rapidly outdated due to the rapid pace of technological evolution. We also see a risk, by overregulating financial services and information provided on financial instruments, to see a growing number of clients turning towards unregulated products that communicate online in an entertaining and dynamic way (see on this the [9 November OECD study for the AMF](#))
- As recalled in the DP, the information overload is already the subject of complaints from investors and has been identified as an area of concern by national and European regulators. Some of the proposals in the consultation seem to be counterproductive on this point, as they run the risk of driving investors even further away from regulated products or discouraging them from seeking out truly relevant information in the midst of a disproportionate flood of *information*. This is particularly true in the digital domain, where users tend to skip long texts. Despite the stated objective, some of the document's proposals seem to us to generate risks in this respect. This is typically the case for layering practices that are at first presented (paragraph 30) as bringing "*opportunities to mitigate information overload*", and for which, afterwards certain conditions are set out that run contrary to this objective, such as: the extensive list of "vital information" that will be expected at level 1, the

expectation not to present such information through hyperlinks as well as not to offer the possibility for clients to skip any piece of vital information.

- Finally, we would like to warn ESMA on the fact that mandating personalised or layered information will require very costly technological developments and may not bring clear benefit to all end clients. It would be a change in paradigm since until now the approach taken to allow clients to compare between different services or products was to standardise as much as possible the information provided to them. We fear that personalised information could be detrimental to comparability since each firm will have their own calculation method and parameters. Therefore, to us, personalisation and layering of information should not be mandatory but should be left as a possibility for the industry and be subject to current requirements on information provided to clients.

