LISTING ACT

DRAFT TECHNICAL ADVICE ON THE PROSPECTUS REGULATION AND THE CDR ON METADATA - ESMA'S CONSULTATION

AMAFI'S ANSWER

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 respond to ESMA's consultation on its draft technical advice concerning the Prospectus Regulation and the update of the CDR on metadata. Before answering the specific questions of the consultation, AMAFI provides hereafter a few general observations. Only the questions to which AMAFI provides an answer are listed henceforth.

GENERAL OBSERVATIONS

Regarding the standardised format and sequencing of the prospectus, AMAFI supports the proposal that these requirements do not apply to Universal Registration Documents (URD), since URDs, which are largely used on the French market, present the issuer extensively in a manner that requires flexibility. We furthermore fully agree with ESMA's approach to limiting the standardised format and sequencing to standard equity and non-equity prospectuses as standardisation is practical only for standard products and more difficult to achieve for more complex and structured products that include, for example, derivatives.

Concerning ESG-related aspects, AMAFI appreciates ESMA's proposals for specific requirements regarding non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives. Since these products are developing, standardising their ESG disclosure will enhance their credibility and foster investor trust, meeting the growing demand for transparency, accountability, and allowing a wider range of financial instruments to contribute to sustainability. Our comments

specifically address the treatment of use of proceeds bonds, sustainability-linked bonds and structured non-equity securities, with the aim of ensuring the smooth and effective integration of these instruments within the prospectus regulatory framework and rationalising ESG disclosure requirements.

In this respect, AMAFI welcomes the ESMA's statement that technical standards related to ESG information apply to "*all types of non-equity securities subject to PR*[1] *and making ESG-related claims, without focusing only on green or ESG-related bonds*"[2]. This broader approach is essential in ensuring that sustainability claims across the entire spectrum of financial products, including structured products, are adequately addressed.

In particular, **recognising the sustainability characteristics of structured products** is an important step in securing their distribution to investors with ESG preferences. Currently these products operate within a regulatory framework that is not suited for their specific characteristics. As highlighted in our response to the SFDR[3] Level 1 consultation (*AMAFI 23-89*), the lack of clear and consistent guidelines for assessing and disclosing the sustainability characteristics of structured products can limit their ability to contribute meaningfully to ESG objectives. To unlock their full potential, it is essential to establish tailored ESG disclosure standards for structed products that ensure alignment with the principles applied to other financial instruments while considering their features. This approach will enhance transparency, support informed investment decisions, and foster trust in ESG structured products.

Regarding ESMA's proposal to **include the disclosure information of the EU Green Bond Standards ("EuGBs") into the prospectus**, it is particularly important to ensure that it remains straightforward and practical to implement. Overly complex or burdensome requirements could discourage issuers from adopting the EuGBs and ultimately limit their diffusion and effectiveness in the market. A balanced approach is needed to match regulatory objectives with the operational realities of issuers to ensure that the EuGBs become a widely used and effective tool for financing the green transition.

[1] "Prospectus Regulation", Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market

[2] ESMA, Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata, section 5.1, point 33.f.

[3] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector

I. STANDARDISED FORMAT AND STANDARDISED SEQUENCE OF THE PROSPECTUS, THE BASE PROSPECTUS AND THE FINAL TERMS (SECTION 4)

Question 1 – What are your views in relation to format and sequencing? Do you agree with ESMA's approach to limit changes to the 'standard' equity and non-equity annexes? And do you have any concerns relating to a potential tension between Annexes II and III in the Amending Regulation and Articles 24 and 25 CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

AMAFI greatly appreciates that:

- The Amending Regulation excludes Universal Registration Documents from the standardized format and sequencing and we understand that nothing in the Commission delegated regulation ("CDR") changes that.
- ESMA proposes to limit the strict and standardised sequence of information to 'standard' equity and non-equity prospectuses, i.e., excluding multiple non-equity securities with building blocks or securities with derivative elements (or: structured products). We understand this to mean that structured products, containing derivatives elements, are excluded from this standardisation. Furthermore, AMAFI supports the emphasis on "*pragmatism*" as stated in paragraph 22 of the consultation paper.

Concerning potential tensions between Annexes II and III in the Amending Regulation and Articles 24 and 25 (currently 22 and 23) of the CDR, it seems to us that the texts are clear. The Level 1 Amending Regulation provides that the "*prospectus shall be presented in a standardised sequence, in accordance with the delegated act*" (*art. 6.2*) whilst the CDR provides: "(…) *following elements set out in the following order* (…)". As a consequence, the sequence of the sections of a prospectus are set by articles 24 and 25 (currently 22 and 23) of the CDR. Although linkage between Articles 24 and 25 and the Amending Regulation would bring clarity, we understand that the order of the sections in annexes I to III of the Amending Regulation is not a mandatory sequence.

Finally, AMAFI does not agree with the "short cover note" to be placed in the first position in the prospectus drawn up as a single document, as there is already a summary (currently in the second position in the prospectus, right after the table of contents).

Question 2 – Do you have specific comments about the reduced time periods which financial information should cover which need to be considered as part of this work?

Annex 6 of the CDR, containing the sections and items that Registration Documents must contain, provides that "*Audited historical financial information covering the last financial year (or such shorter period as the issuer has been in operation) and the audit report in respect of that year*" are part of the Registration Document (*point 5.1.1*). AMAFI welcomes ESMA's pragmatic approach to the reduction of time periods. We understand that the "*last financial year*" in this sentence is a minimum period and that issuers may add more than only the last year of financial information for informational purposes.

Question 3 – Do you agree with ESMA's sustainability-related assessment in relation to the 'standard' equity registration document? If not, please explain why?

Although this question mentions a standard "*equity*" registration document, we understand this question to refer to paragraph 26 of the consultation paper, which concerns "*non-equity*" registration documents.

In any case, for equity like for non-equity, AMAFI is of the opinion that entity-level sustainability information should not be included in the registration document, even though paragraph 26 of the consultation paper makes it clear that this is not a "*hard requirement*". In practice, because this comes from ESMA, it can easily become a requirement. Sustainability information should not be a section as such, which is not an obstacle to the prospectus referring to CSRD[4] and including sustainability information in the enumeration of risk factors.

Question 5 – What are your views in relation to potential implications of the proposed single non-equity disclosure framework?

AMAFI has concerns about the potential implications of the proposed single non-equity disclosure framework. There are substantial differences between wholesale and retail securities notes. A single non-equity disclosure framework would bring unnecessary complications to the wholesale disclosure framework. It should be noted that the current annexes 14 and 15 for respectively retail and wholesale non-equity securities have not raised substantial difficulties, justifying a change of approach.

If the proposition of a single non-equity disclosure framework is maintained, AMAFI calls for more clarity in the presentation of the new annexe as to whether each disclosure item applies to retail or wholesale securities notes. Since the new annexe 13 is drafted in an integrated manner, it should then be clarified item per item, where required, whether that item is for retail only or wholesale only or listing prospectuses only. The current presentation increases the burden and risks for issuers when drafting base prospectuses that are prepared for retail or wholesale issuances.

We noted a new section 7 «Information on the underlying securities and the issuer of the underlying securities» in annex 13 (new). We would respectfully ask for the reason behind such new section. Also, we think that this new section would overlap with the information to be disclosed in accordance with annex 15 (new) "Securities giving rise to payment or delivery obligations linked to an underlying asset».

In addition, in relation to this section 7:

- This section refers to items 2.1 and 2.2 of Annex 26. However, Annex 26 is marked to be deleted.
- This section also contains a reference to Annex 18. However, Annex 18 governs pro-forma information. "Article" 18 governs "*securities giving rise to payment or delivery obligations linked to an underlying asset*". Should the reference to "Annex" 18 in section 7 read "Article" 18?

[4] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

- This section also refers to Articles 20(1), 20(2) and 20(3) that do not exist.

Clarifications on this section 7 would be most welcome and in any case should not lead to impose the provision of additional information to the one that is already required.

Question 7 – In your view, will these proposals add or reduce costs? Please explain your answer.

AMAFI strongly doubts that the Listing Act will reduce costs.

For small caps (i.e. growth issuance prospectus), the new exemptions to the obligations to establish a prospectus might reduce costs. However, as the current SME growth prospectus is not largely used, we expect no cost reduction in the establishment of the new SME growth issuance prospectus.

Concerning large caps, we also see no cost reduction inherent to the processus of establishing and publishing a prospectus, URD or securities note. The only cost reduction we possibly see results from the enlarged exemptions to the obligation to establish a prospectus. However, the two fungibility exemptions in case of public offering (*art. 1.4(da) and art. 1.4(db)*) require the issuer to establish a document containing the information of Annex IX. This document is expected to lead to extra due diligence costs and liabilities, the costs of which could exceed those of the establishment of a prospectus.

II. THE DISCLOSURE REQUIREMENTS FOR NON-EQUITY SECURITIES ADVERTISED AS TAKING INTO ACCOUNT ESG FACTORS OR PURSUING ESG OBJECTIVES (SECTION 5)

Question 8 – Do you agree with ESMA's approach to the disclosure requirements for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives? Please explain your answer and provide any suggestions for amendments.

AMAFI generally agrees with ESMA's approach regarding the disclosure requirements. However, we wish to highlight potential confusion or misinterpretation arising from the definitions used to describe non-equity securities with extra-financial characteristics, in the PR Regulation[5] and ESMA's consultation paper, which refer to "*taking into account ESG factors*" or "*pursuing ESG objectives*".

This distinction mirrors the terminology introduced in the revised Benchmark Regulation[6] (BMR), which requires benchmark providers to disclose how ESG factors are reflected in their benchmarks. However, these two categories lack formal definitions and are not referenced in other sustainable

[5] Regulation (EU) 2017/1129 amended by Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises

[6] Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020, supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published.

finance texts. In comparison, SFDR provides a different distinction, between products promoting environmental or social characteristics[7] and those pursuing sustainable investment objectives[8]. The discrepancy arises without clearly referencing or justifying this choice and despite ESMA's stated intention to ensure coherence between MiFID II[9] sustainability preferences and SFDR, creating potential inconsistencies in the regulatory framework.

Moreover, applying the same level of disclosure to both categories in the prospectus renders the distinction practically unnecessary.

Given that SFDR is under review, aiming to establish clear ESG product categories and criteria, likely to further consistency with MiFID II sustainability preferences, embedding these undefined categories into a foundational regulation like the Prospectus Regulation risks misleading financial market participants (FMPs) into viewing them as definitive ESG classifications.

While we recognise that these definitions are enshrined in Level 1 regulation and cannot be amended at this stage, we respectfully ask ESMA and the Commission to be cautious in the terminology used. In the already complex regulatory landscape of sustainable finance, it is critical to avoid further confusion for FMPs navigating the obligations applicable to them.

Question 9 – Do you agree with the definitions proposed for 'use of proceeds bonds' and 'sustainability-linked non-equity securities'? If not, what changes to the definition would you suggest?

AMAFI agrees with the definition of "*sustainability-linked non-equity securities*." However, we believe the definition of "*use of proceeds bonds*" needs to be amended to better reflect how such bonds are structured and managed.

Specifically, the proposed definition does not account for the fact that the proceeds of the bonds do not always finance or directly refinance green and/or social projects or activities. Instead, as cash is fungible, an equivalent amount of funds is allocated by the issuer to such projects or activities. This principle is clearly stated in the ICMA Green Bonds Principles[10], recognising the practical challenges of directly tracing proceeds in financial institutions with multiple funding sources and cash management systems.

Directly linking proceeds to specific projects is often impractical for several reasons:

- Cash management practices: organizations frequently pool their funding sources, making it operationally impossible to segregate bond proceeds for specific uses.

[7] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, article 8.
[8] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, article 9.
[9] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
[10] ICMA, Green Bond Principals, Green Bond Definition "*Green Bonds are any type of bond instrument where the proceeds or an equivalent amount will be exclusively applied to finance or re-finance, in part or in full, new and/or existing eligible Green Projects*".

- Timing of allocation: the allocation of proceeds may not align perfectly with the bond issuance timeline due to delays in project implementation, such as regulatory approvals, supply chain disruptions, or environmental reviews, which can prevent immediate use of allocated proceeds. Additionally, varying funding needs across different project phases (e.g., planning, construction, or operation) may not align with the bond issuance timeline, leading to temporary gaps in allocation.
- Regulatory and operational constraints: certain jurisdictions impose strict rules on fund management, while centralized treasury systems or operational frameworks often pool funds to optimize liquidity. These practices necessitate flexibility to ensure compliance with legal obligations and operational efficiency, while still adhering to sustainability goals.

For these reasons, we suggest amending the definition of "use of proceeds bonds" to state that the bond issuer commits to allocate an equivalent amount of proceeds to finance or refinance eligible green and/or social projects or activities. This amendment would ensure consistency with recognised market standards, such as the ICMA Green Bond Principles, and provide issuers and investors with greater clarity and confidence in the bond's integrity and sustainability claims by establishing clear criteria and standardised practices. This reduces ambiguity, aligns expectations across stakeholders, and minimises the risk of greenwashing, thereby fostering trust in the environmental and social impacts of the bond.

Proposed definition:

"*(g) 'use of proceeds bond' means non-equity securities whose proceeds,* ***or an equivalent amount****, are applied to finance or re-finance green and/or social projects or activities."*

For consistency, we also propose to amend item 3.1.4 of the section 3 of Annex 21 as follows "*Whether the proceeds,* ***or an equivalent amount,*** *of the bond are ringfenced to sustainable projects or assets."*

Question 10 – Do you agree with ESMA's approach to dealing with i) prospectuses relating to EuGBs and ii) prospectuses from issuers who have opted to use the templates for voluntary pre-issuance disclosures, as referred to in the European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate regulatory burden.

AMAFI agrees with the ESMA's proposed approach to incorporate by reference the relevant information from the EuGBs fact sheet and to include the relevant optional disclosures for the voluntary templates[11]. This will, for example, avoid duplication of information in the prospectus, keep the prospectus concise and user-friendly and allow FMPs to minimise compliance costs and complexity for issuers while maintaining transparency for investors. As the EuGBs standards are set to enter into force on December 21, 2024, and have not yet been adopted in practice by FMPs, there is currently no established precedent or clear guidance on their application. As a result, the interpretation of the concept of "*relevant information*"' particularly regarding the disclosure of alignment with the EU

[11] Voluntary templates as set out in article 20 in the European Green Bond Regulation (Regulation (EU) 2023/2631).

Taxonomy, the allocation of proceeds, and the measurement of environmental impact, will need to be evaluated on a case-by-case basis.

Question 11 – Should Annex 21 be disapplied in relation to prospectuses relating to EuGBs and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

AMAFI strongly supports the disapplication of Annex 21 for prospectuses related to EuGBs given the comprehensive and robust requirements already covered under this framework.

The EuGBs imposes stringent disclosure obligations[12], which are designed to ensure transparency and investor confidence. For EuGBs, issuers must prepare a green bond factsheet before issuance, outlining the alignment of financed projects with the EU Taxonomy, and commit to providing post-issuance allocation and impact reports. These disclosures are subject to external verification, ensuring the integrity and credibility of the green bonds issued under this framework, thus for instance item 6.2[13] of the Annex 21 related to the review by third party of the ESG profile is not needed because it is already covered by the standards. As these obligations comprehensively address transparency and environmental standards, requiring compliance with Annex 21 would create unnecessary duplication and add complexity without tangible benefits for investors.

Furthermore, duplicating disclosure requirements would lead to increased compliance costs for issuers. Smaller entities may particularly find the additional administrative burdens prohibitive. This could discourage market participants from adopting the EuGBs, thereby limiting its potential to scale green financing across the EU.

Finally, applying Annex 21 to EuGBs could create inconsistencies and confusion. Aligning requirements under a single standard, such as the EuGBs, would ensure clarity for issuers and investors, while avoiding unnecessary regulatory burdens.

In conclusion, AMAFI recommends that Annex 21 be disapplied for EuGBs prospectuses. This approach would reduce costs, avoid duplication and encourage the adoption of the EuGBs while ensuring that the highest standards of transparency and investor protection are maintained.

For the voluntary pre-issuance disclosure templates, it is difficult to provide detailed feedback at this stage, as the final version is not expected until the first quarter of 2025[14]. However, following the same logic as with the EuGBs, AMAFI assumes that the voluntary templates will be designed to provide the

[12] Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds, Annex I-IV

[13] Item 6.2 "*If any review, advice, or assurances have been provided by advisors or third parties about the ESG profile of the security, the prospectus shall contain disclosure concerning the scope of the review, advice or assurance and by whom they were provided. An electronic link to the website where investors will be able to access the reports, if any, shall be included in the prospectus, together with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus.*"

[14] The European Commission is wording on guidelines intended to encourage issuers of bonds marketed as environmentally sustainable or sustainability-linked bonds to use standard templates for their pre-issuance disclosures. (see EC public initiatives)

necessary information for investors in line with the regulatory framework, meaning no additional disclosures should be required and Annex 21 items should not apply.

Furthermore, AMAFI strongly recommends that the structure and content of the voluntary templates closely align with the mandatory compliance templates for EU GBS. This alignment will help ensure comparability between different bonds and reduce complexity for issuers managing multiple frameworks, thus encouraging the broader adoption of the voluntary templates.

Question 12 – Are the proposed disclosure requirements in Annex 21 proportionate? If not, please (i) identify disclosure requirements that could be alleviated and (ii) provide a (quantitative) description of the costs of compliance.

As a general comment, AMAFI questions the relevance of certain items included in Annex 21. In some cases, the same information is requested across multiple sections, leading to redundancy (as highlighted in our response to Q15), in others the purpose and usefulness of the requirements is unclear.

For example, there is a lack of clarity with Item 6.1 and the rationale for including this information in the base prospectus. Specifically, this item requires the disclosure of *"ESG ratings assigned to the issuer or the securities at the request or with the cooperation of the issuer in the rating process*," without providing any justification as to why this specific information is necessary.

It is unclear why the disclosure is limited to ESG ratings assigned at the issuer's request or with its cooperation, particularly if the ESG rating has already been published by the rating provider. This raises questions about the purpose and added value of such disclosure. Furthermore, the usefulness of this information for investors in the context of the base prospectus remains uncertain.

In light of these considerations, AMAFI seeks clarification on the intended purpose of this requirement and its relevance to the broader objectives of the Prospectus Regulation. Clear guidance on the scope and rationale of Item 6.1 is necessary to ensure meaningful and consistent disclosure that benefits investors.

AMAFI also wishes to highlight the challenges associated with requiring issuers to commit to a quantitative minimum allocation for the use of proceeds, as stated in item 3.1.3[15]. While issuers may genuinely intend to finance green projects or activities, uncertainties regarding future project availability or compliance with evolving standards may lead them to set a conservatively low percentage to avoid the risk of being accused of greenwashing.

This conservative approach, however, could affect the perception of the commitment of the issuer by investors: a low minimum percentage could be misinterpreted as a lack of genuine commitment to green objectives, potentially undermining investor confidence and damaging the credibility of the green bond market as a whole.

[15] Item 3.1.3, Annex 21 "*In relation to 'use of proceeds' bonds, a description of the goal and characteristics of the relevant sustainable projects or activities and how the sustainable goal is expected to be achieved as well as any permissible terms and conditions for deviations to the minimum use of proceeds, the sustainable projects and activities*."

AMAFI believes it is essential to find a balanced approach that provides sufficient flexibility for issuers while safeguarding market trust and integrity and providing transparency for investors. It is also worth noting that most green bond issuances today apply the ICMA Green Bond Principles, which require issuers to allocate 100% of proceeds to green projects or activities. However, these principles do not currently mandate to state the allocation commitment in the prospectus, demonstrating that credibility can be maintained without rigid quantitative commitments.

Question 13 – Do you agree with the proposal to require disclosure about whether post-issuance shall be provided and the scope of this disclosure in items 6.3 and 6.4 of Annex 21? If not, what changes would you propose? Please explain your answer.

AMAFI supports the proposal to require disclosure regarding whether post-issuance reports will be provided, as outlined in items 6.3 and 6.4 of Annex 21. Transparency on post-issuance disclosure is essential for investors to monitor the sustainability progress of securities. However, clear guidelines are critical to minimizing discrepancies in reporting practices, which could otherwise lead to confusion among investors and undermine trust in sustainability claims. Additionally, aligning the frequency and content of post-issuance reports to the type of security (e.g. use of proceeds or sustainability-linked bonds) and its specific sustainability objectives (e.g. financing renewable energy projects, supporting social housing initiatives) ensures that the information disclosed remains clear, useful and relevant to investors' needs, helping them to see how the money invested in the security is being used to achieve its intended environmental or social impact.

Question 14 – Do you agree with ESMA's proposal in item 2.1 of Annex 21 concerning unequivocal statements about how the criteria or standard are met and that they are significant in relation to the ESG features or objectives of the security?

AMAFI welcomes the flexibility provided to issuers in disclosing their alignment with the EU Taxonomy and other ESG standards.

Item 2.1 requires issuers to state that their securities are "*complying with, aligned with, eligible under, or otherwise adhering to*" the EU Taxonomy only if they are fully compliant with the criteria outlined in Article 3 of Regulation (EU) 2020/852 (Taxonomy Regulation). This provision focuses on cases where issuers meet the full set of requirements, allowing them to make these claims only when they are entirely aligned with the Taxonomy.

Item 2.2 allows the issuer to provide a "*clear and comprehensive explanation to help investors understand the ESG factors considered or the ESG objectives pursued by the securities*" leaving more flexibility on the kind of criteria to be disclosed. This represents a valuable alternative for issuers who may not fully meet the Taxonomy criteria, allowing them to state that the security is, for example, eligible under the EU Taxonomy, even if it does not comply with all the criteria.

This flexibility is important because it enables issuers to communicate their ongoing efforts toward sustainability while acknowledging that they have not yet met all the requirements. Moreover, this approach allows the consideration of different ESG standards, enabling issuers to highlight their

adherence to various frameworks like the ICMA Green Bond Principles or the EU Green Bond Standards, even if full compliance has not yet been achieved.

AMAFI believes that allowing this non-binary approach will improve the usability of the Taxonomy and similar standards. By fostering greater flexibility, this will encourage more issuers to participate in the market and communicate their sustainability progress, ultimately supporting broader adoption of ESG frameworks.

Question 15 – Do you agree with the 'Category A', 'Category B' and 'Category C' classification of the items included in Annex 21, in particular in relation to items 2.1, 2.2 and 2.3? Please provide any suggestions for alternative categorizations and explain your answer.

AMAFI has no specific comments on the categorisation of items into 'Category A', Category B', and 'Category C' in Annex 21. However, we would like to highlight certain concerns regarding redundancy and unclear wording in relation to Items 2.1, 2.2, 2.3 and 2.4 as detailed below.

- Item 2.4, which requires material information about specific market standards, labels, or third-country taxonomies relating to the ESG features of the securities, overlaps with Items 2.1(a) and 2.1(b). Since these earlier items already request the same information about how the securities align with these frameworks, Item 2.4 is redundant and could be removed to reduce repetition and clarify the disclosure process.
- Further, Item 2.3 contains unclear wording, particularly with regard to the terms "material underlying data" and "material assumptions." The regulation does not provide clear guidance on what constitutes "material" data or assumptions for sustainability claims. It is unclear whether "material underlying data" refers to the expected environmental impact of financed projects or broader financial and market assumptions. This lack of clarity could result in inconsistent reporting by issuers and confusion for investors. We recommend that the regulation provide more specific definitions of what constitutes "material" in this context or to directly delete this item.

In addition, AMAFI also points out that there is ambiguity as to how Section 2 should be read in relation to Sections 3 (Use of Proceeds) and 4 (Sustainable-linked bonds), for instance whether the requirements in Section 2 are meant to be assessed standalone or whether they should be read in addition to the requirements in Sections 3 and 4. In the first option, there is significant overlap, because similar information are required in the different sections, for example, in Item 3.1.3 of Section 3, issuers are already asked to describe the goals and characteristics of the relevant sustainable projects or activities, including whether those projects are eligible or aligned with the EU Taxonomy or a third-party taxonomy. This information is essentially the same as what is required in Items 2.1 and 2.4, which ask for disclosure about the alignment with the EU Taxonomy or third-party taxonomy.

In conclusion, AMAFI recommends further clarification on how these sections should be filled and an assessment of whether all of them are necessary and, if so, we recommend that they are reviewed to avoid unnecessary repetition and to simplify the disclosure requirements.

Question 16 – Do you agree with ESMA's approach to disclosure for structured products with a sustainability component? Please explain your answer and include any suggestions to improve the approach.

AMAFI welcomes the inclusion of a specific section 5 in Annex 21 addressing ESG disclosures of the underlying component of the structured products ("SP"). However, not only can structured products have sustainable components as mentioned in the question, but they also can themselves be considered as sustainable products, similar as other products such as funds.

After detailed examination of the issue of assessing the sustainability of a SP, through a dedicated working group and intense discussions with regulators since 2022, AMAFI considers that both components of a SP — the funding and the exposure obtained through a derivative instrument — participate in the sustainability measure of the product. While the funding component is often the most important contributor, the underlying also plays a role when it is chosen or designed to account for ESG factors or pursue ESG objectives. Also, it is only when considering both components (funding and exposure) together that the issuer is incentivised to examine all aspects of the product and ensure its overall sustainability.

The quantification of both elements can be done as described below.

- **The funding element** can be assessed either at issuer level or looking at the specific projects or assets financed, such that:
    - SP with use of proceeds: the sustainability KPI is the one of the assets financed, for example 25% for assets with such Taxonomy alignment.
    - SP without use of proceeds: the sustainability KPI is the one of the issuer (e.g. its Taxonomy Green Asset Ratio), for example 3%.
- **The exposure element** can be assessed based on the underlying assets (often an ESG index or a basket of assets selected based on their ESG characteristics), such that the sustainability KPI is the result of the delta of the corresponding option as a measure of the exposure to the underlying assets (for example 40%), whose sustainability KPI is assessed in the same way as for a fund (for example an ESG Index with a Taxonomy alignment of 20%), the overall KPI of the exposure element being a factor of both (in the example: 40% * 20%, i.e. 8%).

- **The combination of the KPIs of the two elements provides the sustainability measure of the SP.** In the examples above, the SP with use of funds would show a Taxonomy alignment of 25% + 8%, i.e. 33 %, while the SP without use of funds would show a Taxonomy alignment of 3% + 8 %, i.e. 11%.

In summary:

Assuming:

- Taxonomy alignment of the assets financed by the SP with use of funds: 25%, Taxonomy alignment of the issuer: 3%,
- Delta: 40%,
- Taxonomy alignment of the underlying: 20%

	Taxonomy alignment		
	Funding element	Exposure element	Total
SP with use of proceeds	25%	8%	33%
SP without use of proceeds	3%	8%	11%

In addition, as highlighted earlier in the introduction, AMAFI strongly supports the idea that **products with comparable characteristics should be subject to similar disclosure requirements**. This is particularly relevant for ESG SP, which, despite sharing many features with other financial instruments are currently treated differently due to their exclusion from the SFDR scope. Aligning disclosure requirements across these products is crucial to prevent fragmentation, ensure transparency, and create a level playing field for issuers. We strongly agree with the statement in Section 5.5 of the consultation that similar disclosures should be required for products with comparable characteristics, mentioning the example of the different treatments of ESG SP and formula funds just because the first ones do not fall under SFDR.

As such, AMAFI strongly supports the inclusion of structured products in the scope of SFDR because, as stated in in our answer to the consultation on the review of SFDR level 1 regulation[16] (*AMAFI 23-89*) "*Like funds, they can be manufactured to follow sustainable objectives*".

The fact that SFDR does not cover SPs is indeed a real hindrance for the distribution of these products under MIFID II as anyhow they still need to comply with SFDR (which is not adapted to this kind of product) in order to respond to the distributors' needs for meeting investors' sustainable preferences. This point was argued in details in our answer (*AMAFI 23-89*) to the question related to the interaction between SFDR and MIFID II/IDD framework in the consultation on the review of SFDR[17] *"[…] : "structured products […], which by their very nature fall outside the scope of SFDR should still be assessed from a sustainability perspective in order for a distributor to be able to sell them to investors with sustainable preferences. […] For structured products, manufacturers get around these difficulties by providing distributors with the information required under the three criteria for both suitability assessment and target market through the EET. In some cases, distributors may also require an "SFDR-like pre-contractual" document to present the features of a), b) and c) to end-investors, which obliges the manufacturer to indirectly apply the SFDR rules even if the structured products are not recognised in the scope of the Regulation*."

Finally, AMAFI also agrees with ESMA's statement concerning the fact that ESG disclosure requirements should be aligned across regulations (including MIFID II' sustainability preferences) in order to ensure consistency and improve the usability of the sustainable finance framework as a whole. However, we acknowledge the challenge of fully aligning with SFDR and MIFID II the ESG disclosure information required in the Listing Act as being discussed presently, given the review of SFDR that is in progress and the expected review of MIFID II ESG.

[16] European Commission, Targeted consultation document implementation of the Sustainable Finance Disclosures Regulation (SFDR), 14 September 2023.
[17] European Commission, Targeted consultation document implementation of the Sustainable Finance Disclosures Regulation (SFDR), 14 September 2023, Q2.4.

COMMENTS ON SECTION 5 OF ANNEX 21

AMAFI notes that the terms "*ESG*" and "*sustainable*" are often used interchangeably in several items of Annex 21, which can lead to confusion. Although these terms are related, they have different meanings, especially under regulatory frameworks like SFDR, where they imply different levels of issuer engagement. To avoid ambiguity, AMAFI suggests either using a single term that covers both ESG and sustainable aspects, or use both terms, but clarify that they refer to different levels of involvement by issuers.

Concerning Item 5.3.3 related to the materiality of the sustainability features of the underlying for the assessment of the securities, AMAFI understands that the term "*material*" should be read with reference of article 6 or Prospectus Regulation, where it is stated that "*Without prejudice to Article 14a(2), Article 15a(2) and Article 18(1), a prospectus shall contain the necessary information which is material to an investor for making an informed assessment […]".* This general principle can be applied to this item because the issuer will indeed communicate the importance to consider the sustainable characteristics of the underlying if this information is considered material for the investor. We understand though that the answer to the requirement to state "*whether*" the underlying is material could be merely a "yes" or a "no", which would not be very useful for the investor.

For this reason, AMAFI suggests explaining further this materiality and amending item 5.3.3 accordingly as follows:

"A statement as to whether the sustainability features are material for the assessment of the securities, ***and if applicable, as to how."***

Regarding item 5.3.4, we understand ESMA's intention to inform investors of the distinct nature of certain non-equity structured products that do not directly invest in green or sustainable projects or activities (so that do not have specific Use of Proceeds). However, AMAFI strongly disagrees with the proposed wording, as it inaccurately suggests that structured products cannot qualify per se as sustainable investments or "sustainable products".

In the absence of a clear, unified regulatory framework that defines or prescribes how the sustainability features of structured products should be assessed —and pending the SFDR review — AMAFI considers such a statement to be unjustifiably discriminatory against these products. This is further exacerbated using the term "warning" instead of "statement," which carries an unnecessarily negative connotation. Furthermore, while the intent to inform investors is commendable, the proposed wording risks creating confusion in some cases.

Finally, the mention "*if applicable*", without further clarification, leaves the highest discretion to NCAs to assess whether the statement would be required. This approach could lead to inconsistent application and potential gold-plating which runs counter to ESMA's objective with the disclosure requirements proposed in this consultation.

AMAFI therefore proposes either slightly amending the current wording (option 1) or, if possible, significantly revising it to incorporate a more appropriate statement (option 2). The second approach is the preferred one, as it would create consistency with the definitions proposed for use-of-proceeds bonds and better ensure that clear and transparent information is provided to investors.

Option 1

*"**If the structured product does not have specific use of proceeds** ~~If applicable~~, a ~~warning~~ **statement** that the structured product does not represent a~~n~~ **direct** investment in ~~a~~ sustainable **projects** ~~product~~ or economic activities, including ~~products~~ **projects** or economic activities in transition finance."*

Option 2

"If the structured product does not have specific use of proceeds, a statement that the product's proceeds do not directly finance or re-finance green and/or social projects or activities, including sustainable and/or transition projects or activities"

Question 17 – Do you support ESMA's proposal to amend Article 26 CDR on scrutiny and disclosure to facilitate the incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms? Please explain your answer and provide any alternative proposals.

As stated in our reply to question 10, AMAFI agrees with ESMA's proposal to amend Article 26 CDR to facilitate the incorporation by reference of relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms. This approach is the most flexible option, as it enables issuers to avoid significant additional costs and shortens the issuance timeline, both of which are critical for the efficient functioning of the market.

Incorporating such information directly into the base prospectus is the least desirable solution, as it would require updating the base prospectus each time the issuer wishes to issue an EuGB. Considering that these templates typically apply to single issuances, this approach would be excessively costly and time-consuming for issuers, making it impractical.

Similarly, incorporating this information through supplements to the base prospectus is not an ideal solution. While it offers more flexibility than embedding the information directly in the base prospectus, it would still impose additional administrative and procedural burdens on issuers, particularly if they issue frequently or in multiple tranches.

Therefore, AMAFI strongly supports the incorporation by reference via final terms, as it balances the need for regulatory transparency with practical flexibility for issuers, without undermining investor protection or market efficiency.

III. TECHNICAL ADVICE ON THE CONTENT OF THE URD (SECTION 6)

Question 19 – Do you agree with ESMA's assessment regarding changes to the URD annex?

As an introductory comment, AMAFI welcomes the fact that the format and sequence requirements of prospectuses and base prospectuses as introduced by the Listing Act do not apply to the URD.

With reference to Annex II of the CDR, we have no comment on the proposed change (Item 1.3) to the URD annex.

IV. THE CRITERIA FOR THE SCRUTINY OF THE COMPLETENESS, COMPREHENSIBILITY AND CONSISTENCY OF THE INFORMATION CONTAINED IN PROSPECTUSES (SECTION 7)

Question 20 – Do you agree with ESMA's proposal to delete Article 40 CDR on scrutiny and disclosure and introduce Article 21b into CDR on scrutiny and disclosure? Please explain your answer and present any alternative proposals.

AMAFI welcomes this change as Article 21b is more precise that previous Article 40, namely in relation to information items that can be used from other securities prospectuses that are comparable but not identical to the securities to be offered or admitted to trading. That being said, guidance as to the notion of "*comparable but not identical*" would be welcomed.

Question 21 – Do you agree with ESMA that the deletion of Article 40 CDR on scrutiny and disclosure and the inclusion of Article 21b in CDR on scrutiny and disclosure should not lead to additional administrative burden or costs for stakeholders? If not, please quantify the costs as much as possible.

We do not expect the deletion of Article 40 CDR and the introduction of Article 21b to cause additional costs.

Question 22 – Do you agree with ESMA's assessment that there are no circumstances in which an NCA should require additional information in a prospectus over and above that which is required under Articles 6, 13, 14a and 15a PR within the context of the scrutiny and approval of a prospectus? Please explain your answer.

Yes, AMAFI agrees with this assessment.

V. PROCEDURES FOR THE APPROVAL OF PROSPECTUSES (SECTION 8)

Question 23 – Do you agree with ESMA's approach to further harmonising the deadlines in NCAs' approval processes, i.e., trying to keep the deadlines as simple as possible and avoiding complicated administrative procedures? If not, please indicate what changes could be made to improve ESMA's advice in this area.

AMAFI welcomes the approach of harmonising deadlines in all aspects presented in the consultation document (90 days extension, NCAs not requiring deadline of less that 10 days for issuers to respond, "pens down period", i.e. period during which the issuer does not submit new wording to the NCA).

Question 24 – Do you believe ESMA's proposal will impose additional costs and/or burdens for issuers? Please explain your answer and provide an indication of the related costs.

We do not expect that this will impose additional costs or burdens for issuers.

Question 27 – Do you agree with ESMA's proposal to streamline the process of submitting nformation that will need to be submitted by NCAs to ESAP via the Prospectus Register (Article 11a of the draft RTS amending CDR on metadata)? Please explain why

AMAFI would like to draw ESMA's attention to new IT developments that this imposes on issuers to satisfy the delivery of new data in relation to that already delivered to the competent national authorities. By way of example:

- Data or files would have to be reprocessed in order to send the final offer price and amount of securities, even though the offer data would already have been delivered at the start of the offer period; a new 'FOPA' field would have to be added and filled in under 'Field # 6 Document type'.
- A new 'Field # 31 Final offer volume'.
- A new 'IORM' field should be added and completed in the case of listing on a regulated market in Field # 34 Type of offer/ admission'.

VI. UPDATE OF THE CDR ON METADATA (SECTION 9)

Question 28 – With regards to field 5, is it always possible to determine a single venue 'of first admission' in case of simultaneous admission on two or more venues? Please explain why.

Yes, it is possible to determine a single venue "*of first admission*," if securities are admitted to trading. Therefore, this field 5 should not apply to securities that are not admitted to trading.