Council of the European Union

Brussels, 9 June 2023
(OR. en)

10323/23

Interinstitutional File:
2022/0405 (COD)

LIMITE

EF 167
ECOFIN 574
DRS 33
COMPET 586
CODEC 1044

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Directive amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC; - Mandate for negotiations with the European Parliament

This version of the text, based on the previous revised version, includes new compromise proposals from the Presidency.

These new proposals are marked with red bold and underlined text, or with red bold and strike-through.

*

* *

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50, 53(1) and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .

Whereas:

(1) Directive 2014/65/EU of the European Parliament and of the Council[2] has been amended by Regulation (EU) 2019/2115 of the European Parliament and of the Council[3], which introduced proportionate alleviations to enhance the use of SME growth markets and to reduce the excessive regulatory requirements for issuers seeking admission of securities on SME growth markets, while preserving an appropriate level of investor protection and market integrity. However, to streamline the listing process and to render the regulatory treatment of companies more flexible and proportionate to their size, further amendments to Directive 2014/65/EU are necessary.

(2) Directive 2014/65/EU and Commission Delegated Directive (EU) 2017/593[4] set out the conditions under which the provision of investment research by third parties to investment firms providing portfolio management or other investment or ancillary services is not to be regarded as an inducement. In order to foster more investment research on companies in the Union, in particular small and medium capitalisation companies, and to bring those companies greater visibility and more prospect of attracting potential investors, it is necessary to introduce some amendments to that Directive.

---

2 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

3 Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1).

4 Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500).

(3) The provisions concerning research laid down in Directive 2014/65/EU require investment firms to separate payments which they receive as brokerage commissions from the compensation perceived for providing investment research ('research unbundling rules'), or to pay for investment research from their own resources and assess the quality of the research they purchase based on robust quality criteria and the ability of such research to contribute to better investment decisions. In 2021, those rules have been amended by Directive (EU) 2021/338 of the European Parliament and of the Council[5] to allow for bundled payments for execution services and research for small and medium capitalisation companies below a market capitalisation of EUR 1 billion. The decline of investment research has, however, not slowed down.

(4) In order to revitalise the market for investment research and to ensure sufficient research coverage of companies, in particular the small and medium capitalisation companies, ~~further alleviation of~~ the research unbundling rules **need to be further adjusted to offer the investment firms more** ~~are necessary~~ **flexibility in the way they wish to organise the payments of execution services and research, thus limiting situations, if relevant, where separate payments may be too cumbersome. This would however require to maintain a necessary transparency vis-a-vis the client as to the payment choice made by the firms. Firms should inform their clients whether they apply a separate or joint payment for the execution services and the provision of third-party research.** ~~**Should a firm selects separate payments, a**~~**Appropriate information to the clients may be ensured via the recording by the firm of the charges attributable to research and execution services and also via the provision of an annual information on those payments to the clients**. ~~**By increasing from EUR 1 billion to EUR 10 billion the threshold of companies' market capitalisation below which the unbundling rules do not apply, more small and medium capitalisation companies, and in particular more medium capitalisation companies will benefit from a larger research coverage, bringing those companies more visibility from potential investors and thus increasing their capacity to raise funding in the markets.**~~

[5] Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

(5) In addition, to further support the coverage of small and medium capitalisation companies by investment research, research material paid fully or partially by issuers should be labelled as 'issuer-sponsored research'. To ensure an adequate level of objectivity and independence of such research material, such material should be produced in line with a code of conduct. **Also, for this purpose, investment firms should have in place organisational arrangements to ensure that the issuer-sponsored research they produce~~, use~~ or distribute is produced in compliance with the code of conduct. The competent authorities of the Member States should be given supervisory powers to ensure that the investment firms comply with the requirements. For the sake of EU harmonisation the code of conduct should be established by ESMA through draft regulatory technical standards. In order to design a code of conduct in such a way that it constitutes an adequate and proportionate balance for all types of market participants involved in the production of issuer-sponsored research, ESMA should consult publicly and liaise with market participants when preparing its draft regulatory technical standards.** ~~**developed or endorsed by a market operator registered in a Member State or by a competent authority**~~. ~~**In order to support more visibility of the issuer-sponsored research, issuers should have the possibility to submit their issuer-sponsored research to the relevant collection body as defined**[6] **in [Article 2 (2) of the proposal for a Regulation**[7] **on a European Single Access Point].**~~

(6) Directive 2014/65/EU introduced the SME growth market category to increase the visibility and profile of markets specialised in SMEs and foster the development of common regulatory standards in the Union of markets specialised in SMEs. SME growth markets play a key function in facilitating access to capital for those smaller issuers by catering for their needs. To foster the development of such specialised markets and to limit the organisational burden for the operators of multilateral trading facilities (MTFs), it is necessary to allow the segment of a**n** MTF to apply to become a**n** SME growth market provided that such segment is clearly separated from the rest of the MTF.

---

6 See Article2.2 o proposal for a Regulation [2021.78.COD]

7 Proposal for a Regulation [2021/03.78.COD]

(6a) To reduce the risk for fragmentation of liquidity for SME shares, considering the lower liquidity of these instruments, Article 33(7) of Directive 2014/65/EU requires that a financial instrument that is admitted to trading on one SME growth market may only be traded also on another SME growth market where the issuer of the financial instrument has not objected to it. However, the Article currently does not provide the corresponding requirement for non-objection by the issuer where the second trading venue is another type of trading venue than an SME growth market. Hence, the issuer non-objection requirement regarding the admission to trading of an instrument already admitted to trading on an SME growth market should be extended to any other trading venue in order to ensure that issuers maintain control over the liquidity and to further reduce the risk of fragmented liquidity of these instruments. If a financial instrument admitted to trading on an SME growth market is also traded on another type of trading venue, the issuer should follow any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter trading venue.

(7) Directive 2001/34/EC of the European Parliament and of the Council[8] lays down rules concerning listing on Union markets. That Directive aims at coordinating the rules on the admission of securities to official stock exchange listing and on information to be published on those securities to provide equivalent protection for investors at Union level. That Directive also lays down the rules of the regulatory and supervisory framework for Union primary markets. In the course of the years, Directive 2001/34/EC has been amended significantly several times. Directives 2003/71/EC of the European Parliament and of the Council[9] and Directive 2004/109/EC of the European Parliament and of the Council[10] have replaced most of the provisions harmonising the conditions for the provision of information regarding requests for the admission of securities to official stock exchange listing and the information on securities admitted to trading, and have made large parts of Directive 2001/34/EC redundant. **In light of this and the fact that Directive 2001/34/EC as a minimum harmonization Directive gives Member States a rather broad discretion to deviate from the rules laid down,** ~~**Directive 2001/34/EC as a minimum harmonisation Directive gives Member States a rather broad discretion to deviate from the rules laid down in that Directive, which has led to market fragmentation in the Union. To drive market harmonisation at Union level and create a single rule book,**~~ Directive 2001/34/EC should be repealed **to create a single rule book at Union level**.

---

8 Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1).

9 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

10 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

(8) Directive 2014/65/EU, like Directive 2001/34/EC, provides for the regulation of markets of financial instruments and strengthens investor protection in the Union. Directive 2014/65/EU also sets out rules on the admission of financial instruments to trading. By extending the scope of Directive 2014/65/EU to cover specific provisions from Directive 2001/34/EC will ensure that all relevant provisions from Directive 2001/34/EC are maintained. A number of provisions of Directive 2001/34/EC, including the requirements on free float and market capitalisation which still apply, are enforced by competent authorities and are considered important rules for seeking admission to trading of shares on regulated markets in the Union by market participants. It is therefore necessary to transfer those rules in Directive 2014/65/EU to set out, in a new provision of that Directive, specific minimum conditions for the admission to trading of shares on regulated markets. The application of that new provision should complement the general provisions on the admission of financial instrument to trading laid down in Directive 2014/65/EU.

(9) To allow for more flexibility for issuers and to make Union capital markets more competitive, the minimum free float requirement should be decreased to 10%, which is a threshold that ensures for a sufficient level of liquidity in the market. The free float requirement laid down in Directive 2001/34/EC that a sufficient number of shares is to be distributed to the public in one or more Member States refers to the public within the Union and the European Economic Area (EU/EEA). That geographical restriction of the free float requirement to the EU/EEA should not be maintained as Directive 2014/65/EU does not provide for such restriction for financial instruments admitted to trading. The requirement that a company is to have published or filed its annual accounts for a specific period of time should not be transferred to Directive 2014/65/EU since Regulation (EU) 2017/1129 of the European Parliament and of the Council[11] already contains a provision to that effect. Directive 2014/65/EU already lays down provisions to designate competent authorities. Thus, the provisions laid down in Directive 2001/34/EC to appoint one or more competent authorities are redundant. The requirement for debt securities that the amount of the loan is not be less than EUR 200 000 are considered obsolete in light of current market practice.

[11] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

(10) The concept of admission of securities to official listing on stock exchanges provided for in Directive 2001/34/EC is no longer ~~**frequently used**~~ **prevailling,** given market developments, as Directive 2014/65/EU already provides for the concept of 'admission of financial instruments to trading on a regulated market'. **While in some Member States t**~~**T**~~he two concepts 'admission to official listing' and 'admission to trading on a regulated market' are ~~**often**~~ used interchangeably**,** in ~~**some**~~ **other** Member States **the concept of** '**admission to official listing**' **continues to play an important role alongside the concept of** '**admission to trading on a regulated market**'**, in particular by providing an alternative to issuers of securities, notably debt securities, who seek increased visibility but for whom admission to trading is not a relevant or viable option. The repeal of Directive 2001/34/EC by this Directive should be without prejudice to the validity and continuation of the regimes of admission to official listing on stock exchanges in those Member States who would like to continue to apply the regime. In any case, Member States should retain the ability to provide for and regulate such regimes under national legislation**. ~~**That means that, in some Member States, no distinction is made between the two concepts. Furthermore, the dual regime of admission to trading, on the one hand, and admission to official listing, on the other hand, could lead to legal uncertainty at Union level, in particular, due to the fact that the requirements laid down in Directive 2003/71/EC, Directive 2004/109/EC and Directive 2014/57/EU of the European Parliament and of the Council12 do not apply to instruments admitted to official listing, while those requirements apply to instruments admitted to trading on a regulated market.**~~

12 Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).

(11) To enhance the visibility of listed companies, in particular SMEs and to adapt the listing conditions to improve requirements for issuers, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Directive 2014/65/EU. The market capitalisation threshold for companies, for which the re-bundling of trading execution and research fees would be possible, **should be removed**~~**to capture small and medium capitalisation companies,**~~ and ~~**providing**~~ a framework for the development of a particular form of research for which the issuer pays should be **provided**~~**adapted**~~. The adaption of the listing rules in the Union should also reflect market practice for it to be effective and promote competition. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[13]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(12) Directive 2014/65/EU should therefore be amended accordingly.

(13) Since the objectives of this Directive, namely to ease Union small and medium capitalisation companies' access to capital markets, and to increase the coherence of Union listing rules cannot be sufficiently achieved by the Member States but can rather, by reason of the improvements and effects sought, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

[13] OJ L 123, 12.5.2016, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 4(1), point (12) is replaced by the following:

'(12) 'SME growth market' means a**n** MTF, or a segment of a**n** MTF, that is registered as an SME growth market in accordance with Article 33;';

(2) Article 24 is amended as follows:

(a) the following paragraphs 3a to 3**c**~~d~~ are inserted:

'3a. ~~**research provided by third parties to 1.**~~ **Research** ~~**used or**~~ **distributed to clients or potential clients by** investment firms providing portfolio management or other investment or ancillary services**,** ~~**and research**~~ **that has been prepared**~~**and distributed**~~ by **these** ~~**such**~~ firms **or provided to these firms and produced by third parties,** shall be fair, clear and not misleading. Research shall be clearly identifiable as such or in similar terms, provided that all conditions applicable to the research are met.

3b. ~~Where the research is paid, fully or partially, by the issuer and disseminated to the public or to investment firms or to the clients of investment firms providing portfolio management or other investment or ancillary services, such research~~ **Investment firms providing portfolio management or other investment or ancillary services shall ensure that the research they** ~~use for the purpose of providing services or~~ **distribute to clients or potential clients which is paid, fully or partially, by an issuer** shall be **labelled** as "issuer-sponsored research" ~~provided that~~ **only if** it is produced in compliance with ~~a~~ **the EU** code of conduct **for issuer-sponsored research**. ~~developed or endorsed by a market operator registered in a Member State or by a competent authority~~.

ESMA shall develop draft regulatory technical standards to establish a harmonised EU code of conduct for issuer-sponsored research. The code of conduct shall set out ~~minimum~~ standards of independency and objectivity, **and specify procedures and measures for effective identification, prevention and disclosure of conflicts of interest.** ~~to be complied with by the providers of such research~~. ~~The market operator or the competent authority~~ **shall** ~~publish the code of conduct on its website and review and re-endorse it every 2 years~~.

In establishing the code of conduct ESMA shall take into account the content and parameters of codes of conduct which have been established at national level prior to the application of the regulatory technical standards, especially where such codes have been widely endorsed and adhered to.

ESMA shall submit those draft regulatory technical standards to the Commission [by 18 months after the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

The EU code of conduct shall be made available on the website of ESMA.

ESMA shall assess on a regular basis and at least every 5 years whether the EU code of conduct needs to be reviewed, in which case it shall submit amended draft regulatory technical standards to the Commission.

Member States shall provide that investment firms that produce~~, use~~ or distribute issuer-sponsored research have in place organisational arrangements to ensure that such research is produced in compliance with the EU code of conduct developed by ESMA as referred to in paragraph 3b and complies with paragraph 3a and 3c.

~~**3c. Member States shall ensure that any issuer may submit its issuer-sponsored research, as referred to in paragraph 3b of this Article, to the relevant collection body as defined in [Article 2(2) of the proposal for a Regulation on a European Single Access Point[14]].**~~

3~~**d**~~**c**. Research that is labelled as issuer-sponsored research shall indicate on its front page in a clear and prominent way that it has been ~~**prepared**~~**produced** in accordance with ~~**a**~~ **the EU** code of conduct. ~~**The name of the market operator or competent authority that has developed or endorsed such code of conduct shall also be mentioned**~~. Any other research material ~~**paid**~~ fully or part**ially paid** by the issuer **and ~~used or~~ distributed by an investment firm,** but not produced in compliance with **the**~~**a**~~ **EU** code of conduct ~~**as**~~ referred to in paragraph 3b shall be labelled as marketing communication.

14 Proposal for a Regulation [2021/0378.COD].

(b) ~~in~~ paragraph 9a~~, point (c)~~ is amended as follows: ~~replaced by the following~~:

~~'(c) the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as expressed by end-year quotes for the years when those issuers are or were listed or by the own-capital for the financial years when those issuers are or were not liste~~

(i) the first subparagraph, is replaced by the following:

The provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under paragraph 1 if the investment firm informs its clients about the separate or joint payments, as the case may be, for execution services and research made to the third party providers of research.

(ii) the following subparagraphs are added:

Investment firms may keep a record of separate payments and gather information distinguishing the part of combined charges or joint payments for execution services and research that is attributable to research provided to such firms and may inform its clients annually in an aggregated form of the annual expenditure to research of the investment firm that is attributable to the client.

By [3 years after the date of entry into force of this Directive], the Commission shall prepare a report with a comprehensive assessment of the market developments regarding research as understood in this Article. This assessment shall at least incorporate the research coverage of listed firms, the costs of that research, the share of separate and joint payments made by investment firms to third party providers for execution services and research and its possible impact on the costs of research and the level of fulfillment of the demand for research by investors and other buyers.

Based on this report, the Commission may, if appropriate, ~~prepare an impact assessment, and~~ submit to the European Parliament and the Council a legislative proposal concerning targeted changes to the rules laid down in this Directive regarding research.

(3) Article 33 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Member States shall provide that the operator of a**n** MTF may apply to its home competent authority to have the MTF or a segment thereof, registered as an SME growth market.

2. Member States shall provide that the home competent authority may register the MTF, or a segment thereof, as an SME growth market if the competent authority receives an application as referred to in paragraph 1 and is satisfied that the requirements in paragraph 3 are complied with in relation to the MTF, or that the requirements in paragraph 3a are complied with in relation to a segment of the MTF.';

(b) the following paragraph 3a is added:

'3a. Member States shall ensure that the relevant segment of the MTF is subject to effective rules, systems and procedures which ensure that the conditions referred to in paragraph 3 and all of the following conditions have been complied with:

(a) the segment of the MTF registered as 'SME growth market' is clearly separated from the other market segments operated by the MTF operator, which is *inter alia* indicated by a different name, different rulebook, different marketing strategy, and different publicity, as well as a specific allocation of the market identification code to the SME growth market segment;

(b) the transactions made on the specific SME growth market segment are clearly distinguished from other market activity within the other segments of the MTF;

(c) upon request of the MTF's home competent authority, the MTF shall provide a comprehensive list of the instruments listed on the SME growth market segment concerned, as well as any information on the operation of the SME growth market segment that the competent authority may request.';

(c) paragraphs 4 to 6 are replaced by the following:

'4. The criteria laid down in paragraphs 3 and 3a are without prejudice to compliance by the investment firm or market operator operating the MTF, or a segment thereof, with other obligations under this Directive relevant to the operation of MTFs.

5. Member States shall provide that the home competent authority may deregister a**n** MTF, or a segment thereof, as an SME growth market in any of the following cases:

(a) the investment firm or market operator operating the MTF, or a segment thereof, applies for its deregistration;

(b) the requirements in paragraph 3 or 3a are no longer complied with in relation to the MTF, or a segment thereof.

6. Members States shall require that if a home competent authority registers or deregisters a**n** MTF, or a segment thereof, as an SME growth market under this Article, that authority shall as soon as possible notify ESMA of that registration or deregistration. ESMA shall publish on its website a list of SME growth markets and shall keep that list up to date.';

(ca) paragraph 7 is replaced by the following:

7. Member States shall require that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another trading venue only where the issuer has been informed and has not objected. Where the other trading venue is not an SME growth market, the issuer shall be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter trading venue.

(d) paragraph 8 is replaced by the following:

'8. The Commission is empowered to adopt delegated acts in accordance with Article 89 to supplement this Directive by further specifying the requirements laid down in paragraphs 3 and 3a of this Article. Those requirements shall take into account the need to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market. They shall also take into account that de-registrations do not occur nor shall registrations be refused merely because of a temporary failure to comply with the requirement laid down in paragraph 3, point (a), of this Article.';

(4) the following Article 51a is inserted:

'*Article 51a*

Specific conditions for the admission of shares to trading

1. Member States shall **ensure**~~require~~ **that regulated markets** ~~ensure~~ **require** that the foreseeable market capitalisation of the shares for which admission to trading is sought, or if this cannot be assessed, the company's capital and reserves, including profit and loss, from the last financial year, shall be at least EUR 1 000 000 or an equivalent amount in a national currency other than the Euro.

2. Paragraph 1 shall however not apply to the admission to trading of shares fungible with shares already admitted to trading.

3. Where, as a result of an adjustment of the equivalent amount of the Euro in national currency, the market capitalisation expressed in national currency remains for a period of 1 year at least 10 % ~~**approximately**~~**more or less** the value of EUR 1 000 000, the Member State shall, within the 12 months following the expiry of that period, adjust its laws, regulations or administrative provisions to comply with paragraph 1.

4. Member States shall **ensure**~~**require**~~ that regulated markets **require**~~**ensure**~~ that ~~**at any time**~~ at least 10% of the subscribed capital represented by the class of shares concerned by the application for admission to trading is held by the public **at the time of admission**.

5. By way of derogation from paragraph 4, Member States may require that regulated markets establish at least one of the following rules for the application for admission to trading of shares at the time of admission:

(a) a sufficient number of shares is held by the public;

(b) the shares are held by a sufficient number of shareholders;

(c) the market value of the shares held by the public represents a sufficient level of subscribed capital in the class of shares concerned.

~~**5**~~**6. Where the percentage of shares held by the public is below 10% of the subscribed capital, Member States shall ensure that regulated markets require that a sufficient number of shares is distributed to the public to fulfil the requirement laid down in paragraph 4.**

6. Where admission to trading is sought for shares fungible with shares already admitted to trading, regulated markets shall assess, to fulfil the requirement laid down in paragraph 4, whether a sufficient number of shares has been distributed to the public in relation to all the shares issued and not only in relation to the shares fungible with shares already admitted to trading.

78~~8~~. The Commission is empowered to adopt delegated acts in accordance with Article 89 to amend this Directive by modifying the thresholds referred to in paragraphs 1 and 3 or in paragraph~~s~~ 4 ~~**and 5**~~ or in both, when the applicable thresholds impede the liquidity on public markets taking into account the financial developments.';

(5) Article 69 is amended as follows:

a) in paragraph 2, the following point (v) is added:

(v) take all necessary measures to

(i) control that investments firms have in place organisational arrangements to ensure that issuer-sponsored research that they ~~receive,~~ produce~~, use~~ or distribute is produced in compliance with the code of conduct developed by ESMA

(ii) suspend the ~~use or~~ distribution by investment firms of any issuer-sponsored research not produced in compliance with the code of conduct developed by ESMA

~~**(iii) require the temporary or permanent cessation of investment service(s) based on the issuer-sponsored research that the competent authority considers not to be in compliance with the code of conduct developed by ESMA**~~

(iii~~v~~) issue warnings to inform the public that research which has been labelled as an issuer-sponsored research is not produced in compliance with the code of conduct developed by ESMA.

(6) Art 70 is amended as follows:

a) in paragraph 3, the following point (xa) is added :

(xa) Article 24(3b) ~~**b**~~

(~~5~~7) Article 89 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an indeterminate period of time.

3. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4) Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(b) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) or Article 79(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.'.

(6) Article 90 is amended as follows:

The following paragraph 5 is added:

By [four years after entry into force of this Directive] the Commission shall review and assess whether the provision for non-objection in Article 33(7) remains appropriate to pursue the objectives for SME growth markets as stated in this Directive.

Article 2

Repeal of Directive 2001/34/EC

Directive 2001/34/EC is repealed as of … [OP please insert the date = 36~~24~~ months from date of entry into force of this Directive].

Article 3

Transposition

1. Member States shall adopt and publish, by … [OP please insert the date = **24**~~12~~ months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from … [OP please insert the date = **30**~~18~~ months after the date of entry into force of this Directive].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*