

# SUPERVISORY PRIORITIES



# 2023

## AMF SUPERVISORY PRIORITIES FOR 2023

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## I. Summary of the thematic supervisory priorities for years 2022 and 2023

	2022	2023
<b>ASSET MANAGEMENT</b>	<ul style="list-style-type: none"> <li>Valuation of illiquid assets: real estate and corporate bonds <b>(2x SPOT)</b> ■</li> <li>Sustainable finance: compliance with contractual commitments <b>(SPOT)</b></li> <li>Quality of reporting data <b>(SPOT)</b></li> <li>Monitoring and control of AMCs by the depositaries of collective investments <b>(SPOT)</b> ■</li> </ul>	<ul style="list-style-type: none"> <li>Cybersecurity <b>(SPOT)</b></li> <li>Investment management delegation <b>(SPOT)</b> ■</li> <li>Sustainable finance: SFDR <b>(SPOT)</b> ■</li> <li>Quality of data reported to the AMF <b>(SPOT)</b></li> <li>Compliance with professional obligations by depositaries</li> </ul>
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<b>Other themes</b>	<ul style="list-style-type: none"> <li>Securitisation: monitoring of notification obligations and compliance with Regulation EU/2017/2402 for STS transactions <b>(SPOT)</b></li> </ul>	

Key:

**(SPOT)** Issue dealt with via SPOT inspections.

■ Issue dealt with as part of a European Supervisory Action: Union Strategic Supervisory Priority (USSP), Common Supervisory Action (CSA) or peer review.

Note : Summaries of SPOT inspections are available in English on the AMF website at the following address: <https://www.amf-france.org/en/news-publications/publications/spot-inspection-campaigns>.

## 2. Introduction

### ■ Purpose of the document

This document sets out the AMF's priority themes for 2023 regarding supervision of the professionals placed under its authority.<sup>1</sup> The thematic priorities cover three groups of activity:

- asset management, and in particular collective investment management;
- activities of market intermediaries and infrastructures;
- financial product marketing and financial investment advisory services, activities for which we also describe the supervisory work carried out with the Autorité de Contrôle Prudentiel et de Résolution (Banking and Insurance supervisor, ACPR) within the framework of the ACPR-AMF Joint Unit;

Professionals supervised by the AMF whose activities are not covered in this document may nevertheless be subject to inspections independent of the actions described in detail below. The monitoring of issuers' financial and non-financial information and supervision of the regularity of financial offers and transactions (within the meaning of I. of Article L. 621-9) are not dealt with in this document.

Publishing the thematic supervisory priorities serves to highlight certain areas of risk that the regulator has identified, and to encourage regulated firms to look more specifically at some of their practices in light of applicable professional obligations. It is also an opportunity for the regulator to draw attention to specific areas of focus and identify the operational issues associated with practical implementation of the regulations.

### ■ Supervisory tools

The AMF has at its disposal a number of supervisory tools, ranging from ongoing monitoring to specific inspections. The AMF also actively monitors the financial offerings and savings products offered to retail investors and the marketing practices of service providers, in particular through mystery visits.

The AMF monitors all professionals under its supervision continuously based on information submitted on a regular basis (annual control and compliance reports, reporting data, declarations, etc.) or on request (additional information requested from service providers, interviews, etc.). The AMF also receives information about the activities of service providers licensed in France directly through other channels (the "AMF Épargne Info Service" platform, monitoring tools, whistle-blowers, exchanges of information with other regulators in France and abroad, etc.).

These monitoring and inspection actions can be:

- individual, in response to specific alerts or as part of the periodic coverage of regulated entities, calibrated according to a risk-based approach;
- thematic, in particular to ensure implementation of new regulations.

Inspections are carried out according to a procedure governed by law and by the AMF General Regulation, and are conducted by the Inspection Directorate. A Controls Charter sets out the conditions of performance of inspections by the AMF and the behaviour expected of the persons questioned during an inspection. Once an inspection has been completed, the findings are presented in a report that is sent to the inspected entity. About 60 inspections will be performed in 2023. They will break down almost equally between two types of inspections which have different objectives:

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<sup>1</sup> These professionals are listed in paragraph II of Article L. 621-9 of the Monetary and Financial Code.

- On the one hand, regular inspection of major players or those that represent particular risks or have been the subject of specific alerts;
- On the other hand, thematic inspection of a sample of market participants (generally five for each theme) in order to better understand a given activity or practice, assess implementation of the rules or explore potential risks for investors or markets. Established in 2018, these inspections are called "SPOT" inspections, for "*Supervision des Pratiques Opérationnelle et Thématique*" (operational and thematic supervision of practices), and are carried out in parallel on several market participants and in a shorter time than conventional inspections.

The findings of these inspections are fed back to the marketplace where relevant. Such feedback, which is intended to educate the market and raise awareness, constitutes an assessment of observed market practices at a given time. In some cases, it can lead to the update of existing policy.

Lastly, it should be noted that the AMF uses other supervisory tools such as mystery visits (which are a means of concretely assessing the marketing of financial instruments in banking networks and the characteristics of the customer/advisor relationship in branches and through digital channels) and various studies and communications carried out, for example, within the framework of the AMF-ACPR Joint Unit on topics relating to marketing, vulnerable persons, etc.

## ■ European convergence with regard to supervision

One of the missions of the European Securities and Markets Authority (ESMA) is to foster supervisory convergence. The reform of the European Supervisory Authorities (ESAs), which came into force at the end of 2019, has strengthened ESMA's powers and tools in this area, in particular through the establishment of Union strategic supervisory priorities (USSPs) and the drafting of a supervisory handbook.

ESMA's strategic priorities at EU level, published on 10 October 2022 as part of its 2023-2028 multi-annual strategy, are as follows:

- foster market efficiency and financial stability;
- enhance the supervision of EU financial markets;
- improve retail investor protection.

In addition to these strategic focuses, there are two thematic focuses:

- promote sustainable finance;
- facilitate technological innovation and effective use of data.

These themes will be at the heart of ESMA's 2023 work programme, which includes the AMF's work on European supervisory convergence. In this regard, in 2023, the AMF is scheduled to take part in several Common Supervisory Actions (CSAs) initiated by ESMA:

- marketing materials (the 2023 CSA will cover the internal policies, processes and procedures adopted by reporting entities to ensure compliance with MiFID II requirements applicable to marketing materials, including advertisements/promotions);
- with regard to sustainability, priority covering the risk of greenwashing for "sustainable" management funds .

With regard to USSPs, 2023 will see the launch of the USSP on ESG data (the USSP on costs and fees will be closed) and the continuation of the USSP on MiFIR, EMIR and SFTR data quality.

The AMF will also be involved in peer reviews, also initiated and coordinated by ESMA, which will address the following topics in 2023:

- asset management obligations of depositaries;
- provision of market data by trading platforms;
- annual review of clearing houses (with a focus on concentration risks) (mandatory exercise), etc.

### 3. Main supervisory actions and achievements in 2022

The thematic supervisory priorities identified in 2022 included the following:

- in the field of asset management: valuation by portfolio asset management companies (AMCs) (in French: “*Sociétés de Gestion*” or SGP) of illiquid assets, particularly in two asset classes: corporate bonds and real estate assets; sustainable finance, from the perspective of compliance with the contractual commitments of investment funds, governance and the quality of reporting data; and the monitoring and control of AMCs by depositaries of collective investments; These four areas were assessed through five SPOT inspection campaigns. For the first two areas, there were also follow-up actions based on the organisation and analysis of questionnaires and interviews;
- for market intermediaries and infrastructures: the quality of post-trade transparency data on bond instruments (MiFIR reporting), the provision of market data by trading platforms, cross-border activities and the application of the regulation for simple, transparent and standardised securitisation by originators and sponsors, with a SPOT inspection campaign launched at the end of 2021. The AMF also took part in ESMA's common supervisory action (CSA) on the issue of *ex post* disclosure of costs and fees to retail clients by interviewing a sample of distribution institutions about their practices. The findings, which will be shared and analysed with ESMA to enable the convergence of approaches at European level, will highlight good and poor practices, or even situations of non-compliance. The AMF will therefore focus its monitoring efforts;
- In the field of marketing: monitoring of financial investment advisers, supervision of professional associations, compliance with the rules for assessing the suitability and appropriateness of the financial instruments marketed by investment service providers (ISPs) and the system for the supervision of tied agents by the ISPs whose authorisation they use. Specific work was also carried out within the framework of the ACPR-AMF Joint Unit (see below).

The six SPOT inspection campaigns announced at the beginning of 2022 were all launched and most of them have been completed. The conclusions of some of the work from the 2021 and 2022 supervision priorities, completed in 2022, are presented below.

#### ■ SPOT inspections: a tool to assist the marketplace in improving its practices

Six SPOT inspection campaign summaries were published in 2022 on:

- the application of the **post-trade transparency rules set out in MiFID II for the bond market**: the AMF noted significant shortcomings in their application, including a lack of technical expertise on the subject of post-trade transparency among teams based in France. It also found that the ISPs it inspected did not perform the due diligence required by the regulations in the following areas: accessibility of publications of transactions subject to post-trade transparency, compliance with publication deadlines, data quality and compliance mechanisms. The reinforcement of the ISPs' mechanisms should go hand-in-hand with an improvement in data reliability, which is essential in order to achieve the transparency objective sought by legislators with MiFID II.

- the European Regulation on **simple, transparent and standardised securitisations (STS)**: the AMF examined compliance with the specific requirements for granting the label, reporting to ESMA and informing the AMF. There were significant shortcomings in the practices of the institutions in the sample, sometimes due to a lack of understanding of the regulations in force. The AMF noted, for example, that some institutions had no dedicated procedures, no committee to oversee the awarding of the label, and no controls. Although the inspected ISPs notified ESMA of all their transactions awarded the STS label, the time taken to do so was excessive. With regard to the information sent to the AMF, here again the time taken varies considerably, and one institution did not provide any information. In its summary, the regulator urged financial institutions to improve the quality of their systems for awarding, controlling and withdrawing the STS label.
- **entry into the business relationship and monitoring of AMCs by depositaries.** The AMF found that there was still room for improvement in the compliance of institutions, with significant differences in the quality of the systems examined. For example, there were varying levels of robustness of the procedural framework of the depositaries in the sample. The AMF also found that the frequency and quality of due diligence carried out varied from one entity to another, though this may have been due to the negative impact of the health crisis. It also noted that there were significant differences in the use of the alert system implemented in response to the anomalies observed. Lastly, the AMF found that most of the institutions it inspected failed to apply the rules on independence and the prevention of conflicts of interest when there was a corporate link between the management company and the depositary;
- **costs and fees of UCITS marketed to retail customers.** As part of a joint supervision exercise coordinated by ESMA (CSA), the AMF sent a questionnaire to 49 AMCs representing nearly 2,050 French and foreign investment funds with a total of €766 billion assets under management. It completed its observations with a series of SPOT inspections of five of these institutions and conducted in-depth interviews with six others. However, the exercise highlighted two relatively uncommon but questionable practices: It was therefore decided to change the existing rules. The first change concerns the prohibition of turnover fees.<sup>2</sup> The second change concerns the policy on the marketing of active funds featuring high fees due to the fact that their performance closely tracks their benchmark, as well as passive funds with high fees levels<sup>3</sup>.

Among other findings, the SPOT inspections revealed the absence of an internal umbrella procedure explaining the process for setting up fee schedules when funds are created and the criteria taken into account for changing these fees. With regard to disclosure of costs and fees in the funds' regulatory and marketing materials, the AMF noted one shortcoming: the lack of information on the existence, nature and main types of beneficiaries and the general formula for calculating any rebates paid;

- **best selection and best execution among AMCs.** The AMF selected five companies representative of the diversity of the asset management industry in terms of activity and order placing procedures. Although the AMCs have implemented internal best execution policies and procedures, these are not sufficiently specific about the factors taken into account in the choice of execution and their respective importance, the possible execution venues, the criteria for selection, where applicable, of brokers and any outside service providers appointed to perform selection of brokers or order execution, and the methodology used to assess those brokers and service providers. The AMCs in the sample group that use brokers have established a committee in charge of monitoring the quality of the services provided that meets twice a year, and have determined a set of qualitative assessment criteria based on which they state their opinion periodically. While most of the asset management companies in the sample have quantitative measures that can be used to monitor the

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<sup>2</sup> The aim is to prevent UCITS and AIF managers from benefiting from turnover fees, with the exception of turnover fees on real estate assets. To allow asset management companies to adapt their systems, these changes will apply from 1 January 2026. An amendment to the AMF General Regulation was approved by order of the Minister of the Economy, Finance and Recovery published on 19 May 2022.

<sup>3</sup> For active funds, ISPs must implement procedures to identify funds with high fees in relation to their tracking error against their benchmark. For passive funds, the AMF also states that ISPs must have policies and procedures in place to compare the fee level of funds with a passive management objective with the fee level of comparable funds to determine whether equivalent lower-cost collective investments are likely to be suited to their client's profile.

quality of execution of their orders by themselves or by brokers ex post, there is little or no formalisation or internal documentation on the use of these measures to assess the quality of execution. The best-execution policy published on the AMCs' websites merely sets out the principles for informing clients. Regarding the control system, the AMF noted shortcomings with respect to the analysis of the suitability and completeness of the best execution policies, and of their implementation. In particular, the internal control teams did not make sure that due diligence for assessment of correct order execution by the AMC or its brokers was effectively carried out, apart from merely holding a regular committee meeting.

- **AMC market abuse prevention procedures.** The purpose of these SPOT inspections was to analyse the system for preventing, monitoring, detecting and reporting market abuse by five AMCs. The AMF found that most of the AMCs had set up a training programme dedicated to market abuse risk. However, all the procedures consulted revealed shortcomings in their description of operational arrangements and incomplete regulatory references. Regarding the operational management of inside information, most of the AMCs inspected did not have sufficiently formalised procedures for changing the lists of supervised securities, prohibited securities and internal insiders, or for determining how these three lists inter-relate. With regard to the monitoring of transactions executed on behalf of third parties, the inspectors found that four of the five AMCs did not carry out an ex post review of alerts that had been closed without action being taken. This undermines the ability of these companies to continuously improve their investigation process. The alert rules and thresholds set by the AMCs in the sample can be further improved. The tests performed by the inspection mission show that a minority of AMCs still have a high rate of undetected suspicious transactions. These findings call for a regular review of the alert scenarios that have been set up to ensure that the surveillance system is continuously adapted to changes in asset management activity and the risk of market abuse. This review will also aim to ensure that the flow of alerts produced can still be absorbed by the teams in charge.

#### ■ **Anti-money laundering and combating the financing of terrorism (AML/CFT)**

The AMF continued to support investment firms in their efforts to strengthen their AML/CFT systems, following on from the on-site visit in 2021 by assessors from the Financial Action Task Force (FATF), the intergovernmental body responsible for AML/CFT). Their results were published in 2022 and highlighted the AMF's efforts to prevent this risk.

In line with previous years, the AMF also continued to conduct inspections on the AML/CFT arrangements put in place by AMCs and financial investment advisers. In this context, it conducts a very close examination of the accuracy, completeness and operability of the procedural corpus established by the market participants, staff training, due diligence carried out on clients and on portfolio assets (especially in the case of unlisted equities), and the internal control system.

As a reminder, several inspections carried out at AMCs and FIAs in 2019 and 2020 gave rise to the publication, in 2021 and 2022, of sanction decisions or administrative settlement agreements relating to the non-existent, inoperable or imprecise nature of risk procedures and classifications, shortcomings with respect to client due diligence (gathering and classification of information), and deficient control with respect to AML/CFT. This issue is an important and recurring focus of supervision for the AMF, which will continue to deploy monitoring and inspection teams and the enforcement function.

## ■ Sustainable finance

In order to prevent risks of greenwashing, the AMF continued to support implementation of AMF Position-Recommendation 2020-03 on non-financial approaches in collective investment management. Following a one-year transition phase, this policy applies, since 11 March 2021, to all collective investment undertakings that take non-financial criteria into consideration in their investment management, and which are marketed to retail clients.

For the production of the second ACPR-AMF report on the monitoring of the financial markets' climate commitments,<sup>4</sup> detailed questionnaires, supplemented by numerous interviews, were sent to the 20 largest investment management companies in the Paris financial centre to assess implementation of the recommendations of the second ACPR-AMF report of 2021 in connection with the third report, published in October 2022 (in particular, an analysis of the development of their "coal" policies). The work was also able to take stock of the commitments made regarding other fossil energies. The results of this analysis are still mixed, and further progress in transparency and governance is required. The AMF and ACPR called on financial institutions to clarify and reinforce their requirements regarding fossil energies, in particular with regard to exclusion policies covering unconventional hydrocarbons.

Lastly, as mentioned above, the AMF conducted supervisory work on compliance with non-financial constraints and contractual commitments by investment funds, based on questionnaires sent to a large sample of AMCs and SPOT checks performed on five of them. The findings and lessons learned from this exercise will be summarised in a report to be published in 2023.

## ■ Financial investment advisers

Following on from previous years, the AMF conducted inspections of financial advisers (in French, "*Conseillers en Investissement Financier*" or CIF) using a risk-based approach, focusing on the marketing of atypical products with a high risk of mispricing, as well as products that are not authorised for marketing in France. In this regard, it published a news item in April 2022 to reiterate the obligations regarding the marketing of AIFs by financial advisers.

In 2022, the AMF continued to apply the framework for exchange of information with the financial advisers professional associations initiated in 2020. One of the main purposes of these exchanges is to inform associations of potential breaches by their members, which they can then inspect at the AMF's request. In 2022, the AMF referred 30 cases to the associations following mass inspections of financial advisers, 11 of which were combined with a request to inspect the financial adviser concerned. The AMF provides support and follow-up to the inspections carried out by the associations following referrals from the AMF.

The purpose of this process of dialogue and support is to harmonise inspection practices between the associations and the AMF. It should also help to further ground the associations' inspections in a risk-based approach, based in particular on an analysis of atypical products marketed by financial advisers, their sources of income and any conflicts of interest that may arise.

The AMF also organised four webinars for financial advisers in collaboration with three Banque de France regional offices (Occitanie, PACA and Hauts-de-France) involved in mass controls of financial advisers and with the financial advisers' association CNCEF Patrimoine. The main purpose of these sessions was to provide financial advisers with information on the lessons learned from the AMF's supervisory activities with regard to financial advisers and associations.

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<sup>4</sup> Second ACPR-AMF report on monitoring and assessment of the climate commitments of Paris financial market participants, December 2021

## ■ Actions of the ACPR-AMF Joint Unit

In 2022, the Joint Unit (*"Pôle Commun"*) continued to perform the missions conferred to it by law. The number of visitors to the ABEIS website has increased. Content is regularly adapted, enriched and created to answer questions from customers in the banking, insurance and financial sectors. For points requiring greater awareness, the Joint Unit prefers a video format in order to reach a wider audience, particularly young people.

Inspections are coordinated on a regular basis, and systematic discussions at the monthly meetings of the Joint Unit make it possible to synchronise actions and share findings in order to ensure the most harmonised approach possible with regard to the requirements of supervisors. Even though the European Commission has extended the transitional period for the crowdfunding regulation, the teams remain mobilised to process applications for authorisation as a crowdfunding service provider, continue to supervise existing players and organise the supervision of future players. Thanks to cooperation between the ACPR and the AMF, potential areas for improvement were identified in relation to inactive employee savings accounts. Our monitoring of advertising has revealed that communications on sustainable finance have stabilised and that communications via social media have increased. In 2023, the focus will remain on crypto-assets, the promotion of pricing elements in life insurance and the promise of sustainable products.

The two authorities are increasingly working together in the fight against scams. The upcoming decree on the listing of the contact details of players registered with ORIAS in order to fight against impersonations was a major success in this area in 2022. As announced to the market in 2021, the Joint Unit resumed its work on vulnerable elderly people. It is working on the issue of fees with the Treasury Directorate General to improve the unit-linked product offering and with the Financial Sector Advisory Committee (*"Comité Consultatif du Secteur Financier"* or CCSF) to make the fees applied clearer and easier to understand.

Investor protection, which remains at the heart of the Joint Unit's missions, also led the AMF and ACPR to participate actively in European negotiations on impactful initiatives, such as the draft retail investment strategy, the review of the regulation on packaged retail investment and insurance-based products (PRIIPs) and the Distance Selling Directive. The *ad hoc* working group on sustainable finance is continuing its work in order to help the market understand and implement the obligations in terms of the framework for advertising communications and the questioning of customers' preferences in terms of sustainability.

Lastly, work will start in 2023 on the adoption of the provisions of MiFID and DDA by market participants in order to understand any difficulties that they may encounter in applying them and to improve market compliance. The Joint Unit will review changes in the practices of distributors in marketing financial products to vulnerable elderly people, two years after the regulators discussed this issue with the marketplace.

## 4. 2023 priorities regarding asset management

### ■ Cybersecurity

In preparation for the entry into force of the Digital Operational Resilience Act (DORA), technical standards (RTS and ITS) will be implemented on various topics, including the use of IT service providers by institutions subject to the regulation. Against this backdrop, and as a follow-up to the previous SPOT campaigns conducted in 2019 and 2020 respectively, the AMF will conduct a new wave of SPOT inspections on the cybersecurity arrangements of asset management companies, with a view to paying particular attention to the processes and procedures in place for external IT service providers. The lessons learned from these inspections will provide useful input for EU work on the issue. It will also carry out supervisory work on operational resilience in general and on the implementation of ESMA's guidance on cloud service providers in particular.

## ■ Investment management delegations

To prepare for ESMA's peer review on the delegation of financial management of investment funds, which is expected to take place in 2024 or 2025, the AMF will conduct a SPOT inspection campaign on this topic, after a follow-up action carried out with large players. The inspections will cover both delegations given and received in AMCs that have both roles. The investigations will focus mainly on the governance and human resources of AMCs in this area, the associated risk control system, and permanent and periodic controls.

## ■ Application of the Sustainable Finance Disclosure Regulation (SFDR)

As 2023 gets under way, with the SFDR delegated acts and the PRIIPS provisions on collective investment schemes coming into force at the same time, the AMF will continue to support market participants in implementing these new obligations.

As an extension of the work that the AMF has been doing for several years on socially responsible investment and sustainable finance, and in particular the monitoring and SPOT checks carried out in 2022 to ensure that AMCs comply with the constraints and contractual commitments set out in the funds' regulatory documents, the AMF will take part in ESMA's coordination exercise (CSA) on the application of SFDR in 2023. As with previous CSAs, the AMF will initially conduct monitoring activities, notably by sending out and using a questionnaire, and will then conduct SPOT checks on a sample of AMCs.

The AMF will also participate in preparing the report on the application of the provisions of Article 29 of the French Energy and Climate Change Law for the entities under its supervision: AMCs companies, credit institutions and investment firms engaged in portfolio management or advisory services. To this end, in 2023, it will define and implement the transmission of these reports and the main information that they will contain.

Lastly, the AMF's supervisory teams will pay special attention to the systems that depositaries have put in place to monitor the regularity of the decisions of investment management companies on non-financial issues.

## ■ Quality of reporting data

For several years now, AMCs have been subject to reporting obligations to the AMF resulting from European regulations or national requirements. These include the reporting requirements of the AIFM Directive and the Money Market Funds (MMF) Directive, AML/CFT questionnaire, annual disclosure sheets ("*Fiche de renseignement annuel*" or FRA) and annual internal control reports ("*Rapport Annuel de Contrôle*" or RAC), and data on funds net asset values.

Moreover, the roll-out of the ROSA extranet in 2021, which facilitates the gathering and processing of data, has meant that certain changes previously subject to prior approval are now reported by the AMCs and are subject to an ex post review. In 2021, the AMF also established a system for reporting ratio overruns observed by AMCs on the funds that they manage.

The data reported to the AMF contributes to the knowledge and monitoring of market participants and regulated products and enables the regulator to detect situations requiring its attention. Their reliability is therefore a key supervisory issue for the AMF, which stated its expectations regarding data quality on several occasions in 2022 and has already conducted analyses on certain specific reporting systems, such as MMF and AIFM reporting and "ratio overruns". Consequently, after the SPOT inspection campaign launched at the end of 2022 on the governance and process of gathering, calculating and transmitting data submitted to the AMF, which focuses in particular on FRAs, RACs and AML/CFT questionnaires, the AMF will conduct a new SPOT inspection campaign on data quality in 2023, this time on MMF and AIFM reporting, ratios and information reported via the ROSA extranet.

## ■ ESG reporting of benchmark administrators

Since 2020, benchmark administrators are required to explain how they take environmental, social and governance factors into account for all the benchmarks or benchmark families they publish, except for currency or interest rate benchmarks. Delegated acts 2020/1816 and 2020/1817 clarify the transparency expectations applicable to these benchmarks. In 2023, the AMF will assess the application of these provisions by benchmark administrators and their compliance with regulatory requirements.

## 5. 2023 priorities relating to market intermediaries and infrastructures

### ■ Quality of post-trade transparency data on fixed-income instruments (MiFIR) and trading data based on EMIR and SFTR reporting

In 2023, the AMF will continue the actions undertaken to ensure the completeness and quality of post-trade transparency on fixed-income instruments. It will ensure the implementation of the corrective measures following the SPOT inspection on this theme, the findings of which were published in 2022. Supervisory actions will also be carried out with major players in this market segment that were not inspected during the SPOT campaign. ESMA has also decided to extend the EU's strategic supervision priority on data quality into 2023, focusing on MiFIR, EMIR and SFTR reporting. The AMF will therefore continue to participate in data quality assessment exercises at the European level and to strengthen its ability to detect anomalies by developing new automated alerts. However, the AMF would like to point out that institutions and their managers are responsible for monitoring the quality of the reports they send to the AMF. It expects them to be more proactive and more accountable.

Special attention will be paid to EMIR reporting, given the continued poor quality of this reporting and in view of the implementation of the reporting requirements modified by EMIR Refit in early 2024. There will also be a follow-up as part of the peer review conducted by ESMA on EMIR reporting. Specific inspections will be carried out in relation to EMIR reporting, with a particular focus on commodity derivatives due to recent events relating to these underlying assets.

### ■ Cross-border activities

The focus on cross-border retail service provision remains important at the European level, with the publication on 14 December 2022 of a Supervisory Briefing that aims to harmonise supervisory practices in this area, taking into account the conclusions published in March 2022 of the peer review initiated in 2021. The AMF strongly supports this theme in the European discussions and is putting a lot of emphasis on it in supervision.

Although the risk-based approach has historically focused the AMF's actions on the marketing of complex financial instruments in France by branches of European investment firms, the AMF is now also paying special attention to the activities of French ISPs abroad, whether through a branch or under the freedom to provide services, and to the suitability of their supervisory arrangements for cross-border activities. The specific annual questionnaire for branches of European institutions will be continued. The cross-border activities of French ISPs are monitored more closely through MiFIR reporting in order to target more specific supervisory actions given the scale and complexity of services provided under the freedom to provide services.

## ■ **Provision of market data by the trading platforms 2022 supervision priorities (2022 priority)**

The provision of market data (pre- and post-trade) is essential to provide financial market participants with an overall view of trading activities. This provision of data is governed by the MiFID II/MiFIR regulations. In June 2021 ESMA published guidelines in order to ensure that market participants uniformly understand the requirement to provide market data on a reasonable commercial basis and the requirement to provide market data free of charge 15 minutes after publication (lagged data). Moreover, ESMA has made this issue one of its priorities in terms of supervisory convergence for the coming years, notably in the form of a peer review planned in 2023. In 2023, the AMF will publish a summary of the SPOT inspections of trading venues conducted in 2022, and will ensure that any corrective measures that prove necessary are implemented.

Lastly, it should be noted that **data quality**, which was already one of the priorities for supervision in 2022, will continue to be a priority in 2023. The fact that the AMF has maintained significant resources in this area illustrates the importance of data for effective supervision and its desire to make market participants aware of their responsibilities in this area.

## **6. 2023 priorities regarding the marketing of financial instruments**

### ■ **Monitoring of marketing in the distributor banking networks**

Monitoring of ISPs, and in particular, compliance with MiFID II rules throughout the process of financial instrument marketing, will continue in 2023. Five years after these obligations came into effect, work carried out shows that there are still many shortcomings and infringements regarding this issue. This situation is all the more worrying since sustainability preferences must now be integrated into the existing system.

In addition, in line with the supervisory briefing published by ESMA on 2 February 2022, the AMF will continue to focus in 2023 on the marketing methods used by ISPs via tied agents.

The AMF will also pay close attention to digital marketing channels in 2023.

Lastly, the special arrangements for subscribing to non-trading real estate investment trusts (SCPIs) through stripping will be analysed in detail as part of a SPOT inspection campaign.

### ■ **Marketing materials; digital assets**

In 2023, the AMF will take part in ESMA's Common Supervisory Action (CSA) on the theme of "marketing materials".

In this regard, a series of SPOT inspections will be carried out at five ISP distributors of French and foreign funds that prepare their own marketing materials or use those prepared by the producers. The inspections will focus on the ESG dimension incorporated into these marketing materials.

Furthermore, the registration and authorisation requirements for digital asset servicing providers (DASPs) will be tightened.

### ■ **Investor protection: claims handling**

To review claims handling by ISPs, the AMF will conduct a SPOT campaign in 2023 among five providers of different investment services to highlight good and poor practices in this area.

## ■ Supervision of financial investment advisers

As in previous years, the AMF will continue to focus on the marketing by financial advisers (in French *conseillers en investissements financiers*, or CIF) of atypical, risky or prohibited products in France. The AMF's inspections will focus on the due diligence carried out by financial advisers on the legal and economic characteristics of products, whether or not they are authorised for marketing in France, the identification and understanding of the target market, and the regulatory and marketing information provided to customers, particularly with regard to product risks and costs and fees. The AMF will also continue to monitor the adequacy of the advice given to clients and the reasons for this adequacy in the suitability statements. In 2023 the AMF will also continue to apply the framework for exchange of information with the FIA professional associations initiated in 2020.

To build on the Senate's work on investor protection and the resulting recommendations, the AMF will increase the frequency of inspections of associations.

As in 2022, the AMF will organise webinars for financial advisers to pass on the important lessons learned from the supervisory activities conducted, in partnership with other Banque de France regional offices than those involved in 2022, and with industry associations that will wish to join them.



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