

JOINT POSITION PAPER
AFG / AF2I / FBF / FFA / FRANCE INVEST / PARIS EUROPLACE
TAKING BACK CONTROL OF EU DATA:
REGULATING FINANCIAL & ESG DATA PROVIDERS

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Building a competitive, sovereign and sustainable Capital Markets Union through a holistic and coordinated regulatory approach

The legal framework regulating EU financial market participants' reporting and disclosures is one of the most advanced in the world. This entails both detailed transparency and reporting requirements of sectoral financial regulations (AIFMD, UCITS Directive, PRIIPs Regulation, MiFID...), and disclosures towards supervisors and investors on their investments' sustainability (SFDR, Taxonomy Regulation...).

To comply with these requirements, financial market participants need financial and non-financial (ESG) data¹, which is the "oxygen" of efficient, transparent, and sustainable financial markets. Yet, provision of such data in the EU depends on an oligopoly of – mainly non-EU – data providers. This puts EU capital markets as well as the future of Capital Markets Union at risk, as increasing reliance on data providers' unclear methodologies, disputable analysis, and non-competitive commercial practices is detrimental to all EU data users and may jeopardize efforts for a sustainable economic recovery.

We propose to adopt a holistic and coordinated regulatory approach to take back control over both financial and non-financial (ESG) data in the EU, as well as establishing a proper regulatory framework for data providers.

1. Addressing the EU's dependency on non-EU data providers

The growing amount of EU regulations leads to increasing quantity and quality requirements for financial and non-financial data disclosures. Since the 2008 crisis, the number of EU financial regulations on e.g. financial stability, supervisory transparency, or investors' information, skyrocketed: more than 40 pieces of legislation (e.g. UCITS/AIFMD/MiFID/PRIIPs...) were implemented. More recently, sustainable finance regulations, such as SFDR or the Taxonomy Regulation, also introduced precise requirements regarding quantitative and qualitative disclosures of investments' sustainable products or services.

Financial data is required for various financial markets participants' operations: front office (e.g. research, trading), middle office (e.g. compliance, reporting), back-office (e.g. clearing, settlement, valuation), or risk management. This data must be compiled from multiple feeds and aggregated in a way that is not accessible to most financial markets' participants.

Similarly, **non-financial data** is required for disclosures, transparency, and asset allocation purposes. However, it is currently only available through specific analysis of companies' non-financial information – which is not always readily available, or without committing important resources to their standardisation and exploitation.

¹: Financial and non-financial market data entails: "raw" market data from trading platforms received through specialist real-time providers; data relating to third parties attached to securities (e.g. issuers) and financial instruments, aggregated and sold by data providers, which feed into the market data repository of financial institutions; data provided by credit rating agencies or ESG rating agencies, mainly from an analysis of the quality of the issuer's rating and/or perceived sustainability; data provided by index administrators; and all other data derived from financial analysis (e.g. research)

In consequence, most EU financial markets participants have no choice but to use the products and services of a handful of oligopolistic data providers to comply with EU regulations. These technology powered firms have the critical size to aggregate and sell data in a raw and/or processed format via bundled services and mandatory use of proprietary operating systems, submitted to multi-layered licensing requirements.

Financial markets participants, which are data users, heavily rely on these actors to provide e.g. data from exchanges (for an efficient allocation of investments), financial indexes (essential in the design of financial products), or non-financial information from EU companies (to identify and invest in sustainable activities).

Therefore, key elements of the EU investment value chain (client information, investment allocation, supervisory transparency and reporting...) are based on a handful of data providers' infrastructure. However, these actors are facing very limited accountability provisions regarding the transparency, efficiency and reliability of their services, as there are currently very few regulatory requirements applying to these services within the EU.

As a result, data providers' services are too frequently opaque. For example, there is no scrutiny regarding their analysis methodologies, as each data provider applies its own. This means supervisors have no means to verify their reliability, even though this underpins a major part of asset allocation within the EU. This is especially the case for ESG analysis, as the [European Commission](#)² and the [OECD](#)³ recently concluded that the very same company can have widely diverging ESG ratings across different data providers, casting doubt over their capacity to reliably identify sustainable activities for professional and retail investors.

In addition, a significant portion of critical market data providers are headquartered outside of the EU. **The absence of EU authorisation and even localisation requirements for data providers providing financial and non-financial data to European users is concerning for the EU's sovereignty.** EU regulators should introduce such a requirement for all types of data provision services to EU users, e.g. as proposed for IT third-party services providers in the Digital Operational Resilience Act (DORA) draft legislation.

We should build the Capital Markets Union on transparency regarding financial activities and financial actors, and the same for non-financial activities and players. However, there is currently a striking similarity with the over-reliance on Credit Ratings Agencies leading to the 2008 crisis and disastrous consequences for the economy, before the implementation of a dedicated EU framework. We believe the EU should act pre-emptively and create a holistic regulatory framework for data providers. In addition, clear EU regulatory requirements for the setting-up and authorisation of data providers offering services to European users is critical, to safekeep EU sovereignty, and avoid any disruption in the provision of critical market data to EU professional users which might severely disrupt the EU's financial markets and economy.

² Study on Sustainability-Related Ratings, Data and Research, European Commission, November 2020.

³ OECD Business and Finance Outlook 2020: Sustainable and Resilient Finance, September 2020

2. Ensuring high-quality, transparency, and availability across ESG and financial data

A holistic regulatory approach to data providers should be threefold.

1. Ensuring coherence between the few pieces of EU legislation mentioning data provision services

Currently, EU legislations adopts a silo approach regarding data providers' services on financial data: MiFID II, CRA Regulation, the Benchmark Regulation all mention these activities, without providing much of a coherent framework. A number of important provisions already exist regarding transparency of activities, conflict of interests. However, these provisions are fragmented and limited to certain categories of data providers. Implementing a "cross-functional" regulation would provide such a framework for all these actors. For further examples, please refer to the Annex below.

2. Facilitate direct access to data to lighten dependency on data providers

We strongly support the European Commission's recent initiatives to make non-financial data more directly available to market participants (CSRD), as well as the upcoming single access point for EU financial and non-financial data (ESAP). **Access to reliable, comparable, and audited non-financial data, is essential to answer clients' growing demand for transparent and sustainable financial products.** It enables investors to efficiently direct investments towards truly sustainable activities, and ultimately incentivize a larger scale transition towards a sustainable economy. In the same way, an EU consolidated tape as part of the MiFID II/MiFIR review, would contribute to lessen the need to use data providers services. **Achieving a consolidated tape would make all European market data easily accessible both for professional and retail investors and increase trust for cross-border investments.**

Additionally, such policies would be beneficial for competition within the EU, as data providers will have to clearly demonstrate the added value of their analysis and commercial proposals compared to in-house analysis. This will increase the overall quality and transparency of these markets.

3. Implement new transparency and accountability requirements for data providers' activities

ESG ratings activities are especially important in this regard, as they form the basis to identify how sustainable the activities of companies are. However, according to the [recent study](#) the Commission requested on sustainability ratings⁴, it appears that these methodologies vary between data providers, bringing widely different results even when analysing the same companies. In addition, data providers do not take any responsibility for these gaps.

Data providers' methodologies should be sound enough to avoid any risk of greenwashing that could lead to negative consequences on the whole investment chain. We would encourage a regulatory approach to create a transparency framework for these activities, as was proposed recently by [ESMA in its letter to the European Commission](#), or by the [joint proposal by the French and Dutch supervisors \(AMF/AFM\)](#) on the same subject. On this specific point, we note that the European Commission will propose a consultation on ESG ratings markets at the end of 2021 as part of its Sustainable strategy to finance climate transition. We welcome this initiative, but consider this step forward is not ambitious enough given the wide acknowledgement of this issue across financial markets' participants.

⁴ Study on Sustainability-Related Ratings, Data and Research, European Commission, November 2020.

The EU should implement an horizontal European regulation for both financial and non-financial data providers and their activities, which should be accompanied by increased supervision of all data providers at the European level according to [ESMA's 2020-2022 strategic guidelines](#), in which the European authority says it wants to strengthen its reputation as the supervisory authority of credit rating agencies, critical benchmarks and data service providers.

3. Promote fair competition practices to break up the data providers' oligopoly

We need to ensure the fairness of pricing practices regarding data providers' services, as the prices are skyrocketing: **prices for financial data increased 10 % in 2019, to \$32 billion⁵ ; for ESG data, growth is even more important (+20% for ESG data and +30% for ESG benchmarks⁶).** This indeed impacts the price of financial products, and ultimately the retail investors.

This is even more important as the pressure on prices for financial products increases in the EU. This pressure applies mainly on financial markets participants such as asset managers. However, the use of data represents incompressible costs that have become so essential that they are internalized by financial markets' participants. Beyond transparency for methodologies by data providers when providing services more complex than dissemination of raw data from issuers (e.g. analysis, scorings, ratings etc.), **transparency regarding data fees would contribute to a more balanced effort on financial products' prices, which would lead to a fairness in costs ultimately beneficial to end investors – and especially for retail investors.**

One of the objectives would be to **simplify, standardise and make more transparent the user fees and pricing conditions** imposed by data providers. In particular, it could **draw on the FRANDT** (fair, reasonable, non-discriminatory and transparent) principle already existing in the EMIR Regulation and which should be extended to other regulations.

In addition, **the EU needs to start a more fundamental reflexion over reliance on non-EU data providers through industrial initiatives promoting European players and standards.** Some EU data providers are starting to emerge, but they cannot reach the sufficient size to survive in this market due to its oligopolistic nature and the fact that many up-and-coming actors are immediately bought up by existing data providers. Therefore, it is worth considering alternatives to the predominance of current index and data providers. For example, regarding indices, the creation of an index category by the financial markets' participants themselves, recognised by the regulators, would be something to consider.

In the same way, the **EU's voice must be heard in the setting of international standards regarding non-financial data**, which would contribute to the adequation between providers' services and financial markets participants' needs in terms of regulatory compliance.

Furthermore, regarding third country data providers, other regulatory evolutions such as the establishment of an equivalence regime, particularly with regard to the quality and reliability of the data provided, would make sense. This also involves the establishment of a genuine consolidated European tape (see Commission Action No. 14 on the CMU Commission Action Plan) and autonomous market data repositories which, with the use of new technologies, would enable secure sharing and reasonable costs of high-quality data for the benefit of the industry as a whole.

⁵ Source: Burton-Taylor International Consulting, April 2020.

⁶ Source: Optimas Study, 2020.

We believe addressing the competition aspects of the current oligopolistic situation of data providers is also important in guaranteeing EU actors have access to reliable financial and non-financial data. Data providers should be subject to a duty of transparency and publication of their prices, to reduce the opacity of their pricing policy. This issue has namely been identified by the European Parliament, in its recent [2020 annual report on competition policy](#).

ANNEX

Regulatory framework on Benchmarks & data providers - Overview of the existing provisions at International & EU levels

	Cost recovery and distribution principle	Transparency	Conflict of interest
IOSCO's Principles for financial Benchmark Governance			Principle 3: Avoid conflict of interest between the Benchmark determination business and its other businesses
PFMIs	PFMIs 18: Trade repository shall provide data on a fair and commercially reasonable way.	-PFMIs principle 18: FMI shall allow fair and open access to its services. Specifically, Trade repositories shall ensure conditions to access data are easily accessible, services and data are unbundled, closed interface and lock-in or barriers are avoided. -PFMIs principle 23: A FMI should publicly disclose its fees and the level of the individual services it provides with a clear description to allow comparisons.	
MiFID/MiFIR	<u>Level 1:</u> -MiFID 64, 65 (1): Information shall be made available for free 15min after APA and CTP publication, sold at reasonable	<u>Level 2:</u> - Delegated act 2017/565 art. 88 to 89: APAs and CTP shall make data available separately, make available to	<u>Level1:</u> -MiFID 64,65,66: APA, CTP, ARM have to operate administrative arrangements to prevent conflicts of

	<p>commercial basis, accessible in a non-discriminatory way.</p> <p>-MIFIR CHAPTER 3: Obligation to offer trade data on a separate and reasonable commercial basis.</p> <p>-MIFIR art 3, 6 to 11 and 13: Information published by Market operators has to be sold at reasonable commercial basis, accessible in a non-discriminatory way and made free 15 min following publication.</p> <p><u>Level 2:</u></p> <p>-Delegated act 2017/565 art. 84 to 89: APAs and CTP shall sell their data on a reasonable commercial basis, based on cost and on a non-discriminatory way, per user basis with same data only charged once per user.</p> <p>-Delegated act 2017/567 art 6,7,8: MO, Investment Firms, SI shall propose market data on a reasonable commercial basis, on a cost-based price, non-discriminatory basis, use a per user basis to avoid charging twice the same data, any differentials in prices</p>	<p>the public prices and conditions and disclose a certain number of things such as: fees per user, conditions, number of instruments covered etc.</p> <p>- Delegated act 2017/567 art 10,11: MO, Investment firms and SI shall make data available and unbundled, price of data shall be charged on the level of disaggregation. And they shall disclose the price and other terms and conditions in a easily accessible manner, notably how the price was set, cost accounting methodologies, allocation of fixed, joint costs and other services.</p> <p>-ESMA's Q&A on MiFID and MIFIR transparency topics Q9 to 10: Data should be accessible free of charge 15 min after publication in a easily and accessible manner.</p> <p>-ESMA's Q&A on MiFID and MIFIR market structures topics Q1,2 : Ensure data is available on a disaggregated form and on a reasonable commercial terms and at the same speed than non-free data.</p>	<p>interest with its clients, separate different business functions.</p> <p><u>Consultation Paper:</u></p> <p>-Consultation paper on guidelines MiFID II/MIFIR 2020: Ensure that CTP are neutral and avoid any conflict of interest.</p>
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	<p>must be proportionate by data market value or the use by the customer.</p>	<p><u>Consultation Paper :</u></p> <p>-Consultation paper on guidelines MiFID II/MIFIR 2020: ESMA's proposals are to ensure a harmonized and disclosed fee accounting methodology, methodology would state how margins are determined and enforce their cost-based principle, data should only paid once, data should be unbundled. It states that information and disclosures shall be harmonized, and a user-id is applied.</p>	
<p>Credit Rating Agencies Regulation (CRA)</p>	<p><u>Level 1:</u></p> <p>- 462/2013 Annex I., 3 (C) (3c): A credit rating agency shall ensure that fees charged to its clients for the provision of credit rating and ancillary services are not discriminatory and are based on actual costs. Fees charged for credit rating services shall not depend on the level of the credit rating issued by the credit rating agency or on any other</p>	<p><u>Level 1:</u></p> <p>- 462/2013 Annex I., 3 (C) (3c) : Requires CRAs to ensure that fees charged to clients for the provision of ancillary services(including data) are not discriminatory and are based on actual costs.</p>	<p><u>Level 2:</u></p> <p>-CRAR Delegated act 462/2013 Recital 38: Fees charged are not discriminatory, fees differences will have to be justified, CA shall disclose to ESMA their pricing policy.</p> <p>-CRAR art 6 (Guidelines): CRA shall ensure to avoid any conflict of interest during their rating issue and avoid any conflict of interest between analytical activities</p>

	result or outcome of the work performed.		and commercial and marketing ones. -CRAR Annex 1 Section B 1 to 4: CRA shall avoid any conflict of interest, specially concerning ancillary activities.
Benchmark regulation (BMR)		Level 1: - BMR art 22: Critical Benchmark shall ensure that data is provided to all users on a fair, reasonable, transparent and non-discriminatory basis.	Level 1: - BMR art 4: Commercial activities and provision of a benchmark activity shall be separated to avoid any conflict of interest.
EMIR		Level 1: - EMIR art 78: Trade Repository shall publicly disclose prices and fees associated with service provider, services shall be sold separately.	