No51

FINANCIAL Newsletter

Amafi

FRENCH FINANCIAL MARKETS ASSOCIATION

DECEMBER 2023

FEATURE

ESAP: a new digital space for Europe's business data

Corporate financial and sustainability data are critical to orderly capital markets. But anyone looking for that information in the European Union has to scour 27 jurisdictions and deal with 24 official languages, multiple access points, and an array of formats. There is no one-stop-shop for sourcing all the information currently scattered from Lisbon to Ljubljana. The European Single Access Point project aims to change all that by creating a universally accessible data space.

EDITORIAL

Stéphane Giordano and Stéphanie Hubert | AMAFI

The European Union is pressing ahead with its quest for strategic autonomy. While the need for self-determination was starkly apparent during the Covid-19 crisis and the war in Ukraine, mounting geopolitical pressures, as evidenced by the ongoing conflict in the Middle East, continue to demonstrate the value of the EU's approach. But as Ursula von der Leyen, President of the European Commission, recently stressed, the Union cannot hope to act independently of other countries in strategically important areas unless it safeguards and strengthens its competitiveness. Failure to do so will leave European businesses unable to provide vital products and services efficiently and cost-effectively. This holds equally true for financial markets, which are being asked to shoulder significant challenges in financing the European economy. Which is why the competitiveness of these markets and their participants is vitally important. Eight years after its launch, the Capital Markets Union initiative is still far from delivering the hoped-for results. The time has come to make competitiveness a priority, on an equal footing with financial stability, increased transparency and investor protection.

To offer input to the discussions ahead of Europe's institutional overhaul in 2024, AMAFI will shortly publish proposals aimed at enabling EU markets to meet the financing needs facing the European Union, while reaching a higher level of strategic autonomy.

ESAP: a new digital space for Europe's business data

Sandra Sebag

To function properly, capital markets rely on instant access to clear and meaningful business data. But information is not always available in a readily accessible location nor an easily readable format. Meanwhile, the finance industry is grappling with mounting costs associated with financial and sustainability data, together with implementation challenges connected with data management and good governance.

Recognising the importance of this issue, some jurisdictions have introduced solutions to provide centralised access to machine-readable business information. The United States introduced its EDGAR system back in the 1990s. Japan's EDINET scheme was set up in 2008, while Canada recently revamped and consolidated its SEDAR+ system as part of a multi-year project to bring multiple standalone databases, systems and data together under one digital roof.

But Europe lacks a central public database containing all the financial information published by corporates, including the regulatory disclosures required by supervisors. Instead, its 27 jurisdictions use different languages, access points and formats. Disclosures are scattered across the net, and posted on websites maintained by supervisors, stock exchanges and companies themselves. Some member states have introduced domestic-level initiatives to consolidate information, but these schemes are not exhaustive and do not employ machine-readable formats. Sustainability disclosures are not even on the menu yet, since the regulations governing them are still being hammered out. While some rules apply, notably under the Green Taxonomy framework, the largest European firms are not due to begin filing disclosures until next year, when they start phasing in harmonised sustainability reports under the Corporate Sustainability Reporting Directive.

Until now, the industry has relied for this information on data providers, which retrieve, check and analyse business information. US providers of financial and sustainability data dominate the scene and take full advantage of their virtual monopolies to charge hefty fees. In the credit segment, a handful of European data providers, such as Six and WMdaten, hold tiny market shares, but they are dwarfed by the three US behemoths: Bloomberg, MSCI and Standard &Poor's. The same goes for sustainability data, which is controlled by MSCI, Morningstar Sustainalytics, S&P Sustainable, Moody's and ISS ESG. In recent years, the leaders have actually absorbed several European agencies. Moody's took over France's Vigéo-Eiris in 2019, while the German firm Oekom Research was acquired by a US agency in 2018. Across the board, these firms are hiking their prices, with contracts between asset managers and data providers showing increases of between 5% and 10% this year. Besides stiffer prices, businesses are also frustrated by the lack of transparency, as many data providers do not offer clear pricing schedules. Clauses that restrict data access by confining plans to a particular service or function are another bone of contention. Meanwhile, green fintechs hoping to expand in the segment for Environmental, Social, and Governance (ESG) data have emerged recently, particularly in France.

ESAP's fable

This situation is set to change with the creation of the European Single Access Point. ESAP is a key component of the Capital Markets Union (CMU), the EU's plan to create a single EU-wide market for capital. The CMU action plan published back in 2020 set out a series of measures to support a green, digital, inclusive and resilient economic recovery by making financing more accessible to companies. Top of the list was to the need to make businesses more visible to cross-border investors, and ESAP was identified as the means to achieve that goal. In 2021, the European Commission followed up on the plan by releasing a package to deliver on CMU, which included a proposal for a regulation establishing a European Single Access Point to provide "centralised access to publicly available information of relevance to financial services, capital markets and sustainability".

Under the proposal, ESAP is expected to offer an impressive array of functionalities, including a web portal with a user-friendly interface in all of the EU's official languages to provide access to the information in ESAP. The portal will also feature an application programming interface enabling easy access to ESAP; a search function in all the official languages of the Union; an information viewer; a download service, including for large quantities of data; and a notification service informing users of any new data added. The site will also offer a machine translation service for the information retrieved by users.

ESAP will provide free access to all the raw data put out by eurozone companies. The new database will be accessible to anyone, anywhere in the zone, and will use a single format, including access to metadata. It will provide access to all the information required by European regulations. This includes financial and sustainability data published by companies under their disclosure obligations, such as annual reports, sustainability reports, compensation policies as well as any sanctions. Large companies will be involved in the first instance, and many of them are expected to gradually start transferring their information to the new system. Market fragmentation particularly affects small and midsize enterprises (SMEs) seeking access to financing, making it harder for them to expand beyond their national borders. Data integration will partly address this fragmentation, with ESAP allowing any entity, including smaller companies, to voluntarily post information. This will boost the visibility of SMEs among European and international investors, such as business angels, venture capital and private equity funds. It will also diversify the firms' funding sources, one of the key aims of CMU. ESAP will also centralise information about financial products, including key information documents, pre-contractual information and prospectuses.

As explained in the package of measures to deliver on the CMU action plan, ESAP is also intended to anchor Europe's Digital Finance Strategy and boost the green transition. In the first case, by tackling data fragmentation along national borders, the new scheme will pave the way for better digital use and re-use of information. In the second, by facilitating access to the ESG data of EU companies and information on ESG financial products, ESAP will address the growing demand for sustainability-related information, thereby contributing to the fair transition to sustainability.

An ambitious project

ESAP is a massive undertaking, comprising one regulation and two pieces of omnibus legislation that amend 16 directives and 19 regulations, addressing a total of 230 disclosure obligations. It organises information collection at the level of each country in order to make data obtainable from a single European access point via an open web portal and an application programming interface. ESAP will provide the freshest possible information and keep it for ten years. The project does not create any new obligations, concentrating instead on ensuring that existing information is digitally accessible and user friendly. Structurally, ESAP will rely on at least 60 domestic- and European-level data collection bodies, which will make the information available to the European Securities and Markets Authority (ESMA). ESAP will eventually receive information from approximately 150,000 entities and national competent authorities via the system of collection bodies. Contributing entities will include, among others, issuers of securities, including on SME markets, large listed and unlisted corporations publishing sustainability disclosures, insurance corporations, credit institutions, funds, fund managers, investment firms, credit rating agencies, and auditors.

Third-country entities will not provide information to ESAP unless required to do so by European Union law. The three European Supervisory Authorities (ESAs) are set to work together on implementation, notably by drafting the technical standards that will be adopted once the regulation comes into force.

Phased-in implementation through to 2030

ESMA will be supplied with the human and financial resources needed to run the scheme. Overall, through to 2027, the project is estimated to cost between €14 million and €16.5 million, of which 60% will be funded by the EU and 40% by national competent authorities. The framework is scheduled to come into force in several phases starting in mid-2026 and lasting until 2030 and possibly beyond. Phase 1, which will cover information published under the Transparency Directive and the Prospectus and Short Selling Regulations, is unlikely to start properly before 2027, as the market continues to get organised.

The remaining phases will be implemented through to 2030, although the idea of a 36-month implementation delay is already being floated for Phase 3.

> *"ESAP aims to make companies more visible to investors"*

Industry concerns

The ESAP Regulation is expected to make it easier for investors to access ESG data and improve comparability. This will help to bring down the cost associated with these data, because they will be free to access. However, businesses are worried about the scale and cost of the reforms, and are wary of the operational aspects. And while ESAP is not supposed to create any new disclosure obligations, it will require companies and the finance industry to do preparatory work to adapt the current disclosure format. All this could prove costly. Timing is another concern, given that the project is mammoth in scale and will take more than five years to finalise as the requisite ecosystems are set up.

The AFEP, an association representing France's largest companies, stressed in its feedback to the ESAP consultation in 2022 that the project should not include additional costs or responsibilities. It also pointed out that, in the short term, the chief beneficiaries will be financial sector firms, which need the data for reporting purposes, and data suppliers, which will enjoy enhanced access to raw data, allowing them to focus more on value added services using this information. But large companies concede that greater transparency will help to improve access to financing in the long run.

Commenting on the European Single Access Point, European Commissioner Mairead McGuinness said: "We don't have a one-stop shop where you can get access to information from companies. If you want to invest, you have to do a lot of work, or you have to pay for someone to do that work for you. We believe that ESAP will answer the questions asked by investors, both small and large, about company information." Notwithstanding the concerns and challenges, ESAP is set to be a game changer. It will help to make good on the Commission's goals of promoting further integration of Europe's capital markets and encouraging capital to be allocated more efficiently across the EU.

INVESTOR PROTECTION

Retail Investment Strategy

MiFID II and PRIIPs

As part of ongoing negotiations on the Retail Investment Strategy (RIS) at the European Parliament's ECON Committee, AMAFI Chairman Stéphane Giordano and several members of the European Action Committee met with MEP Stéphanie Yon-Courtin, rapporteur for the RIS.

On the MiFID II review, AMAFI stressed the following issues:

- It opposes the partial ban on inducements, as proposed by the European Commission, and therefore supports the Rapporteur's position.
- On the value-for-money proposals, which form part of the product governance regime and whose primary goal is to ensure that the industry produces and distributes only financial instruments that add value for investors, AMAFI said that if the benchmarks used to compare products within the same class were to be kept, they should be established by the industry, not the European Supervisory Authorities, for reasons of feasibility.
- AMAFI also supported Ms Yon-Courtin's proposal to review the RIS in five years rather than three, so that any assessment will be based on substantiated findings.
- In addition, AMAFI voiced serious concerns about the number of mandates that are supposed to be entrusted to ESMA. The supervisor's approach may be overly prescriptive when it comes to clarifying essential points, such as the best-interest test to ensure that retail customers are offered products with the optimal cost/benefit trade-off based on their preferences.

On the PRIIPs review, AMAFI said that it broadly opposed the European Commission's proposals *(AMAFI / 23-64)*, which Ms Yon-Courtin took up in her draft report, and called for greater regulatory stability. It also stressed the need for consumer tests to make sure that the new transparency obligations are truly beneficial to customers, while emphasizing that plain vanilla products should be excluded from the scope of PRIIPs.

AMAFI also broached RIS-related topics with the policy advisor of the Progressive Alliance of Socialists and Democrats (S&D), and with the office of Finnish MEP Eero Heinäluoma, who represents the S&D Alliance on the ECON Committee negotiating team.

Plain vanilla products

Acting alongside other members of the European Forum of Securities Associations (EFSA), AMAFI *wrote* to the European Commission and ESMA protesting the undue regulatory barriers hindering the distribution of plain vanilla shares and bonds to retail customers, at a time when the European institutions want to make it easier for these investors to access financial markets.

In their response, the European authorities merely encouraged the associations to submit their points as part of the ongoing work on the RIS, which is what AMAFI has already endeavoured to do through its efforts to convey this message to national authorities and members of the European Parliament. We were therefore pleased that Ms Yon Courtin presented an amendment to the ECON Committee proposing to exempt all non-packaged financial instruments – including plain vanilla shares and bonds – from product governance obligations.

Arnaud Eard, Catherine Balençon

DERIVATIVES

MiFIR

Exemption from the trading obligation

As part of the review of the Markets in Financial Instruments Regulation (MIFIR), due to come into force at the end of first-quarter 2024, the European Commission would be entitled to grant a trading obligation exemption for certain derivatives (including the most liquid swaps and credit default swaps) on multilateral trading facilities in the European Union or equivalent facilities in third countries. Exemptions would be granted in certain circumstances, based on information sent by institutions to their competent authorities.

AMAFI reached an agreement with the Commission that exemption applications could be reviewed before MIFIR comes into force, so that exemptions could be effective from that date. AMAFI is therefore working with the French securities regulator, AMF, and the European Commission to establish the content of the applications that will enable institutions to be covered by the exemption.

This is a key issue for the competitive performance of institutions in France and the rest of the EU in these products. The exemption will shape their ability to propose cost-effective solutions to customers outside the EU, insofar as the trading obligation created an unfair playing field that severely eroded their market shares.

EMIR 3.0

It is not known at this stage when EMIR 3.0, Europe's new derivatives regulation, will come into effect. However, AMAFI and other Paris-based associations believe that national and European supervisory authorities should be asked to extend the current exemption for equity options clearing to that date. Currently, under EMIR regulatory technical standards, European market participants are covered by a temporary exemption, set to expire on 4 January 2024, from the requirement to post bilateral margin (variable and initial) for equity options.

In early November, AMAFI, the FBF, the AFG and Paris Europlace wrote to the AMF and the ACPR asking them to make a request to the European authorities to extend the exemption. That outcome is likely under EMIR 3.0: the co-legislators are agreed on extending the derogation for an unspecified duration, while non-EU jurisdictions – including the United States and the United Kingdom – do not apply such a requirement.

Emmanuel de Fournoux

LISTING ACT

Investment research

The European Listing Act package, which aims to make it easier for companies to list in the European Union, includes a review of MiFID II provisions on the treatment of investment research. As part of the trilogue negotiations between the European Commission, Parliament and Council, AMAFI, which supports this initiative, reminded the authorities of several points:

- Regarding the conditions in which sponsored research may be considered to be investment research, consistent with the system in place in France since May 2021 under the *AMAFI-AFG-SFAF Charter,* AMAFI recommended setting up national codes based on guidelines from ESMA, rather than having ESMA draw up a code.
- On rebundling execution and research fees, which was possible before MiFID II entered into application in 2018, AMAFI does not believe that going back to the old system is appropriate or even possible, given how much the business models of different participants, including research producers and consumers, have changed in the intervening period.
- On making sponsored research available through the European Single Access Point (ESAP, see Feature, p. 2), AMAFI argued that if such a proposal were adopted, only sponsored research that is entirely paid for by the issuer should be included, and such publications should consist of a link to the research producer's website rather than to the research paper itself, at the risk of endangering its existence if the requirement is not met.

Emmanuel de Fournoux

SETTLEMENT

T+1

The United States and Canada have decided to shorten the securities settlement cycle to one day (T+1). Starting in April 2024, trades will be settled one day after trading instead of the two-day period that is currently the standard internationally, except for a few Asian platforms. The aim is to make the markets more attractive and less risky.

The United Kingdom and the European Union are also in talks to determine whether to align with the T+1 cycle. AMAFI, the AFG and France Post-Marché are currently conducting a joint investigation of this topic, focusing on the effects of the North American switch on the operation of European markets; and the pros and cons of adopting such a scheme in Europe.

It is important to stress that at this stage of the investigation, and setting aside the interest of adopting the same standards as those used by the main global markets, the technical drawbacks appear to outweigh the benefits. As things stand, unlike closely integrated non-EU markets, Europe's post-trade segment is highly fragmented, making a reform of this kind extremely hard to execute. However, the US switch to T+1 – and, more importantly, the possibility that the UK may follow suit – seems likely to affect EU markets.

Emmanuel de Fournoux

CLEARING

A new model for Euronext markets

After acquiring the Italian stock exchange in 2021, Euronext decided to switch its cash and derivatives clearing to the Italian clearing house, previously part of Borsa Italiana. The change has been effective for cash markets since 27 November 2023; derivatives markets will follow suit next May.

AMAFI was delighted by the constructive dialogue that took place between Euronext and its members, which paved the way for the successful execution of a highly complex project.

Emmanuel de Fournoux

SUSTAINABLE FINANCE

Issuance of green and sustainability-linked bonds

AMAFI organised a meeting on 8 November between a members' delegation and the AMF's Corporate Finance Division to get clarification on the regulator's expectations for the issuance of green and sustainability-linked bonds.

During the meeting, two main topics were adressed:

- Use of the term "taxonomy" in prospectuses and frameworks, in situations where alignment with the European Taxonomy cannot be demonstrated at issuance.
- Different aspects of issuance frameworks for sustainability-linked bonds, including labels of selected indicators, step-up clauses and Second Party Opinion (SPO) certification.

The AMF's Corporate Finance Division reiterated that its main goal is to monitor the information contained in issuance prospectuses and frameworks to ensure these are meaningful, clear and accurate, in order to avoid any controversies related to greenwashing risk. If need be, the AMF may therefore ask institutions to provide more detail, to check the consistency between the language used and the proposed issue.

SFDR consultation review

The European Commission has launched a consultation on a review of its Sustainable Finance Disclosure Regulation (SFDR). The main challenges of this review concern the extension of the regulation's scope to all financial instruments, the implementation of a specific product categorisation to replace Article 8 and 9, and a more precise definition for sustainable investment.

In this context, AMAFI aims to reassert the importance of a consistent approach to considering derivatives in the sustainability disclosure for products. It also believes that a transparency framework is necessary for structured products. However, if such a framework were defined in the SFDR, an in-depth review of the regulation would be needed to ensure that the criteria used were suited to these products.

Ambra Moschini

DIGITAL ASSETS

Unidroit

Thiebald Cremers, AMAFI's Director of Legal Affairs, took part in discussions between Unidroit and the Hague Conference on Private International Law (HCCH) held in Rome in October.

The aim of the talks was to decide whether the HCCH should work on a conflict-of-law rule based on the one contained in the Unidroit Principles on Digital Assets, which concern crypto-assets but also financial securities. Specifically, the discussions sought to determine what law governs ownership of these assets in a cross-border situation – for example, where a trader in Paris trades securities on a Dutch venue that are delivered to a central securities depository in Belgium.

The discussions highlighted significant differences between countries, including on key concepts. In particular, introducing a single conflict-of-law rule for all assets (notably crypto-assets, stablecoins and securities) would be challenging for HCCH member states, which are therefore planning to continue their talks in spring 2024.

MiCA Regulation

The HCJP, a high-level committee set up to consider legal issues affecting the Paris financial centre, established a working group on Europe's new Markets in Crypto-Assets (MiCA) Regulation, which came into force on 29 June. Three sub-groups are working on the provision of crypto-asset services, the offering and admission of the assets themselves, and the private international law applicable to them. AMAFI is taking part in the first and second sub-groups.

The aim is to propose amendments to adapt France's legal framework to the new regulation.

Thiebald Cremers, Clara Le Du

AMAFI

TEAM

Ambra Moschini joined AMAFI in early October as Head of Sustainable Finance. Ambra holds degrees from Ca' Foscari University of Venice and from Georgia State University, Atlanta, in economics, finance and risk management. She began her career in academia before working for two years in Luxembourg as a treasury management and hedge trading specialist. She then worked for seven years at Ailancy, a consultancy, where she specialised in sustainable finance.

CONTACTS

Jeanne Auriac
01 53 83 00 74 | jauriac@amafi.fr

Catherine Balençon
01 53 83 00 87 | cbalencon@amafi.fr

Philippe Bouyoux
01 53 83 00 84 | pbouyoux@amafi.fr

Thiebald Cremers
01 53 83 00 91 | tcremers@amafi.fr

Maguette Diouf
01 53 83 00 88 | mdiouf@amafi.fr

Arnaud Eard
01 53 83 00 75 | aeard@amafi.fr

Julie Dugourgeot
01 53 83 00 81 | jdugourgeot @amafi.fr

Emmanuel de Fournoux
01 53 83 00 78 | edefournoux@amafi.fr

Stéphanie Hubert
01 53 83 00 95 | shubert@amafi.fr

Clara Le Du
01 53 83 00 76 | cledu@amafi.fr

Alexandra Lemay-Coulon
01 53 83 00 71 | alemaycoulon@amafi.fr

Ambra Moschini
01 53 83 00 86 | amoschini@amafi.fr

Director of Publication:
Stéphanie Hubert

Editor:
Philippe Bouyoux

Design:
Rodolphe Herrera

Layout:
Sabine Charrier

ISSN: 2557-5317

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.

FRENCH FINANCIAL MARKETS ASSOCIATION

http://www.amafi.fr/en

http://amafi.fr/topics/en/linfo-amafi

@AMAFI_FR amafi-france

Nos vidéos Professeur Spot

Nos vidéos Métiers

13 rue Auber, 75009 Paris, France | Phone : + 33 1 5383-0070 | Email: info@amafi.fr

For further information about any of the topics discussed in this Newsletter, contact the person(s) named at the bottom of the article in question. Dial (+ 33 1 5383) followed by the extension number, or send an email.