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IFR / IFD

EBA AND ESMAs 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.

Since 2016, (first consultations of EBA and EC) AMAFI has followed and contributed to the setting up of specific prudential regime for investment firms (Ifs) whose aim was to introduce more proportionate and risk-sensitive rules for investment firms. AMAFI had always advocated for such a policy evolution and fully supported this initiative.

AMAFI represents all categories of ifs (class 1, class 1-minus, class 2 and class 3).

It is worth noting that AMAFI totally shares the following EBA general statement "*EBA is of the overall opinion, that the current framework reaches the original general objectives, providing a robust and risk-sensitive prudential framework tailored to the size, activities and complexity of the MiFID investment firms while, at the same time, introducing substantial simplification in the calculation and reporting methodologies reducing the burden on participants in the market of investment services*"

In this context, and before answering to the specific questions of the call of advice (CoA), AMAFI would like to make the following general comments

I. AMAFI's GENERAL COMMENTS

1. MAINTENING THE INTINITAL OBJECTIF TO HAVE A SEPARATE REGIME FOR IFS COMPARE TO EC AND UCITS/AIFMD ONES

AMAFI really believes that the different frameworks that allow rules adapted to risk profiles and business models of each category of EU entities should be maintained (EC, Ifs and UCITS/AIFMD). The review of the IFR/IFD rules should not end up with an alignment of those regimes in line with the initial political objective.

Indeed, some of the considerations and/or proposals of the CoA imply convergence of the different rules.

Moreover, we consider that the different authorities (EBA, ESMA) should strengthen their expertise and economic intelligence on the investment firms' activities, risk profiles and specificities. This could be achieved through dedicated task forces within EBA and ESMA and through the launch of expert consultation working groups.

2. AVOIDING INTRODUCING MORE COMPLEXITY AND MAINTENING REGULATORY STABYLITY

The entry into force of IFR/IFD occurred in June 2021 (about 3 years ago) and, as it is outlined in the CoA, and according to what happened is France, it does not raise any critical issues. Indeed, it is a collective EU regulatory implementation success.

It is therefore important not to undermine the positive development of these rules by introducing provisions that could make the framework more complicated and more difficult to understand by various stake holders at least at levels 1 and 2 of the regulation. For some issues, it could be convenient that EI competent authorities provide the industry with level 3 guidelines or Q&A.

3. TAKING INTO ACCOUENT EU COMPETITIVNESS

Evolution of the rules should be assessed given the overall objective of the EU to take into account competitiveness of the EU markets compared to what is at stake in other jurisdictions, especially in the UK. This is particularly relevant for Ifs remuneration policies.

4. IMPROVE THE CURRENT SYSTEM TO REMEDY SOME OF ITS MAJOR DRAWBACKS

AMAFI has identified some key points (and this points where raised since the beginning without, any positive outcomes) that should be deeply consider by EBA and ESMA.

The first and mainly topic is the question of consolidation rules within Ifs group. IFR applies prudential rules to every individual investment firm (class 3 exemption being put apart). Before IFR applied, many investment firms (such as class 2) were subject to CRR and therefore exempted from certain individual requirements provided their group was subject to CRR/CRD requirements at consolidated level. We would like to re-iterate that the absence of such "individual" exemption of IFR firms consolidated in a CRR group is creating duplicative, costly and overburdensome constraints with almost no added value.

AMAFI has always never **understo**od the rationale behind this piece of rules and would be more than happy to discuss it again with EBA and ESMA.

Then, we consider that the calculation of K-ASA should be totally assed divert that it does not reflect the risks occurred by Ifs that carry out this activity.

Besides that, rules concerning the calculation of specific K factors (risk mitigation for instance) could be amended.

II. AMAFI'S ANSWERS TO ESMA'S QUESTIONS

1 – CATEGORISATION OF INVESTMENT FIRMS

AMAFI believes that removing thresholds for categorizing investment firms could increase complexity in managing regulatory requirements. Smaller firms may face additional costs to comply with stricter rules, which could heighten the risk of non-compliance.

2 – CONDITIONS FOR INVESTMENT FIRMS TO QUALIFY AS SMALL AND NON-INTERCONNECTED

Q2: Would you suggest any further element to be considered regarding the thresholds used for the categorization of Class 3 investment firms?

No, at this stage according to our analysis

Q3: Do you have any views on the possible ways forward discussed above regarding the transition of investment firms between Class 2 and Class 3 should be introduced?

No, at this stage according to our analysis

3 – FIXED OVEREADS REQUIREMENTS (FOR)

Q4: Should the minimum level of the own funds requirements be different depending on the activities performed by investment firms or on firms' business model? If yes, which elements should be considered in setting such minimum?

We have not identified any reasons why the minimum would be differentiated on the activities.

Q5: Is it necessary to differentiate the deductibles by activity or by business model for the purpose of calculating the FOR? If yes, which items should then be considered and for what reasons?

There is no need to differentiate the deductibles by activity or business model, as too much granularity would bring too much complexity and the risk of loopholes.

Q6: Are expenses related to tied agents' material for the calculation of the FOR to the extent to require a dedicated treatment for their calculation? If yes, are the considerations provided above sufficient to cover all the relevant aspects?

No, at this stage according to our analysis

Q7: Should the FOR be calculated distinguishing the costs related to non-MiFID activities, which criteria should be considered? What kind of advantages or disadvantages would this have in practice?

The FOR should not be calculated distinguishing the costs related to non-MIFID activities, especially for investment firms providing crypto-assets services under MiCA for the following reasons:

- Currently, there are very few investment firms providing crypto-asset services and their commercial activity is just beginning. The main part of their costs are human resources costs related to research and development of new technologies and products. It would be virtually impossible to allocate costs by activities since (i) teams work on multiple activities and (ii) current low revenues of these firms do not allow costs to be simply allocated by various activities. The costs associated with non-MIFID activities are perceived as a whole, linked to a global R&D effort, rather than to actual commercial activities.

- This would impose disproportionate and unfair administrative costs on investment firms providing crypto-asset services and would create a level-playing field issue between investment firms providing crypto-asset services and crypto-asset service providers (CASP) under MiCA. This would amount to requiring investment firms to break down their costs in more or less artificial ways, while crypto-asset service providers could, under MICA, calculate their FOR over all their overhead costs.

- There is no justification for this competitive disadvantage against investment firms: if investment firms provide the same crypto-asset services as crypto-asset service providers, they should be treated in the same way prudentially. Same activities, same rules.

- Nevertheless, investment firms providing crypto-asset services are already subject to higher minimum capital requirements under IFR/IFD (Article 9) than CASPs under MiCA (art 67) for the same services. These minimum requirements should be aligned and, at the very least, prudential obligations on investment firms should not be increased.

Q8: Should expenses related to fluctuation of exchange rates be included in the list of deductions for the calculation of the FOR? If yes, which criteria should be considered in addition to the ones suggested above?

No, at this stage according to our analysis

4 – REVIEW OF EXISTING K-FACTORS

4.3 Client Orders Handled (COH): Name give-up operations

Regarding the handling of client orders and specifically 'name give-up' operations, we acknowledge that this practice has already been addressed in the EBA Q&A, which clarifies its treatment under the K-COH calculation.

We agree with the EBA's guidance and find it beneficial that this issue is explicitly mentioned. Overall, we support the current approach and do not see any issues with the way 'name give-up' operations are handled under the existing framework.

4.5 Assets under management and ongoing advice (K-AUM): definition of ongoing advice

Q9: Should the concept of 'ongoing advice' be further specified for the purpose of calculating the K-AUM? If yes, which elements should be taken into account in distinguishing a recurring provision of investment advice from a one-off or non-recurring one?

The existing definition of ongoing advice of Article 4.1(21) of the IFR is sufficient and has not raised any concerns (i.e. "the recurring provision of investment advice as well as the continuous or periodic assessment and monitoring or review of a client portfolio of financial instruments, including of the investments undertaken by the client on the basis of a contractual arrangement"). To be noted that MIFID requires that the client be informed of the recurring nature of the advice (assessment of the suitability) before providing it.

4.7 Daily Trading Flow (K-DTF)

Q10: Does the K-DTF provide a proper level of capital requirements for the provision of the services Trading on own account and execution of order on behalf of clients on account of the investment firm? If not, what elements of the calculation of the K-DTF present most challenges?

We have adapted to the requirements of the IFR regarding K-DTF and have not identified any specific concerns with the capital requirements for trading on own account and execution of orders on behalf of clients. The current framework appears to provide an adequate level of capital coverage for these activities

Q11: Would you have any examples where the calculation of the K-DTF based on comparable activities or portfolios results in very different or counterintuitive outcomes? If yes, how could the calculation of the K-DTF be improved?

AMAFI has observed that the calculation of K-DTF results in different outcomes, particularly in the context of operational risk.

For instance, in situations where an establishment manages multiple operations, each operation is recorded separately to ensure prudent capital coverage. This practice sometimes results in K-DTF calculations that appear counterintuitive. Some establishments record two operations for a single trade to cover both settlement and credit risk, even when only one trade occurs. This approach ensures that all potential risks are adequately accounted for.

Further review and discussion on the interpretation of K-DTF calculations are encouraged to address these discrepancies and improve the framework's accuracy.

4.8 Concentration risk in the trading book (K-CON): scope restricted to the trading book

First, we acknowledge the current concerns regarding the scope of K-CON and its application to the trading book for investment firms carrying out the so-called MiFID activities (3) and (6). There are two main points that need addressing:

Clarification of Article 37: There is a need for clearer guidance on Article 37, which gives the national competent authorities discretion in enforcing the 25% limit for large exposures. The current framework lacks specifics on how long a firm can exceed this limit and the process for returning to compliance. This uncertainty makes it harder to manage concentration risk and understand regulatory expectations.

Credit Risk Mitigation: Under the IFR, the credit risk mitigation options, such as using cash collateral, are more limited compared to those available under the CRR. This restricts establishment’s ability to manage risks effectively and could impact competitiveness. Allowing similar mitigation techniques as those under the CRR would offer a more balanced approach.

These clarifications are essential to ensure the IFR framework is applied consistently and competitively,

Then, we are strongly opposed to any consideration of the non trading book, including a hard limit as per CRR. We would like to insist on the fact that IFR/IFD’s initiative aims at providing a prudential regime (notably for MiFID activities other than (3) and (6)) lighter than CRR/CRD and more adapted to their size and activities. IFR review’s outcome shall not contradict the spirit and rationale prevailing to the IFR/IFD framework.

4.9 Concentration risk in the trading book (K-CON): notion of ‘client’

Under the IFR framework, K-TCD exclusively considers derivative portfolios for exposure calculations, while K-CON may potentially include other exposures not covered by K-TCD, such as "reverse repos" and "cash balances" with banks.

The question arises whether exposures to banks and other counterparties, currently excluded from K-TCD, should be included in K-CON. It is important to clarify if all relevant assets, including those not captured by K-TCD, should be accounted for under K-CON.

AMAFI recommends including theses additional exposures in K-CON calculations for trading book to ensure comprehensive risk management and consistency across the framework.

4.11 - Assets under safekeeping and administration (K-ASA)

Q12: What are the elements of the current methodology for the calculation of the K-ASA that raise most concerns? Taking into account the need to avoid complexifying excessively the methodology, how could the calculation of the K-ASA be improved to assess those elements? Q13: Clients' asset protection may be implemented differently in different Member States. Should this aspect be considered in the calculation of the K-ASA? If so, how should that be taken into account in the calculation?

The K ASA relates to assets under custody and administration, but a coefficient of 0.04% is applied regardless of the quality of the custody work carried out.

1st challenge: whether or not the IF, which manages custodian account, is part of a credit institution introduces a bias:

- If the custodian account holder is not a separate legal entity from the credit institution, only CRR applies with smaller consideration of risks associated with custody, since only operational risk is measured for this part;
- If the custodian account holder is a separate legal entity under IFR, K ASA Factor calculation applies, provided that K ASA is the highest measure.

As such, an IF providing custody services for two major banking networks, by delegation, saw its capital requirements quadruple following the switch from CRR to IFR. This increase was attributable almost exclusively to this K Factor ASA calculation, even though its main risk remains operational risk.

2nd challenge: K ASA calculation does not take into account the quality of the custodian chain. Indeed, an IF can be only one link of a chain between the 1st tier account holder, the credit institution, the global custodian and the Central Security Deposit (CSD), where:

- Country risks differentiation: as such a chain of delegation of an Euroclear or Euroclear Settlement of Euronext Securities (ESES) custodian has a lower intrinsic custodial risk than third countries with no CSD principle, especially those with an identified country risk;
- Definition of the nature of acts of administration remains unclear;

- Rules for protection of assets held in custody differentiation: as such, levels of segregation that applies in one country with local applicable regulations in case of default in the custody chain, should be taken into consideration, particularly where securities guarantee fund exists.

To conclude, in our view, a lower K ASA taking into account good quality of asset protection should be implemented in order to limit bias mentioned in the 1st challenge mentioned. The existence of 2 different coefficients for the K ASA calculation does not seem to increase measurement complexity. In our view, criteria for having a lower ASA coefficient should be set out in the RTS

Q13: Clients' asset protection may be implemented differently in different Member States. Should this aspect be considered in the calculation of the K-ASA? If so, how should that be taken into account in the calculation?

Please refer to our answer to Q. 12

5 – Risks not covered by existing K-factors

5.2 - Non-trading book positions in crypto-assets

Q14: Should crypto-assets be included into K-factor calculation, either as a new K-factor or as part of K-NPR?

Crypto-assets should not be included into K-factor calculation for various reasons:

- It would create **level-playing field serious issues between investment firms providing crypto-assets services and crypto-assets services providers** (CASP) under MiCA. Even if they provide the exact same services, investment firms will be subject to K-factors additional capital requirements whereas CASP will be subject only to capital requirements under MiCAR, ie FOR or minimum capital requirements. There is no objective justification to treat differently the same activities.
- The volatility of crypto-assets could lead to huge increase or decrease of purchase or selling of crypto-assets or of the amounts under custody and, finally could lead to **huge increase of decrease of capital requirements** if K-factos were to be applied. The K-factor requirements are not adapted to cryptossets services.

Currently, there are several prudential regimes for crypto-assets services:

- MiCA regime for CASPs based on FOR and minimum capital requirements,
- Electronic Money Directive for Electronic Money Institutions which issue stablecoins, based on the same two requirements,
- IFR/IFD for investment firms providing crypto-assets services based on additional K-factor requirements.

Currently these 3 regimes are not aligned. It means that any entity licensed under 2 or under the 3 regimes has 2 or 3 levels of own funds to respect. In the long term it could be envisaged to align the 3 regimes to make sure that fixed overheads are not counted several times for the calculation of each

FOR. However, this alignment should be done at the same time for the 3 regimes in order to preserve the level-playing field between the 3 kind of entities. Capital requirements are indeed an important requirement for small businesses to be able to survive. In the meantime, capital requirements for investment firms providing crypto-asset services should not be made more demanding than for CASPs or EMIs.

Additionally, the proposal made on paragraph 125 to **align the prudential treatment of crypto-assets for investment firms credit institutions is disproportionate** and poses several problems:

- it creates **unjustified level-playing field issues between IF providing crypto-assets services and CASPs**. It would lead to a situation where, even if they provide the exact same services, IF will have much more capital requirements than CASPs. It would in fact advantage CASPs which are, in fine, subject to less stringent regulation than IFs.
- The nature of IF providing crypto-assets services and of CASPs is **not comparable with the systemic nature of credit institutions** which could justify a stricter prudential treatment for positions in crypto-assets.
- Currently **IF providing crypto-assets services hold crypto-assets mainly to pay gas fees** when they issue transactions on blockchains. **This is not a trading activity** and these holding are justified by a technical reason rather that by active trading. Therefore the 1,250 % risk weighting factor doesn't seem appropriate to be applied to these holdings.

5.3 - Operational risk for firms calculating the K-DTF

Q15: In the context of addressing operational risk for investment firm trading on own account, is there any further element to be considered to ensure that the requirements are proportionate to their trading activities?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules.

Q16: The discussion paper envisages the possibility to rely on alternative methodologies with respect to the K-DTF. If the respondents suggest an alternative approach, how would this refer to the two activities addressed under the K-DTF (trading on own account and execution on own account on behalf of the clients)?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules

5.5 - Investment firms providing other prudentially regulated or non-regulated services

Q17: When addressing other activities an investment firm may perform, which elements, on top of the discussed ones, should be also taken in consideration?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules 6 – Implications of the adoption of the Banking Package (CRR3/CRD6)

7 – Liquidty requirements

7.2 - Level of liquidity requirements

Q18: Investment firms performing MiFID activities 3 and 6 (trading on own account and underwriting on a firm commitment basis) are more exposed to unexpected liquidity needs because of market volatility. What would be the best way to measure and include liquidity needs arising from these activities as a liquidity requirement?

IFs performing trading on own account are not exposed to unexpected liquidity needs because of market volatility.

Regarding the impact on liquidity, we must distinguish between IFs performing intraday only activity (ie : no overnight positions) and those who hold overnight positions.

1) In case of no overnight positions, there is no unexpected liquidity risk as there is no difference in value of the portfolio to finance.

2) In case of overnight positions the liquidity risk may theoretically arise even in case of hedged positions (hedged in delta or vega). For example, for a long-put option position delta hedged with a long position in the underlying Future, in case of a crash of the market, the clearing house will require a margin call on the Future position but will not credit the IFs clearer account for the increase in value of the put option. So, the IF holding this position will need to finance the margin call on the Future position, if it does not sell its overall position (put + Futures).
The IF can then always unwind its portfolio on the market and in this case the value of the Put sold covers the margin call on the Future and there is no liquidity impact.
Alternatively, the IF can decide to keep its position if it has the necessary cash available (or credit line agreement in place with its clearer).

We then consider that increase in volatility creates no liquidity risk. On the contrary, an increase in volatility will be a profitable market condition. Consequently, an increase of volatility has generally a positive impact on the profitability of IFs trading for own account (arbitrage or market making).

Q19: Investment firms performing the activities of providing loans and credit to clients as an ancillary service in a non-negligeable scale would be more exposed to liquidity risks. What would be the best way to measure such risk in order to take them into account for the purposes of the liquidity requirements?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules

Q20: Investment firms, providing any of the MiFID services, but exposed to substantial exchange foreign exchange risk may be exposed to liquidity risks. What would be the best way to measure such risk in order to take them into account for the purposes of the liquidity requirements?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules

7.4 - Third country service and liquidity providers

Q21: Are there scenarios where the dependency on service providers, especially in third countries, if disrupted, may lead to unexpected liquidity needs? What type of services such providers perform?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules

Q22: Are there scenarios where the dependency on liquidity providers, especially in third countries, would lead to unexpected liquidity needs? Could you provide some examples?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules

7.5 - Exemption under Article 43 of the IFR for small and non interconnected investment firms

Q23: What other elements should be considered in removing the possibility of the exemption in Article 43 of the IFR?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules 8 – Prudential consolidation

9 – Interactions of IFD and IFR with other regulations

Q24: Do you have any views on the possible ways forward discussed above concerning the provision of MiFID ancillary services by UCITS management companies and AIFMs?

The Capital Markets Union is at the heart of EU's political priorities to support the development of European capital markets, that lag far behind non-EU competition. In this context, **supporting the competitiveness of EU actors is a key priority, which, in turn, strongly depends on <u>regulatory stability</u>, especially for regulations that are efficient and have not raised any issues.**

More particularly, in the case of question 24, it is worth noting that:

- UCITSD/AIFMD have just been reviewed in a thorough manner by co-legislators, in March 2024, and capital requirements have not been subject to change,

- The fact that some MiFID activities like portfolio management activities can be carried out by UCITS and AIF management companies, on top of fund management, is not new; all requirements have been calibrated in light of all activities that management companies can handle and for which they need to be authorised.
- UCITSD and AIFMD have proved to be efficient and there is no evidence against the fact that capital requirements are adequately set.

On this basis **it would be inadequate to re-open regulations such as UCITS/AIFMD or IFR** on the matter. Instead, and in line with EU priorities, EU resources (industry, co-legislators/supervisors) should primarily focus on developing a strong CMU and addressing EU competitiveness concerns.

In any case, **should these regulations be reviewed again on capital requirements despite the above comment**, any possible way forward should then consider very **targeted and balanced** amendments, therefore (i) **including in IFR a € cap on the risk-sensitive capital requirement factor (i.e. on the K-AUM**) as is the case under UCITS and AIFMD, and (ii) then including portfolio management and ongoing advice services within the AUMs scope under UCITS and AIFMD, without further modifying the capital requirement formula of these directives.

We insist on the **the UCITS/AIFMD cap on risk-sensitive capital requirement (capped at 10 M€) being maintained, but also extended to investment firms's K-AUM**. It has been implemented to avoid excessively increasing capital, since a rise in AUM does not translate into a proportionate increase in operational risks. As a reminder, assets are managed on behalf of third parties and segregated. In practice, operational risks (e.g. violation of conduct rules, negligence), do not increase with the volume of AUMs, and experience is actually contrary as larger actors have stringent risk management frameworks and organisations. As such, no incidents have occurred to challenge the current UCITS/AIFMD capital requirement formula that includes the above-mentioned 10 M€ cap.

In addition, we very strongly oppose to any way forward limiting the size of MiFID services like portfolio management activities (e.g. limitation in the volume of AUM) provided by UCITS/AIFMD management companies. Indeed, it would lead to unjustified, overburdensome and costly organisational complexities.

Q25: Are differences in the regulatory regimes between MICAR and IFR/IFD a concern to market participants regarding a level playing field between CASPs and Investment firms providing crypto-asset related services? In particular, are there concerns on the capital and liquidity requirement regimes?

The current differences in the prudential regimes between MiCAR and IFR/IFD is not a concern regarding the level-playing field between CASPs and Investment firms providing crypto-assets services because **those differences are limited**:

- Whereas the **minimum capital requirements** under IFR/IFD that apply to investment firms are higher (art 9 IFD) than those under MiCA, the entities should normally apply quickly the fixed overheads criteria rather than the minimum capital requirements.

- Investment firms have to apply **K-factors** whereas CASPs don't have to.

An additional prudential regime is to be considered for issuers of stablecoins (Electronic Money Tokens under MiCA) since this activity requires an Electronic Money Institution license and the application of the prudential regime of EMIs under EMD (Electronic Money Directive).

Ideally there should be an alignment between IFR/IFD, MiCAR and EMD prudential regimes. However this alignment should be done at the same time for the 3 regimes in order to preserve the level-playing field between the 3 kind of entities. Capital requirements are indeed an important requirement for small businesses to be able to survive. In the meantime, capital requirements for investment firms providing crypto-asset services should not be made more demanding than they already are, compared to CASPs or EMIs.

Regarding the specific questions of what falls under the various K-factor for investment firms providing crypto-assets services (cf. paragraph 220), **the scope of K-factor could be indeed clarified to explicitly exclude crypto-assets from K-factors to preserve the current level-playing field between IF, CASPs and EMIs**. For example, it should be clear that K-CMH doesn't apply to client money held in relation to crypto-asset services since this is already considered by MiCAR prudential regime. Similarly, K-COH should not apply to reception and transmission of orders in crypto-assets since it is a totally different service, regulated by MiCAR and not by MiFID which tackles only financial instruments. Should these K-factors be extended to crypto-assets, MiCAR should also be amended to make sure that CASPs are subject to the same requirements as IF when they provide the same crypto-assets services.

Finally, **there should be a clarification between the reporting requirements under IFR/IFD and under MiCAR in order to make sure that IF have not double reporting obligations under MiCA and under IFD (eg ICAAP and SREP), which seems to be the case currently**.

Q26: Sections 5.2, 5.4 as well as this Section 9.1 all touch upon how crypto-assets (exposures and services) may influence the IFD and the IFR. Is there any other related element that should be considered in the review of the investment firms' prudential framework?

Regarding how crypto assets influence the IFD and the IFR, there are additional elements that should be considered in the review of the prudential framework for investment firms. Specifically, clarity is needed on the inclusion of crypto-assets within K-Factors and how to address the prudential treatment of these assets. Furthermore, distinguishing between crypto assets held for network purposes versus proprietary trading positions is crucial. This distinction will help prevent excessive prudential requirements that could be imposed on crypto assets used for operational purposes. Additionally, exploring options for more granular capital requirements based on activity types could better reflect the risk profile associated with crypto-asset exposures.

10 – REMUNERATION AND ITS GOVERNANCE

Q27: Is the different scope of application of remuneration requirements a concern for firms regarding the level playing field between different investment firms (class 1 minus and class 2), UCITS management companies and AIFMs, e.g., in terms of the application of the remuneration provisions, the ability to recruit and retain talent or with regard to the costs for the application of the requirements?

The co-existence of different scopes for financial institutions [ie class 1- subject to CRD, investment firms subject to IFD or management companies subject to AIFMD or UCITSD] does **not** raise any concern

The historical context of remuneration regulation, shaped by the 2008 financial crisis and the G20's Principles for Sound Compensation Practices, has promoted common principles applied to the financial institutions but also highlights that uniformity in regulation may not fully address the unique risks and business models of each sector.

Maintaining sector-specific regulations is crucial as it ensures that remuneration practices are appropriately aligned with the risk and business profiles of different entities. The divergence in risk exposure between sectors such as asset management, investment firms or firms trading on their own account justifies tailored rules rather than a one-size-fits-all approach. This differentiation helps in addressing the specific needs and risk profiles of each sector effectively.

Furthermore, we advocate for a balanced approach that preserves **regulatory stability** while allowing for necessary sectoral adaptations. This is all the more relevant that these remuneration regulatory frameworks have proved to be efficient.

In addition, attention should be given to avoiding regulatory redundancies: notably with upcoming regulation "Pay Transparency Directive", which will address in particular the gender gap remuneration regulations across the EU..

Q28: Are the different provisions on remuneration policies, related to governance requirements and the different approach to identify the staff to whom they apply a concern for firms regarding the level playing field between different investment firms (class 1 minus under CRD or class 2 under IFD), UCITS management companies and AIFMs, e.g. in terms of the application of the remuneration provisions, the ability to recruit and retain talent or with regard to the costs for the application of the requirements?

AMAFI has not identified significant issues with the different provisions on remuneration policies, governance requirements, or the identification of applicable staff.

Despite some initial application complexities, there are no major concerns regarding the level playing field among class 1-, investment firms, UCITS and AIF management companies in terms of applying remuneration provisions or their impact on recruitment and costs.

Q29: Are the different provisions, criteria and thresholds regarding the application of derogations to the provisions on variable remuneration, and that they apply to all investment firms equally without consideration of their specific business model, a concern to firms regarding the level playing field between different investment firms (class 1 minus under CRD and class 2 under IFD), UCITS management companies and AIFMs, e.g., in terms of the application of the remuneration provisions, the ability to recruit and retain talent or with regard to the costs for applying the deferral and pay out in instruments requirements? Please provide a reasoning for your position and if possible, quantify the impact on costs and numbers of identified staff to whom remuneration provisions regarding deferral and pay out in instruments need to be applied.

Same answer as Q27 and Q28. In addition, we would like to raise a **concern with IFD article 32 (5) (a).**

Article 32 (5) sets conditions for increasing the threshold up to € 300 million of assets to benefit from the derogation foreseen by article 32 (4)(a) and to certain other requirements (governance for example).

Condition (a) requires that *"the investment firm is not, in the Member State in which it is established, one of the three largest investment firms in terms of total value of assets".* **This condition raises the following issues**:

- the "top 3" investment firms (IFs) being appreciated at the scale of each Member State, this leads to **level playing field issues across IFs at EU level**: in some Member States, 290 M€ total assets ends up falling in the top 3, while in another Member State the top 3 largely exceed 1 bn € total assets each, which allows to apply the exemption to all investment firms whose assets are below the 300 M€ threshold (subject to the other conditions of article 32 (5) of course).

- **practically** speaking it raises many issues :
    - It is difficult to monitor by Investment Firms, as the information on the 3 largest Investment Firms of a Member State is not available.
    - This criterion does not depend only on the evolution of the Investment Firm itself, but also on the evolution of other IFs in one given Member State. Therefore, one firm could meet the criterion one year and not the following year and reversely the year after. The IF has no visibility on this and is not in a position to anticipate. For example, **this has a significant impact on the remuneration policy** that needs to be adapted from one year to another, **and even more so for employees** whose variable remuneration needs to be paid fully upfront one year and partly deferred the year after. For an employee standpoint, it is very difficult to understand that one year his/her remuneration can be deferred and another year not, whereas his/her function and responsibilities and the risks he/she may have taken have not changed at all, but only the ranking of the IF he/she works for.

We therefore believe that **in case IFD is reviewed, point (a) of article 32 (5) should be removed**.

Furthermore, there is a significant **discrepancy between IFRS accounting standards and some Member States' local accounting practices**, such as the non-compensation principle in France. Under local standards (Local GAAP), the principle of non-compensation means that financial positions are not offset, leading to inflated balance sheet totals. This leads to a distortion between Member States to assess the size of on and off- balance sheet items and benefit from the exemption threshold of article 32 (4) and 32 (5).

To address these discrepancies, it might be beneficial to allow for certain adjustments, such as netting, without mandating full IFRS adoption for entities not part of a consolidated group as it would be too burdensome for these standalone companies to manage two accounting standards (local and IFRS). This approach would enable a more consistent evaluation of the thresholds (e.g., the 100 million or 300 million euros limit).

Q30: Are the different provisions regarding the oversight on remuneration policies, disclosure and transparency a concern for firms regarding the level playing field between different investment firm, UCITS management companies and AIFMs, e.g., with regard to the costs for the application of the requirements or the need to align these underlying provisions? Please provide a reasoning for your position.

As per our response to Q27, to address concerns about varying provisions for oversight, disclosure, and transparency, we propose maintaining the stability of existing regulations while defending sector-specific adaptations. This approach ensures that remuneration practices are aligned with the unique risk profiles of each sector, thereby addressing compliance costs and complexities effectively.

11 – Other elements

Q31: What would be costs or benefits of extending existing reporting requirement to financial information? Which other elements should be considered before introducing such requirement?

We believe that financial information may be reported to authorities provided that it does not constitute an additional burden compared to the annual accounts filed to the local register of Commerce. This means the format remains at the choice of the IF or at least under the same template, format (pdf for ex.) and language as the ones used for the filing to the register of Commerce, and under the same local accounting standards, on an annual basis.

Q32: Should there be the need to introduce prudential requirement for firms active in commodity markets and that are not currently subject to prudential requirements? How could the existing framework for investment firms be adapted for those cases? If a different prudential framework needs to be developed, what are the main elements that should be considered?

At this stage, AMAFI considers that there is no market failure and therefore that there is no need to modify the current rules