



PROCEDURE OF RECOGNITION OF FOREIGN EXCHANGES

Reference provisions: Articles L. 423-1, D. 423-1 to D. 423-3 of the monetary and financial code and articles 251-1 to 251-7 and 513-3 of the AMF General Regulation

Article L. 423-1 of the monetary and financial code provides that « *the public may only be approached, in whatever form and by whatever means, directly or indirectly, in connection with transactions relating to a foreign market in securities other than a regulated market of a State party to the European Economic Area Agreement, negotiable futures contracts or any other financial product, if said market has been recognised as determined by decree, and subject to reciprocity.* » (translation provided by www.legifrance.gouv.fr)

This principle is further completed with articles D. 423-1 to D. 423-3 of the monetary and financial code that set out the conditions and the recognition's procedure of a foreign exchange. Finally, articles 251-1 to 251-7 and article 513-3 of the AMFGR respectively set out the marketing regime in France of financial instruments traded on a recognised foreign market or a regulated market of the European Economic Area (EEA) and the mutual access of a foreign market member in a regulated market, and *vice versa*.

This instruction sets out the conditions and recognition procedure of foreign markets:

- which seek to develop activities in France by:
 - (i) providing access as a member to their exchange to French entities or persons that are non professional clients¹;
 - (ii) providing access as member to firms that intend to target non professional clients;
- or for which intermediaries would target non professional clients concerning the financial instruments which are admitted to trading on the exchange.

This instruction deals specifically with foreign exchanges that are not European trading venues pursuant to the directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (thereafter "the MiFID 2 directive").

Such exchanges (e.g. foreign markets based in jurisdictions that are outside the European Economic Area (thereafter "EEA") are subject to prior recognition by the French Ministry for the Economy and Finance, following a detailed assessment by the Autorité des marchés financiers (thereafter "the AMF"), as described below.

This instruction is not intended to be legal advice, nor is it a substitute for legal advice.

¹ The notion of « non professional clients » shall have the meaning provided in article D. 533-4, I, last paragraph of the monetary and financial code, i.e., clients, including clients mentioned in Annex 2, II, 1, first paragraph of the directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments. This notion encompasses the notion of retail clients.

1. THE EUROPEAN REGULATORY FRAMEWORK FOR EEA REGULATED MARKETS

The EU/EEA legislation on investment firms and trading venues is based upon the MiFID 2 directive, which is transposed into French law and applied from 3 January 2018.

European trading venues

Under MiFID 2, trading venues are multilateral systems that are authorised as regulated markets, multilateral trading facilities or organised trading facilities². They are respectively defined in articles 4(1)(21), 4(1)(22) and 4(1)(23) of the MiFID 2 directive and comply with regulatory and organisational requirements stemming from the said directive. The authorisation of those trading venues is exclusively limited to exchanges based in the EEA.

The list of the authorised European trading venues is available on the ESMA register at the following link: <https://registers.esma.europa.eu/publication/>.

The marketing of financial instruments to non professional clients in France³, including those that are negotiated on trading venues, is governed by French law, which prevents the solicitation of non professional clients by firms which are not authorised to do so.

2. THE GOVERNMENT RECOGNITION OF FOREIGN EXCHANGES' REGIME

Article L. 423-1 of the monetary and financial code provides that *“the public may only be approached, in whatever form and by whatever means, directly or indirectly, in connection with transactions relating to a foreign market in securities other than a regulated market of a State party to the European Economic Area Agreement, negotiable futures contracts or any other financial product, if said market has been recognised as determined by decree, and subject to reciprocity.”* (translation provided by www.legifrance.gouv.fr)

Non-EEA exchanges are eligible in France for a specific national government recognition regime that enable them, their members or other intermediaries to solicit non professional clients concerning financial instruments admitted to trading on the exchange.

This recognition is a prerequisite when:

- financial instruments traded on the exchange can give rise to solicitation of non professional clients (be they members or other intermediaries);
- the exchange admits non professional clients as members.

However, non-EEA exchanges need not apply for recognition when:

- its members are professional clients acting on own account or on behalf of professional clients;
- its members are professional clients acting for non professional clients that have not been solicited (by the member itself or by any other intermediary);
- intermediaries solicit professional clients.

The recognition procedure of a foreign exchange is set out in articles D. 423-1 to D. 423-3 of the monetary and financial code. It is further developed in Section 3.

² Article 4(1)(24) of the directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

3. RECOGNITION PROCEDURE OF A FOREIGN EXCHANGE

3.1. Letter of application to the Minister for the Economy and Finance

The letter to the Minister shall be signed by the Chairman of the applicant exchange, or by any person authorised to sign on behalf of the exchange (please see Section 3.4. for the list of documents to be attached).

In order to expedite the process, it is advisable to copy the application letter with attachments to the French Treasury and to the AMF (see template in **Annex**).

3.2. Transmission of the application by the French Treasury to the AMF

The application to the Minister for the Economy and Finance will be followed by a request by the French Treasury to the AMF to start its formal review of the application, with a view to providing the Minister with an opinion on the recognition.

3.3. Main assessment criteria used by the AMF

The AMF verifies that the application complies with the criteria referred to in articles D. 423-1 to D. 423-3 of the monetary and financial code.

The assessment is made by the AMF's Market Directorate in liaison with the International Affairs Directorate. As mentioned earlier, the criteria used in the analysis concern the equivalence with European regulations and French laws, including the investor protection regime and the surveillance and supervisory framework of the applicant exchange. The assessment will take into account equivalence decisions adopted by the European Commission, when relevant for the purpose of the recognition decisions. The analysis also considers whether French trading venues may benefit from similar treatment in the home country of the applicant exchange.

3.4. Documentation reviewed by the AMF

The AMF assessment covers the market's organisation and rules as well as on the main applicable national securities laws and regulations.

The AMF will review, *inter alia*, the following elements:

- in respect of the exchange, a documentation enabling the AMF to compare the exchange organisation and arrangements and the European applicable framework. This gap assessment should be provided in line with the Commission delegated regulation (EU) 2017/584 of 14 July 2016⁴ and the Commission implementing regulation (EU) 2016/824 of 25 May 2016⁵;
- in respect of the assessment of the legal and supervisory framework, the following elements will be taken into account:
 - (i) the exchange is subject to authorisation and to effective supervision and enforcement on an ongoing basis;
 - (ii) the exchange has clear and transparent rules regarding the admission of financial instruments to trading so that the latter are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0584>

⁵ <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex%3A32016R0824>

- (iii) issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection;
- (iv) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing or market manipulation; and
- (v) any other information as may be required by the AMF.

For the purpose of non professional client marketing, the assessment will be further completed with a gap assessment with the local investor protection rules and the one applicable in the EU.

It is worth to mention that when the applicant exchange has recently been recognised or approved in another jurisdiction, it may be advisable to provide the AMF with the copy of the recognition/authorisation decision (e.g. copy of a US CFTC decision approving a market as “Designated Contract Market”, or a similar decision of the UK FCA). This is of particular interest for decisions that come together with background information relating to the assessment performed by the relevant regulator. The AMF will take these elements into consideration in its own assessment with due consideration of their relevance to the application made in France.

3.5. Opinion of the AMF sent to the Minister for the Economy and Finance

Depending on the information provided, the AMF may seek clarifications from the applicant exchange or from its regulator and/or supervisory authority. In addition, a visit of the exchange is generally organised for the purpose of the assessment.

3.6. Implementation of a regulatory framework enabling the exchange of information between the AMF and the home regulator of the applicant exchange

According to the French monetary and financial code, the mission of the AMF is to protect the savings invested in financial instruments, ensure that investors are properly informed and maintain the orderly operation of the financial markets.

To ensure investors’ protection and prior to any recognition of a foreign exchange, the AMF requires that a regulatory framework be established so as to permit the exchange of information with the relevant national competent authority.

To this end, the AMF has signed more than 20 Memorandums of Understanding or cooperation letters with regulators from outside the EEA. For instance, the AMF has signed a cooperation agreement with the US Commodity and Futures Trading Commission.

3.7. Opinion of the AMF to be transmitted to the Minister for the Economy and Finance

Depending on the results of the general assessment of the exchange and its regulatory framework by the AMF staff, the Board of the AMF will decide to express either a positive or negative opinion. The latter is then transmitted to the Minister for the Economy and Finance.

3.8. Signature by the Minister of the order of recognition published in the French Official Journal

Upon receiving the opinion of the AMF, the Minister will decide whether to recognise the exchange. If he/she decides favourably, a publication in the Official Journal of the order (“*arrêté*”) of recognition will follow.

The Minister will then inform the exchange that it has been recognised.

3.9. Obligations of the recognised exchange

In addition to the laws and regulations applicable to the provision of financial activities in France, the newly recognised foreign exchange will have to comply more specifically with the requirements relating to the disclosure of information to investors as provided in articles 251-2 to 251-7 of the AMF General Regulation.

Annex: Template of letter of application for recognition addressed to the Minister for the Economy and Finance

Monsieur/Madame
le Ministre de l'Économie et des Finances
139, rue de Bercy
75572 PARIS CEDEX 12
FRANCE

Dear Minister,

In accordance with the provisions of Article L. 423-1 and Articles D. 423-1 to D. 423-4 of the French monetary and financial Code, I have the honour to submit this application for recognition in France of [name of the exchange].

I am duly aware that, in accordance with the above provisions, this recognition is subject to the equivalence between the investor protection, surveillance and supervision rules of [name of the exchange] and the applicable rules in the French markets. I am also aware that, in accordance with the same decree, such recognition is also dependent on the condition that equivalent treatment be made available to French intermediaries, French regulated markets and their products in the home country of the applicant exchange.

In order to allow you to assess compliance with the above criteria, I hereby enclose a copy of the rules of [name of the exchange] as well as a copy of the main securities laws and regulations applicable to activities conducted on [name of the exchange].

[...]

Copy to:
Chef du Service de Financement de l'Économie
Direction du Trésor
Ministère de l'Économie et des Finances
139, rue de Bercy
75572 PARIS CEDEX 12
FRANCE

Executive Director
Markets
Autorité des Marchés Financiers
17 Place de la Bourse
75082 PARIS CEDEX 2
FRANCE