



Council of the European Union
General Secretariat

**Interinstitutional files:
2022/0411 (COD)**

Brussels, 15 March 2023

WK 2242/2023 REV 1

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Listing Act) Financial Services Attachés

Subject:	Listing Act Regulation: Regulation amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises / replies from 22 MS
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COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
2022/0411 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (Text with EEA relevance)	SK (Comments):SK SK: The Slovak Republic applies a scrutiny reservation and therefore our comments are still preliminary. Generally Slovakia supports the solutions provided for in this draft regulation. PT (Comments):PT For the moment, PT has a <u>scrutiny reservation</u>. Therefore, our comments are still <u>preliminary</u>. CZ (Comments):CZ Our remarks are only of preliminary nature. In general we welcome the initiative. PL (Comments):PL PL: In principle, we are supportive of the proposed changes. An important aspect for us, however, will be to introduce such facilitations for issuers and entrepreneurs that will not result in an excessive reduction of investor protection, in particular retail investors. The major concern for us is the introduction of a unified threshold for offers exempted from the

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	obligation to publish a prospectus at. EUR 12 million. We believe it is too high for many smaller capital markets. Please note that all the comments in this table have a preliminary character, as Poland did not yet adopt an official Government's position. Therefore, we may submit further comments at later stages of the work on this proposal. NL (Comments):NL NL (Comments): <u>All our comments are made under parliamentary scrutiny.</u> IT (Comments):IT The Italian delegation, since the package "Listing Act" is still under scrutiny by the Italian Parliamentary Commissions, can only express a general appreciation and support for the legislative proposal and reserves at later stages to explicit its official position. However, as regard Prospectus regulation, we see merit in the reduction of the regulatory burden for issuers without investor protection and market efficiency, therefore we appreciate and support the approach adopted by the Commission that seems to properly address both instances where companies seek access to public markets for the first time (IPO) and where

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Commission proposal	Drafting Suggestions Comments
	they access public markets for follow-on of equity or non-equity securitiesmain of the relevant . At the same time, with reference to MAR Regulation, we see merit in the distinction of the notion of “<i>inside information</i>” between a notion for the purpose of the market abuse prohibition and a notion for the disclosure obligation. The current (and excessively broad) notion of inside information implies that issuers are required to disclose information at a very early stage. Moreover, in case of protracted processes (such as a merger), the disclosure requirements related to the so called “intermediate steps” bring high compliance costs in a context of lack of legal clarity. Therefore, Italy support the Commission proposal aimed at narrowing down the scope of the obligation to disclose inside information and enhance legal clarity as to what information needs to be disclosed and when FR (Comments):FR FRANCE: We strongly support both the objective and the approach of the Listing Act legislative proposal. We want the text to be ambitious and to enhance access to market funding for companies by reducing the administrative burden, clarifying market abuse rules and recalibrating parameters of the listing framework. The Listing Act should be discussed bearing in mind the need of SME but also of innovative companies, which are the other important target of policy effort to make market financing more efficient and resilient. Comments provided below are preliminary and mostly aim at expressing our support, questioning aspect that are still to be clarified and ensuring the legal soundness of the text –

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	notably on MAR. RO (Comments):RO RO Comments General remarks We welcome the European Commission Listing Act Proposal that is targeted to make public capital markets in the Union more attractive and to facilitate the access of companies to market-based sources of financing, in line with the main aim of the Capital Markets Union (CMU). As a general approach, we support the measures that encourage companies to list and remain listed and to facilitate access to public markets while taking into consideration the need to properly address an adequate level of investor protection. BE (Comments):BE The remarks below are preliminary in nature and subject to a scrutiny reservation. Additional comments might be sent at a later stage. As mentioned by ESMA in its response to the European Commission's targeted consultation on the Listing Act, BE believes that no form of facilitation of companies' access to EU markets should come at the detriment of the rules established to combat market abuse. The current market abuse regime works efficiently and its core mechanisms should remain unaltered.

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	This being said, BE is open for discussion and could support some alleviations of the market abuse prevention mechanisms. We might have further comments at a later stage regarding the Annexes or the recitals. LU (Comments): LU <u>General comment</u> LU supports the Commission's initiative to make the listing and post-listing process as efficient as possible in order to make European capital markets stronger and more attractive for issuers seeking capital, in particular SME's, and therefore welcomes the Commission's legislative proposal amending the current Prospectus Regulation, Market Abuse Regulation and Markets in Financial Instruments Regulation. However, we would like to stress that we are highly concerned about the unjustified extension of some of ESMA's powers without any clear added value or justification. Please refer to our detailed comments regarding Articles 25 and 25b of the proposal on the Market Abuse Regulation. Please note that the comments below are of preliminary nature and that LU reserves the right to provide further comments if necessary. BG (Comments): BG BG:

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	General comments Bulgaria supports the objectives of the proposal, which introduces measures to facilitate companies' access to capital markets. Bulgaria considers it important to ensure the right balance between alleviating the administrative burden and reducing costs for issuers and maintaining a high level of investor protection. Bulgaria considers that a deadline should be provided for the adoption of national measures to implement the regulation. Bulgaria believes that sufficient time should be left to the Member States to adopt the necessary amendments to the national legislation. Regarding the proposal to introduce a harmonized threshold of EUR 12,000,000, below which publication of a prospectus for a public offering will not be required, Bulgaria considers that the option for Member States to determine the threshold at national level should be preserved in order to take into account the specificities and the size of their markets. Bulgaria considers that the threshold of 12,000,000 euros is too high considering the size of the national market and the size of the issuers. Bulgaria does not share the EC's argument that the lack of a single threshold in the Member States represents an obstacle to cross-border offerings, as the exemption under the threshold is applicable when the offer of securities is limited within the territory of the given Member State. Bulgaria considers that the proposal for the issuer to have the opportunity to determine the language in which the prospectus will be drawn up by being able to use the language customary

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	in the sphere of international finance, i.e. English language, would deprive investors of the opportunity to take an informed investment decision. Another important aspect of the proposal in respect of investor protection is the interplay between the different exemptions, namely the exemptions in Article 1, par. 4 and 5, and the exemption in Article 3. It should be clear what documents Member states and market operators are allowed to require in situations where the issuer falls under these exemptions and would not issue a prospectus. We do not provide comments on the recitals at this stage. LT (Comments): LT Please note that the comments in this questionnaire are of a preliminary nature. We reserve the right to revise or amend comments once our analysis and the discussions of the Working Party has advanced further.
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the	

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Functioning of the European Union, and in particular Article 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,	
Whereas:	
(1) By developing Union capital markets and decreasing their	

¹ OJ C , , p. .

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Commission proposal	Drafting Suggestions Comments
fragmentation along national borders, the Capital Markets Union² project aims to enable companies to access funding sources other than bank lending and to adapt their financing structure when maturing and growing in size. More diversified financing in the form of debt and equity will decrease risks for individual companies and the overall economy as well as help Union companies, including small and mid-sized enterprises (SMEs), realise their growth potential.	
(2) The Capital Markets Union requires an efficient and effective regulatory framework that supports access to public equity funding for companies, including SMEs. Directive	

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on Building a Capital Markets Union (COM(2015) 468 final).

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2014/65/EU of the European Parliament and of the Council ³ created a new type of trading venue, the SME growth market, to facilitate access to capital specifically for SMEs. Recital 132 of Directive 2014/65/EU also expressed the need to monitor how future regulation should further foster and promote the use of SME growth markets, and provide further incentives for SMEs to access capital markets through SME growth markets.	
(3) Regulation (EU) 2019/2115 of the European Parliament and of the Council ⁴ introduced proportionate alleviations to enhance the use of SME growth markets and to reduce the regulatory requirements for issuers	

³ 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).

⁴ 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).

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seeking admission of securities on SME growth markets, while preserving an appropriate level of investor protection and market integrity. Nevertheless, more needs to be done to make access to Union public markets more attractive and render the regulatory treatment of companies more flexible and proportionate to their size. The High-Level Forum on the Capital Markets Union⁵ recommended the Commission to remove regulatory obstacles that hold companies back from accessing public markets. The Technical Expert Stakeholder Group on SMEs⁶ set out detailed recommendations on how to foster companies and, in particular, SMEs to access Union public markets.	
(4) Building on a Commission's	

⁵ Final report of the High Level Forum on the Capital Markets Union - A new vision for Europe's capital markets (10 June 2020).

⁶ Final report of the Technical Expert Stakeholder Group (TESG) on SMEs - Empowering EU capital markets - Making listing cool again (May 2021).

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initiative within its post-Covid-19 recovery strategy, i.e. the Capital Markets Recovery Package, targeted amendments have been introduced into Regulation (EU) 2017/1129 of the European Parliament and of the Council⁷, Regulation (EU) 2017/2402 of the European Parliament and of the Council⁸, Directive 2014/65/EU and Directive 2004/109/EC of the European Parliament and of the Council⁹ to make it easier for companies affected by the economic crisis caused by the pandemic to raise equity capital on public markets, facilitate investments in the real economy, allow for the rapid re-	

⁷ 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).

⁸ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

⁹ 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).

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capitalisation of businesses, and increase banks' capacity to finance the recovery.	
(5) On the basis of the recommendations of the Technical Expert Stakeholder Group on SMEs and building on Regulation 2019/2115 and on the measures adopted under Regulation (EU) 2021/337 of the European Parliament and of the Council¹⁰, and as part of the Capital Markets Recovery Package, the Commission committed to put forward a legislative initiative to make access to Union public markets more attractive by reducing compliance costs, and by removing significant obstacles that hold back companies, including SMEs, from tapping public markets in the Union. To achieve its objectives, the scope of that	PT (Drafting):PT

¹⁰ Regulation (EU) 2021/337 of the European Parliament and of the Council of 16 February 2021 amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries and Directive 2004/109/EC as regards the use of the single electronic reporting format for annual financial reports, to support the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 1).

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legislative initiative should be broad and address obstacles that concern companies' access to public markets, namely the pre-initial public offering (IPO), IPO and post-IPO phases. In particular, the simplification and removal of obstacles should focus on the IPO and post-IPO phases by addressing burdensome disclosure requirements to seek admission to trading on public markets laid down in Regulation (EU) 2017/1129, and by addressing burdensome ongoing disclosure requirements laid down in Regulation (EU) No 596/2014 of the European Parliament and of the Council ¹¹ .	
(6) Regulation (EU) 2017/1129 lays down requirements for the drawing up, approval and distribution of the	NL (Comments):NL

¹¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

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prospectus to be published when securities are offered to the public or admitted to trading on a regulated market that is situated in or operating within a Member State. To reinforce the attractiveness of Union public markets, it is necessary to address obstacles stemming from the length, complexity and high costs of the prospectus documentation, both where companies, including SMEs, seek access to public markets for the first time (IPO), and where companies access public markets for secondary issuances of equity or non-equity securities. For the same reason, the length of the scrutiny and approval process of those prospectuses by competent authorities, and the lack of convergence of those processes across the Union should also be addressed.	NL (Comments): In the preamble, the word “IPO” is used for the first time. It was not mentioned in the previous regulation. Is it clear what the meaning of IPO is?
(7) For small offers of securities to the public, the costs of producing a prospectus could be disproportionate in	

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relation to the total consideration of the offer. Regulation (EU) 2017/1129 does not apply to offers of securities to the public with a total consideration in the Union of less than EUR 1 000 000. In addition, in view of the varying sizes of financial markets across the Union, Member States may exempt offers of securities to the public from the obligation to publish a prospectus where such offer stays below a certain threshold, which Member States may set between EUR 1 000 000 and EUR 8 000 000. Certain Member States have used that possibility, which has led to different exemption thresholds, creating complexity and lack of clarity for both issuers and investors. In order to reduce complexity in the application of various thresholds under Regulation (EU) 2017/1129 and to foster legal clarity, the lower threshold of EUR 1 000 000 for the non-applicability of that Regulation should be removed.	

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(8) To foster clarity and convergence across the Union and to reduce unnecessary burden for companies, a single harmonised threshold of EUR 12 000 000 should be set out at Union level and should replace the existing optional thresholds. Below that threshold, offers of securities to the public should be exempted from the obligation to publish a prospectus, provided that those offers do not require passporting. In the case of such an exemption, however, Member States should be able to require other disclosure requirements at national level to the extent that such requirements do not constitute a disproportionate or unnecessary burden.	
(9) Cross-border offers of securities to the public that are exempted from the obligation to publish a prospectus should be subject to the national disclosure requirements set out by the concerned	

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Member States, where applicable. However, issuers, offerors or persons asking for the admission to trading on a regulated market of securities which are not subject to the obligation to publish a prospectus should benefit from the single passport where they choose to draw up a prospectus on a voluntary basis.	
(10) Regulation (EU) 2017/1129 contains several provisions that refer to the total consideration of certain offers of securities to the public to be calculated over a period of 12 months. To provide clarity to issuers, investors and competent authorities and to avoid divergent approaches across the Union, it is necessary to specify how a the total consideration of those offers of securities to the public should be calculated over a period of 12 months.	LU (Drafting): LU (10) Regulation (EU) 2017/1129 contains several provisions that refer to the total consideration of certain offers of securities to the public to be calculated over a period of 12 months. To provide clarity to issuers, investors and competent authorities and to avoid divergent approaches across the Union, it is necessary to specify how <u>a</u> the total consideration of those offers of securities to the public should be calculated over a period of 12 months. LU (Comments): LU

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	Typo.
(11) Article 1(5), point (a), of Regulation (EU) 2017/1129 contains an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market of securities fungible with securities already admitted to trading on the same regulated market, provided that the newly admitted securities represent over a period of 12 months less than 20 % of the number of securities already admitted to trading to the same regulated market and provided such admission is not combined with an offer of securities to the public. To reduce complexity and to limit	

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unnecessary costs and burdens, that exemption should apply to both the offer to the public and the admission to trading on a regulated market of the concerned securities and the percentage threshold that determines the eligibility for that exemption should be increased. For the same reason, that modified exemption should also encompass an offer to the public of securities fungible with securities already admitted to trading on an SME growth market.	
(12) Article 1(5), point (b), of Regulation (EU) 2017/1129 also contains an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market of shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that the newly admitted shares represent, over a period of 12 months, less than 20 % of the	

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number of shares of the same class already admitted to trading on the same regulated market. That 20 % should be aligned with the threshold for the exemption for securities fungible with securities already admitted to trading on the same regulated market, the scope of the two exemptions being equivalent.	
(13) Companies whose securities are admitted to trading on a regulated market or on an SME growth market are to comply with the periodic and ongoing disclosure requirements that are laid down in Regulation (EU) No 596/2014, Directive 2004/109/EC or, for issuers on SME growth markets, in Commission Delegated Regulation (EU) 2017/565 ¹² . Where those companies issue securities fungible with securities already admitted	HU (Comments):HU It is necessary to specify that, with regard to the new exemption introduced by art 1 (4) and (5) (a) what does “fungible securities” mean (this may vary in national legislation); (b)what are the conditions for a company to be considered “in financial distress” (C) the concept of ‘significant transformation’ also requires a precise explanation. FR

¹² Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

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to trading on those trading venues, they should be exempted from the obligation to publish a prospectus, as much of the required content of a prospectus will already be publicly available and investors will be able to trade on the basis of that information. However, such exemption should be subject to safeguards that do ensure that the company issuing the securities has complied with the periodic and ongoing disclosure requirements under Union law and is not in financial distress or restructuring or going through a significant transformation, including a change in control resulting from a takeover, a merger, or a division. Furthermore, to ensure the protection of investors, in particular retail investors, a short-form document with key information for investors should still be made available to the public and filed with the competent authority of the home Member State. Where the scope of the	(Comments):FR <i>“or going through a significant transformation”</i> : this caveat is not reflected in the text of Article 1(4)(db) and Article 1(5)(ba) and should be introduced in the operative text of the Regulation. This requires defining what a “significant transformation” is. We have proposed modifications to that end. <i>“a short-form document...”</i>: The purpose and the legal status of this document remain unclear. Those aspects need clarifications in the recital and the operative text of the Regulation.

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new exemption makes other existing exemptions redundant, such other exemptions should be removed. To enable successful companies to scale up and benefit from greater exposure to a broader pool of investors, that new exemption and its eligibility criteria should also be applicable to companies that are willing to make a transition from an SME growth market to a regulated market. However, to enable investors to take informed investment decisions, it is necessary to set out safeguards to ensure that those investors have access to sufficient information about those companies.	
(14) Article 1(4), point (j) of Regulation (EU) 2017/1129 exempts credit institutions from the obligation to publish a prospectus in the case of an offer or admission to trading on a regulated market of certain non-equity securities issued in a continuous or	

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Commission proposal	Drafting Suggestions Comments
repeated manner up to an aggregated amount of EUR 75 000 000 over a period of 12 months. Regulation (EU) 2021/337, as part of the Capital Markets Recovery Package, increased that threshold to EUR 150 000 000 for a limited period to foster fundraising for credit institutions and give those institutions breathing space to support their clients in the real economy. To continue to support fundraising through capital markets of issuers, including credit institutions, the increased threshold introduced by Regulation (EU) 2021/337 should be made permanent.	
(15) To reduce the complexity of the prospectus documentation, and to make the prospectus a more harmonised document to improve its readability for investors across the Union, irrespective of the jurisdiction where securities are offered to the public or admitted to trading on a regulated market, it is	

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necessary to introduce a standardised format for the prospectus for both equity and non-equity securities and to require that the information included in the prospectus is disclosed in a standardised sequence.	
(16) In certain cases, the prospectus or its related documents may reach massive sizes, becoming unfit for investors to take an informed investment decision. To improve the readability of the prospectus and make it easier for investors to analyse it and navigate through it, it is necessary to set out a maximum page limit. However, such page limit should only be introduced for offers to the public or admissions to trading on a regulated market of shares. A page limit would not be appropriate for equity securities other than shares or non-equity securities, which include a broad range of different instruments, including complex ones. Furthermore, the	NL (Comments):NL NL (Comments): This Recital seems inconsistent with the proposed paragraph 4 of Article 6 according to which the page limit applies to prospectuses for shares <u>and securities equivalent to shares</u> whereas according to this Recital the page limit only applies to shares and states that it would not be appropriate for equity securities other than shares. DE (Drafting): DE

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Commission proposal	Drafting Suggestions Comments
summary, information incorporated by reference or information to be provided when the issuer has a complex financial history or has made a significant financial commitment should be excluded from the page limit.	
(17) The standardised format and the standardised sequence of the information to be disclosed in the prospectus should be a requirement, irrespective of whether a prospectus, or a base prospectus, is drawn up as a single document or is composed of separate documents. It is therefore necessary that Annexes I, II and III to Regulation (EU) 2017/1129 set out the standardised sequence of the sections for the information to be	FR (Drafting):FR (17) The standardised format and the standardised sequence of the information to be disclosed in the prospectus should be a requirement, irrespective of whether a prospectus, or a base prospectus, is drawn up as a single document or is composed of separate documents. It is therefore necessary that Annexes I, II and III to Regulation (EU) 2017/1129 set out the standardised sequence of the sections for the information to be disclosed in the prospectus or, separately, in the registration document and in the securities note. Those Annexes should be the basis for the Commission to amend any delegated acts that impose a standardised format and

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Commission proposal	Drafting Suggestions Comments
disclosed in the prospectus or, separately, in the registration document and in the securities note. Those Annexes should be the basis for the Commission to amend any delegated acts that impose a standardised format and sequence of sections of the prospectus, the base prospectus and the final terms, including on disclosure items within those sections. Furthermore, it is necessary to set out the standardised sequence of the information to be disclosed in the prospectus summary.	sequence of sections of the prospectus, the base prospectus and the final terms, including on disclosure items within those sections. Furthermore, it is necessary to set out the standardised sequence of the information to be disclosed in the prospectus summary. FR (Comments):FR See new Recital 17a proposed below
	FR (Drafting):FR <u>(17a) The requirements of a standardised sequence and of a page limit should be adapted for issuers who choose to produce a universal registration document every year to benefit from the status of frequent issuers awarded under Regulation (EU) 2017/1129. A frequent issuer should be allowed to use its universal registration document and any amendments thereto as a constituent part of its prospectus. In that case, the requirements of a standardised sequence and of a page limit should be lifted by derogation, as they would otherwise be incompatible with the use of a universal registration document. Frequent issuers should be required to insert a cross reference list identifying where each information of the standardised sequence may be found in</u>

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	<u>their prospectus.</u> FR (Comments):FR We strongly support the new prospectus formats, we would like to ensure their compatibility with the use of a URD, which is the most exhaustive document for investors in terms of information.
(18) The prospectus summary is a key document that serves as a guidance to support retail investors in better understanding and navigating through the whole prospectus and thus to make informed investment decisions. To make the prospectus summary more easily readable and comprehensible for retail investors, it is necessary to allow issuers to present or summarise information in the prospectus summary in the form of charts, graphs or tables.	
(19) Regulation (EU) 2017/1129 allows issuers to extend the maximum length of the prospectus summary by one	LU (Comments): LU

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page when there is a guarantee attached to the securities, since information on both the guarantee and the guarantor needs to be provided. However, where there is more than one guarantor, an additional page may not be sufficient. It is therefore necessary to extend further the maximum length of the prospectus summary in the event of guarantees that are provided by more than one guarantor.	In relation to our comment below on Article 7(7), we would suggest adjusting the page limit of the summary in order to allow for 1 additional side of A4-sized paper <i>per guarantor</i>.
(20) Regulation (EU) 2017/1129 allows an issuer which has received approval for a universal registration document for 2 consecutive years to file without prior approval all subsequent universal registration documents and any amendments thereto. To reduce unnecessary burdens and incentivise the use of the universal registration document, it is necessary to reduce the requirement of receiving the competent authority's approval to obtain the status of frequent issuer and the benefit to file	FR (Drafting):FR (20) Regulation (EU) 2017/1129 allows an issuer which has received approval for a universal registration document for 2 consecutive years to file without prior approval all subsequent universal registration documents and any amendments thereto. To reduce unnecessary burdens and incentivise the use of the universal registration document, it is necessary to reduce the requirement of receiving the competent authority's approval to obtain the status of frequent issuer and the benefit to file only all subsequent universal registration documents and any amendments thereto to 1 year. Such alleviation will not affect investor protection, as a universal registration document and any amendments thereto may not be used as the constituent part of a prospectus without being resubmitted for approval to <u>approved by</u> the relevant competent authority. Furthermore, a competent authority is allowed to review a

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Commission proposal	Drafting Suggestions Comments
only all subsequent universal registration documents and any amendments thereto to 1 year. Such alleviation will not affect investor protection, as a universal registration document and any amendments thereto may not be used as the constituent part of a prospectus without being resubmitted for approval to the relevant competent authority. Furthermore, a competent authority is allowed to review a universal registration document which has been filed with it on an ex-post basis whenever that competent authority deems it necessary and, where appropriate, request amendments.	universal registration document which has been filed with it on an ex-post basis whenever that competent authority deems it necessary and <u>may</u>, where appropriate, request amendments. FR (Comments):FR Redrafting for clarification: there is no “resubmission for approval” of a filed URD. A filed URD will eventually be approved, once completed by a securities note and a summary (cf. Art. 10(3) of Regulation (EU) 2017/1129.
(21) To facilitate the IPO of private companies on Union’s public markets and, in general, to reduce unnecessary costs and burdens for companies that are offering securities to the public or seeking admission to trading on a regulated market, the prospectus for both	

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Commission proposal	Drafting Suggestions Comments
equity and non-equity securities should be significantly streamlined, while ensuring that a sufficient high level of investor protection is maintained.	
(22) While being too prescriptive for SMEs, it appears that the level of disclosure in the EU Growth Prospectus would be fit for purpose for companies seeking admission to trading on a regulated market. It is therefore appropriate to align Annexes I, II and III to Regulation (EU) 2017/1129 to the level of disclosure of the EU Growth prospectus, by taking as reference the related Annexes laid down in Commission Delegated Regulation (EU) 2019/980 ¹³ .	NL (Comments):NL NL (Comments): We are not sure if we understand the ratio of this Recital. Annex I, II and III include the content of standard prospectuses but the Recital refers to prospectuses for companies seeking admission to trading on a regulated market only. It is not clear to us what is intended with this Recital. Furthermore, we wonder if the level of disclosure is alleviated for the current prospectus regime (standard prospectus) to the level of disclosure of the EU Growth prospectus. This is unclear from this Recital.

¹³ Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).

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Commission proposal	Drafting Suggestions Comments
(23) Due to the growing importance of sustainability considerations in investment decisions, investors are increasingly considering information on environmental, social and governance (ESG) matters when taking informed investment decisions. It is therefore necessary to prevent greenwashing, by establishing ESG-related information to be provided, where relevant, in the prospectus for equity or non-equity securities offered to the public or admitted to trading on a regulated market. That requirement should, however, not overlap with the requirement laid down in other Union law to provide that information. Companies that offer equity securities to the public or seek the admission to trading of equity securities on a regulated market should therefore incorporate by reference in the prospectus, for the periods covered by the historical financial information, the management	LU (Comments): LU While we do not oppose ESG-related information to be provided in the prospectus, these developments should be closely monitored in order to avoid any duplication of disclosure, and should be viewed alongside the proposal for the EU Green Bond Standard, which is currently being negotiated.

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Commission proposal	Drafting Suggestions Comments
and consolidated management reports, which include the sustainability reporting, as required by Directive 2013/34/EU of the European Parliament and of the Council ¹⁴ . Moreover, the Commission should be empowered to set out a schedule specifying the ESG-related information to be included in prospectuses for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives.	
(24) Article 14 of Regulation (EU) 2017/1129 provides for the possibility to draw up a simplified prospectus for secondary issuances by companies already admitted to trading on a regulated market or a SME growth market continuously for at least 18 months. However, the level of disclosure	CZ (Drafting):CZ (24) Article 14 of Regulation (EU) 2017/1129 provides for the possibility to draw up a simplified prospectus for secondary issuances by companies already admitted to trading on a regulated market or a SME growth market continuously for at least 18 months. However, the level of disclosure of the simplified prospectuses for secondary issuances is still considered too

¹⁴ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

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of the simplified prospectuses for secondary issuances is still considered too prescriptive and close to a standard prospectus to make a significant difference for secondary issuances of companies whose securities are already admitted to trading on a regulated market or an SME growth market and that are subject to periodic and ongoing disclosure requirements. To make the listing documentation easier to understand, and thus to make investor protection more effective, while reducing costs and burdens for issuers, a new and more efficient EU Follow-on prospectus for such secondary issuances should be introduced. However, to limit burdens for issuers and to protect investors, it is necessary to provide for a transitional period for prospectuses approved under the simplified disclosure regime for secondary issuances before the date of application of the new regime. Such EU Follow-on prospectus should be available	prescriptive and close to a standard prospectus to make a significant difference for secondary issuances of companies whose securities are already admitted to trading on a regulated market or an SME growth market and that are subject to periodic and ongoing disclosure requirements. To make the listing documentation easier to understand, and thus to make investor protection more effective, while reducing costs and burdens for issuers, a new and more efficient EU Follow-on prospectus for such secondary issuances should be introduced. However, to limit burdens for issuers and to protect investors, it is necessary to provide for a transitional period for prospectuses approved under the simplified disclosure regime for secondary issuances before the date of application of the new regime. Such EU Follow-on prospectus should be available for issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months, or offerors of those securities. Those criteria should ensure that such issuers have complied with the periodic and ongoing disclosure requirements laid down in Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014, or, where applicable, Delegated Regulation (EU) 2017/565. To enable issuers to fully benefit from this alleviated prospectus type, the scope of the EU Follow-on prospectus should be broad and encompass public offers or admission to trading on a regulated market of securities that are fungible or not fungible with securities already admitted to trading. However, an issuer who has only non-equity securities admitted to trading on a regulated market or an SME growth market should not be allowed to draw up an EU Follow-on prospectus for the admission to trading on a regulated market of equity securities, as an IPO of equity securities requires the disclosure of a full prospectus to enable investors to take an informed investment decision. CZ

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for issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months, or offerors of those securities. Those criteria should ensure that such issuers have complied with the periodic and ongoing disclosure requirements laid down in Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014, or, where applicable, Delegated Regulation (EU) 2017/565. To enable issuers to fully benefit from this alleviated prospectus type, the scope of the EU Follow-on prospectus should be broad and encompass public offers or admission to trading on a regulated market of securities that are fungible or not fungible with securities already admitted to trading. However, an issuer who has only non-equity securities admitted to trading on a regulated market or an SME growth market should not be allowed to draw up an EU Follow-on prospectus for	(Comments):CZ Typing error

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the admission to trading on a regulated market of equity securities, as an IPO of equity securities requires the disclosure of a full prospectus to enable investors to take an informed investment decision.	
(25) The EU Recovery prospectus referred to in Article 14a of Regulation (EU) may no longer be used after 31 December 2022. That EU Recovery prospectus had the advantage that it was composed of a single document that was limited in size, making it easy for issuers to draw it up and easy for investors to understand it. For those reasons, the EU Follow-on prospectus should follow the same model, and should be subject to the same reduced scrutiny period as the EU Recovery prospectus. However, the requirements for the EU Follow-on prospectus should for obvious reasons not require Covid-19 crisis-related disclosures. As the EU Follow-on prospectus should replace both the	

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simplified prospectus for secondary issuances and the EU Recovery prospectus, it should be permanent and available for both secondary issuances of equity and non-equity securities. In addition, its use should not be subject to any restrictions beyond the requirement of the minimum and continuous period of admission of the securities concerned to trading on a regulated market or an SME growth market.	
(26) The EU Follow-on prospectus should contain a short-form summary as a useful source of information for investors, in particular retail investors. That summary should be set out at the beginning of the EU Follow-on prospectus and should focus on key information enabling investors to decide which offers to the public and admissions to trading of shares to study further, and subsequently to review the EU Follow-on prospectus as a whole to take an	LU (Drafting): LU (26) The EU Follow-on prospectus should contain a short-form summary as a useful source of information for investors, in particular retail investors. That summary should be set out at the beginning of the EU Follow-on prospectus and should focus on key information enabling investors to decide which offers to the public and admissions to trading of <u>securities</u> to study further, and subsequently to review the EU Follow-on prospectus as a whole to take an informed investment decision. LU

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Commission proposal	Drafting Suggestions Comments
informed investment decision.	(Comments): LU It is necessary to amend recital (26) by replacing the word “shares” by the word “securities”, in order to be consistent with Article 7, paragraph 12b, third subparagraph, point c)(iii), which refers to the key information on <i>securities</i> to be included in the EU Follow-on prospectus, and with Article 14b of this proposal, according to which an EU Follow-on prospectus can be drawn up in the case of an offer of <i>securities</i> to the public or of an admission to trading of <i>securities</i> on a regulated market.
(27) In order to make the EU Follow-on prospectus a harmonised document and facilitate its readability for investors across the Union, irrespective of the jurisdiction where securities are offered to the public or admitted to trading on a regulated market, its format should be standardised for both equity and non-equity securities. For the same reason, the information in the EU Follow-on prospectus should be disclosed in a standardised sequence. To improve the readability of the EU Follow-on prospectus and to make it easier for investors to analyse it and navigate through it, the number of pages of such	

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prospectus should be limited for secondary issuances of shares. Such a page limit would, however, be inappropriate for the broad category of equity securities other than shares or non-equity securities, which include a wide range of different instruments, including complex ones. Furthermore, the summary, information incorporated by reference or information to be provided when the issuer has a complex financial history or has made a significant financial commitment should be excluded from the page limit.	
(28) One of the key objectives of the Capital Markets Union is to facilitate access of SMEs to public markets in the Union, to provide those SMEs with other sources of funding than bank lending and the opportunity to scale up and grow. The cost of producing a prospectus may be a deterrent for SMEs willing to offer securities to the public, considering the	

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typical low size of the consideration of those offers. The EU Growth prospectus is a lighter prospectus, introduced by Regulation (EU) 2017/1129, and is available for SMEs and few other categories of beneficiaries, including companies with market capitalisation up to EUR 500 million the securities of which are already admitted to trading on an SME growth market. The EU Growth prospectus aimed to reduce the costs of preparing a prospectus for smaller issuers, while providing investors with material information to assess the offer and take an informed investment decision. While issuers who draw up an EU Growth prospectus can achieve quite substantial costs savings, the level of disclosure of an EU Growth prospectus is still considered too prescriptive and close to a standard prospectus to make a significant difference for SMEs. There is therefore a need for an EU Growth issuance document that has light	

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requirements to make the listing documentation for SMEs even less complex and burdensome and to enable SMEs to achieve even more important savings. In order to limit burdens for issuers and to protect investors, it is, however, necessary to provide for a transitional period for EU Growth prospectuses approved before the date of application of the new regime.	
(29) The requirements as to the content of the EU Growth issuance document should be light, taking into account the level of disclosure of the EU Recovery prospectus and some of the most straightforward admission documents that some SME growth markets require issuers to produce in case of an exemption from the obligation to publish a prospectus, and which content is laid down in the SME growth markets' rulebooks. The reduced information to be disclosed in an EU	

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Growth issuance document should be proportionate to the size of the companies listed on SME growth markets and their fundraising needs and ensure an adequate level of investor protection. Eligible companies should be required to use the EU Growth issuance document for their offer of securities to the public, to facilitate the transition to a new and more efficient regime and to prevent the risk that advisors convince small companies to continue using the full prospectus.	
(30) The EU Growth issuance document should be available for SMEs, issuers other than SMEs the securities of which are admitted or are to be admitted to trading on an SME growth market, and offers from small unlisted companies up to EUR 50 000 000 over a period of 12 months. To avoid a two-tier disclosure standard on regulated markets depending on the size of the issuer, the EU Growth	

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issuance document should not be available for companies the securities of which are already admitted or are to be admitted to trading on regulated markets. However, in order to facilitate an upgrade to a regulated market and to enable issuers to benefit from an exposure to a broader investors' base, issuers that have already securities admitted to trading on an SME growth market continuously for at least the last 18 months should be allowed to use an EU Follow-on prospectus to transfer to a regulated market, unless they benefit from an exemption for such follow-on issuance on a regulated market.	
(31) The EU Growth issuance document should contain a short-form summary, as a useful source of information for retail investors, having the same format and content as the summary of the EU Follow-on prospectus. That summary should be set	LU (Drafting): LU (31) The EU Growth issuance document should contain a short-form summary, as a useful source of information for retail investors, having the same format and content as the summary of the EU Follow-on prospectus. That summary should be set out at the beginning of the EU Growth issuance document and should focus on key information enabling investors to decide

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Commission proposal	Drafting Suggestions Comments
out at the beginning of the EU Growth issuance document and should focus on key information enabling investors to decide which offers to the public and admissions to trading of shares to study further, and subsequently to review the EU Growth issuance document as a whole in order to take an informed investment decision.	which offers to the public and admissions to trading of securities shares to study further, and subsequently to review the EU Growth issuance document as a whole in order to take an informed investment decision. LU (Comments): LU It is necessary to amend recital (31) of this proposal by replacing the word “shares” by the word “securities”, and by deleting the reference to admissions to trading, in order to be consistent with Article 15a.
(32) The EU Growth issuance document should be a harmonised document which is easy to read by investors, irrespective of the jurisdiction within the Union where the securities concerned are offered to the public or admitted to trading on a regulated market. Its format should therefore be standardised for both equity and non-equity securities and the information included in the EU Growth issuance document should be disclosed in a standardised sequence. To further	LU (Drafting): LU (32) The EU Growth issuance document should be a harmonised document which is easy to read by investors, irrespective of the jurisdiction within the Union where the securities concerned are offered to the public or admitted to trading on a regulated market. Its format should therefore be standardised for both equity and non-equity securities and the information included in the EU Growth issuance document should be disclosed in a standardised sequence. To further standardise and improve the readability of the EU Growth issuance document and make it easier for investors to analyse it and navigate through it, a page limit should be introduced in the event that an EU Growth issuance document is drawn up for securitiessecondary issuances of shares. That page limit should also be efficient in terms of the lighter requirements as to the content of the EU Growth issuance document and effective in

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standardise and improve the readability of the EU Growth issuance document and make it easier for investors to analyse it and navigate through it, a page limit should be introduced in the event that an EU Growth issuance document is drawn up for secondary issuances of shares. That page limit should also be efficient in terms of the lighter requirements as to the content of the EU Growth issuance document and effective in terms of providing the necessary information to enable investors to make informed investment decisions. A page limit would, however, be inappropriate for the broad category of equity securities other than shares or non-equity securities, which include a wide range of different instruments, including complex ones. Furthermore, the summary, information incorporated by reference or information to be provided when the issuer has a complex financial history or has made a significant financial	terms of providing the necessary information to enable investors to make informed investment decisions. A page limit would, however, be inappropriate for the broad category of equity securities other than shares or non-equity securities, which include a wide range of different instruments, including complex ones. Furthermore, the summary, information incorporated by reference or information to be provided when the issuer has a complex financial history or has made a significant financial commitment should be excluded from the page limit. LU (Comments): LU It is necessary to amend recital (32) of this proposal by replacing the word “secondary issuances of shares” with the word “securities”, in order to be consistent with the new Article 15a which refers to the EU Growth issuance document.

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commitment should be excluded from the page limit.	
(33) The EU Follow-on prospectus and the EU Growth issuance document should complement the other forms of prospectuses laid down in Regulation (EU) 2017/1129. Therefore, unless explicitly stated otherwise, all references to the term ‘prospectus’ under Regulation (EU) 2017/1129 should be understood as referring to all different forms of prospectuses, including the EU Follow-on prospectus and the EU	NL (Comments):NL NL (Comments): This Recital clarifies that the term ‘prospectus’ should be understood as referring to all types of prospectuses including the EU Growth issuance document. However, there does not seem to be a specific provision in the proposal to arrange this. As the newly introduced EU Growth issuance document does not include the word ‘prospectus’ it does not seem to clearly follow

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Growth issuance document.	from the legal text that this document should also be understood as a prospectus. We propose to include the definition of ‘prospectus’ in Article 2 of the Prospectus Regulation, or clarify in another manner (not only in a Recital) that all references to prospectus should include references to the EU Growth issuance document (and the EU Follow-on prospectus). BE (Comments):BE Using the term ‘issuance document’ for a prospectus could be misleading and unnecessary. Moreover, the principle that all references to the term ‘prospectus’ under Regulation (EU) 2017/1129 should be understood as referring to all different forms of prospectuses, including the EU Follow-on prospectus and the EU Growth issuance document has not been introduced in the text of the Regulation. We are in favour of keeping the term ‘prospectus’.
(34) Risk factors that are material and specific to the issuer and his or her securities should be mentioned in the prospectus. For that reason, risk factors are also to be presented in a limited number of risk categories depending on their nature. However, issuers should no longer be required to rank the most material risk factors, which is complicated and burdensome for issuers.	FR (Drafting):FR (34) Risk factors that are material and specific to the issuer and his or her securities should be mentioned in the prospectus. For that reason, risk factors are also to be presented in a limited number of risk categories depending on their nature. However, issuers should no longer be required to rank the most material risk factors, which is complicated and burdensome for issuers. To improve the comprehensibility of the prospectus and make it easier for investors to take informed investment decisions, it is necessary to specify that issuers should not overload the prospectus with risk factors that are generic, that only serve as disclaimers, or that could

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To improve the comprehensibility of the prospectus and make it easier for investors to take informed investment decisions, it is necessary to specify that issuers should not overload the prospectus with risk factors that are generic, that only serve as disclaimers, or that could obscure the specific risk factors that investors should be aware of.	obscure the specific risk factors that investors should be aware of. FR (Comments):FR Requiring from issuers that “<i>in each category [of risk factors] the most material risk factors [should] be mentioned first</i>” is not an excessive requirement. It prompts the issuer to prioritise amongst its risk factors and to single out those that should be brought to the fore. The current text does not mandate a “ranking of risk factors” as such, but aims at avoiding that the issuer jumbles together all risk factors in a random and disorderly way. The aim is to help investors identify the most material risks, from the point of view of the issuer. We therefore prefer to keep the existing rule.
(35) Under Article 17(1) of Regulation (EU) 2017/1129, where the final offer price and amount of securities offered to the public cannot be included in the prospectus, the investor has a withdrawal right which can be exercised within 2 working days after the final offer price or amount of securities to be offered to the public has been filed. To increase the level of investor protection, the period during which investor can exercise that	BE (Comments):BE We do not agree with the proposal “<i>Therefore, where the final offer price of securities only differs slightly from the maximum price that was disclosed in the prospectus, issuers should not be required to publish a supplement</i>” for investor protection considerations. If the final offer price differs from the maximum price, the investor should have a right of withdrawal further to the publication of the supplement.

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withdrawal right should be extended. It is however important to limit the administrative burdens for issuers. Therefore, where the final offer price of securities only differs slightly from the maximum price that was disclosed in the prospectus, issuers should not be required to publish a supplement.	
(36) Article 19 of Regulation (EU) 2017/1129 gives issuers the possibility to incorporate into the prospectus certain information by reference. That possibility was introduced to reduce the burden for issuers and to avoid duplication of information that has already been disclosed and published under other Union financial services law. To significantly reduce burdens for issuers and to avoid duplication of information that has already been disclosed and published under other Union financial services law, that possibility should become a legal	PT (Comments):PT The possibility referred in the last subparagraph, for issuers to voluntarily incorporate information not required in the prospectus seems to allow the inclusion of information with no added value for the investor, which may ultimately confuse the investor. Hence, we do not support such approach. LU (Drafting): LU (36) — Article 19 of Regulation (EU) 2017/1129 gives issuers the possibility to incorporate into the prospectus certain information by reference. That possibility was introduced to reduce the burden for issuers and to avoid duplication of information that has already been disclosed

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requirement when information is to be disclosed in a prospectus and fulfils the conditions laid down in Article 19(1) of Regulation (EU) 2017/1129 on incorporation by reference . Such legal requirement would only to a limited extent reduce the readability of information for investors that, in the future, should be able to access in a more efficient and effective way the company data centralised on the European Single Access Point (‘ESAP’)¹⁵. While the exact layout and perimeter of the future legislation are currently being debated by the co-legislators, the ESAP is expected to enable investors to find in a single place the majority of the relevant information, hence further facilitating access to information incorporated by	and published under other Union financial services law. To significantly reduce burdens for issuers and to avoid duplication of information that has already been disclosed and published under other Union financial services law, that possibility should become a legal requirement when information is to be disclosed in a prospectus and fulfils the conditions laid down in Article 19(1) of Regulation (EU) 2017/1129 on incorporation by reference . Such legal requirement would only to a limited extent reduce the readability of information for investors that, in the future, should be able to access in a more efficient and effective way the company data centralised on the European Single Access Point (‘ESAP’)¹⁶. While the exact layout and perimeter of the future legislation are currently being debated by the co-legislators, the ESAP is expected to enable investors to find in a single place the majority of the relevant information, hence further facilitating access to information incorporated by reference in prospectuses. Nevertheless, companies should still be allowed to incorporate by reference on voluntary basis information that is not to be disclosed in a prospectus, provided that such information fulfils the conditions laid down in Article 19(1) of Regulation (EU) 2017/1129 on incorporation by reference. LU (Comments): LU

¹⁵ Proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (COM/2021/723 final).

¹⁶ Proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (COM/2021/723 final).

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reference in prospectuses. Nevertheless, companies should still be allowed to incorporate by reference on voluntary basis information that is not to be disclosed in a prospectus, provided that such information fulfils the conditions laid down in Article 19(1) of Regulation (EU) 2017/1129 on incorporation by reference.	Pursuant to our comment below on Article 19, we do not see the added value in making incorporation by reference mandatory. Indeed, such a provision would reduce the flexibility for issuers on how to draw up a prospectus and may additionally lower the readability of a prospectus. Accordingly, we would suggest deleting recital (36) as it would become redundant. ES (Comments): ES Negotiations on ESAP will have to be closely monitored to ensure consistency between the provisions of all the regulatory texts.
(37) To remove unnecessary costs and burdens and to increase the efficiency and effectiveness of the incorporation into the prospectus of information by reference, companies should not be required to publish a supplement for updating the annual or interim financial information incorporated by reference in a base prospectus which is still valid.	NL (Comments):NL NL (Comments): In general we support the alleviation of the burden of drawing up a supplement in cases where previously published financial information of listed companies (i.e. issuers that fall under the scope of the TD) does not entail a material new factor. However, the consequence of not drawing up a supplement is that investors loose their right of withdrawal. The recital should explain the weighing of interests in this respect. BE

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	(Comments):BE The legal consequences of this proposal should be further investigated. If no supplement is required in this case, the updated financial information is not part of the prospectus and the prospectus' liability regime will not apply.
(38) Regulation (EU) 2017/1129 promotes the convergence and harmonization of rules about the scrutiny and approval of prospectuses by competent authorities. In particular, criteria for the scrutiny of the completeness, comprehensibility, and consistency of the prospectus were streamlined and laid down in Delegated Regulation (EU) 2019/980. That list of criteria is, however, not exhaustive, because it should allow for the possibility to take into account developments and innovations in financial markets. As a result, Delegated Regulation (EU) 2019/980 allows competent authorities to apply additional criteria for the scrutiny and approval of prospectuses where those competent authorities deem that	

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necessary to protect investors. The peer review report from the European Securities and Markets Authority ('ESMA')¹⁷ pointed out that that possibility has created material differences in the way competent authorities apply additional scrutiny criteria and request issuers to provide additional information in the prospectus under their scrutiny. To foster harmonisation and convergence of the prospectus supervisory activity by competent authorities, which should provide certainty to issuers and confidence to investors, it is appropriate to specify the circumstances under which a competent authority may use such additional criteria, the type of additional information that competent authorities may require to be disclosed and the procedures and timeline for the approval	

¹⁷ Peer review of the scrutiny and approval procedures of prospectuses by competent authorities of 21 July 2022 (ESMA42-111-7170).

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of the prospectus.	
(39) Peer reviews conducted by ESMA are an effective tool to promote supervisory convergence across the Union. In order to foster supervisory convergence on the scrutiny and approval processes of competent authorities when assessing the completeness, consistency and comprehensibility of the information contained in a prospectus, and to assess the impact of different approaches with regard to scrutiny and approval by competent authorities, it is appropriate to require ESMA to conduct recurrent peer reviews on the scrutiny and approval of prospectuses on a regular basis and specify the appropriate time periods.	FR (Comments):FR We have some doubts on “<i>it is appropriate to require ESMA to conduct recurrent peer reviews on the scrutiny and approval of prospectuses on a regular basis and specify the appropriate time periods.</i>” Forcing ESMA to undertake the same peer review at regular interval (here every 3 years) runs counter the need to adapt ESMA’s convergence workplan according to priorities. Besides such a peer review on scrutiny & approval has already been done twice over the past decade and the next peer review might benefit from hindsight on the effects of the Listing Act.
(40) Article 21 of Regulation (EU) 2017/1129 requires, for an IPO of shares, the publication of the prospectus at least 6 working days before the end of the	PT (Comments):PT We are still forming our final stance on this regard.

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offer. In order to foster swift book-building processes, especially in fast moving markets, and to increase the attractiveness of the inclusion of retail investors in IPOs, the current minimum period of 6 days between the publication of the prospectus and the end of an offer of shares should be reduced, without affecting investor protection.	
(41) In order to collect data that support the assessment of the EU Follow-on prospectus and the EU Growth issuance document, the storage mechanism referred to in Article 21(6) of Regulation (EU) 2017/1129 should cover both the EU Follow-on prospectus and the EU Growth issuance document, which should be clearly differentiated from the other types of prospectuses.	
(42) To make the distribution of the prospectus to investors more sustainable, to increase digitalisation in the financial	

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sector and to remove unnecessary costs, investors should no longer be entitled to request a paper copy of a prospectus. A copy of the prospectus should therefore only be delivered to investors in electronic format, upon request and free of charge.	
(43) Article 23(3) of Regulation (EU) 2017/1129 requires financial intermediaries to inform investors who have purchased or subscribed securities through that financial intermediary of the possibility of a supplement being published and, under certain circumstances, to contact those investors on the day when a supplement is published. Regulation (EU) 2021/337 introduced the new paragraphs 2a and 3a to that Article, which provide for a more proportionate regime to reduce burdens for financial intermediaries, while maintaining a high level of investor protection. Those paragraphs specify	

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which investors should be contacted by financial intermediaries when a supplement is published and extended both the deadline by which those investors are to be contacted and the deadline for those investors to exercise their withdrawal rights. In addition, those paragraphs specify that financial intermediaries should contact investors who purchase or subscribe securities at the latest at the closing of the initial offer period. That period refers to the period during which issuers or offerors offer securities to the public as prescribed in the prospectus and excludes subsequent periods during which securities are resold on the market. The regime introduced by Article 23(2a) and (3a) of Regulation (EU) 2017/1129 expires on 31 December 2022. Considering the overall positive stakeholders' feedback on that regime, it should be made permanent.	

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(44) Article 23(2a) and (3a) of Regulation (EU) 2017/1129 extended the deadline to contact eligible investors about the publication of a supplement to the end of the first working day following that on which the supplement is published. To enable financial intermediaries to comply with that deadline, it is necessary to lay down that financial intermediaries will only have to inform those investors who agreed to be contacted by electronic means about the publication of a supplement. Furthermore, financial intermediaries should offer investors that indicated their wish to be contacted only by other means than electronic ones an opt-in for electronic contact to receive the notification of the publication of a supplement. It is also necessary to oblige financial intermediaries to point out to investors that do not agree to be contacted by electronic means and refuse the opt-in for electronic contact that they	

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can consult the issuer's or the financial intermediary's website until the closing of the offer period or the delivery of the securities, whichever occurs first, to check whether a supplement is published.	
(45) To ensure investor protection and foster regulatory convergence across the Union, it is appropriate to lay down that a supplement to a base prospectus should not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus. Furthermore, ESMA should be requested, within 2 years from the entry into force of this Regulation, to provide additional clarity by means of guidelines on the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus.	

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(46) Article 27 of Regulation (EU) 2017/1129 requires issuers to produce translations of their prospectus to enable authorities and investors to appropriately scrutinise those prospectuses and to assess risks. In most cases, a translation must be provided in at least one of the official languages accepted by the competent authorities of each Member State where an offer is made or admission to trading is sought. To reduce unnecessary burdens significantly, companies should be allowed to draw up the prospectus in a language customary in the sphere of international finance, irrespective of whether the offer or admission to trading is domestic or cross border, while the translation requirement should be limited to the prospectus summary to ensure the protection of retail investors.	HU (Comments):HU We recommend publishing the prospectus in English and in the official language of the Member State for the sake of retail investor protection.
(47) Article 29 of Regulation (EU) 2017/1129 currently requires that third	FR

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country prospectuses are approved by the competent authority of the home Member State of the issuer of the securities concerned, irrespective of whether those third prospectuses have already been approved by the relevant third country authority. That Article also requires that the Commission adopts a decision stating that the information requirements imposed by the national law of such a third country are equivalent to the requirements under Regulation (EU) 2017/1129. To facilitate access of third country issuers, including SMEs, to public markets in the Union and provide investors in the Union with additional investment opportunities, while ensuring their protection, it is necessary to amend the equivalence regime. In particular, in order to offer the maximum level of protection for investors it should be clarified that for third country issuers offers of securities to the public in the Union are to be accompanied with an	(Comments):FR The sentence “<i>In particular, in order to offer the maximum level of protection for investors it should be clarified that for third country issuers offers of securities to the public in the Union are to be accompanied with an admission to trading on either a regulated market or an SME growth market established in the Union.</i>” represent a very strong requirement on third-country issuers. Is the policy intention of the Commission behind forcing third-country issuers wishing to extend offers to EU investors with an equivalent third-country prospectus to seek a listing in the EU for the securities they offer ? Will such a provision not deter third-country issuers from making any offer in the EU at all, thus reducing investment opportunities for EU investors? What is the rationale behind imposing such a constraint to third-country issuers using the “Article 29” route (use of a third-country prospectus, subject to equivalence), and not to those that use the “Article 28” route (use of an EU prospectus)? 2) We are supportive of the proposed extension of the scope of the equivalence assessment of third-country prospectus regime, which should not be limited to prospectus content, but should also encompass liability, scrutiny & approval, control of advertisements, among others. LU (Drafting): LU (47) Article 29 of Regulation (EU) 2017/1129 currently requires that third country prospectuses are approved by the competent authority of the home Member State of the issuer of the securities concerned, irrespective of whether those third prospectuses have already been approved by the relevant third country authority. That Article also requires that the Commission adopts a decision stating that the information requirements imposed by the national law of such

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admission to trading on either a regulated market or an SME growth market established in the Union. Third country issuers are however allowed to use the procedure under Article 28 of Regulation (EU) 2017/1129 for any type of offers of securities to the public, by drawing up a prospectus in accordance with that Regulation. Furthermore, it should be clarified that, in the case of an admission to trading on an EU regulated market or an offer of securities to the public in the Union, equivalent third country prospectuses that have already been approved by the third country supervisory authority, are only to be filed with the competent authority of the home Member State in the Union. Furthermore, the general equivalence criteria, which are currently to be based on the requirements laid down in Articles 6, 7, 8 and 13 of Regulation (EU) 2017/1129, should be expended to encompass provisions on liability, validity of the	a third country are equivalent to the requirements under Regulation (EU) 2017/1129. To facilitate access of third country issuers, including SMEs, to public markets in the Union and provide investors in the Union with additional investment opportunities, while ensuring their protection, it is necessary to amend the equivalence regime. In particular, in order to offer the maximum level of protection for investors it should be clarified that for third country issuers offers of securities to the public in the Union are to be accompanied with an admission to trading on either a regulated market or an SME growth market established in the Union. Third country issuers are however allowed to use the procedure under Article 28 of Regulation (EU) 2017/1129 for any type of offers of securities to the public, by drawing up a prospectus in accordance with that Regulation. Furthermore, it should be clarified that, in the case of an admission to trading on an EU regulated market or an offer of securities to the public in the Union, equivalent third country prospectuses that have already been approved by the third country supervisory authority, are only to be filed with the competent authority of the home Member State in the Union. Furthermore, the general equivalence criteria, which are currently to be based on the requirements laid down in Articles 6, 7, 8 and 13 of Regulation (EU) 2017/1129, should be expended to encompass provisions on liability, validity of the prospectus, risk factors, scrutiny, approval and publication of the prospectus, and advertisements and supplements. To ensure the protection of investors in the Union, it is also necessary to specify that the third country prospectus is to entail all the rights and obligations provided for under Regulation (EU) 2017/1129. LU (Comments): LU We do not see the need to amend the existing equivalence regime for third countries

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prospectus, risk factors, scrutiny, approval and publication of the prospectus, and advertisements and supplements. To ensure the protection of investors in the Union, it is also necessary to specify that the third country prospectus is to entail all the rights and obligations provided for under Regulation (EU) 2017/1129.	prospectuses, as the current regime where third country issuers can offer or admit securities to trading on a regulated market in the EU by producing a prospectus drawn up in accordance with Article 28 of the Prospectus Regulation, is well-functioning and NCAs are best placed to take into account local market practices. Hence, we suggest deleting recital (47). Should the equivalence regime be modified, certain aspects should be clarified and reciprocity should be ensured.
(48) An effective cooperation with supervisory authorities of third countries concerning the exchange of information with those authorities and the enforcement of obligations arising under Regulation (EU) 2017/1129 in third countries is necessary to protect investors in the Union and ensure level playing field between issuers established in the Union and third country issuers. In order to ensure an efficient and consistent exchange of information with supervisory authorities, ESMA should establish cooperation arrangements with	FR (Drafting):FR (48) An effective cooperation with supervisory authorities of third countries concerning the exchange of information with those authorities and the enforcement of obligations arising under Regulation (EU) 2017/1129 in third countries is necessary to protect investors in the Union and ensure level playing field between issuers established in the Union and third country issuers. In order to ensure an efficient and consistent exchange of information with supervisory authorities, ESMA <u>national competent authorities</u> should establish cooperation arrangements with the supervisory authorities of third countries concerned, and the Commission should be empowered to determine the minimum content and the template to be used for such arrangements. However, third countries that are in the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and in countering the financing of terrorism regimes that pose significant threats to the financial system of the Union should be excluded

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the supervisory authorities of third countries concerned, and the Commission should be empowered to determine the minimum content and the template to be used for such arrangements. However, third countries that are in the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and in countering the financing of terrorism regimes that pose significant threats to the financial system of the Union should be excluded from such cooperation arrangements.	from such cooperation arrangements. FR (Comments):FR Cooperation arrangements must be concluded between the relevant supervisory authorities of the third country issuer and the relevant NCA (i.e. the NCA of the Home Member State), not ESMA. This is because, pursuant to Art. 29, ESMA does not supervise the (third-country) prospectus established by the third-country issuer. Such (third-country) prospectus will be filed with the NCA of the Home Member State. It is therefore the NCA of the Home Member State, not ESMA, which will need to cooperate with the third-country supervisor of the third-country issuer if something goes wrong with the offer / admission. LU (Drafting): LU (48) — An effective cooperation with supervisory authorities of third countries concerning the exchange of information with those authorities and the enforcement of obligations arising under Regulation (EU) 2017/1129 in third countries is necessary to protect investors in the Union and ensure level playing field between issuers established in the Union and third country issuers. In order to ensure an efficient and consistent exchange of information with supervisory authorities, ESMA should establish cooperation arrangements with the supervisory authorities of third countries concerned, and the Commission should be empowered to determine the minimum content and the template to be used for such arrangements. However, third countries that are in the list of jurisdictions which have strategic deficiencies in their national anti-money

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	laundering and in countering the financing of terrorism regimes that pose significant threats to the financial system of the Union should be excluded from such cooperation arrangements. LU (Comments): LU We should stick to the current regime, according to which competent authorities of Member States, instead of ESMA, conclude cooperation arrangements with the supervisory authorities of concerned third countries. Accordingly, we would suggest deleting recital (48).
(49) It is necessary to ensure that the EU Follow-on prospectus, the EU Growth issuance document and related prospectus summaries are subject to the same administrative sanctions and other administrative measures as other prospectuses. Those sanctions and measures should be effective, proportionate and dissuasive and ensure a common approach in Member States.	
(50) Article 47 of Regulation (EU) 2017/1129 requires ESMA to publish every year a report containing statistics	

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on the prospectuses approved and notified in the Union and an analysis of trends. It is necessary to lay down that that report should also contain statistical information about the EU Growth issuance documents, differentiated by types of issuers, and should analyse the usability of disclosure regimes applicable under the EU Follow-on prospectus, the EU Growth issuance documents and the universal registration documents. Finally, that report should also analyse the new exemption for secondary issuances of securities fungible with securities already admitted to trading on a regulated market or on an SME growth market.	
(51) The Commission should, after an appropriate time period after the date of application of this amending Regulation, review the application of Regulation (EU) 2017/1129 and assess in particular whether the provisions on the prospectus summary, on the disclosure regimes for	

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the EU Follow-on prospectus, on the EU Growth issuance documents and on the universal registration document remain appropriate to meet the objectives pursued by those provisions. It is also necessary to lay down that that report should analyse the relevant data, trends and costs in relation the EU Follow-on prospectus and for the EU Growth issuance document. In particular, that report should assess whether those new regimes strike a proper balance between investor protection and the reduction of administrative burdens.	
(52) Regulation (EU) No 596/2014 establishes a robust framework to preserve market integrity and investor confidence by preventing insider dealing, unlawful disclosure of inside information and market manipulation. It subjects issuers to several disclosure and record-keeping obligations and requires issuers to disclose inside information to the	

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public. Six years after its entry into force, feedback from stakeholders collected in the context of public consultations and expert groups highlighted that some aspects of Regulation (EU) No 596/2014 place a particularly high burden on issuers. It is therefore necessary to enhance legal clarity, address disproportionate requirements for issuers and increase the overall attractiveness of Union capital markets, while ensuring an appropriate level of investor protection and market integrity.	
(53) Article 14 and 15 of Regulation (EU) No 596/2014 prohibit insider dealing, the unlawful disclosure of inside information and market manipulation. Article 5 of that Regulation contains, however, an exception to those prohibitions for buy-back programmes and stabilisation. For a buy-back programme to benefit from that exemption, issuers are obliged to report	BE (Drafting):BE - BE (Comments):BE -

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to all the competent authorities of the trading venues on which the shares have been admitted to trading or are traded each transaction relating to the buy-back programme, including information specified in Regulation (EU) No 600/2014. In addition, issuers are obliged to subsequently disclose the trades to the public. Those obligations are overly cumbersome. It is therefore necessary to simplify the reporting procedure by requiring an issuer to report information on the buy-back programme transactions only to the competent authority of the most relevant market in terms of liquidity for its shares. It is also necessary to simplify the disclosure obligation by allowing an issuer to only disclose to the public aggregated information.	
(54) Under Article 7(1), point (d), of Regulation (EU) No 596/2014, inside information comprises, for persons	BE (Drafting):BE

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charged with the execution of orders concerning financial instruments, information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments. That definition is, however, too limited in that it only applies to persons charged with the execution of orders, whereas also other persons may be aware of a forthcoming order or transaction. That definition should therefore be expanded to also cover cases where information is passed by virtue of management of a proprietary account or of a managed fund, and in particular to cover all	- BE (Comments):BE -

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categories of persons that may be aware of a future order.	
(55) According to Article 11(1) of Regulation (EU) No 596/2014, market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it, such as its potential size or pricing, to one or more potential investors. Market sounding is an established practice which contributes to efficient capital markets. Market sounding may, however, require disclosure to potential investors of inside information and expose the parties involved to legal risks. The definition of market sounding should be broad in order to cater for the different typologies of soundings and different practices across the Union. The definition of market sounding should therefore also	BE (Drafting):BE - BE (Comments):BE -

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cover the communications of information not followed by any specific announcement, as also in that case inside information may be disclosed to potential investors and issuers should be able to benefit from the protection afforded by Article 11 of Regulation (EU) No 596/2014.	
(56) Article 11(4) of Regulation (EU) No 596/2014 provides that the disclosure of inside information in the course of a market sounding is deemed to be made in the normal exercise of a person's employment, profession or duties, and therefore does not constitute unlawful disclosure of inside information, where the disclosing market participant complies with the requirements laid down in Article 11(3) and (5) of that Regulation. In order to avoid an interpretation whereby disclosing market participants carrying out market sounding are obliged to comply with all	EL (Comments):EL EL: The reference that “<i>it should also be specified that the requirements set out in Article 11(3) of Regulation (EU) No 596/2014 are mandatory for all disclosing market participants</i>” is a useful clarification of the mandatory notion of article 11 (3). BE (Drafting):BE - BE (Comments):BE BE is of the view that the market sounding regime should remain compulsory. A compulsory

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the requirements set out in Article 11(5) of Regulation (EU) No 596/2014, it should be specified that the market sounding regime and the related requirements are a mere option for the disclosing market participants to benefit from the protection from the allegation of unlawful disclosure of inside information. At the same time, while there should be no presumption that disclosing market participants that do not comply with the requirements set out in Article 11 of Regulation (EU) No 596/2014 when conducting a market sounding have unlawfully disclosed inside information, those disclosing market participants should not be able to take advantage of the protection afforded to those that choose to comply with those requirements. To ensure the possibility for competent authorities to obtain an audit trail of a process that may imply disclosure of inside information to third parties, it should also be specified that	market sounding regime is essential to ensure an adequate level of audit trail for competent authorities to be able to effectively investigate any potential abuse. Without an express obligation, the offered protection from the allegation of unlawful disclosure of inside information cannot be per se a sufficient incentive for DMPs to follow the market sounding requirements on a voluntary basis.

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the requirements set out in Article 11(3) of Regulation (EU) No 596/2014 are mandatory for all disclosing market participants.	
(57) Liquidity in an issuer's shares can be enhanced through liquidity provision activities, including market making arrangements or liquidity contracts. A market making arrangement comprises a contract between the market operator and a third party who commits to maintaining the liquidity in certain shares and, in return, benefits from rebates on trading fees. A liquidity contract comprises a contract between an issuer and a third party who commits to provide liquidity in the shares of the issuer, and on its behalf. Regulation (EU) No 2019/2115 introduced into Article 13 of Regulation (EU) No 596/2014 the possibility for issuers of financial instruments admitted to trading on SME growth markets to enter into a liquidity contract with a	BE (Drafting):BE - BE (Comments):BE -

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liquidity provider, provided certain conditions are met. One of those conditions is that the market operator or the investment firm operating the SME growth market has acknowledged in writing to the issuer that it has received a copy of the liquidity contract and has agreed to that contract's terms and conditions. The operator of an SME growth market is, however, not a party to a liquidity contract and the requirement that such operator has agreed to the liquidity contract's terms and conditions leads to excessive complexity. In order to remove that complexity and to foster liquidity provisions on those SME growth markets, it is appropriate to remove the requirement for operators of SME growth markets to agree to the terms and conditions of liquidity contracts.	
(58) The prohibition of insider dealing has the objective to prevent any possible	EL

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exploitation of inside information and should apply as soon as that information is available. The requirement to disclose inside information aims to enable investors to take well-informed decisions. When information is disclosed at a very early stage and is of a preliminary nature, it may mislead investors, rather than contribute to efficient price formation and address the information asymmetry. In a protracted process, given the different iterations information has still to go through, the information related to intermediate steps is not sufficiently mature and hence should not be disclosed. In that case, the issuer should only disclose the information related to the event that this protracted process intends to bring about, at the moment when such information is sufficiently precise, such as when the management board has taken the relevant decision to bring about that event. In the case of non-protracted processes related	(Comments):EL EL: The reference to the precise nature of the inside information might cause legal uncertainty, as far as the definition of inside information is concerned for the purposes of insider dealing, given the fact that the definition of inside information is the same for both insider dealing and disclosure obligation. Therefore, special attention is needed, as the time when an information obtains a precise nature, affects equally both insider dealing and disclosure obligation. BE (Drafting):BE - BE (Comments):BE BE opposes a waiver of the disclosure requirement for intermediate steps in a protracted process. The disclosure obligation and the prohibition of insider dealing are closely related and therefore should not be decoupled. If disclosure is no longer required for intermediate steps of protracted processes, there will be a temporary inefficiency of the market (pending disclosure). Likewise, focusing only on a predefined and arbitrary list of material events for disclosure obligations narrows the scope of information made publically available to the market. This undermines the efficiency of the financial markets: not all necessary information is disclosed to investors to make rationale investment decisions in a timely manner, risk of unlawful behaviour of insiders based on events that are not included in the list of material events and therefore not

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to one-off events, notably when the occurrence of those events does not depend on the issuer, the disclosure should take place as soon as the issuer becomes aware of that event.	disclosed (though they may significantly influence the price of a financial instrument depending on specific circumstances of the issuer).
(59) To facilitate the assessment of the moment of disclosure of the relevant information by the issuer and ensure a consistent interpretation of the requirement, the Commission should be empowered to adopt a delegated act to set out a non-exhaustive list of relevant information, and, for each information, the moment when the issuer could be reasonably expected to disclose it.	BE (Drafting):BE - BE (Comments):BE As BE opposes the waiver, there is no need for it to draw up a list of material events. Drawing up such a list of relevant information and the moment of disclosure would also be extremely difficult.
(60) Issuers should ensure the confidentiality of information related to intermediate steps where the event, that a protracted process intends to bring about, has not yet been disclosed. Once that event has been disclosed, the issuer	BE (Drafting):BE - BE

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should no longer be required to protect the confidentiality of the information related to intermediate steps.	(Comments):BE BE sees the following technical issue: the proposed change will apply when information becomes inside information. Accordingly, issuers should evaluate precisely when the inside nature of the information kicks in. This limits the benefit of the waiver of the disclosure requirements for intermediate steps of protracted processes (opposed by BE).
(61) Article 17(4) of Regulation (EU) No 596/2014 provides that an issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that specified conditions are met. In such a case, an issuer is obliged to inform the competent authority that disclosure of the information was delayed and to provide a written explanation of how the conditions set out in that Article were met immediately after the information is disclosed to the public. To enable competent authorities to receive information on delays in a timely manner an issuer should notify the competent authority immediately after that issuer	FI (Comments):FI The modification of the timing of the notification of the delay to the NCA is likely to increase the burden in issuers since the issuer would be obliged to notify also projects that are not eventually completed. On the other hand, this would enhance the NCA's possibilities to detect market abuse cases if the project has been inside information. BE (Drafting):BE - BE (Comments):BE BE welcomes this evolution that will facilitate detection of potential insider trading cases.

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takes the decision to delay disclosure. However, competent authorities should not be required to authorise those delays.	DE (Comments): DE Concerning the communication of supervised entities/issuers with competent authorities it seems preferable to use terms which make clear that the provision of information to an authority can also take place in electronic form. Otherwise, there could be discussions about this possibility in practice and this could lead to re-introducing a paper-based supervisory practice on EU-level. The term “a written explanation” could therefore eventually be replaced by the term “explanation in text form” (this also refers to Article 17 para.4 lit. c). In addition, this comment may also apply to other parts of the proposal where terms like “in writing” or “written” are used for providing information to competent authorities.
(62) Article 18(1) of Regulation (EU) No 596/2014 obliges issuers and any person acting on their behalf or on their account to draw up and to keep updated a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise perform tasks through which they have access to inside information, including advisers, accountants and credit rating agencies. Article 18(6) of Regulation (EU)	BE (Drafting):BE - BE (Comments):BE BE is of the view that event-driven insider lists should be maintained. Insider lists remain a key tool in market abuse investigations. With only permanent insider lists, the information provided to competent authorities will be less reliable. Furthermore, competent authorities will no longer be able to identify external service providers based on permanent insider lists. They will have to

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No 596/2014, however, restricts that obligation for issuers whose financial instruments are admitted to trading on an SME growth market. Those issuers are to include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information. Given the availability of other existing supervisory enforcement tools, it is appropriate to use the same approach for all issuers, rather than only for issuers whose financial instruments are admitted to trading on an SME growth market.	expressly request their identities to issuers. BE also points out that there will be no more acknowledgment of legal and regulatory duties for issuers' one-off insiders (higher risk of insider trading) and no more internal monitoring of circulation of inside information.
(63) In some Member States, insider lists are considered particularly important for ensuring a high level of market integrity. For that reason, Article 18(6), second subparagraph, of Regulation (EU) No 596/2014 allows Member States to require issuers on SME growth markets to draw up the more extensive insider lists that include all persons who have	FR (Drafting):FR (63) In some Member States, insider lists are considered particularly important for ensuring a high level of market integrity. For that reason, Article 18(6), second subparagraph, of Regulation (EU) No 596/2014 allows Member States to require issuers on SME growth markets to draw up the more extensive insider lists that include all persons who have access to inside information, however, on the basis of an alleviated format, requiring less information. To avoid excessive regulatory burden, while maintaining the essential information for competent

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access to inside information, however, on the basis of an alleviated format, requiring less information. To avoid excessive regulatory burden, while maintaining the essential information for competent authorities to investigate market abuse breaches, such an alleviated format should be used for all insider lists. Nevertheless, the option for Member States set out in Article 18(6), second subparagraph, of Regulation (EU) No 596/2014 should be maintained, provided that its use is justified by national market integrity concerns, and provided that it is only used in relation to issuers whose securities have been admitted to trading on a regulated market for at least the last 5 years. To ensure proportionate treatment of SMEs, that option should not be used for SME growth markets. To facilitate companies' first time access to regulated markets as well as the companies' transition from SME growth markets to regulated	authorities to investigate market abuse breaches, such an alleviated format should be used for all insider lists. Nevertheless, the option for Member States set out in Article 18(6), second subparagraph, of Regulation (EU) No 596/2014 should be maintained, provided that its use is justified by national market integrity concerns, and provided that it is only used in relation to issuers whose securities have been admitted to trading on a regulated market for at least the last 5 years. To ensure proportionate treatment of SMEs, that option should not be used for SME growth markets. To facilitate companies' first time access to regulated markets as well as the companies' transition from SME growth markets to regulated markets, issuers whose securities have been admitted to trading on a regulated market for less than 5 years should also not be obliged to draw up more extensive lists. FR (Comments):FR Regardless of the regular framework retained for companies listed on a regulated market, we do not think a two-tier insider lists regime on regulated markets would be manageable. All issuers on regulated markets should be treated equally and, while we understand the rationale of the legislative proposal on this point, time does not make a compelling argument to create a 5-year grace period for new issuers on regulated markets. BE (Drafting):BE -

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markets, issuers whose securities have been admitted to trading on a regulated market for less than 5 years should also not be obliged to draw up more extensive lists.	BE (Comments):BE Besides the fact that BE opposes the waiver (see comments on draft Recital 62), it appears counterintuitive to apply a stricter regime to experienced issuers. Moreover, there are no guidelines as to what the concept of “<i>specific national market integrity</i>” covers. LU (Comments): LU
(64) Article 19 of Regulation (EU) No 596/2014 provides for preventive measures against market abuse and, more specifically, insider dealing, concerning persons discharging managerial responsibilities and persons closely associated with them. Such measures range from notification of transactions carried out on financial instruments of the relevant issuer to the prohibition to conduct transactions on such instruments in certain defined periods. In particular, Article 19(8) of Regulation (EU)	BE (Drafting):BE - BE (Comments):BE BE has a neutral stance on raising the notification threshold from €5,000 to €20,000. By increasing the threshold to €20,000 the number of notifications will decrease on a yearly basis by approximately 30% (1,600 --> 1,100) with limited impact on the signal function of these notifications.

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No 596/2014 provides that persons discharging managerial responsibilities have to notify the issuer and the competent authority where those persons have transactions reaching the threshold of EUR 5 000 in a calendar year, as well as any subsequent transaction in the same year. The notifications concern, as regards issuers, transactions conducted by persons discharging managerial responsibilities or persons closely associated with them on their own account relating either to the shares or debt instruments of that issuer, or to derivatives or other financial instruments linked thereto. In addition to the EUR 5 000 threshold, Article 19(9) of Regulation (EU) No 596/201 provides that competent authorities may decide to increase the threshold to EUR 20 000.	DE (Comments): DE In Germany, the NCA has raised the threshold from EUR 5,000 to EUR 20,000 by way of a general administrative act, effective as of 1 January 2020. Therefore, the proposed amendment already corresponds to the legal situation in Germany.
(65) In order to avoid an undue requirement for persons discharging managerial responsibilities to report and	BE (Drafting):BE

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for companies to disclose transactions which would not be meaningful to investors, it is appropriate to raise the threshold for reporting and related disclosure from EUR 5 000 to EUR 20 000, while allowing competent authorities to increase that threshold further, where justified.	- BE (Comments):BE This proposed change is not relevant for BE as it would not opt in. DE (Comments): DE In Germany, the NCA has raised the threshold from EUR 5,000 to EUR 20,000 by way of a general administrative act, effective as of 1 January 2020. Allowing NCA's to further increase this threshold seems useful.
(66) Article 19(11) of Regulation (EU) No 596/2014 prohibits persons discharging managerial responsibilities to trade, during a period of 30 calendar days before their company's financial reporting (closed period), shares or debt instruments of the issuer or derivatives or other financial instruments linked to them, unless the issuer gives his or her consent and specific circumstances are met. That exemption from the closed	BE (Drafting):BE - BE (Comments):BE BE welcomes this extension of the exemption from close periods.

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period requirement currently includes employee shares or saving schemes as well as qualifications or entitlement of shares. In order to promote consistency of rules across different asset classes that exemption should be expanded to include among the exempted employees' schemes those concerning financial instruments other than shares and also to cover the qualification or entitlement of instruments other than shares.	
(67) Certain transactions or activities carried out by the person discharging managerial responsibilities during the closed period may relate to irrevocable arrangements entered into outside of a closed period. Those transactions or activities may also result from a discretionary asset management mandate executed by an independent third party under a discretionary asset management mandate. Such transactions or activities may also be the consequence of duly	BE (Drafting):BE - BE (Comments):BE BE agrees with this extension of the exemption from closed periods. Nevertheless, BE would like to point out the following technical aspect: the transactions covered, on the one hand, by the notification requirement and, on the other hand, by the close period prohibition, will differ to a larger extent. It will be a technical challenge for competent authorities to create different

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authorised corporate actions not implying advantageous treatment for the person discharging managerial responsibilities. Furthermore, those transactions or activities may be the consequence of the acceptance of inheritances, gifts and donations, or the exercise of options, futures, or other derivatives agreed outside the closed period. All such activities and transactions, do not, in principle, involve active investment decisions by the persons discharging managerial responsibilities. Prohibiting such transactions or activities throughout the closed period would excessively restrict the freedom of persons discharging managerial responsibilities, as there is no risk that they will benefit from an informational advantage. In order to ensure that the prohibition to trade in closed period applies only to transactions or activities that depend on the wilful investment activity of the person discharging managerial	lists for notifications aspects and closed period aspects. LU (Drafting): LU (67) Certain transactions or activities carried out by the person discharging managerial responsibilities during the closed period may relate to irrevocable arrangements entered into outside of a closed period. Those transactions or activities may also result from a discretionary asset management mandate executed by an independent third party under a discretionary asset management mandate. Such transactions or activities may also be the consequence of duly authorised corporate actions not implying advantageous treatment for the person discharging managerial responsibilities. Furthermore, those transactions or activities may be the consequence of the acceptance of inheritances, gifts and donations, or the exercise of options, futures, or other derivatives agreed outside the closed period. All such activities and transactions, do not, in principle, involve active investment decisions <u>or active involvement</u> by the persons discharging managerial responsibilities. Prohibiting such transactions or activities throughout the closed period would excessively restrict the freedom of persons discharging managerial responsibilities, as there is no risk that they will benefit from an informational advantage. In order to ensure that the prohibition to trade in closed period applies only to transactions or activities that depend on the wilful investment activity of the person discharging managerial responsibilities, that prohibition should not cover transactions or activities that depend on external factors or that do not involve active investment decisions <u>or active involvement</u> by the persons discharging managerial responsibilities.

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responsibilities, that prohibition should not cover transactions or activities that depend on external factors or that do not involve active investment decisions by the persons discharging managerial responsibilities.	LU (Comments): LU Pursuant to our comments below on Article 19, paragraph 12, we consider it is necessary to ensure that the transactions referred to in recital (67) also cover situations where the manager does not formally take active investment decisions, but is otherwise actively involved in the investment process.
(68) The increasing integration of markets heightens the risk of cross-border market abuses. To protect market integrity, competent authorities should cooperate in a swift and timely manner, also with ESMA. To strengthen such cooperation, ESMA should be able to act on its own initiative to facilitate the collaboration of competent authorities with a possibility to coordinate the investigation or inspection that has cross-border effect. Collaboration platforms established by the European Insurance and Occupational Pensions Authority have proven to be useful as a supervisory tool to strengthen the exchange of	BE (Drafting):BE (68) The increasing integration of markets heightens the risk of cross-border market abuses. To protect market integrity, competent authorities should cooperate in a swift and timely manner, also with ESMA. To strengthen such cooperation, ESMA should be able to act, <u>at the initiative of one or more competent authorities</u>, on its own initiative to facilitate the collaboration of competent authorities with a possibility to coordinate the investigation or inspection that has cross-border effect. Collaboration platforms established by the European Insurance and Occupational Pensions Authority have proven to be useful as a supervisory tool to strengthen the exchange of information and to enhance collaboration among authorities. It is therefore appropriate to introduce the possibility also for ESMA, <u>at the initiative of one or more competent authorities</u>, to set up and coordinate such platforms in the field of securities markets when there are concerns about market integrity or the good functioning of markets. Considering the strong relations between financial and spot markets, ESMA should also be able to set up such platforms also with public bodies monitoring wholesale commodity markets, including the

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information and to enhance collaboration among authorities. It is therefore appropriate to introduce the possibility also for ESMA to set up and coordinate such platforms in the field of securities markets when there are concerns about market integrity or the good functioning of markets. Considering the strong relations between financial and spot markets, ESMA should also be able to set up such platforms also with public bodies monitoring wholesale commodity markets, including the Agency for the Cooperation of Energy Regulators (ACER), when such concerns affect both financial and spot markets.	Agency for the Cooperation of Energy Regulators (ACER), when such concerns affect both financial and spot markets. BE (Comments):BE BE welcomes the possibility to set up collaboration platforms. However, competent authorities remain the competent investigatory bodies. Accordingly, only competent authorities should be in a position to initiate the set-up of collaboration platforms. LU (Drafting): LU (68) — The increasing integration of markets heightens the risk of cross border market abuses. To protect market integrity, competent authorities should cooperate in a swift and timely manner, also with ESMA. To strengthen such cooperation, ESMA should be able to act on its own initiative to facilitate the collaboration of competent authorities with a possibility to coordinate the investigation or inspection that has cross border effect. Collaboration platforms established by the European Insurance and Occupational Pensions Authority have proven to be useful as a supervisory tool to strengthen the exchange of information and to enhance collaboration among authorities. It is therefore appropriate to introduce the possibility also for ESMA to set up and coordinate such platforms in the field of securities markets when there are concerns about market integrity or the good functioning of markets. Considering the strong relations between financial and spot markets, ESMA should also be able to set up such platforms also with public bodies monitoring wholesale commodity markets, including the

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	Agency for the Cooperation of Energy Regulators (ACER), when such concerns affect both financial and spot markets. LU (Comments): LU Pursuant to our comments below on Article 25, we would like to note that the responsibility for the supervision and enforcement of MAR rests with the NCAs and introducing collaboration platforms at ESMA level is neither necessary nor justified. Hence, the proposal is not in line with the principles of necessity and proportionality. Moreover, we would like to draw the attention to the fact that the bilateral cooperation between competent authorities is currently operating in a very efficient manner. We thus fail to identify the possible added value to involve more actors, which would complicate the exchange of information. Besides, it is also important to stress that the relevant data typically contains personal data (e.g. client files of banks) to which strict rules under GDPR apply. Last but not least, the proposal is not in line with the outcome of the ESA review. Therefore, recital (68) should be deleted.
(69) The monitoring of order book data is crucial for the surveillance of market activity. Competent authorities should therefore have easy access to data that they need for their supervisory activity. Some of those data concern	BE (Drafting):BE - BE

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instruments that are traded in a trading venue located in another Member State. To enhance the effectiveness of supervision, competent authorities should set up a mechanism to exchange order book data on an ongoing basis. Considering its technical expertise, ESMA should draft implementing technical standards specifying the arrangements required by that mechanism for the exchange of order book among competent authorities. To ensure that the scope of that mechanism for exchanging order book data is proportionate in relation to its use, only competent authorities that supervise markets that have a high level of cross-border activity should be obliged to participate to that mechanism. The level of cross-border dimensions should be determined by the Commission in a delegated act. Furthermore, that mechanism for exchanging order book data should at first only concern shares,	(Comments):BE BE welcomes the set-up of a mechanism to exchange order book data. As it is related to competent authorities with significant cross-border activity, it will initially not impact the Belgian financial regulator. DE (Comments): DE The new mechanism to exchange order book data needs further assessment. In general, we are sceptical regarding the benefits of the new mechanism in relation to the cost of its establishment.

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bonds and futures, considering the relevance of those financial instruments in terms of both cross-border trading and market manipulation. However, to ensure that such mechanism for exchanging order book data takes into account developments in financial markets and the capacity of competent authorities to process new data, the Commission should be empowered to broaden the scope of instruments the order book data of which can be exchanged through that mechanism.	
(70) The monitoring of order book data is crucial for the supervision of markets by competent authorities. To enhance that monitoring through technological developments, competent authorities should be able to access order book data not only on an ad-hoc request, but also on an ongoing basis. Moreover, to facilitate the processing of order book data by national competent authorities, it	BE (Drafting):BE - BE (Comments):BE BE welcomes the set-up of a mechanism to exchange order book data. As it is related to competent authorities with significant cross-border activity, it will initially not impact the

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is necessary to harmonise the format of such data.	Belgian financial regulator.
(71) Administrative sanctions imposed in cases of infringements related to the disclosure regime (public disclosure of inside information, insider lists and managers' transactions) are set out as a minimum of the maximum, which allows Member States to set a higher level of the maximum sanctions in national law. The risk of inadvertent breach of disclosure requirements under Regulation (EU) No 596/2014 and associated administrative sanctions are an important factor that dissuades companies from seeking admission to trading. To avoid an excessive burden on companies, in particular SMEs, the sanctions for infringements committed by legal persons in relation to disclosure requirements should be proportionate to the size of the company, while considering all relevant circumstances	BE (Drafting):BE (71) Administrative sanctions imposed in cases of infringements related to the disclosure regime (public disclosure of inside information, insider lists and managers' transactions) are set out as a minimum of the maximum, which allows Member States to set a higher level of the maximum sanctions in national law. The risk of inadvertent breach of disclosure requirements under Regulation (EU) No 596/2014 and associated administrative sanctions are an important factor that dissuades companies from seeking admission to trading. To avoid an excessive burden on companies, in particular SMEs, the sanctions for infringements committed by legal persons in relation to disclosure requirements should be proportionate to the size of the company, while considering all relevant circumstances under Article 31 of Regulation (EU) No 596/2014. Those sanctions should be determined based on the total annual turnover of the company. The sanctions determined based on absolute amounts should be applied exceptionally and only if competent authorities deem that the amount of the administrative sanction based on the total annual turnover would be disproportionately low in light of the circumstances set out in Article 31 of Regulation (EU) No 596/2014. In those cases, it is also appropriate to lower the minimum of the maximum level of sanctions for SMEs, as expressed in absolute amounts, in order to ensure their proportionate treatment. BE

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Commission proposal	Drafting Suggestions Comments
under Article 31 of Regulation (EU) No 596/2014. Those sanctions should be determined based on the total annual turnover of the company. The sanctions determined based on absolute amounts should be applied exceptionally and only if competent authorities deem that the amount of the administrative sanction based on the total annual turnover would be disproportionately low in light of the circumstances set out in Article 31 of Regulation (EU) No 596/2014. In those cases, it is also appropriate to lower the minimum of the maximum level of sanctions for SMEs, as expressed in absolute amounts, in order to ensure their proportionate treatment.	(Comments):BE BE agrees to the proposal that pecuniary sanctions for infringements of disclosure requirements would be, by default, calculated as a percentage of the total annual turnover of the issuer, to the extent such amount is not disproportionately low. However, the use of the fall back mechanism based on absolute amounts should not be subject to a criterion of exceptionality. A disproportionately low amount should be in itself sufficient to apply an absolute amount. Otherwise, sanctions of infringements of disclosure requirements may no longer have a deterrent effect. Furthermore, depending on the sanction cases at hand, competent authorities may have to divert from the default mechanism – based on a percentage of the annual turnover – more often than "exceptionally" (e.g. cases involving biotech or holding companies that may have no – or low – annual turnover). DE (Comments): DE We do not agree with the proposed amendments. There is no need to change the existing sanctioning rules. It should be the decision of the competent authority to set a sanction according to the absolute amount or the annual turnover. The starting point in the determination of a pecuniary sanction should be the severity of the case and not the size of the legal person which committed the offence. Especially since it might prove to be impossible for a competent authority to determine whether or not a legal person is a SME, if e.g. no financial records have been disclosed for the years prior to the sanctioning decision. In addition, there is no danger of excessive burdens for SMEs since the amount of the financial

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	penalty has to take the financial situation of the offender into account. Sanctions are therefore reduced if they prove to be unaffordable for the offender. This principle is already included in Art. 31 (1) (c) Regulation (EU) No 596/2014 and Art. 39 (1) (c) Regulation (EU) No 2017/1129.
(72) Regulations (EU) No 596/2014, (EU) No 600/2014 and (EU) 2017/1129 should therefore be amended accordingly.	BE (Drafting):BE - BE (Comments):BE - DE (Comments): DE Please refer to our previous comment to Recital 71.
(73) When processing personal data within the framework of this Regulation	BE

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(EU) No 596/2014, competent authorities should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council ¹⁸ . With regard to the processing of personal data by ESMA within the framework of that Regulation, ESMA should comply with the Regulation (EU) No 2018/1725 of the European Parliament and of the Council ¹⁹ . In particular, ESMA and national competent authorities shall keep personal data for no longer than is necessary for the purposes for which the personal data are processed.	(Drafting):BE - BE (Comments):BE -
(74) In order to specify the requirements set out in this Regulation, in accordance with its objectives, the	FR (Drafting):FR

¹⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).

¹⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

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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 revising the format and content of the prospectus, fostering convergence in the scrutiny and approval of the prospectus by competent authorities, further specifying general equivalence criteria for prospectuses drawn up by third country issuers, determining the minimum content of cooperation arrangements between ESMA and third country supervisory authorities, pursuant to Regulation (EU) 2017/1129, as well as revising the alleviated template setting out the list of persons who have access to inside information, and expanding the list of financial instruments to enable competent authorities to obtain order	(74) In order to specify the requirements set out in this Regulation, in accordance with its objectives, 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 revising the format and content of the prospectus, fostering convergence in the scrutiny and approval of the prospectus by competent authorities, further specifying general equivalence criteria for prospectuses drawn up by third country issuers, determining the minimum content of cooperation arrangements between ESMA <u>national competent authorities</u> and third country supervisory authorities, pursuant to Regulation (EU) 2017/1129, as well as revising the alleviated template setting out the list of persons who have access to inside information, and expanding the list of financial instruments to enable competent authorities to obtain order book data, pursuant to Regulation (EU) No 596/2014. 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-Making²¹. 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. FR (Comments):FR

²¹ OJ L 123, 12.5.2016, p. 1.

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Commission proposal	Drafting Suggestions Comments
book data, pursuant to Regulation (EU) No 596/2014. 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-Making²⁰. 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.	Cooperation arrangements must be concluded between the relevant supervisory authorities of the third country issuer and the relevant NCA, not ESMA.
(75) Since the objectives of this Regulation cannot be sufficiently	

²⁰ OJ L 123, 12.5.2016, p. 1.

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achieved by the Member States, as the measures introduced require full harmonisation across the Union, but can rather, by reason of scale and effects 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 Regulation does not go beyond what is necessary in order to achieve those objectives,	
HAVE ADOPTED THIS REGULATION:	
<i>Article 1</i> Amendments to Regulation (EU) 2017/1129	CZ (Comments):CZ Side Note: Regarding the Art. 1 we would like to point out that the wording in para 1 in not up to date as it does not reflect trading on an SME growth market (drafting suggestion: <i>1. This Regulation lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a</i>

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	<i>regulated market or an SME growth market situated or operating within a Member State.)</i> RO (Comments):RO <u>RO Comments</u> <u>Amendments to the Regulation (EU) 2017/1129</u> As a general approach, we support the measures that are meant to reduce the regulatory burdens for issuers of all sizes, in particular SMEs, so that they can better access public funding through capital markets. Nevertheless, we are of the opinion that a proper balance between the need of investor protection, especially in the case of retail investors and the need of the implementation of certain measures meant to reduce the administrative burdens for issuers should be adequately considered as an adequate investor protection is the basis for maintaining the trust in financial markets. While we support the amendments that are meant to ensure a better harmonization of the requirements across EU as well as the modifications that are meant to reduce the excessive length and complexity of prospectuses, including for secondary issuances by listed companies, we support the approach according to which the modifications should take into consideration the different dimensions of different national capital markets in order for the regulation to reflect the features of the capital markets across EU, including those that are not very large in size.

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Commission proposal	Drafting Suggestions Comments
Regulation (EU) 2017/1129 is amended as follows:	
(1) Article 1 is amended as follows:	ES (Comments): ES We have some preliminary and general comments on the extension of prospectus exemptions for public offerings and admissions to trading of securities on SME Growth Markets (SME GM) and regulated markets (RM). - We welcome the proposal to simplify the prospectus requirement for secondary issuances. However, and subject to further assessment, we consider that the total exemptions with the threshold increased to 40% and the new exemptions of fungible securities that have been admitted to trading in a SME GM or a RM in the last 18 months (with some requirements, but presenting only one document) might be too ambitious. We will send more written comments in the upcoming texts. - If the exemptions of fungible securities that have been admitted to trading in the last 18 months were to be maintained, it should be clarified the notions of a company in insolvency or restructuring procedure in order to avoid any circumvention.

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	- We consider that the changeover of an issuer with shares listed on SME GM to RM must always be done with a prospectus (the new EU Follow-on model), as stated in Article 15a paragraph 1, subparagraph 2.
(a) paragraph 3 is deleted;	HU (Comments):HU We do not support deleting Art. 1(3). See rationale in Article 3(2). FR (Comments):FR This modification restore the continuity of the supervision regime and mirrors choices made in the Crowdfunding Regulation. We support this change.
(b) paragraph 4 is amended as follows:	
(i) the following points (da) and (db) are inserted:	
'(da) an offer of securities to be	PT

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admitted to trading on a regulated market or an SME growth market and that are fungible with securities already admitted to trading on the same market, provided that they represent, over a period of 12 months, less than 40 % of the number of securities already admitted to trading on the same market;	(Drafting):PT ‘(da) an offer of securities to be admitted to trading on a regulated market or an SME growth market and that are fungible with securities already admitted to trading on the same market, provided that they represent, over a period of 12 months, less than 40 % of the number of securities already admitted to trading on the same market; PT (Comments):PT The exception concerning regulated markets seems to be already encompassed in by the waiver presented in paragraph 5(1)a). CY (Comments):CY We are against this insertion. Specifically, we are concerned with the insertion of the new exemptions, as under the specific exemptions the majority of offers by existing issuers in Cyprus will take place without the obligation to publish a prospectus thus jeopardizing investor protection. Instead, the scope of Article 14(b) (EU Follow-on prospectus) could be extended to also cover offers that would fall under the new exemptions in Articles 1(4)(da) & (db), so that issuers could benefit from the lighter regime and investors have available the necessary information to take an informed investment decision.

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	HU (Comments):HU In practice, this amendment means that issuers are able to enter from the SME growth market to the regulated market by drawing up, filing and making publicly available a ‘short summary document’ as set up in Annex IX, but without a standard authorisation procedure by the NCA. The amendment would also eliminate the role of the supervisory authority as a gatekeeper in the case covered by the provision. A ‘short summary document’, the content and justification of which has not been verified by the supervisory authority, will not necessarily be capable of providing investors with adequate information in order to fully understand the ‘offer’ contained in the short summary document. We suggest that the supervisory authority should have at least the opportunity to comment on the summary document, in which it may object in case of non-conformity of the document. PL (Comments):PL PL: The understanding of the term “fungible”, especially in the context of debt securities, may raise doubts. While it is a fairly common market practice that securities which can be covered by the same ISIN code are considered fungible, in the case of bonds, it is generally not the case – even bonds with the same parameters, differing only in the maturity date, cannot be covered by the same ISIN code, so an issuer who issues bonds on a regular basis will not in fact be able to take advantage of this exception. Therefore, we propose to clarify this term.

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	NL (Comments):NL NL (Comments): The Netherlands is in principle in favour of the proposal to raise the percentage of 20% of the exemption for the admission to trading of fungibles to 40%. Introducing this exemption also for the offer of securities to the public, creates the opportunity for retail investors to participate in the issuance of fungibles which the Netherlands believes is positive. However, as retail investors require a different level of investor protection, we wonder whether the exemption for a percentage of 40% is too high. Furthermore, we believe that offerings of (non-equity) fungibles to retail investors should only be exempted if the initial prospectus for the fungibles was drawn up for retail investors to guarantee adequate investor protection. FR (Comments):FR This will give issuers substantiel flexibility to access market funding when needed for a limited cost. We think the loosening of secondary issuance is <i>not</i> going to harm investors since such

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	operations will still need to approved by the shareholders' assembly, which act as a safeguard. EL (Drafting):EL '(da) an offer of securities to be admitted to trading on a regulated market or an SME growth market and that are fungible with securities already admitted to trading on the same market, provided that they represent, over a period of 12 months, less than 30 % of the number of securities already admitted to trading on the same market; EL (Comments):EL EL: In our opinion, a 30% threshold would strike a better balance in relation to different market sizes within the EU, investor protection and reduction of administrative burdens. IE (Comments):IE IE see the scope for administrative burden alleviation for such issuers, however careful assessment will be required as to whether investors might lack the the necessary information to make an informed decision when impactful corporate actions take place, such as a rights issue. These could be quite significant given the increase in the threshold to 40%. Has the Commission considered putting safeguards in place on how the issuer is to inform the market on the reasons for the material capital increase?

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Commission proposal	Drafting Suggestions Comments
	RO (Comments):RO RO Comments Article 1 para 4 letters (da)– taking into consideration the general goal of providing investors with an adequate level of disclosure through a document/prospectus containing in a centralized and synthetic manner the information necessary for investors to make an informed investment decision we are currently analyzing the opportunity for establishing a lower threshold than the one mentioned in letter (da). AT (Comments):AT We would appreciate clarification on why the exemptions in the new Article 1(4)(da) and Article 1(5)(a) and (b) relating to the issuance of fungible securities below 40% of the already admitted securities do not require that those securities have already been admitted to trading on the regulated market for a minimum period of 18 months. This minimum period was introduced (on the occasion of the introduction of SME growth markets) in order to ensure that there is enough disclosure in the market. It is required also for regulated markets in other exemptions like Article 1(4)(db) and Art 1(5)(ba). DE (Drafting): DE ‘(da) an offer of securities to be admitted to trading on a regulated market or an SME

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Commission proposal	Drafting Suggestions Comments
	growth market and that are fungible with securities already admitted to trading on the same market, provided that they represent, over a period of 12 months, less than 40% <u>25%</u> of the number of securities already admitted to trading on the same market, <u>provided that a document is made available to the public in accordance with the arrangements set out in Article 21 (2), containing information on the number and nature of the securities and the reasons for and details of the offer;</u> DE (Comments): DE There must be at least some information on the offer, see in this respect e.g. the requirements in points h) and i) of current paragraph 4. We suggest to add a similar requirement at the end of the new exemption. Furthermore, a threshold as high as 40% likely exempts situations / capital increases that would otherwise require additional information in a prospectus, e.g. pro forma financial information in case of larger acquisitions. Such information is not available via other transparency requirements (e.g. ad hoc information) outside a prospectus. The same is true for information on risks and recent developments neither included in the latest financial information nor covered by MAR, but potentially relevant when assessing the conditions of the offer (in particular the offer price). Therefore, in terms of investor protection, a lower threshold of 25% percent ist suggested, while for larger offers the proposed exemption in point (db) with the 10-page document or the EU Follow-on propectus should be used. BG

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Commission proposal	Drafting Suggestions Comments
	(Comments): BG BG: The interplay between the different exemptions, namely the exemptions proposed in Article 1, par. 4 and 5, and the exemption in Article 3 should be clarified, as all stakeholders should be aware of what documents Member states and market operators are allowed to require in the situations where the issuer falls under these new exemptions and is not obliged to issue a prospectus. Our understanding of the proposal under new letter (da) is that where the securities to be admitted to trading are under the threshold as defined in Article 3, Member states and market operators are allowed to define what kind of document would be required by the issuer. In case the offer is above the threshold it seems that only the market operator could require an admission document. Member states are not allowed to require a document. It is not clear how the issuer would inform market participants, including the investors, what are the reasons for the capital increase and in what form the issuer would publish all the relevant information in this regard. The lack of a standard document would undermine legal certainty and lead to additional fragmentation. LT (Comments): LT Greater clarity should be provided regarding the definition of these securities fungible with

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Commission proposal	Drafting Suggestions Comments
	securities. Please note that the currently valid version of the regulation contains only the concept of non-fungible shares. HR (Comments): HR We believe that this threshold could be higher or that a full exemption could be introduced for the whole secondary issuance, same as for issuers whose fungible securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities (combined with the obligation of drafting the new short summary document).
(db) an offer of securities fungible with securities that have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities, provided that all of the following conditions are met:	CY (Comments):CY Please see the previous comment. NL (Comments):NL NL (Comments): The Netherlands is in principle critical of the proposal to fully exempt issuers to publish a prospectus for both the offer of securities and the admission to trading. The consequences of this proposal are, i.a., that there is no limit to the secondary issuance of fungible securities (such

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Commission proposal	Drafting Suggestions Comments
	as a limit of 20% or the new 40% of securities already admitted to trading) and that an issuer could transfer from a SME growth market to a regulated market without a new prospectus. Netherlands is of the opinion that this additional exemption, on top of the 40% exemption, might strike a disproportionate balance between flexible rules for issuers and investor protection. We therefore ask what the consideration has been for this additional exemption. Furthermore, it is important that a transfer of an issuer from an SME growth market to a regulated market is always accompanied by an approved prospectus. FR (Comments):FR While we strongly support measures to facilitate secondary issuance, we think the 18-months exemption should be removed since time since admission to trading is not a relevant criteria to decide whether an operation is transformative (contrary to the dilution), even more so for SME. IE (Comments):IE While IE appreciate alleviation of administrative and cost burden for issuers, is there potential that the lack of a prospectus that has to be scrutinised by an NCA may allow scope for the document under Annex IX to resemble marketing material at the detriment of providing targeted information for investors? RO

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Commission proposal	Drafting Suggestions Comments
	(Comments):RO RO Comments Article 1 para 4 letters (db) –We are currently analyzing the approach taken in letter (db) as it implies a permanent exemption from the obligation to publish a prospectus in the case of securities that have been admitted to trading on a regulated market or SME growth market continuously for at least 18 months. BG (Comments): BG BG: Please refer to the comment in letter (da). It is not clear in our view if the offer is under the threshold defined in Article 3 Member states are allowed to require other documents than the document in Annex IX. It is also not clear if market operators are allowed to require other documents regardless of the size of the offer. In our opinion, market operators should not be prevented to require additional documents when they deem this necessary in order to ensure high level of investor protection. HR (Comments): HR We support this exemption.

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Commission proposal	Drafting Suggestions Comments
(i) the securities offered to the public are not issued in connection with a takeover by means of an exchange offer, a merger or a division;	DE (Drafting): DE i) the securities offered to the public are not issued in connection with a takeover by means of an exchange offer, a merger or a division <u>and the issuer of the securities has no complex financial history and has not made a significant financial commitment, as referred to in Article 18 of Commission Delegated Regulation (EU) 2019/980;</u> DE (Comments): DE We suggest to exclude any situation that would fall under Article 18 of Commission Delegated Regulation (EU) 2019/980 regarding complex financial history and significant financial commitment, as information on such transactions cannot be provided in a document of 10 pages as set out in Annex IX.
(ii) the issuer of the securities is not under an insolvency or restructuring procedure;	FR (Drafting):FR (ii) the issuer of the securities is not under an insolvency or restructuring procedure, <u>nor going through a significant transformation;</u> (iix) the issuer is not delaying the disclosure of inside information pursuant to Article 17(4) of

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Commission proposal	Drafting Suggestions Comments
	<u>Regulation (EU) No 596/2014, at the time of the offer to the public;</u> FR (Comments):FR This to reflect the – currently floating – recital 13 (“<i>or going through a significant transformation</i>”) which should be introduced in the operative text of the Regulation. This requires defining what a “significant transformation” is. This pre-condition is implied under section VI of Annex IX and should therefore be set out upfront in Art. 1(4)(db) for the sake of legal clarity. DE (Comments): DE The term “restructuring procedure” should be further defined or explained in a Recital. ES (Comments): ES There should be more clarity about the notions of a company in insolvency or restructuring procedure in order to avoid any circumvention.

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Commission proposal	Drafting Suggestions Comments
(iii) a document containing the information set out in Annex IX is filed with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2).’;	PL (Comments):PL PL: In order to ensure proper access to information for investors and the NCA, it would be reasonable for Article 21(1) (the provision concerning the date of publication of the prospectus) to also apply to this document, both in terms of publication for investors and submission to the NCA. FR (Comments):FR The legal status of this document remains unclear : does it serve - like a prospectus - to provide information enabling the investor to make an investment decision? What liability regime is attached to it since it is not required to be approved by the NCA ? EL (Drafting):EL EL: (iii) a prospectus containing the information set out in Annex IV or V, is approved filed with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2).’; EL (Comments):EL EL: In our opinion the simplified prospectus regime for secondary issuances should not be

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Commission proposal	Drafting Suggestions Comments
	lifted. Instead, it should be further simplified. The majority of responses by stakeholders on this issue (51%) supported the prospectus requirement. Therefore, to strike a balance between investor protection and administrative burdens, a less detailed prospectus regime for all types (fungible and non fungible) of secondary issuances should take the place of the existing simplified disclosure prospectus. The EU Follow on prospectus, as set out in Annex IV or V of the proposal, seems appropriate to this end. IE (Comments): IE We note that the document is to be filed with the NCA. If filing is required, could this create an expectation with the public that it is being reviewed on an ex-post basis? It will be important to ensure that NCAs have appropriate powers if an issue with such a document is identified. We are analysing the existing list of powers under the Prospectus Regulation to assess if they are sufficient and may have comments on this in due course. DE (Drafting): DE (iii) a document containing the information set out in Annex IX is filed, <u>in electronic format</u>, with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2). DE (Comments): DE

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Commission proposal	Drafting Suggestions Comments
	It shall be ensured that any filing needs to be done in electronic form only. BG (Comments): BG BG: It should be clarified what are the powers of the National Competent Authority (NCA) in relation to this document.
(ii) in point (j), the introductory wording is replaced by the following:	
‘(j) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities:’;	PT (Comments):PT
(iii) point (l) is deleted;	
(iv) the following subparagraphs are	

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Commission proposal	Drafting Suggestions Comments
added:	
‘The document referred to in point (db)(iii) shall have a maximum length of 10 sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.	EL (Drafting):EL EL: ‘The document referred to in point (db)(iii) shall have a maximum length of 10 sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State. EL (Comments):EL EL: Please refer to our comment above regarding the requirement of a PROSPECTUS according to Annex IV or V. LU (Drafting): LU ‘The document referred to in point (db)(iii) shall have a maximum length of 10 sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in <u>a language fulfilling the requirements of Article 27(2), first subparagraph</u>the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that

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Commission proposal	Drafting Suggestions Comments
	<u>Member State.</u> LU (Comments): LU In case of cross border offers, the document should also be available in a language accepted by investors in host Member States and their competent authorities.
The total aggregated consideration of the offers of securities to the public referred to in the first subparagraph, point (j), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except those offers of securities to the public that were subject to any other exemption from the obligation to publish a prospectus in accordance with the first subparagraph, or pursuant to Article 3(2).’;	PL (Comments):PL PL: The proposed method of calculating the value of offers indicates that all offers are to be included, except for those carried out on the basis of exceptions. This wording could be interpreted as including public offerings based on a prospectus, which is illogical. It would not raise any doubts if this provision were worded in such a way that all public offerings conducted on the basis of this particular prospectus exception are included in the limit. This would also solve another doubt – whether the issuer can differentiate securities in such a way that it multiplies the limit of EUR 150 million, recognizing that it applies separately to each security, e.g. individual bonds that differ only in single parameters, such as the method of calculating interest. AT (Comments):AT We would appreciate clarification on how to calculate the “total aggregated consideration over

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Commission proposal	Drafting Suggestions Comments
	a period of 12 months”. Our understanding is that when deciding whether an offer can be made under the exemption, the issuer has to look back to the last 12 months and all offers having started within that period must be counted. But we are not sure whether the wording (“the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public”) in the proposal covers this understanding, at least it might be prone to misunderstandings.
(c) paragraph 5 is amended as follows:	
	NL (Drafting):NL NL (drafting suggestion): The total aggregated consideration of the offers of securities to the public referred to in the first subparagraph, point (j), shall take into account the total aggregated consideration of all offers of securities to the public <u>that fall either partially or fully within</u> the 12 months preceding the start date of a new offer of securities to the public, except those offers of securities to the public that were subject to any other exemption from the obligation to publish a prospectus in accordance with the first subparagraph, or pursuant to Article 3(2).’; NL

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Commission proposal	Drafting Suggestions Comments
	(Comments):NL NL (Comments): We welcome a clarification of how the total consideration over a period of 12 months should be interpreted. However, the proposed text is not sufficiently clear and unambiguous in this respect. It should in our opinion be clarified that offers that only fall partially within the 12-month period, either because their start date was more than 12 months ago or because the offer is still ongoing at the start date of the new offer, should also be taken into account.
(i) the first subparagraph is amended as follows:	
(1) points (a) and (b) are replaced by the following:	
‘(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 40 % of the number of securities already admitted to trading on the same regulated market;	CY (Comments):CY We are sceptical about the increase of the limit of the number of securities from 20% to 40% as the proposed increase is very high and it would result to a large number of admissions to trading of securities without a prospectus. PL

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Commission proposal	Drafting Suggestions Comments
	(Comments):PL PL: The understanding of the term “fungible” should be clarified, in line with our comments to Article 1(4)(da). FR (Comments):FR This will give issuers substantiel flexibility to access market funding when needed for a limited cost. We think the loosening of secondary issuance is <i>not</i> going to harm investors since such operations will still need to approved by the shareholders’ assembly, which act as a safeguard. EL (Drafting):EL EL: securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 30 % of the number of securities already admitted to trading on the same regulated market; EL (Comments):EL EL: In our opinion, a 30% threshold would strike a better balance in relation to different market sizes within the EU, investor protection and reduction of administrative burdens. HR

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Commission proposal	Drafting Suggestions Comments
	(Comments): HR We believe that this threshold could be higher or that a full exemption could be introduced for the whole secondary issuance, same as for issuers whose fungible securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities (combined with the obligation of drafting the new short summary document). Additionally, in theory, would it be possible for an issuer to have have fungible securities admitted to trading on two different regulated markets (one issuance on regulated market X, the second one on regulated market Y)? If yes, we do not see a reason why this exemption would not be applicable also to such issuers.
(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 40 % of the number of shares of the same class already admitted to	CY (Comments):CY We are still assessing the consequences of the proposed increase to 40% in light of the other suggested exemptions. EL (Drafting):EL EL: b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same

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Commission proposal	Drafting Suggestions Comments
trading on the same regulated market, subject to the third subparagraph;';	class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 30 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the third subparagraph;'; EL (Comments):EL EL: Please refer to our comments above on the 30% threshold. LU (Drafting): LU (b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 40 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the <u>second</u>third subparagraph;'; LU (Comments): LU It is the <i>second</i> subparagraph of Article 1, paragraph 5, that refers to this point (b). Therefore, we suggest amending point (b) of Article 1, paragraph 5, first subparagraph, accordingly.

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Commission proposal	Drafting Suggestions Comments
	HR (Comments): HR We believe that this threshold could be higher. However, it is our understanding that a full exemption would apply where a prospectus was drawn up in accordance with either the Prospectus Regulation or Directive 2003/71/EC upon the offer to the public or admission to trading on a regulated market of the securities giving access to the (resulting) shares? Could you confirm this?
(2) the following point (ba) is inserted:	
‘(ba) securities fungible either with securities that have been admitted to trading on a regulated market continuously for at least the last 18 months before the admission to trading of the new securities, or with securities that have been offered to the public with a prospectus and admitted to trading on an SME growth market continuously for at least the last 18 months before the admission to trading of the new securities, provided that all of the	CY (Comments):CY We have concerns with this new exemption as it has a very broad scope (eg no percentage cap, transfer from SME growth market) and when considered with other exemptions a large number of securities in Cyprus will be admitted to trading on the regulated market without the obligation to publish a prospectus. Instead, the scope of Article 14(b) could be extended to also cover admissions that would fall under the exemption in Articles 1(5)(ba). FI

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following conditions are met:	(Comments):FI We support this new prospectus exemption. Companies that are already listed are subject to disclosure requirements pursuant to other regulations and directives (e.g. transparency directive and MAR). However, we would like to point out that in Finland, the share issuance is arranged at the level of book entry system so that in connection with the share issuance with pre-emptive rights the subscription rights (and temporary shares) are also listed. It seems that the fungibility criterion does not apply to issuance and listing of the subscription rights since these securities are not fungible with the shares for which the subscription rights entitle to. This entails that the prospectus exemption (which we find very positive) would not be applicable in Finland. Therefore, we find it of paramount importance that e.g. in own paragraph (or subparagraph) this would be clarified so that the issuance and listing of the subscription rights (and other technical arrangements (e.g. issuance of temporary shares in connection with the share issuance)) used in connection with the share issuance with pre-emptive rights would fall under the fungibility criterion. FR (Comments):FR While we strongly support measures to facilitate secondary issuance, we think the 18-months exemption should be removed since time since admission to trading is not a relevant criteria to decide whether an operation is transformative (contrary to the dilution), even more so for SME. HR

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Commission proposal	Drafting Suggestions Comments
	(Comments): HR We agree with this exemption. Please note that we would suggest to explore further simplifications of the “full” prospectus regime.
(i) the securities to be admitted to trading on a regulated market are not issued in connection with a takeover by means of an exchange offer, a merger or a division;	DE (Drafting): DE (i) the securities to be admitted to trading on a regulated market are not issued in connection with a takeover by means of an exchange offer, a merger or a division <u>and the issuer of the securities has no complex financial history and has not made a significant financial commitment, as referred to in Article 18 of Commission Delegated Regulation (EU) 2019/980;</u> DE (Comments): DE We suggest to exclude any situation that would fall under Article 18 of Commission Delegated Regulation (EU) 2019/980 regarding complex financial history and significant financial commitment, as information on such transactions cannot be provided in a document of 10 pages as set out in Annex IX.
	NL (Comments):NL

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Commission proposal	Drafting Suggestions Comments
	NL (Comments): See also our comment above at point (db) of Article 1 paragraph 4. Also for the admission to trading of securities on a regulated market the Netherlands is critical of fully exempting admissions to trading on a regulated market of fungibles.
(ii) the issuer of the securities is not under an insolvency or restructuring procedure;	FR (Drafting):FR (ii) the issuer of the securities is not under an insolvency or restructuring procedure, <u>nor going through a significant transformation</u>; <u>(iix) the issuer is not delaying the disclosure of inside information pursuant to Article 17(4) of Regulation (EU) No 596/2014, at the time of the admission to trading;</u> FR (Comments):FR This to reflect the – currently floating – recital 13 (“<i>or going through a significant transformation</i>”) which should be introduced in the operative text of the Regulation. This requires defining what a “significant transformation” is. This pre-condition is implied under section VI of Annex IX and should therefore be set out

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Commission proposal	Drafting Suggestions Comments
	upfront in Art. 1(4)(db) for the sake of legal clarity. ES (Comments): ES There should be more clarity about the notions of a company in insolvency or restructuring procedure in order to avoid any circumvention.
(iii) a document containing the information set out in Annex IX is filed with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2).	PL (Comments):PL PL: In order to ensure proper access to information for investors and the NCA, it would be reasonable for Article 21(1) (the provision concerning the date of publication of the prospectus) to also apply to this document, both in terms of publication for investors and submission to the NCA. FR (Comments):FR The legal status of that document remains unclear – cf. comment on the mirror provision for SME Growth Markets EL (Drafting):EL EL: (iii) a prospectus containing the information set out in Annex IV or V, is approved filed

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Commission proposal	Drafting Suggestions Comments
	with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2).’; EL (Comments):EL EL: In our opinion, the simplified prospectus regime for secondary issuances should not be lifted. Instead, it should be further simplified. The majority of responses by stakeholders on this issue (51%) supported the prospectus requirement. Therefore, to strike a balance between investor protection and administrative burdens, a less detailed prospectus regime for all types (fungible and non fungible) of secondary issuances should take the place of the existing simplified disclosure prospectus. The EU Follow on prospectus, as set out in Annex IV or V of the proposal, seems appropriate to this end. DE (Drafting): DE (iii) a document containing the information set out in Annex IX is filed, <u>in electronic format</u>, with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2). DE (Comments): DE It shall be ensured that any filing needs to be done in electronic form only.

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Commission proposal	Drafting Suggestions Comments
(3) in point (i), the introductory wording is replaced by the following:	
‘(i) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities:’;	PL (Comments):PL PL: There is no precise indication whether the issuer may differentiate securities in such a way that it multiplies the limit of EUR 150 million, recognizing that it applies separately to each security, e.g. individual bonds that differ only in single parameters, such as the method of calculating interest.
(4) points (j) and (k) are deleted;	
(ii) in the second subparagraph the introductory wording is replaced by the following:	
‘The requirement that the resulting shares represent, over a period of 12 months, less than 40 % of the number of shares of the same class already admitted to trading on the same regulated market as referred to in the first subparagraph,	EL (Drafting):EL EL: ‘The requirement that the resulting shares represent, over a period of 12 months, less than 30% of the number of shares of the same class already admitted to trading on the same regulated market as referred to in the first subparagraph, point (b), shall not apply in any of the

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Commission proposal	Drafting Suggestions Comments
point (b), shall not apply in any of the following cases:’;	following cases:’; EL (Comments):EL EL: Please refer to our comments above on the 30% threshold.
(iii) the following two subparagraphs are added:	
‘The document referred to in point (ba)(iii) shall have a maximum length of 10 sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.	EL (Drafting):EL EL: ‘The document referred to in point (ba)(iii) shall have a maximum length of 10 sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State. EL (Comments):EL EL: Please refer to our comment above regarding the requirement of a PROSPECTUS according to Annex IV or V.

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Commission proposal	Drafting Suggestions Comments
	AT (Comments): AT We are not quite sure why this document of 10 sides, contrary to other documents replacing a prospectus, e.g. Art 1(4)(f) – (i), needs to be filed with the NCA. Either all such documents should be filed with the NCA or none. DE (Comments): DE As regards the use of language for the document, the principles laid down in Article 27 should be taken into account. Where the offer to the public is made (also) in Member States other than the home Member State, the document should be also drawn up in a language accepted in the other Member States. LU (Drafting): LU ‘The document referred to in point (ba)(iii) shall have a maximum length of 10 sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in the <u>a language fulfilling the requirements of Article 27(2), first subparagraph official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.</u>

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Commission proposal	Drafting Suggestions Comments
	LU (Comments): LU In case of cross border offers, the document should also be available in a language accepted by investors in host Member States and their competent authorities.
The total aggregated consideration of the offers of securities to the public referred to in the first subparagraph, point (i), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except for those offers of securities to the public that were subject to any other exemption from the obligation to publish a prospectus in accordance with the first subparagraph, or pursuant to Article 3(2).’;	PL (Comments):PL PL: The proposed method of calculating the value of offers indicates that all offers are to be included, except for those carried out on the basis of exceptions. This wording could be interpreted as including public offerings based on a prospectus, which is illogical. It would not raise any doubts if this provision were worded in such a way that all public offerings conducted on the basis of this particular prospectus exception are included in the limit. There is also no precise indication whether the issuer may differentiate securities in such a way that it multiplies the limit of EUR 150 million, recognizing that it applies separately to each security, e.g. individual bonds that differ only in single parameters, such as the method of calculating interest. AT (Comments):AT The definition of „that have been made in the 12 months preceding...” seems unclear: which event needs to be more than 12 months in the past – the end of the offer period, the closing or

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Commission proposal	Drafting Suggestions Comments
	the start of the first offering? DE (Drafting): DE The total aggregated consideration of the offers of securities to the public referred to in the first subparagraph, point (i), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except for those offers of securities to the public that were subject to any other exemption from the obligation to publish a prospectus in accordance with the first subparagraph, or pursuant to Article 3(2).’; DE (Comments): DE The reference to Article 3(2) at the end of the subparagraph seems inconsistent as the exemption in Article 3(2) applies only to offers, while this paragraph 5 is about exemptions for the admission to trading.
(d) paragraph 6 is replaced by the following:	
‘6. The exemptions from the obligation to publish a prospectus that	FR

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Commission proposal	Drafting Suggestions Comments
are set out in paragraphs 4 and 5 may be combined together. However, the exemptions in paragraph 5, first subparagraph, points (a) and (b), shall not be combined together where such combination could lead to the immediate or deferred admission to trading on a regulated market over a period of 12 months of more than 40 % of the number of shares of the same class already admitted to trading on the same regulated market, without a prospectus being published.’;	(Comments):FR This overlap creates a very large exemption that is not justified by the needs of investors. The dilution criteria is a much more relevant criteria to decide whether an operation is transformative and requires a prospectus. EL (Drafting):EL EL: ‘6. The exemptions from the obligation to publish a prospectus that are set out in paragraphs 4 and 5 may be combined together. However, the exemptions in paragraph 5, first subparagraph, points (a) and (b), shall not be combined together where such combination could lead to the immediate or deferred admission to trading on a regulated market over a period of 12 months of more than 30% of the number of shares of the same class already admitted to trading on the same regulated market, without a prospectus being published.’; EL (Comments):EL EL: Please refer to our comments above on the 30% threshold. BE (Drafting):BE The exemptions from the obligation to publish a prospectus that are set out in paragraphs 4 and 5 may be combined together. However, <u>the exemptions that are set out in paragraphs 4 and 5</u>

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	<u>may not be combined with the exemption set out in article 3.2. Moreover, the exemptions in paragraph 5, first subparagraph, points (a) and (b), shall not be combined together where such combination could lead to the immediate or deferred admission to trading on a regulated market over a period of 12 months of more than 40 % of the number of shares of the same class already admitted to trading on the same regulated market, without a prospectus being published.’;</u> BE (Comments):BE It should be clarified in the text that the exemptions from the obligation to publish a prospectus that are set out in paragraphs 4 and 5 may not be combined with the exemption set out in article 3.2. DE (Drafting): DE ‘6.The exemptions from the obligation to publish a prospectus that are set out in paragraphs 4 and 5 <u>and pursuant to Article 3 paragraph 2</u> may be combined together. However, the exemptions in paragraph 5, first subparagraph, points (a) and (b), shall not be combined together where such combination could lead to the immediate or deferred admission to trading on a regulated market over a period of 12 months of more than 40 % of the number of shares of the same class already admitted to trading on the same regulated market, without a prospectus being published.’; DE

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Commission proposal	Drafting Suggestions Comments
	(Comments): DE We suggest to add a clarification that the exemptions set out in paragraph 4 may be combined with the exemption in Art. 3(2). HR (Comments): HR Please note that we are in favour of either increasing this threshold or introducing a full exemption for the whole secondary issuance, same as for issuers whose fungible securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities (combined with the obligation of drafting the new short summary document).
(2) Article 2 is amended as follows:	
(a) point (z) is deleted;	FR (Comments):FR We support this modification.
(b) the following point (za) is added:	
'(za) 'electronic format' means an electronic format as defined in Article	CZ

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Commission proposal	Drafting Suggestions Comments
4(1), point (62a) of Directive 2014/65/EU;’.	(Drafting):CZ ‘(za) ‘electronic format’ means an electronic format as defined in Article 4(1), point (62a) of Directive 2014/65/EU.’; CZ (Comments):CZ Typing error
	EL (Drafting):EL (c) the following point (aa) is added: (aa) ‘fungible’ means.... EL (Comments):EL EL: In our opinion, a definition of ‘fungible’ securities should be added, to provide clear guidance on the application of the PR exemptions.
(3) in Article 3, paragraphs 1 and 2 are replaced by the following:	CZ (Comments):CZ Side note: It would be probably desirable to align the limit for prospectus obligation in the Prospectus Regulation with a limit set in Crowdfunding Regulation. Therefore we would like to

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Commission proposal	Drafting Suggestions Comments
	propose to add an admendment to the Crowdfunding regulation adjusting a limit that is there in Article 1(2) letter (c), so there would not be 7 mil. EUR gap in regulatory practice. BG (Comments): BG Regarding the proposal to introduce a harmonized threshold of EUR 12,000,000, below which publication of a prospectus for a public offering will not be required, Bulgaria considers that the option for Member States to determine the threshold at national level should be preserved in order to take into account the specificities and the size of their markets. Bulgaria considers that the threshold of 12,000,000 euros is too high considering the size of the national market and the size of the issuers. Bulgaria does not share the EC's argument that the lack of a single threshold in the Member States represents an obstacle to cross-border offerings, as the exemption under the threshold is applicable when the offer of securities is limited within the territory of the given Member State.
‘1. Without prejudice to Article 1(4) and paragraph 2 of this Article, securities shall only be offered to the public in the Union after prior publication of a prospectus in accordance with this Regulation.	

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Commission proposal	Drafting Suggestions Comments
2. Without prejudice to Article 4, a Member State shall exempt offers of securities to the public from the obligation to publish a prospectus set out in paragraph 1 provided that:	PT (Drafting):PT Without prejudice to Article 4, a Member State shall exempt offers of securities to the public are exempted from the obligation to publish a prospectus set out in paragraph 1 provided that: PT (Comments):PT As this is a regulation there should be no need to establish in national legislation an exemption for the publication of a prospectus. CY (Comments):CY Cyprus considers that the proposed harmonised threshold of EUR 12 million is too high, taking also into account that the existing national threshold in Cyprus is set to EUR 5 million, as a large number of offers will take place without the obligation to publish a prospectus thus jeopardizing investor protection. The existing threshold in Cyprus matches the characteristics of the Cypriot market, which is relatively small. We are also sceptical given the fact that the Crowdfunding Regulation imposes a threshold of EUR 5 million which is the threshold used by most MS to exempt offers of securities to the public from the obligation to publish a prospectus in accordance with the PR. By increasing PR threshold to EUR 12 million, this creates a gap where securities could be offered to retail

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Commission proposal	Drafting Suggestions Comments
	investors without sufficient information thus jeopardizing again investor protection. RO (Comments):RO RO Comments Article 3 (2) – Although we support a harmonized approach across the EU, we are of the opinion that the rule exempting certain offers of securities from the obligation to publish a prospectus when the total aggregated consideration of securities offered in the Union is less than EUR 12 000 000 should be carefully considered taking into consideration the different sizes of capital markets across EU, including the dimension of the markets that are not very large in size. Therefore, we are of the opinion that the level of the threshold should be lowered or the current approach that gives the MS the possibility to exempt from the obligation to publish a prospectus certain offers whose total consideration is below a certain threshold could be taken into account. It should be taken into account that the maintenance of a level of a fixed threshold that is too high for small capital markets could lead to fragmentation and to different national disclosure regime. BE (Drafting):BE 2. Without prejudice to Article 4, offers of securities to the public <u>shall be exempted</u> from the obligation to publish a prospectus set out in paragraph 1 provided that:

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Commission proposal	Drafting Suggestions Comments
	BE (Comments):BE Wording to be revised: why are the words “Member State shall exempt” used here given the proposal to remove possibility to determine threshold per Member State?
(a) such offers are not subject to notification in accordance with Article 25;	
(b) the total aggregated consideration in the Union for the securities offered is less than EUR 12 000 000 per issuer or offeror calculated over a period of 12 months.	SK (Comments):SK SK: We are seriously concerned that the option for Member States is being removed and a harmonized threshold is being proposed. This approach would not make it possible to reflect the characteristics of local capital markets which may mean a weakening of investor protection. We are in favor of the Member State has the possibility to set a threshold. CZ (Comments):CZ We welcome the setting of a single limit, however we are rather sceptical regarding the limit which is set quite high. It could lead to an extended fragmentation among national regulations under the set EU limit.

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Commission proposal	Drafting Suggestions Comments
	The Czech Republic has a positive experience with the prospectus which is viewed favourably also by trading venues and NCA. We would therefore welcome a <u>lower bar</u> for incurring of prospectus obligation. We would like to also consider other alternative, like using the Growth issuance document even in other trading venue (like regulated market for the issuance that is below 12 milion EUR). So far the investors do rely on information in prospectus and the bar at 12 milion EUR for IPO is too high for our market. But we are open to consider also other possibilities than setting the bar lower. FI (Comments):FI We support increasing the threshold to 12 million. It should be noted that the threshold is not applicable where the issuer seeks the admission to trading of securities on a regulated market. The effect of the amendement on investor protection is therefore limited. In addition, companies that are already listed are subject to disclosure requirements pursuant to other regulations and directives (such as transparency directive and MAR). HU (Comments):HU We suggest to maintain the current rules of Art. 1 (scope): Art. 1(3) “<i>Without prejudice to the second subparagraph of this paragraph and to Article 4, this Regulation shall not apply to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months.</i>”

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Commission proposal	Drafting Suggestions Comments
	We do not support the proposed modification of Art. 3(2), we propose to delete it. If the above is not possible then we suggest a lower threshold always regulated in the scope of the regulation (Art. 1) and not in Article 3(2). Currently, the Hungarian legislation in force contains rules below the EUR 1 million threshold for prospectuses, the maintenance of which is necessary for the functioning of the Hungarian market. EE (Comments):EE We are still assessing the proposal when it comes to raising the upper exemption threshold for small offers of securities. Even though Member States are free to decide whether to raise the threshold from their current levels or not make any changes to existing thresholds set out in their national law, then enabling the possibility of raising this threshold would create an uneven playing field for those Member States whose markets are smaller or those that have done away with the requirement of having the information document approved by the NCA before the offer (both applicable in case of Estonia). It is true that the thresholds are fragmented across Member States but this is due to the size of the markets. Raising the upper threshold further could make the fragmentation across Member States worse, not alleviate it. PL (Comments):PL

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Commission proposal	Drafting Suggestions Comments
	PL: The introduction of a single threshold applicable in all Member States raises our doubts, bearing in mind the very large differences in the size of capital markets in these countries. The value of the capital raised through a public offering without a prospectus in one Member State cannot be determined by the de facto size of the largest EU markets, because investors from these markets will not be the addressees of such an offer. Our preferred solution would be to maintain the current solution, enabling individual Member States to set the threshold at national level. FR (Comments):FR Increasing the maximum exemption threshold from 8 M € to 12 M € would facilitate market financing for smallest issuers. The current 8 M € threshold is binding and forces some small issuers to produce a prospectus or complete the 8 M € offer with a small private placement to raise enough fund. Such barriers entail costs for these companies that may relinquinsh listing. A slight ajustement might alleviate this constraint. EL (Comments):EL EL: We can support the proposed new threshold. IE (Comments):IE IE is currently analysing this. While we do not have significant concerns (given that there is

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Commission proposal	Drafting Suggestions Comments
	scope for national disclosure rules to be strengthened) we are entering a scrutiny reservation as we appreciate there are concerns on this proposal. BE (Comments):BE The 12M threshold is very high for smaller markets. BE is concerned that if more offers are exempted, more disclosure requirements at national level will be drafted for smaller offers, which could lead to less harmonisation. AT (Comments):AT We are not sure if the increased threshold of 12 Mio. Euro would foster harmonization within the EU-markets. Currently the MS are free to set different thresholds at national levels between EUR 1 and 8 million. The crowdfunding-threshold for public offers of securities via platforms is currently set at EUR 5 million. Thus a higher threshold of 12 Mio. Euro could lead in our view to even more fragmentation since each MS would be free to set their respective prospectus threshold somewhere within the range of 5 to 12 Mio. Euro. The fragmentation of markets in the EU would be contrary to the goals of the Capital Markets Union. ES (Comments): ES We have to express a scrutiny reservation regarding the EUR 12 000 000 threshold established

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Commission proposal	Drafting Suggestions Comments
	for the exemption of elaborating and publishing a prospectus. LT (Comments): LT We support the proposal that a single harmonised threshold should be set out at Union level, however we believe that further discussions are required on the threshold amount. The threshold must be appropriate and proportionate to diversity of the markets. New wording of the provision lacks clarity regarding the calculation of this threshold; it is not entirely clear whether it should be calculated including all securities or only individual types of securities. HR (Comments): HR We support the implementation of a single harmonised EU threshold. We believe that threshold of EUR 12 000 000 will promote more efficient (less costly) financing via capital markets especially for SMEs. Having said that, we believe that EUR 12 000 000 strikes a good balance between offers that do not need prospectus and offers for which prospectus is obligatory.
The total aggregated consideration for the securities offered, as referred to in the first subparagraph, point (b), shall take into account the total aggregated consideration of all offers of securities to	PL (Comments):PL PL: The proposed method of calculating the value of offers indicates that all offers are to be

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Commission proposal	Drafting Suggestions Comments
the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except those offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus pursuant to Article 1(4), first subparagraph.	included, except for those carried out on the basis of exceptions. This wording could be interpreted as including public offerings based on a prospectus, which is illogical. It would not raise any doubts if this provision were worded in such a way that all public offerings conducted on the basis of this particular prospectus exception are included in the limit. There is also no precise indication whether the issuer may differentiate securities in such a way that it multiplies the possibility of applying this prospectus exception, recognizing that it applies separately, e.g. to different types of prospectuses – shares and bonds, or even separate application to each security within one type, e.g. individual bonds that differ only in single parameters, such as the method of calculating interest. BE (Drafting):BE The total aggregated consideration for the securities offered, as referred to in the first subparagraph, point (b), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except those offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus pursuant to Article 1(4), first subparagraph <u>and offers for which a prospectus has been published.</u> BE (Comments):BE It should be added in the text that offers for which a prospectus has been published should not

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	be taken into consideration for this calculation. AT (Comments):AT The definition „<i>all offers of securities to the public...</i>” seems too broad. It should refer to securities of the same issuer only. Moreover, a clarification which securities have to be added up would be helpful.
	NL (Comments):NL NL (Comments): The Netherlands is in principle in favour of the proposal to both harmonise and raise the the threshold for small offers to the public. This could lead to an immediate decrease in burdens for SMEs seeking capital. However, this could also have an effect on the level of investor protection. We ask the Commission what the expected effects of this amendment to investor protection are if the threshold is raised to EUR 12 million, before the Netherlands can agree to this new threshold.
Where an offer of securities to the public is exempted from the obligation to publish a prospectus pursuant to the first subparagraph, a Member State may	CZ (Comments):CZ

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require other disclosure requirements at national level, to the extent that such requirements do not constitute a disproportionate or unnecessary burden.';	It is not clear to what extent requirements do not constitute a disproportionate or unnecessary burden. Would eg.something similar to EU Growth issuance document be acceptable? It would be quite difficult for MS to assess what <i>disproportionate or unnecessary burden</i> is when trying to stipulate disclosure requirements. PL (Comments):PL PL: We propose to add a provision clarifying whether national legislation may provide for some form of ex ante verification and approval by NCAs of the information document defined by national legislation. EL (Drafting):EL Where an offer of securities to the public is exempted from the obligation to publish a prospectus pursuant to the first subparagraph, Member States should require other disclosure requirements at national level for public offerings up to 5 000 000to the extent that such requirements do not constitute a disproportionate or unnecessary burden.'; EL (Comments):EL EL: In our opinion, for public offerings below the common threshold of 12 000 000 and up to 5 000 000, all member states should require disclosure requirements according to national rules,

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	in order to avoid regulatory arbitrage. ES (Comments): ES We have a scrutiny reservation regarding the additional disclosure requirements at national level. If this discretionary powers are allowed to NCA, more details would be needed to delimitate them, in order to avoid unintended consequences as regards the level playing field among jurisdictions. If one of the objectives of the proposal is to achieve more consistent rules and procedures at European level, we believe that it does not make much sense to allow NCAs a high degree of discretion in setting these additional requirements. Moreover, its application could create in cross-border emissions. Additionally, the concept of “<i>disproportionate or unnecessary burden</i>” seems too broad and lacks legal clarity.
(4) in Article 4, paragraph 1 is replaced by the following:	
‘1. Where an offer of securities to the public or an admission of securities to trading on a regulated market is exempted from the obligation to publish a prospectus in accordance with	

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Article 1(4) or (5) or Article 3(2), an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to voluntarily draw up a prospectus in accordance with this Regulation.’;	
(5) in Article 5(1), the first subparagraph is replaced by the following:	
‘Any subsequent resale of securities which were previously the subject of one or more of the types of offer of securities to the public listed in Article 1(4), points (a) to (db), shall be considered as a separate offer and the definition set out in Article 2, point (d), shall apply for the purpose of determining whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus unless one of the exemptions listed in	

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Commission proposal	Drafting Suggestions Comments
Article 1(4), points (a) to (db) applies in relation to the final placement.’;	
(6) Article 6 is amended as follows:	CY (Comments):CY We support the proposed amendments in Article 6 that introduce a standardised format and sequence of the prospectus and also introduce a page-limit for prospectuses that relate to shares or other transferable securities.
(a) in paragraph 1, the introductory wording is replaced by the following:	
‘Without prejudice to Article 14b(2), Article 15a(2) and Article 18(1), a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of:’;	HR (Comments): HR The problem with the current prospectus regime is the inflation of information for the potential investor (many of that information not actually being material, and serving as a distraction from the actually relevant information). If the purpose of the prospectus is to inform and protect the retail investor (which seems to be the case, as issuances aimed towards qualified investors and investors that can afford to invest in securities whose denomination per unit amounts to at least EUR 100 000), we need to do more to make the prospectus more understandable and concise for its intended audience.

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	The fact that, years after the application of the prospectus regime, one of the changes proposed now is limiting the size of pages in a prospectus to (near) 300 pages (and only for shares), should be sufficient to illustrate that there is room for improvement: - in the definition and understanding of materiality, - the scope of the prospectus (its purpose, taking into account the targeted audience) - in the way this information is presented in the prospectus. We would propose to discuss further what could be done to simplify the “full” prospectus regime and/or if it would be appropriate to expand the use of the EU Growth Issuance Document.
(b) paragraph 2 is replaced by the following:	
‘2. The prospectus shall be a document of a standardised format and the information disclosed in a prospectus shall be presented in a standardised sequence, in accordance with delegated acts referred to in Article 13(1). The information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible	FR (Drafting):FR ‘2.The prospectus shall be a document of a standardised format and the information disclosed in a prospectus shall be presented in a standardised sequence, in accordance with delegated acts referred to in Article 13(1). The information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible form, taking into account the factors set out in paragraph 1, second subparagraph, of this Article.

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Commission proposal	Drafting Suggestions Comments
form, taking into account the factors set out in paragraph 1, second subparagraph, of this Article.’;	<u>By derogation to the first subparagraph, where the prospectus consists of separate documents, and where the order of the information does not coincide with the order in which that information is presented in the Annexes to this Regulation, a cross reference list identifying the pages where each information of those Annexes can be found in the prospectus shall be included in the prospectus.</u> FR (Comments):FR We overall support the streamlining and standardization of the prospectus. Proposed modifications will reduce the administrative burden associated with the prospectus, increase harmonization across Member States and make the document more user-friendly for investors regardless of the Home Member State. At the same time, we propose a small modification to remove the hurdle for issuers wishing to use the URD as registration document in a tripartite EU prospectus (see similar provision in Art. 24(5) of Delegated Regulation (EU) 2019/980). IE (Comments):IE We recognise that standardisation aims to benefit smaller issuers/SMEs. We would ask if the Commission foresee or have considered if this could cause issues for the markets as a whole

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	and, specifically for established issuers as it will remove flexibility? There may also be concerns regarding the reusability of disclosure provided in other jurisdictions, US, UK, Asia etc. This point about re-reusability of disclosure globally is particularly pertinent for debt issuances. This ties in with our comment to amendment of Art. 13 para 1 first sub paragraph referencing specifically a standardised format and standardised sequence of the prospectus, base prospectus and final terms. RO (Comments):RO RO Comments Article 6 – as a general approach we are of the opinion that the requirement according to which the information is disclosed in a prospectus in a standardized sequence facilitate the reading of the prospectus and is beneficial to investors. ES (Comments): ES On a preliminary basis, we are positive about the introduction of more standardized prospectuses that should follow a pre-determined structure and order. HR (Comments): HR

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	We would propose to discuss further what could be done to simplify the “full” prospectus regime and/or if it would be appropriate to expand the use of the EU Growth Issuance Document.
(c) the following paragraphs 4 and 5 are added:	
‘4. A prospectus that relates to shares or other transferrable securities equivalent to shares in companies shall be of maximum length of 300 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.	PT (Comments):PT We are in favour of imposing a page limit for prospectuses as we believe that the length of prospectuses can be an issue for investors. Based on our recent experience with the EU Recovery Prospectus, which has a page limit and results in a more focused and investor-friendly prospectuses and given that we have not seen an increase in complaints since its implementation, we support this adjustment. Finally, we are still assessing whether this regime should be extended to other prospectus besides those of shares and equivalent securities. PL (Comments):PL PL: The principle that the information in the prospectus “shall be presented and laid out in a way that is easy to read, using characters of readable size” should apply to each prospectus. We

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Commission proposal	Drafting Suggestions Comments
	therefore propose to include it in the provisions regulating other types of prospectuses. Furthermore, in the case of an IPO, financial information for the prospectus is most often transformed to meet the financial reporting requirements that will be appropriate for the issuer on a regulated market. This means that such information is unlikely to meet the requirements for inclusion by reference. As a consequence, financial information will have to be included directly in the prospectus, which will de facto prevent the issuer from complying with the page limit. Therefore, it would be reasonable exclude the limit in the event that the issuer cannot refer to the financial statements but must include them in the prospectus. FR (Drafting):FR ‘4. A prospectus that relates to shares or other transferrable securities equivalent to shares in companies shall be of maximum length of 300 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size. <u>The maximum number of pages set out in the first sub-paragraph shall not apply where the prospectus consists of separate documents and a universal registration document is used as a constituent part thereof.</u> FR (Comments):FR The 300-pages limit is welcome to make the prospectus more standardized across the E.U. It

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	will avoid the risk of companies using the prospectus as a liability, which has produced an inflation in the number of pages over the last decade. We also propose to introduce a change to make the new prospectus framework compatible with the use of a URD as a constituent part of the prospectus. In this particular circumstance, the cap should be removed by derogation. RO (Comments):RO RO Comments We support the provisions stating that a prospectus that relates to shares or other transferable securities equivalent to shares in companies shall be of maximum lengths of 300 sides of A4-sided paper, as these provisions facilitate the presentation of the information in a concise manner. BE (Comments):BE Not opposed to the proposal but limiting the length of pages seems not to be the appropriate solution, especially if as a consequence more information would be incorporated by reference into prospectuses (any documents incorporated by reference still form an integral part of a prospectus and should be read by prospective investors). DE

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	(Drafting): DE ‘4. A prospectus that relates to shares or other transferrable securities equivalent to shares in companies, <u>or depository receipts issued over shares</u>, shall be of maximum length of 300 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size. DE (Comments): DE We support efforts to shorten the length of prospectuses in order to focus on the information that is really material and relevant for an investment decision. As regards the specified maximum length, we need to further analyse what would be the appropriate limit. We suggest to apply the page limit also to depository receipts issued over shares, as the disclosure requirements are comparable to those for a share prospectus. Furthermore, the readability criteria should be further specified at level 2 or level 3 to ensure a harmonised approach. ES (Comments): ES Scrutiny reservation regarding the limitation of the number of pages to 300 just for shares or other transferrable securities. We think that it needs to be studied whether this regime could be extended to non-equity securities.

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Commission proposal	Drafting Suggestions Comments
5. The summary, the information incorporated by reference in accordance with Article 19 or the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Commission Delegated Regulation (EU) 2019/980 ^{*1}, shall not be taken into account for the maximum length referred to in paragraph 4 of this Article.	PT (Comments):PT We are in favour of imposing a page limit for prospectuses as it serves as a necessary measure to promote clarity and concision. AT (Comments):AT The readability of the summary might decline if information of other documents are to be incorporated by reference only.
	NL (Comments):NL NL (Comments): Maybe consider also excluding historical financial information from the maximum length of the prospectus, assuming financial information drawn up for the special purpose of the prospectus does not qualify as information that can be incorporated by reference on the basis of Article 19.
^{*1} Commission Delegated Regulation (EU) 2019/980 of 14 March	

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Commission proposal	Drafting Suggestions Comments
2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).';	
(7) Article 7 is amended as follows:	CY (Comments):CY We support the proposed amendments in Article 7 that introduce a standardised format and sequence of the prospectus summary. FR (Comments):FR We support measures to make the summary more user-friendly. It is a key section and the most-read part of the document for many investors.
(a) in paragraph 3, the following	

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Commission proposal	Drafting Suggestions Comments
subparagraph is added:	
'Without prejudice to the first subparagraph of this paragraph, the summary may present or summarise information in the form of charts, graphs or tables.';	
(b) in paragraph 4, the introductory wording is replaced by the following:	
'The summary shall be made up of the following four sections in the following order:';	FR (Comments):FR The fixed order mirrors the new presentation set out for the prospectus and is therefore consistent with the global approach of the legislative proposal.
(c) paragraph 5 is amended as follows:	
(i) in the first subparagraph, the introductory wording is replaced by the following:	

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'The section referred to in paragraph 4, point (a), shall contain the following information in the following order:';	
(ii) in the second subparagraph, the introductory wording is replaced by the following:	
'It shall contain the following warnings in the following order:';	
(d) in paragraph 6, the introductory sentence is replaced by the following:	
'The section referred to in paragraph 4, point (b), shall contain the following information in the following order:';	
(e) paragraph 7 is amended as follows:	
(i) the introductory sentence is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
'The section referred to in paragraph 4, point (c), shall contain the following information in the following order:';	
(ii) the fifth subparagraph is replaced by the following:	
'Where the summary contains the information referred to in the first subparagraph, point (c), the maximum length set out in paragraph 3 shall be extended by one additional side of A4-sized paper, where there is one guarantor only, or by 3 additional sides of A4-sized paper where there are more guarantors.';	LU (Drafting): LU 'Where the summary contains the information referred to in the first subparagraph, point (c), the maximum length set out in paragraph 3 shall be extended by one additional side of A4-sized paper, where there is one guarantor only, or by <u>one3</u> additional sides of A4-sized paper <u>per guarantor</u>, where there are more guarantors, <u>provided that the additional A4-sized paper sides are dedicated to the description of the guarantors</u>where there are more guarantors.'; LU (Comments): LU We suggest to amend Article 7, paragraph 7, fifth subparagraph, by adjusting the page limit of the summary in order to allow for 1 additional side of A4-sized paper <i>per guarantor</i>. This amendment would ensure coverage of all cases of complex structural guarantees under which several subsidiaries of the same group are guarantors, and would be consistent with ESMA's

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	answer to Q13.4 on the length of summaries in the case of multiple guarantors, within its Q&A on the Prospectus Regulation.
(f) in paragraph 8, the introductory sentence is replaced by the following:	
'The section referred to in paragraph 4, point (d), shall contain the following information in the following order:';	
(g) paragraph 12a is deleted;	
(h) the following paragraph 12b is added:	
'12b. By way of derogation from paragraphs 3 to 12 of this Article, an EU Follow-on prospectus drawn up in accordance with Article 14b or an EU Growth issuance document drawn up in accordance with Article 15a shall contain a summary drawn up in accordance with this paragraph.	PT (Comments):PT While we are still forming our final stance on this regard, we have reservations regarding the establishment of different summaries for these specific prospectuses. Although we consider appropriate to establish lighter regimes concerning the content of other parts of these prospectuses, such as the registration document and the securities note, we consider it may be preferable to establish the same summary regime

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	for all prospectuses. Indeed, the summary is the segment of the prospectus to which investors pay more attention hence its content as significative relevance for investor information, moreover this approach ensures comparability amongst all securities offers with prospectus. AT (Drafting):AT <i>By way of derogation from paragraphs 3 to 12 of this Article and subject to paragraph 1 subparagraph 2 lit a and b of this Article, an EU Follow-on prospectus drawn up in accordance with Article 14b or an EU Growth issuance document drawn up in accordance with Article 15a shall contain a summary drawn up in accordance with this paragraph.</i> AT (Comments):AT It should be clarified that when using the new follow-on prospectus addressed only to whole-sale markets, no summary has to be prepared.
The summary of an EU Follow-on prospectus or of an EU Growth issuance document shall be drawn up as a short document written in a concise manner and of a maximum length of 5 sides of A4-sized paper when printed.	

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The summary of an EU Follow-on prospectus or of an EU Growth issuance document shall not contain cross-references to other parts of the prospectus or incorporate information by reference and shall comply with the following requirements:	
(a) it shall be presented and laid out in a way that is easy to read, using characters of readable size;	
(b) it shall be written in a language that is clear, non-technical, concise and comprehensible for investors and in a style that facilitates the understanding of the information;	
(c) it shall be made up of the following four sections in the following order:	
(i) an introduction, containing all of the information referred to in paragraph 5	DE

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of this Article, including warnings and the date of approval of the EU Secondary prospectus or of the EU Growth issuance document;	(Drafting): DE (i) an introduction, containing all of the information referred to in paragraph 5 of this Article, including warnings and the date of approval of the EU Secondary <u>Follow-on</u> prospectus or of the EU Growth issuance document; DE (Comments): DE Reference to “EU Secondary prospectus” to be replaced by “EU Follow-on prospectus”. LU (Drafting): LU (i) an introduction, containing all of the information referred to in paragraph 5 of this Article, including warnings and the date of approval of the EU <u>Follow-on</u>Secondary prospectus or of the EU Growth issuance document; LU (Comments): LU Considering that the Commission proposed to replace the EU Secondary prospectus with the new EU Follow-on prospectus, it is necessary to make this amendment in order to be aligned with the new wording used by the Commission in its proposal.
(ii) key information on the issuer;	

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(iii) key information on the securities, including the rights attached to those securities and any limitations on those rights;	
(iv) key information on the offer of securities to the public or the admission to trading on a regulated market, or both;	
(v) where there is a guarantee attached to the securities, key information on the guarantor and on the nature and scope of the guarantee.	
Without prejudice to the third subparagraph, points (a) and (b), the summary of an EU Follow-on prospectus or of an EU Growth issuance document may present or summarize information in the form of charts, graphs or tables.	
Where the summary of an EU Follow-on prospectus or of an EU Growth issuance	LU

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Commission proposal	Drafting Suggestions Comments
document contains the information referred to in the third subparagraph, point (c)(v), the maximum length as referred to in the second subparagraph shall be extended by one additional side of A4-sized paper, where there is one guarantor only, or by 3 additional sides of A4-sized paper where there are more guarantors.’;	(Drafting): LU Where the summary of an EU Follow-on prospectus or of an EU Growth issuance document contains the information referred to in the third subparagraph, point (c)(v), the maximum length as referred to in the second subparagraph shall be extended by one additional side of A4-sized paper, where there is one guarantor only, or by <u>one3</u> additional sides of A4-sized paper <u>per guarantor</u>, where there are more guarantors, <u>provided that the additional sides of A4-sized paper are dedicated to the description of the guarantors.</u>’; LU (Comments): LU In accordance with our comment above on Article 7, paragraph 7, fifth subparagraph, we suggest to adjust the page limit of the summary in order to allow for 1 additional side of A4-sized paper <i>per guarantor</i>, instead of allowing a total of 3 additional sides for all guarantors altogether. This amendment would ensure coverage of all cases of complex structural guarantees under which several subsidiaries of the same group are guarantors, and would be consistent with ESMA’s answer to Q13.4 on the length of summaries in the case of multiple guarantors, within its Q&A on the Prospectus Regulation.
(8) in Article 9(2), the second subparagraph is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
‘After the issuer has had a universal registration document approved by the competent authority for one financial year, subsequent universal registration documents may be filed with the competent authority without prior approval.’;	FR (Comments):FR We support this measure. The shelf registration process should be eased to become more attractive for issuers and to become the cornerstone of the financial information framework as it is in the U.S. After one year, the issuer should be well known by the NCA and markets participants thanks to (i) information contained in the prospectus, (ii) information disclosed under MAR and (iii) the URD is supposed to be partially or totally known by market participants. HR (Comments): HR We are still analysing this provision, but are initially positive.
(9) in Article 11(2), second subparagraph, the introductory part is replaced by the following:	FR (Comments):FR
‘However, Member States shall ensure that no civil liability shall attach to any	

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Commission proposal	Drafting Suggestions Comments
person solely on the basis of the summary pursuant to Article 7, including any translation thereof, unless:’;	
(10) Article 13 is amended as follows:	
(a) paragraph 1 is amended as follows:	
(i) the first subparagraph is replaced by the following:	
‘The Commission shall adopt delegated acts in accordance with Article 44 to supplement this Regulation regarding the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents.’;	IE (Comments):IE While recognising the benefits of standardisation, in line with previous comments we have some questions re the amendments in Art 13 1.1 ‘The Commission shall adopt delegated acts re <i>the standardised format and the standardised sequence of the prospectus, the base prospectus and the final terms...</i> Please see comment to amendment of Article 6, paragraph 2. AT

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Commission proposal	Drafting Suggestions Comments
	(Comments):AT We doubt the added value of prospectuses being presented in a standardized sequence. The flow of reading and understanding might be reduced while the added value of comparability would be limited. DE (Comments): DE A deadline should be set to the Commission to adopt the delegated act as the specifications stipulated by that delegated act are necessary from the day the amendments to the prospectus regulation will be applicable. HR (Comments): HR Even though we support that Commission shall adopt delegated acts regarding schedules defining the specific information to be included in a prospectus, we suggest to include a provision that would provide further instruction by the legislator to ensure that the delegated acts will not introduce any unnecessary information that could possibly lead to the inflation of the content. We believe that adding additional information or expanding the current content further could potentially be harmful to the conciseness and comprehensibility of the prospectus. This is linked to our suggestion to discuss further what could be done to simplify the “full” prospectus regime and/or if it would be appropriate to expand the use of the EU Growth

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Commission proposal	Drafting Suggestions Comments
	Issuance Document.
(ii) in the second subparagraph, the following points (f) and (g) are added:	FR (Comments):FR This update is needed to make the Prospectus regime consistent with the new set of information required to be published by listed companies.
‘(f) whether the issuer is required to provide sustainability reporting, together with the related assurance opinion, in accordance with Directive 2004/109/EC and Directive 2013/34/EU of the European Parliament and of the Council*²;	IE (Comments):IE IE is supportive of the introduction of this new requirement which harmonises the CSRD amendments to Article 19 of Directive 2013/34/EU into prospectus disclosures. AT (Comments):AT We would appreciate a clear definition of what is exactly meant by „assurance opinion“. HR (Comments): HR We would ask to confirm that this is only meant to be a simple yes/no information with a possible reference to the document where further information is available in the prospectus?

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Commission proposal	Drafting Suggestions Comments
	We believe that duplication of sustainability reporting in the prospectus would be harmful to the conciseness and comprehensibility of the prospectus
(g) whether non-equity securities offered to the public or admitted to trading on a regulated market are advertised as taking into account environmental, social or governance (ESG) factors or pursuing ESG objectives.	PT (Comments):PT PT believes it is important to ensure the compatibility with existing disclosure regimes on ESG factors. IE (Comments):IE IE support this new requirement considering the increase in issuance of securities covering ESG factors. For the avoidance of doubt, could the Presidency or Commission clarify whether debt with ESG characteristics issued by SPVs, would be under the scope of these disclosures? We expect that SPVs, being small and unlisted companies would not fall under the CSRD requirements but it may be that harmonised disclosure requirements where such issuers advertise securities as “green” could be beneficial. BE (Comments):BE

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Commission proposal	Drafting Suggestions Comments
	We would need more information on this proposal and the text should be more detailed on this subject. HR (Comments): HR We would ask to confirm that this is only meant to be a simple yes/no and “is this a Article 8 or Article 9” product information with a possible reffrence to the document where further information is available in the prospectus? We believe that duplication of sustainability reporting in the prospectus would be harmfull to to the conciseness and comprehensibility of the prospectus.
^{*2} Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182,	

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Commission proposal	Drafting Suggestions Comments
29.6.2013, p. 19).’;	
(b) in paragraph 2, the first subparagraph is replaced by the following:	
‘The Commission shall adopt delegated acts in accordance with Article 44 to supplement this Regulation by setting out the schedule specifying the minimum information to be included in the universal registration document.’;	IE (Comments):IE Could clarification be given on whether this Level 2 disclosure should cover securities with ESG factors that are issued by companies that do not fall under the scope of CSRD, such as Special Purpose Vehicles?
(c) paragraph 3 is replaced by the following:	
‘3. The delegated acts referred to in paragraphs 1 and 2 shall comply with Annexes I, II and III to this Regulation.’;	
(11) Articles 14 and 14a are deleted;	FR (Comments):FR

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Commission proposal	Drafting Suggestions Comments
	Our comments are preliminary, since we are still analyzing these provisions, but we overall support the new prospectus formats. Proposed formats will reduce the administrative burden associated with the prospectus, increase harmonization across Member States and make the document more user-friendly for investors regardless of the Home Member State. Our only concern is to ensure the compatibility of the new prospectus formats with the URD, which is used by two thirds of French issuers. The so-called “tripartite document” remains relevant and the use of URD should not be discouraged as it is the most complete document available to investors.
	NL (Comments):NL NL (Comments): Please see our comment below (11). We believe that sufficiently detailed requirements at level 2 are needed to ensure supervisory convergence in the scrutiny of prospectuses.
(12) the following Article 14b is inserted:	
	NL (Comments):NL NL

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Commission proposal	Drafting Suggestions Comments
	(Comments); We believe that sufficiently detailed requirements at level 2 are needed to ensure supervisory convergence in the scrutiny of prospectuses. The power to adopt delegated acts has been removed (deleted Articles 14 and 14a) and had not been reinstated in Articles 14b and 15a. Is this an omission? If this was intended, please elaborate on this choice.
<i>'Article 14b</i> EU Follow-on prospectus	CY (Comments):CY We reserve our comments after we further scrutinise the provisions of the said article and the proposed content of the EU Follow-on prospectus in the Annexes. FI (Comments):FI We support this. PL (Comments):PL PL: In general we support the introduction of the EU Follow-on prospectus. However, we are still analysing the scope of information to be presented in it and the impact it will have on investor protection. EL

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Commission proposal	Drafting Suggestions Comments
	(Comments):EL EL: We support that the EU Follow-on prospectus as set out in annex Annex IV & V would be the most appropriate to take the place of the simplified disclosure regime for secondary offerings. ES (Comments): ES On a preliminary basis, we generally support the introductions of an EU Follow-on prospectus for secondary issuances, which should also apply for the step from a SME GM to a RM.
1. The following persons may draw up an EU Follow-on prospectus in the case of an offer of securities to the public or of an admission to trading of securities on a regulated market:	PL (Comments):PL PL: There is no provision expressly stating either that this prospectus cannot be used for transition from an SME growth market to a regulated market, or – if there is such an intention – that it may be used for such purpose. IE (Comments):IE We would question the rationale for changing the naming convention again within a relatively short period of time? i.e. from secondary to follow-on prospectus. HR

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Commission proposal	Drafting Suggestions Comments
	(Comments): HR We agree with the proposed new regime, and are generally in favour of any appropriate simplification of the current regime. Please note however that we are still analysing if it is indeed appropriate to use the equivalent of the EU recovery prospectus for issuers whose securities have been admitted to trading only on a SME growth market and where no “full” prospectus has been drawn up.
	NL (Comments):NL NL (Comments): The Netherlands can in general support the EU follow-on prospectus regime, with several changes to ensure retail investors are protected and to ensure that a transfer from a SME growth market to a regulated market is accompanied by a prospectus. Furthermore, we wonder how this regime relates to the introduced exemption for already admitted securities and if the follow-on prospectus regime is a valuable addition to this.
(a) issuers whose securities have been admitted to trading on a regulated	

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Commission proposal	Drafting Suggestions Comments
market or an SME growth market continuously for at least the 18 months preceding the offer to the public or the admission to trading on a regulated market of the new securities;	
	NL (Comments):NL NL (Comments): It is not clear whether or not offerors of units issued by collective investment undertakings other than the closed-end type and collective investment undertakings other than the closed-end type may also draw up an EU Follow-on prospectus. We propose to clarify this and what the consequences are for the current minimum information requirements for investment undertakings in delegated acts.
(b) offerors of securities admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of securities to the public.	
By way of derogation from the first subparagraph, an issuer who has only	

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Commission proposal	Drafting Suggestions Comments
non-equity securities admitted to trading on a regulated market or an SME growth market shall not be allowed to draw up an EU Follow-on prospectus for the admission to trading of equity securities on a regulated market.	
2. By way of derogation from Article 6(1), and without prejudice to Article 18(1), the EU Follow-on prospectus shall contain all the information that investors need to understand all of the following:	
(a) the prospects and financial performance of the issuer and the significant changes in the financial and business position of the issuer that have occurred since the end of the last financial year, if any;	
(b) the essential information on the securities, including the rights attached to those securities and any limitations on	

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Commission proposal	Drafting Suggestions Comments
those rights;	
(c) the reasons for the issuance and its impact on the issuer, including on the overall capital structure of the issuer, and the use of proceeds.	
3. The information contained in the EU Follow-on prospectus shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors, especially retail investors, to make an informed investment decision, taking into account the regulated information that has already been disclosed to the public pursuant to Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, information referred to in Commission Delegated Regulation (EU) 2017/565^{*3}.	FI (Comments):FI We are wondering whether the Article 22 on advertisement should be amended respectively. Pursuant to Art. 22 para 3 the information contained in an advertisement shall - - be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is yet to be published. Since EU Follow-on prospectus should be written in a manner that takes into account also other disclosure requirements, we are wondering whether this should be the case in advertisement as well. HR (Comments): HR Please note that we are still analysing if it is indeed appropriate to use the equivalent of the EU recovery prospectus for issuers whose securities have been admitted to trading only on a SME growth market and where no “full” prospectus has been drawn up. The main reason being the

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Commission proposal	Drafting Suggestions Comments
	difference in the scope of reporting that an issuer on a SME growth market is required to publish v. an issuer on a regulated market. An option that we are considering is if it would be appropriate to provide additional information in the EU Follow-on prospectus in such a case.
4. The EU Follow-on prospectus shall be drawn up as a single document containing the minimum information set out in Annex IV or Annex V, depending on the types of securities.	FR (Drafting):FR The EU Follow-on prospectus shall be drawn up as a single document, <u>or as separate documents</u>, containing the minimum information set out in Annex IV or Annex V, <u>and in the delegated acts referred to in paragraph 8</u>, depending on the types of securities. FR (Comments):FR This provision forbids the drafting of the EU Follow-on prospectus as a “tripartite document”, thus preventing SMEs that choose to publish a URD every year to use it as a constituent part of their prospectus. Recital 44 of Regulation (EU) 2017/1129 currently allows the use of the URD as part of a base prospectus, a secondary issuance prospectus or an EU growth prospectus (“<i>Frequent issuers</i>”).

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Commission proposal	Drafting Suggestions Comments
	<i>should be allowed to use a universal registration document and any amendments thereto as a constituent part of a base prospectus. Where a frequent issuer is eligible to draw up an EU Growth prospectus, a simplified prospectus under the simplified disclosure regime for secondary issuances or a wholesale prospectus for non-equity securities, it should be allowed to use its universal registration document and any amendments thereto as a constituent part of any such prospectus, instead of the specific registration document required under those disclosure regimes.”)</i> The text should be redrafted to recognise that the EU Follow-on prospectus may be drawn up as a tripartite document, and to explicitly allow the use of a URD as constituent part, in the same spirit as Recital 44. IE (Comments):IE IE would welcome clarity from the Presidency or Commission on whether Annex IV and V will fully specify the content of this prospectus type without issuance of Level 2 regulation? We note that the current Prospectus Regulation contains high level disclosures in Annexes for Secondary issuances.
5. An EU Follow-on prospectus that relates to shares or other transferable securities equivalent to shares in companies shall be of maximum length	PT (Comments):PT

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Commission proposal	Drafting Suggestions Comments
of 50 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.	We are assessing whether this regime should be extended to other prospectuses besides those of shares and equivalent securities. FR (Drafting):FR 5. An EU Follow-on prospectus that relates to shares or other transferable securities equivalent to shares in companies shall be of maximum length of 50 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size. <u>The maximum number of pages set out in the first sub-paragraph shall not apply where the EU Follow-on prospectus consists of separate documents and a universal registration document is used as a constituent part thereof.</u> FR (Comments):FR The hard cap is a hurdle for issuers wishing to use a URD as a constituent part of their EU Follow-on prospectus, and should therefore be removed by derogation. DE (Comments): DE We support efforts to shorten the length of prospectuses in order to focus on the information

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Commission proposal	Drafting Suggestions Comments
	that is really material and relevant for an investment decision. As regards the specified maximum length, we need to further analyse what would be the appropriate limit for this kind of prospectus.
6. The summary, the information incorporated by reference in accordance with Article 19 of this Regulation or the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Delegated Regulation (EU) 2019/980, shall not be taken into account for the maximum length referred to in paragraph 5 of this Article.	PT (Comments):PT Coherently with our comment in Article 6(5), we are in favour of imposing a page limit as it serves as a necessary measure to promote clarity and concision.
7. The EU Follow-on prospectus shall be a document of a standardised format and the information disclosed in an EU Follow-on prospectus shall be presented in a standardised sequence based on the order of disclosure set out in Annex IV or Annex V, depending on the types of	FR (Drafting):FR 7. The EU Follow-on prospectus shall be a document of a standardised format and the information disclosed in an EU Follow-on prospectus shall be presented in a standardised sequence based on the order of disclosure set out in Annex IV or Annex V, depending on the

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Commission proposal	Drafting Suggestions Comments
securities.	types of securities. <u>By derogation to the first subparagraph, where the EU Follow-on prospectus consists of separate documents, and where the order of the information does not coincide with the order in which that information is presented in the Annexes to this Regulation, a cross reference list identifying the pages where each information of those Annexes can be found in the prospectus shall be included in the prospectus.</u> FR (Comments):FR This derogation is necessary to remove the hurdle for issuers wishing to use the URD as registration document in a tripartite EU Follow-on prospectus (see similar provision in Art. 24(5) of Delegated Regulation (EU) 2019/980).
	FR (Drafting):FR <u>8. The Commission shall, by [add date 18 months after entry into force], adopt delegated acts in accordance with Article 44 to supplement this Regulation by specifying the content, format and sequence for the EU Follow-on prospectus.</u> <u>Those delegated acts shall be based on Annexes IV and V.</u>

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Commission proposal	Drafting Suggestions Comments
	FR (Comments):FR The contents of Annexes IV and V are too high level to provide sufficient guidance to preparers as to what disclosure is expected from them. Without more granular requirements, prospectuses will cease to be harmonised across the EU and we will witness a proliferation of divergent disclosure practices across the EU.
*3 Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).’;	
(13) Article 15 is deleted;	
(14) the following Article 15a is	

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Commission proposal	Drafting Suggestions Comments
inserted:	
<i>Article 15a</i> EU Growth issuance document	CY (Comments):CY We reserve our comments after we further scrutinise the provisions of the said article. PL (Comments):PL PL: In general we support the introduction of the EU Growth issuance document. However, we are still analysing the scope of information to be presented in it and the impact it will have on investor protection. ES (Comments): ES Again on a preliminary basis, we are positive about the introduction of an EU Growth issuance prospectus. For the sake of more clarity, it should not be called “document”, but prospectus. Even though is a more simplified prospectus, it shares the features of a prospectus. BG (Comments): BG BG :

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Commission proposal	Drafting Suggestions Comments
	Bulgaria considers that the replacement of the name "EU Growth Prospectus" with "EU Growth Issuance Document" may lead to confusion that the issuance document is not subject to approval, as the term "document" is used. The obligation to approve this document becomes clear upon a systematic reading of the regulation together with the relevant Annexes VII and VIII. We suggest keeping the term “prospectus” which would not prevent the simplification of its content. We do not see the rationale behind the substitution of the possibility for the issuer “may choose to draw up” with a requirement “shall draw up”. Article 15a does not fall in the scope of Article 4 for a voluntary prospectus. Issuers should have the opportunity to decide if they wish to issue a full prospectus or an EU growth prospectus. Moreover, in the scope of this provision are included issuers which are not SMEs.
1. Without prejudice to Article 1(4) and Article 3(2), the following persons shall draw up an EU Growth issuance document in the case of an offer of securities to the public, provided that they have no securities admitted to	PL (Comments):PL PL: It is not justified to introduce a derogation from the current clear rule that an IPO is associated with a standard mandatory prospectus. This is even explicitly stated in recital 24: „However, an issuer who has only non-equity securities admitted to trading on a regulated

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Commission proposal	Drafting Suggestions Comments
trading on a regulated market:	<i>market or an SME growth market should not be allowed to draw up an EU Follow-on prospectus for the admission to trading on a regulated market of equity securities, as an IPO of equity securities requires the disclosure of a full prospectus to enable investors to take an informed investment decision”.</i> Furthermore, in the case of an IPO, issuers are required to use the EU growth issuance document (max. 50 pages), while in the case of another public offering or transition to a regulated market, they can prepare an EU Follow-on prospectus (max. 75 pages). This would mean that in the case of these issuers the gradation of the burden of disclosure would be reversed – at the beginning the prospectus with the smaller volume, and in the case of subsequent public offerings, the prospectus with a larger volume. Such an approach is not justified by the logic of information obligations related to a public offering. FR (Drafting):FR Without prejudice to Article 1(4) and Article 3(2), the following persons shall <u>may</u> draw up an EU Growth issuance document in the case of an offer of securities to the public, provided that they have no securities admitted to trading on a regulated market: FR (Comments):FR The alleviated prospectus formats offered by the Prospectus Regulation should remain optional. An issuer should always have the choice to adapt the level of disclosure (and hence the type of

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Commission proposal	Drafting Suggestions Comments
	prospectus) to the needs and demands of its potential investors. RO (Comments):RO RO Comments Article 15a – it should be clarified if the EU Growth document has the same regime as a prospectus (e.g. – if it is approved by the NCA in accordance with Article 20 of PR, etc.) BE (Comments):BE Using the term ‘issuance document’ for a prospectus could be misleading and unnecessary. We are in favor of keeping the term ‘prospectus’. AT (Comments):AT The wording in the first sentence should read “Without prejudice to Article 1(4) and Article 3(2), the following persons <i>may choose to draw up</i> an EU Growth issuance” as in the former Article 15 in order to have still a choice whether to draw up such document or another type of prospectus. LU (Drafting): LU

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Commission proposal	Drafting Suggestions Comments
	1. Without prejudice to Article 1(4) and Article 3(2), the following persons <u>may choose to</u>shall draw up an EU Growth issuance document in the case of an offer of securities to the public, provided that they have no securities admitted to trading on a regulated market: LU (Comments): LU The long-established principle that issuers can <i>voluntarily</i> choose to use a stricter prospectus regime should be kept. HR (Comments): HR We fully support the simplifications and changes made to the scope of the possible users of this type of prospectus. However, we would be open to expand this scope even further. The main reason is that we find the full prospectus regime too complex, which provides a strong disincentive for issuers to consider financing through transferable securities/the capital market. We would also urge for a discussion on how to simplify the prospectus itself. Additionally, how is “provided that they have no securities admitted to trading on a regulated market” meant to be understood (see the example below for a SME)?
(a) SMEs;	HR

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Commission proposal	Drafting Suggestions Comments
	(Comments): HR To provide an example, if we assume that a SME X has bonds listed on a regulated market, would this SME X not be able to use the EU Growth issuance document if it wanted to issue shares? And a SME Y that has no instruments listed on a regulated market would be able to use the EU Growth issuance document. As SME X has previously provided more information to the public than SME Y, what is the reasoning behind this restriction?
	NL (Comments):NL NL (Comments): Please also see our comment on investment undertakings under 14b. It is not clear whether or not offerors of units issued by collective investment undertakings other than the closed-end type and collective investment undertakings other than the closed-end type may also draw up an EU Growth issuance document. We propose to clarify this and what the consequences are for the current minimum information requirements for investment undertakings in delegated acts.
(b) issuers, other than SMEs, whose securities are, or are to be admitted to trading on an SME growth market;	

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Commission proposal	Drafting Suggestions Comments
(c) issuers, other than those referred to in points (a) and (b), where the total aggregated consideration in the Union for the securities offered to the public is less than EUR 50 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499;	PT (Drafting):PT (c) issuers, other than those referred to in points (a) and (b), where the total aggregated consideration in the Union for the securities offered to the public is less than EUR 50 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499; PT (Comments):PT We believe the reference to “other than those referred to in points (a) and (b),” may be redundant. PL (Comments):PL PL: The proposed method of calculating the value of offers indicates that all offers are to be included, except for those carried out on the basis of exceptions. This wording could be interpreted as including public offerings based on a prospectus, which is illogical. It would not raise any doubts if this provision were worded in such a way that all public offerings conducted on the basis of this particular prospectus exception are included in the limit. There is also no precise indication whether the issuer may differentiate securities in such a way that it multiplies the limit of EUR 150 million, recognizing that it applies separately to each

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Commission proposal	Drafting Suggestions Comments
	security, e.g. individual bonds that differ only in single parameters, such as the method of calculating interest. DE (Comments): DE BG (Comments): BG BG: We do not see the rationale behind the alleviation for companies that are not SMEs and the offer to be higher than the current threshold of 20 mln. HR (Comments): HR We do not understand why the fact that an issuers has securities traded on an MTF would eliminate this issuer from using the EU Growth issuance document.
(d) offerors of securities that have been issued by issuers as referred to in points (a) and (b).	

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Commission proposal	Drafting Suggestions Comments
By way of derogation from the first subparagraph, the persons referred to in points (a) and (b) of that subparagraph, whose securities have been admitted to trading on an SME growth market continuously for at least the last 18 months, may draw up an EU Follow-on prospectus in the case of an offer of securities to the public or an admission to trading on a regulated market, provided that those issuers have no securities already admitted to trading on a regulated market.	PL (Comments):PL PL: For a clear grouping of provisions regarding individual types of prospectuses, it would be reasonable to place the provision on the possibility of transition from an SME growth market to a regulated market on the basis of EU Follow-on prospectus in the Article regulating the EU Follow-on prospectus. Furthermore, it is not justified to introduce a derogation from the current clear rule that an IPO is associated with a standard mandatory prospectus. This is even explicitly stated in recital 24: <i>„However, an issuer who has only non-equity securities admitted to trading on a regulated market or an SME growth market should not be allowed to draw up an EU Follow-on prospectus for the admission to trading on a regulated market of equity securities, <u>as an IPO of equity securities requires the disclosure of a full prospectus to enable investors to take an informed investment decision</u>”.</i> DE (Drafting): DE By way of derogation from the first subparagraph, the persons referred to in points (a) and (b) of that subparagraph, whose securities have been admitted to trading on an SME growth market continuously for at least the last 18 months, may draw up an EU Follow-on prospectus in the case of an offer of securities to the public or an admission to trading on a regulated market; provided that those issuers have no securities already admitted to trading on a regulated market.

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Commission proposal	Drafting Suggestions Comments
	DE (Comments): DE The last part of the sentence seems redundant with the first subparagraph ES (Comments): ES We agree with the fact that stepping from a SME GM to a RM must require the drawing of a prospectus. However, it would be more clear if this subparagraph was introduced in Article 14b (EU Follow-on prospectus). BG (Comments): BG BG: This paragraph in our opinion leads to confusion. In our view, the EU Growth prospectus/ EU growth issuance document should be applicable only for the first admission to trading. The migration from an SME growth market to a regulated market should be in a separate provision, not in Article 15a. In addition, this paragraph as currently drafted with “may” does not provide clarity what is the other alternative - in our view, it should be a standard prospectus. This situation (migration from an SME Growth market to a regulated market) should be clearly explained also in a recital as otherwise the exemption in Article 1(4)(5) could lead to the

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Commission proposal	Drafting Suggestions Comments
	misinterpretation that a company could migrate from an SME growth market to a regulated market only with the document in Annex IX or no document (possibly document required by the market operator). HR (Comments): HR Please note that we are still analysing if it is indeed appropriate to use the equivalent of the EU recovery prospectus for issuers whose securities have been admitted to trading only on a SME growth market and where no “full” prospectus has been drawn up. The main reason being the difference in the scope of reporting that an issuer on a SME growth market is required to publish v. an issuer on a regulated market. An option that we are considering is if it would be appropriate to provide additional information in the EU Follow-on prospectus in such a case. Or was the intention to allow such issuers to use <u>the EU Growth issuance document</u>, and not the EU Follow-on prospectus?
The total aggregated consideration for the securities offered to the public, as referred to in the first subparagraph, point (c), shall take into account the total	BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except for offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus in accordance with Article 1(4), first subparagraph, or pursuant to Article 3(2).	The total aggregated consideration for the securities offered to the public, as referred to in the first subparagraph, point (c), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except for offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus in accordance with Article 1(4), first subparagraph, or pursuant to Article 3(2) <u>and offers for which a prospectus has been published</u>. BE (Comments):BE It should be added in the text that offers for which a prospectus has been published should not be taken into consideration for this calculation.
2. By way of derogation from Article 6(1) and without prejudice to Article 18(1), an EU Growth issuance document shall contain the relevant reduced and proportionate information that is necessary to enable investors to understand the following:	
(a) the prospects and financial performance of the issuer and the	DE

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Commission proposal	Drafting Suggestions Comments
significant changes in the financial and business position of the issuer since the end of the last financial year, if any, as well as its growth strategy;	(Comments): DE
(b) the essential information on the securities, including the rights attached to those securities and any limitations on those rights;	
(c) the reasons for the issuance and its impact on the issuer on the overall capital structure of the issuer, and the use of proceeds.	
3. The information contained in the EU Growth issuance document shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors in particular retail investors, to make an informed investment decision.	

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Commission proposal	Drafting Suggestions Comments
4. The EU Growth issuance document shall be drawn up as a single document containing the information set out in Annex VII or Annex VIII, depending on the types of securities.	IE (Comments):IE IE would welcome clarity from the Commission on whether Annex VII and VIII will fully specify the content of this prospectus type – i.e. there will be no Level 2? We note the current Prospectus Regulation contains high level disclosures in Annexes for the EU Growth Prospectus.
5. An EU Growth issuance document that relates to shares or other transferable securities equivalent to shares in companies shall be of maximum length of 75 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.	PT (Comments):PT Please take into consideration our comments presented in Article 14b(5). DE (Comments): DE We support efforts to shorten the length of prospectuses in order to focus on the information that is really material and relevant for an investment decision. As regards the specified maximum length, we need to further analyse what would be the appropriate limit for this kind of document.
6. The summary, the information incorporated by reference in accordance with Article 19 or the additional	PT (Comments):PT

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Commission proposal	Drafting Suggestions Comments
information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Delegated Regulation (EU) 2019/980, shall not be taken into account for the maximum length referred to in paragraph 5 of this Article.	Please take into consideration our comments presented in Article 14b(6).
7. The EU Growth issuance document shall be a document of a standardised format and the information disclosed in an EU Growth issuance document shall be presented in a standardised sequence based on the order of disclosure set out in Annex VII or Annex VIII, depending on the types of securities.’;	DE (Comments): DE
(15) in Article 16, paragraph 1 is replaced by the following:	
‘1. The risk factors featured in a prospectus shall be limited to risks which	FR

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Commission proposal	Drafting Suggestions Comments
are specific to the issuer and to the securities and which are material for taking an informed investment decision, as corroborated by the content of the prospectus.	(Comments):FR We support this proposal. The risk factors section of the prospectus remains complex and cumbersome to draft for issuers as they are struggling with legal complexity of current provisions and/or tempted to use it as a liability shield. AT (Comments):AT We are sceptical about the requirement „<i>as corroborated by the content of the prospectus</i>“ in short prospectuses. It might include, if at all, risk factors related to business, regulatory environment, industry , that should be described extensively due to liability reasons. HR (Comments): HR We are currently still assessing this provision but generally speaking we support idea to simplify risk factors contained in the prospectus.
A prospectus shall not contain risk factors that are generic, that only serve as disclaimers, or that do not give a sufficiently clear picture of the specific risk factors that investors are to be aware of.	PT (Comments):PT We deem this addition beneficial. FR

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Commission proposal	Drafting Suggestions Comments
	(Comments):FR This new provision would limit the use of the risk factors section as a liability shield and make this information more relevant for investors.
When drawing up the prospectus, issuers, offerors or persons asking for admission to trading on a regulated market shall assess the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact.	DE (Drafting): DE When drawing up the prospectus <u>assessing the materiality of the risk factors</u>, issuers, offerors or persons asking for admission to trading on a regulated market shall assess <u>include in the assessment</u> the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact. DE (Comments): DE Besides the probability of occurrence and magnitude of negative impact, there could be further relevant criteria in the assessment of the materiality of risk factors, which should be considered as well.
The issuer, the offeror or the person asking for admission to trading on a regulated market shall adequately	

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Commission proposal	Drafting Suggestions Comments
describe each risk factor, and explain how that risk factor affects the issuer, or affects the securities being offered or to be admitted to trading. Issuers, offerors or persons asking for admission to trading on a regulated market may also disclose the assessment of the materiality of the risk factors referred to in the third subparagraph by using a qualitative scale of low, medium or high, at their choice.	
The risk factors shall be presented in a limited number of categories depending on their nature.’;	PT (Drafting):PT The risk factors shall be presented in a limited number of categories depending on their nature. <u>In each category the most material risk factors shall be mentioned first according to the assessment provided for in the third subparagraph.</u> PT (Comments):PT It seems preferable to keep the second requirement, which is presented in the current text of the prospectuses Regulation. FR

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Commission proposal	Drafting Suggestions Comments
	(Comments):FR Concision effort are welcome to make the risk factors section more user friendly. DE (Comments): DE
(16) Article 17 is amended as follows:	
(a) in paragraph 1, point (a) is replaced by the following:	
‘(a) the acceptances of the purchase or subscription of securities may be withdrawn for not less than 3 working days after the final offer price or amount of securities to be offered to the public has been filed; or’;	CY (Comments):CY We support the proposed amendment for the increase of the withdrawal period to not less than 3 working days. FR (Comments):FR We welcome this proposal: shortening the minimum duration of public offerings from 6 to 3

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Commission proposal	Drafting Suggestions Comments
	days will allow for more efficient book-building processes and improve price formation at the IPO. HR (Comments): HR We are still analysing this proposal.
(b) in paragraph 2, the following subparagraph is added:	
‘Where the final offer price referred to in the first subparagraph differs by no more than 20 % from the maximum price disclosed in the prospectus as referred to in paragraph 1, point (b)(i), the issuer shall not be required to publish a supplement in accordance with Article 23(1).’;	PT (Comments):PT For the moment we deem this approach acceptable. IE (Comments):IE IE is giving careful consideration to this as it will be important that investor protection is maintained and there are safeguards in place to inform investors correctly and on time for them to exercise their withdrawal rights. Presuming the final offer price fluctuates by 20% above or below maximum price disclosed in the prospectus, investors may wish to withdraw. We would seek clarity from the Presidency or

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Commission proposal	Drafting Suggestions Comments
	Commission that the withdrawal right still applies in such a case. Can this right be exercised without the issuance of a supplement? BE (Comments):BE We do not agree with this proposal for investor protection considerations. If the final offer price differs from the maximum price, the investor should have a right of withdrawal further to the publication of the supplement. AT (Comments):AT A final pricing up to 20% above the previously published maximum price (without a published prospectus supplement) could be problematic from an investor protection and a banking point of view, because the account would be blocked on the basis of the maximum price - if the pricing is then higher, “surprising” account overdrafts may occur. HR (Comments): HR We would like to know more about rational behind choosing 20 % instead of a smaller figure. Does it mean that in a situation where the final offer price differs more than 20 % than the maximum price in the prospectus (e.g. the final price is 18% higher than the maximum price),

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Commission proposal	Drafting Suggestions Comments
	since there is no need to publish a supplement to the prospectus, the investor is now no longer not entitled to withdraw his acceptance of the offer? If this is the case, we believe that 20 % is too high a deviation and we need to assess the proposal in more detail. It would be useful if the Commisison could provide information on how they reached such a limit.
(17) Article 19 is amended as follows:	
	NL (Comments):NL NL (Comments): Whether or not a difference in the final price and the maximum price indicated in the prospectus, entails a material new factor for which a supplement has to be drawn up, depends not only on the percentage of the difference in price but may also depend on other factors such as the impact on the use of proceeds. Furthermore, in our opinion, a difference of less than 20% may also have a material impact on the information in the prospectus. For these reasons we are not in favour of this proposal.
(a) paragraph 1, first subparagraph, is amended as follows:	CY (Comments):CY We are still assessing the consequences of the amendments for mandatory inclusion by

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Commission proposal	Drafting Suggestions Comments
	reference of the documents referred to in the said article.
(i) the introductory wording is replaced by the following:	FR (Drafting):FR (i) the introductory wording is replaced by the following: LU (Drafting): LU (i) the introductory wording is replaced by the following: LU (Comments): LU Please refer to our comment below.
'Information that is to be included in a prospectus pursuant to this Regulation and the delegated acts adopted on the basis of it, shall be incorporated by reference in that prospectus where it has been previously or simultaneously published electronically, drawn up in a	PL (Comments):PL PL: This proposal is justified, but in practice it may contribute to difficulties both for the NCA verifying the prospectus and for investors who will receive a prospectus with many references to other documents. Thus, the investor will probably often have to reach for other documents

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Commission proposal	Drafting Suggestions Comments
language fulfilling the requirements of Article 27 and where it is contained in one of the following documents:’;	containing important information in order to make an informed investment decision. FR (Drafting):FR ‘Information that is to be included in a prospectus pursuant to this Regulation and the delegated acts adopted on the basis of it, shall be incorporated by reference in that prospectus where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the following documents:’; IE (Comments):IE IE’s initial consideration of the proposal to make inclusion by reference mandatory indicates that certain safeguards are necessary: • information incorporated by reference should remain available for investors during the validity of the prospectus. incorporation by reference should not serve as a replacement for meaningful summarised technical information in the prospectus, such as company law provisions or financial summaries. BE (Comments):BE We have doubts concerning the readability of the prospectus if too much information is

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Commission proposal	Drafting Suggestions Comments
	incorporated by reference and thus that the investors must consult and read various documents instead of one set of consolidated information. LU (Drafting): LU <u>‘Information that is to be included in a prospectus pursuant to this Regulation and the delegated acts adopted on the basis of it, shall be incorporated by reference in that prospectus where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the following documents:’</u> LU (Comments): LU Considering that the Commission’s proposal aims at reducing burdensome regulatory requirements with regards to the setting up of a prospectus, we do not see the added value of the amendment foreseen in Article 19, paragraph 1, first subparagraph, which would result in making incorporation by reference mandatory and would not necessarily reduce burdensome regulatory requirements. Indeed, such an amendment would reduce the flexibility for issuers on how to draw up a prospectus and may additionally lower the readability of a prospectus. Accordingly, we would suggest sticking to the original wording of paragraph 1, first subparagraph, of this Article.
(ii) point (b) is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
'(b) the documents referred to in Article 1(4), first subparagraph, points (db) and (f) to (i), and in Article 1(5), first subparagraph, points (ba) and (e) to (h);';	
(iii) point (f) is replaced by the following:	
'(f) management reports as referred to in Chapters 5 and 6 of Directive 2013/34/EU including, where applicable, the sustainability reporting;';	
(b) the following paragraphs 1a and 1b are inserted:	
'1a. Information that is not to be included in a prospectus may still be incorporated by reference in that prospectus on a voluntary basis, where it has been previously or simultaneously published electronically, drawn up in a language	PT (Drafting):PT 1a. Information that is not to be included in a prospectus may still be incorporated by reference in that prospectus on a voluntary basis, where it has been previously or simultaneously

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Commission proposal	Drafting Suggestions Comments
fulfilling the requirements of Article 27 and where it is contained in one of the documents referred to in paragraph 1, first subparagraph.	published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the documents referred to in paragraph 1, first subparagraph. PT (Comments):PT This possibility seems to allow the inclusion of information with no added value for the investor, which may ultimately confuse the investor. LU (Drafting): LU ‘1a. Information that is not to be included in a prospectus may still be incorporated by reference in that prospectus on a voluntary basis, where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the documents referred to in paragraph 1, first subparagraph. LU (Comments): LU In line with our comment above on Article 19, paragraph 1, first subparagraph, and the suggestion to make the incorporation by reference optional, we would suggest to delete new paragraph 1a as it would become redundant.
1b. An issuer, an offeror or a person asking for admission to trading on a	PT

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Commission proposal	Drafting Suggestions Comments
regulated market shall not be required to publish a supplement pursuant to Article 23(1) for updating the annual or interim financial information incorporated by reference in a base prospectus that is still valid under Article 12(1).’;	(Comments):PT We would appreciate a clarification on whether the aim of this proposal is to allow for the update of information without issuing a supplement or if a base prospectus is allowed to contain outdated information under the circumstances described. IE (Comments):IE IE has questions on this proposal and what safeguards are envisaged e.g. • Investors will still need to be notified of the new and updated financial information when published by the issuer. • How will investors be made aware of their withdrawal rights when opened offers are ongoing? Additionally, can clarity be provided on whether issuers will still have the option to voluntarily publish a supplement re financial statements? It is our experience that many issuers prefer to publish financial information by way of supplement to inform the market – even if not strictly required by the current Prospectus Regulation. Our preliminary view would tend towards, issuers retaining this flexibility as it also relates to their obligations and provision of information under MAR. We would ask if these types of disclosures will still be considered to be a significant new factor? BE

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Commission proposal	Drafting Suggestions Comments
	(Comments):BE The legal consequences of this proposal should be further investigated. If no supplement is required in this case, the updated financial information is not part of the prospectus and the prospectus' liability regime will not apply. DE (Comments): DE We suggest moving this provision to Article 23, as it should not make a difference whether such information is incorporated by reference or not. It should be clarified – maybe in a Recital - whether or not an issuer may supplement such information on a voluntary basis. HR (Comments): HR We would appreciate clarification of the notion of the “updating the annual or interim financial information”. What means updating? “Updating” should be legally defined. We assume that updating does not mean correction of material mistakes or material inaccuracy.
	NL (Comments):NL NL (Comments): Since the general aim of the proposal is that prospectuses should be easily readable and

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Commission proposal	Drafting Suggestions Comments
	comprehensible and therefore not lengthy and not include irrelevant information, for example with the introduction of a page limit, we wonder whether this specific proposal contradicts this general aim by referring investors to more information that is not necessary.
(18) Article 20 is amended as follows:	
(a) paragraph 6a is deleted;	
(b) the following paragraph 6b is inserted:	
‘6b. By way of derogation from paragraphs 2 and 4, the time limits set out in paragraph 2, first subparagraph, and paragraph 4 shall be reduced to 7 working days for an EU Follow-on prospectus. The issuer shall inform the competent authority at least 5 working days before the date envisaged for the submission of an application for approval.’;	BE (Comments):BE We are opposed to this proposal and ask to keep 10 working days. NCA’s should have sufficient time to review draft prospectuses.
(c) paragraph 11 is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
‘11. The Commission is empowered to adopt delegated acts in accordance with Article 44 to supplement this Regulation by specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus, and all of the following:	PT (Comments):PT We disagree with points (a) to (c) as they significantly restrict the discretion of supervisors when evaluating prospectuses. A delegated regulation cannot assume it can anticipate all situations where it would be appropriate for a competent authority to request additional information or criteria. Point (b) appears to allow for the possibility of an offer proceeding without the approval of the prospectus, which is not acceptable from an investor protection perspective. Nevertheless, in case that is not the objective of this proposal, we consider that any consequences to NCA should be dealt in the context of their national legal framework. Regarding point (c), we believe that all deadlines for reviewing a prospectus should be established at level 1. We also note that if a definitive deadline is imposed on NCA, it could result in an increase in rejections, as no NCA will approve a prospectus that does not meet adequate regulatory standards. CZ (Comments):CZ In the spirit of legal certainty we would prefer it if the basic criterias for scrutiny and approval of the prospectus (such as timeframe) are set in Level 1, rather than in delegated acts. IE (Comments):IE While we understand the aim of the proposed changes it will be important to find an appropriate

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Commission proposal	Drafting Suggestions Comments
	balance between maintaining an adequate level of investor protection and a more streamlined process. In our initial view overall, we would have some concerns on the restrictions from an investor protection standpoint and for NCAs to properly implement and live their risk appetites. We would ask if the changes could result in NCAs being required to approve prospectuses despite having significant concerns e.g. regarding the compliance of the offer/the security with other legislation and requirements. Could this also result in an increase of ex post product intervention, which could be onerous and time consuming to implement? ES (Comments): ES We have a scrutiny reservation on the adoption of the delegated acts. We need more rationale about the need for the mentioned delegated acts and, in any case, we think it is very important to clearly delimitate the mandate to the Commission. LT (Comments): LT We agree with these proposals, but we would like to draw attention that the possible changes (e.g. change of the maximum inspection period) should not affect the quality and efficiency of supervision.

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Commission proposal	Drafting Suggestions Comments
(a) the circumstances under which a competent authority is allowed to use additional criteria for the scrutiny of the prospectus, where deemed necessary for investor protection, and the type of additional information that may be required to be disclosed in such circumstances;	PL (Comments):PL PL: If the delegated act is to support NCAs in conducting prospectus verifications and explain what NCAs should base their activities on, then the term “criteria for the scrutiny of the prospectus” should be clarified. One of the conclusions of the peer review conducted by ESMA regarding the application of prospectus regulations by NCAs was that there are different understandings of what should be regarded as the "criteria" for verifying a prospectus. IE (Comments):IE Similar to the preceding comments, we have some initial concerns and questions on the Commission specifying the “circumstances under which a competent authority is allowed to use additional criteria for the scrutiny of the prospectus”. These include: • Does this overly limit NCA discretion, which is necessary given the diversity of issuer and security types that NCAs may be faced with (e.g. complex products)? • Could this prevent an NCA considering compliance with other pieces of legislation e.g. sanctions, MIFID? Could this create a precedent in other areas of financial services law? BE

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Commission proposal	Drafting Suggestions Comments
	(Comments):BE Not supportive of this proposal because (i) competent authorities should be allowed to use additional criteria for investor protection purposes and (ii) new developments in the market may render this necessary.
	NL (Comments):NL NL (Comments): The Netherlands can support the proposal to streamline approval procedures, but we are critical towards the delegation clause. When it comes to rules about financial claims towards an NCA, we strongly believe this should be covered in the prospectus regulation itself. . Therefore, we consider being more reticent when it comes to this delegated act.
(b) the consequences for a competent authority that fails to take a decision on the prospectus as referred to in paragraph 2, second subparagraph;	CY (Comments):CY We are sceptical about the proposed amendment as it might constrain the ability of the NCAs to

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Commission proposal	Drafting Suggestions Comments
	exercise judgement. BE (Comments):BE Please provide more information (including scope of possible consequences to be decided in level 2). LU (Drafting): LU (b) — the consequences for a competent authority that fails to take a decision on the prospectus as referred to in paragraph 2, second subparagraph. LU (Comments): LU Considering that the ESMA Peer Review Report did not indicate that failure to take a decision on the prospectus is an issue in practice and generally notes that NCAs have very rarely missed the deadlines imposed by the Prospectus Regulation, we believe point (b) of Article 20, paragraph 11, is not necessary and should be deleted. Moreover, the scenario of competent authorities failing to take a decision on a prospectus is already indirectly regulated by Article 40 of the Prospectus Regulation, which grants a right of appeal where decisions taken under this Regulation are not properly reasoned.

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Commission proposal	Drafting Suggestions Comments
	HR (Comments): HR We would require more clarity on what is meant by “the consequences for a competent authority”. In the absence of this clarification, we would oppose this mandate.
	NL (Comments):NL See comment at subparagraph (c).
(c) the maximum timeframe for a competent authority to finalise the scrutiny of the prospectus and to reach a decision on whether that prospectus is approved, or whether the approval is refused and the review process terminated.	EL (Comments):EL EL: We support supervisory convergence on the scrutiny and approval processes. The current level 1 and level 2 legislation provides an efficient and clear framework, in relation to time frames and procedures of scrutiny and approval. The proposal should take into consideration various circumstances that may influence the response from the part of the issuer (the NCAs have to comply, in all cases, with level 1 time limits) in order not to be too strict or to compromise reality in one size fits all proposal. BE (Comments):BE We are opposed to this proposal. This would put too much pressure on the NCA’s and their independence to take decisions. Also, a general time limit would be impracticable as it does not

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Commission proposal	Drafting Suggestions Comments
	take into account the quality of the document upon first submission, the time taken by issuers to submit following versions or other diverging factors over which NCAs have no control. LU (Drafting): LU (be) the maximum timeframe for a competent authority to finalise the scrutiny of the prospectus and to reach a decision on whether that prospectus is approved, or whether the approval is refused and the review process terminated. LU (Comments): LU In case our suggested amendment above is retained, a renumbering is necessary. HR (Comments): HR We oppose to that maximum timeframe should be defined by delegated act. We believe that this should be defined in level 1.
	NL (Comments):NL NL (Comments):

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Commission proposal	Drafting Suggestions Comments
	Can the Commission elaborate on what is meant by ‘consequences?’ For example, when it comes to (rules about) liability of or financial claims against an NCA, this should in our opinion be specified in the Prospectus regulation.
The maximum timeframe referred to in point (c) shall include any competent authority’s requests to issuers to change the prospectus or provide supplementary information, as referred to in paragraph 4.’;	LU (Drafting): LU The maximum timeframe referred to in point (<u>be</u>) shall include any competent authority’s requests to issuers to change the prospectus or provide supplementary information, as referred to in paragraph 4.’; LU (Comments): LU In case our suggested amendment above is retained, a renumbering is necessary.
(d) paragraph 13 is replaced by the following:	
‘13. Without prejudice to Article 30 of Regulation (EU) No 1095/2010, ESMA shall organise and conduct, at least once every 3 years, one peer review of the	PT (Comments):PT We do not agree with the provision of mandatory peer-reviews in sectorial legislation. They

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Commission proposal	Drafting Suggestions Comments
scrutiny and approval procedures of competent authorities, including notifications of approval between competent authorities. The peer review shall also assess the impact of different approaches with regard to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union. The report on the peer review shall be published by [3 years after the date of entry into force of this amending Regulation] and every 3 years thereafter. In the context of the peer review, ESMA shall take into account the advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.';	should be conducted in areas where ESMA, not the Commission or co-legislators, has identified the need to reinforce supervisory convergence. Prescribing mandatory peer-reviews means that ESMA capacity to undertake peer-reviews in other areas will be limited as peer-reviews are resource intensive. Additionally, if co-legislators start prescribing peer-reviews in sector-specific legislation, it would render Article 30 of the ESMA regulation meaningless, as ESMA would be required to follow a peer-review schedule dictated by level 1 texts. We also do not agree that the peer-review should assess the impact of different approaches with regard to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union, as we are not convinced that NCA's practices are the main obstacles in the capacity of issuers to raise capital. Finally, the last paragraph seems to require the Markets Stakeholder Group to issue an advice on peer-review, although it is not clear at which stage, which goes beyond what is currently provided in the ESMA regulation, where such an advice is not mandatory. CY (Comments):CY We are sceptical about the proposed timeframe of conducting a peer review (every 3 years),

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	given the time and resources needed to complete a peer review both by ESMA and NCAs. PL (Comments):PL PL: It is questionable how such a peer review would exclude all other factors affecting the raising of capital through a public offering in order to show the impact of a given prospectus review and approval practice. With this in mind, before adopting this solution, it would be reasonable to obtain a more detailed explanation from the Commission, e.g. in the preamble, on how the conditions for such an analysis could be achieved, enabling the expected market picture to be obtained. BE (Comments):BE Opposed to this proposal, 3 years is too short given the time needed before and after the peer review. Peer reviews are time consuming and present a heavy burden for smaller NCAs, where they require redirecting human resources that would otherwise be dedicated to prospectus scrutiny. DE (Drafting): DE ‘13. Without prejudice to Article 30 of Regulation (EU) No 1095/2010, ESMA shall organise and conduct, at least once every 35 years, one peer review of the scrutiny and approval procedures of competent authorities, including notifications of approval between competent

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Commission proposal	Drafting Suggestions Comments
	authorities. The peer review shall also assess the impact of different approaches with regard to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union. The report on the peer review shall be published by [3 years after the date of entry into force of this amending Regulation] and every 35 years thereafter. In the context of the peer review, ESMA shall take into account the advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.'; DE (Comments): DE Tanking into account the high amount of resources that the conduct of a peer review requires, a frequency of 3 years appears not appropriate, in particular when considering that a follow-up peer review is required within two years following the publication of a peer review report (Art. 30(6) ESMA Regulation). LU (Drafting): LU <u>'13. Without prejudice to Article 30 of Regulation (EU) No 1095/2010, ESMA shall organise and conduct, at least once every 3 years, one peer review of the scrutiny and approval procedures of competent authorities, including notifications of approval between competent authorities. The peer review shall also assess the impact of different approaches with regard to</u>

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Commission proposal	Drafting Suggestions Comments
	scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union. The report on the peer review shall be published by [3 years after the date of entry into force of this amending Regulation] and every 3 years thereafter. In the context of the peer review, ESMA shall take into account the advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.'; LU (Comments): LU Considering that a recent ESMA press release, accompanying the ESMA Peer Review Report, found that NCAs' scrutiny and approval of prospectuses are generally satisfactory, we do not agree with the Commission's proposal. A timeframe of 3 years to organise a peer review on this topic is disproportionate. It would entail significant administrative burden and would be extremely resource intensive. We believe the current framework of the ESMA Regulation leaves sufficient discretion to ESMA to decide on carrying out peer reviews in the areas and with the frequency that ESMA deems necessary. ES (Comments): ES On a preliminary basis, we have a scrutiny reservation regarding the proposed period of three years for the peer reviews. These reviews are exhaustive procedures and having them with that periodicity could be disproportionate, also taking into account that some changes might take a long time to be introduced.

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Commission proposal	Drafting Suggestions Comments
	HR (Comments): HR We agree with the reduction of the frequency for the peer review.
(19) Article 21 is amended as follows:	
	NL (Comments):NL NL (Comments): The ESMA regulation already gives ESMA the authority to organise and conduct peer reviews. Therefore, this clause is not necessary. Furthermore, we wonder whether a peer review every 3 years might possibly place a large burden on NCAs. Please elaborate on the need to specify the period for peer reviews, and the possible burden on NCAs.
(a) in paragraph 1, the second subparagraph is replaced by the following:	
'In the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market	PT (Comments):PT

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for the first time, the prospectus shall be made available to the public at least 3 working days before the end of the offer.';	We are still forming a definitive stance regarding the appropriateness of this time set. CY (Comments):CY We are concerned with the proposed amendment to decrease the days a prospectus needs to be available before the end of the offer, from 6 to 3 as this would limit the ability of investors to make an informed assessment about the offer. FI (Comments):FI We support shortening the minimum period between the publication of a prospectus and the end of an offer from six to three days. This would enhance the retail investors participation in offers, since we understand that the amendment relates to swift book-building process, which has been widely used in private placements. The amendment could foster public offerings, which would be very welcomed. PL (Comments):PL PL: We are still analysing if this change would not be detrimental to investor protection. FR

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	(Comments):FR We strongly support this measure. The period of six days as defined in Article 21(1) is actually closer to eight to ten days, factoring in that (i) the offering starts the day after the disclosure of the prospectus and (ii) Saturday is deemed a working day. This window gives investors too much time to cancel/modify their order, therefore disrupting the book building process and increasing execution risk for the issuer. Such a long duration is also detrimental as it increases the risk of a deterioration of market conditions. HR (Comments): HR We are still assessing whether “at least 3 working days before the end of the offer” provides enough minimum time for investor to process the content of the prospectus. Having said that, we are not able to support this change at the moment.
(b) paragraph 5a is deleted;	
(c) the following paragraphs 5b and 5c are inserted:	
‘5b. An EU Follow-on prospectus shall be separately classified in the storage	

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mechanism referred to in paragraph 6.	
5c. An EU Growth issuance document shall be classified in the storage mechanism referred to in paragraph 6 in a way that it is differentiated from the other types of prospectuses.’;	
(d) paragraph 11 is replaced by the following:	
‘11. A copy of the prospectus shall be delivered in electronic format to any potential investor, upon request and free of charge, by the issuer, the offeror, the person asking for admission to trading on a regulated market or the financial intermediaries placing or selling the securities.’;	BE (Comments):BE It seems to us that it could be difficult for some investors to read a whole prospectus without a printed version. ES (Comments): ES On a preliminary basis, we can agree with the new redaction. HR

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Commission proposal	Drafting Suggestions Comments
	(Comments): HR We agree with this change.
(20) Article 23 is amended as follows:	CY (Comments):CY We support the proposed amendments of Article 23 for the increase of the investor's withdrawal right from 2 to 3 days, in cases of the publication of a supplement.
(a) paragraph 2 is replaced by the following:	
'2. Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within 3 working days after the publication of the supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1	FR (Comments):FR We can support this modification. Should the minimum duration of a public offer be reduced to 3 working days as proposed, it is reasonable to give investors an additional day to revise their order in case of a material modification of the prospectus. HR (Comments): HR We agree with this change.

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arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.	
The supplement shall contain a prominent statement concerning the right of withdrawal, which clearly states all of the following:	
(a) a right of withdrawal is only granted to those investors who had already agreed to purchase or subscribe for the securities before the supplement was published and where the securities had not yet been delivered to the investors at the time when the significant new factor, material mistake or material inaccuracy arose or was noted;	
(b) the period in which investors can	

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exercise their right of withdrawal;	
(c) whom investors may contact if they wish to exercise the right of withdrawal.’;	
(b) paragraph 2a is deleted;	
(c) paragraph 3 is replaced by the following:	
‘3. Where investors purchase or subscribe securities through a financial intermediary between the time when the prospectus for those securities is approved and the closing of the initial offer period, that financial intermediary shall:	AT (Comments):AT The obligation to inform clients according to Art. 23 (3) should apply to those clients who have subscribed for securities based on the financial intermediary’s investment advice. Only in these instances, a close link between the financial intermediary and the investor as his client exists which triggers an information obligation due to investor protection. By purchasing in a non-advisory business, the investor expresses that they do not need any further support from an advisor. Therefore, we propose that Art. 23 (3) should not be applicable to the non-advisor business as the need for investor protection on the self-deciding investor is adequately taken into account

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Commission proposal	Drafting Suggestions Comments
	by the publication of the supplement on the issuer's website. HR (Comments): HR We agree with the proposed changes.
(a) inform those investors of the possibility of a supplement being published, where and when it would be published, including on its website, and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such a case;	AT (Comments):AT We are skeptical about the new obligation for the financial intermediary in Art. 23 (3) (a) and (d) to publish the supplement to a prospectus on its website. It might be more efficient and less susceptible to errors for the financial intermediary to inform the investors that the supplement is published on the issuer's website.
(b) inform those investors in which case the financial intermediary would contact them by electronic means pursuant to the second subparagraph to notify that a supplement has been published and subject to their agreement to be contacted by electronic means;	

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Commission proposal	Drafting Suggestions Comments
(c) offer those investors that agree to be contacted only by means other than electronic ones an opt-in for electronic contact solely for the purpose of receiving the notification of the publication of a supplement;	PL (Drafting):PL PL: (c) offer those investors that agree to be contacted only by means other than electronic ones an opt-in for electronic contact solely for the purpose of receiving the notification of the publication of a supplement. This opt-in for electronic contact shall be valid until the end of the offer and cannot be revoked by the investor; PL (Comments):PL PL: Evaluating the proposal positively in general, it should be pointed out that in the case of constructing the investor's consent, it may be revoked after it has been granted, which will make it necessary for the intermediary to manage additional data on consents. It is proposed to introduce the principle of consent until the end of the offer. AT (Comments):AT This solution might be costly in practice since additional agreements with financial intermediaries would need to be established. This would lead to increased administrative burden.

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Commission proposal	Drafting Suggestions Comments
(d) warn those investors that do not agree to be contacted by electronic means and refuse the opt-in for electronic contact as referred to in point (c) to monitor the issuer's or the financial intermediary's website until the closing of the offer period or the delivery of the securities, whichever occurs first, to check whether a supplement is published.	PT (Drafting):PT warn those investors that do not agree to be contacted by electronic means <u>to present alternative telephonic means or and</u> refuse the opt-in for electronic contact as referred to in point (c) to monitor the issuer's or the financial intermediary's website until the closing of the offer period or the delivery of the securities, whichever occurs first, to check whether a supplement is published. PT (Comments):PT It may be appropriate to provide for alternative contact means instead of solely determined the acceptance of electronic means or their refusal. AT (Comments):AT See above DE (Drafting): DE (d) warn those investors that do not agree to be contacted by electronic means and refuse the opt-in for electronic contact as referred to in point (c) to monitor the issuer's or the financial intermediary's website until the closing of the offer period or the delivery of the securities,

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Commission proposal	Drafting Suggestions Comments
	whichever occurs first, to check whether a supplement is published. DE (Comments): DE There could still be a right of withdrawal after the closing of the offer period or the delivery of the securities, provided the significant new factor, material mistake or material inaccuracy arose or was noted before and only the supplement published after these dates.
Where the investors referred to in the first subparagraph of this paragraph have the right of withdrawal referred to in paragraph 2, the financial intermediary shall contact those investors by electronic means by the end of the first working day following that on which the supplement is published.	PT (Drafting):PT Where the investors referred to in the first subparagraph of this paragraph have the right of withdrawal referred to in paragraph 2, the financial intermediary shall contact those investors by electronic means no later than by the end of the first working day following that on which the supplement is published. PT (Comments):PT The contact of the investor should be done as quickly as possible so that the investor can fully benefit from the three working days it has to exercised his right. BE (Comments):BE

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Commission proposal	Drafting Suggestions Comments
	Please clarify what does 'by electronic means' mean for the contact in case of right of withdrawal? To be clarified whether or not the financial intermediary would be required to actively contact the investors or whether for instance the mere publication on their website would suffice.
Where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the possibility of a supplement being published and where it would be published and that, in such a case, they could have a right to withdraw the acceptance.';	LU (Drafting): LU Where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the possibility of a supplement being published, where and when where it would be published and that, in such a case, they could have a right to withdraw the acceptance.'; LU (Comments): LU We suggest this amendment in order to be consistent with Article 23, paragraph 3, first subparagraph, point (a), which makes reference to the place and the time of publication of a supplement.
(d) paragraph 3a is deleted;	
(e) the following paragraph 4a is inserted:	

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Commission proposal	Drafting Suggestions Comments
‘4a. A supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus.’;	IE (Comments):IE IE supports the addition of this new paragraph which includes in the legislative text the provision from the previous recital that “a new type of security shall not be introduced by way of supplement.” However, it is important that what constitutes a type of security is specifically defined. AT (Comments):AT We believe it would be important for issuers that the inclusion and supplement of reference (interest) rates not already disclosed in the prospectus would not be regarded as "new security", as the structure of the approved securities does not change per se. It would be difficult for issuers to include all reference interest rates for the upcoming year in the annual update of the securities notes, as market conditions and market standards may change within a year and make the usage of other reference rates necessary.
(f) the following paragraph 8 is added:	

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Commission proposal	Drafting Suggestions Comments
‘8. ESMA shall by [2 years after the date of entry into force of this amending Regulation] develop guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus.’;	IE (Comments):IE Our initial view is to support this proposal. For supervisory convergence and for legal clarity it is pertinent that this is defined properly. It appears that a more convergent approach at ESMA and NCA level on this point would be beneficial as many factors can influence a “type of security”.
(21) Article 27 is amended as follows:	CY (Comments):CY We are still assessing the consequences of the proposal not to require the publication of a prospectus in the language accepted by the Competent Authority of the home Member State. EE (Comments):EE We have a scrutiny reservation for the proposed amendments regarding the language requirements for prospectuses.
(a) paragraphs 1 and 2 are replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
‘1. Where an offer of securities to the public is made or admission to trading on a regulated market is sought only in the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authority of the home Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.	HU (Comments):HU We recommend publishing the prospectus in English and in the official language of the Member State for the sake of retail investor protection. PL (Comments):PL PL: The possibility of drawing up a prospectus in a language accepted in the sphere of international finance raises our doubts. This term is only commonly understood to mean the English language. However, there are no regulations that would legally define the term in this way. This may therefore give rise to disputes between third country issuers and national supervisory authorities as to which language they are authorized to draw up the prospectus in. In addition, the current possibility to allow the prospectus to be drawn up in a language other than that country's official language at national level provides an opportunity to take better account of the level of investor protection and financial education of the public. FR (Comments):FR Drafting prospectus in English would contribute to increase its use by international investor while reducing the burden for issuers. The summary should nevertheless remain available in the language of the Home Member States.

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Commission proposal	Drafting Suggestions Comments
	HR (Comments): HR We would like to suggest the introduction of a national discretion where Member States could introduce the obligation to draft the prospectus in the language of the home Member State if the offer or admittance will only take place in the home Member State.
The summary referred to in Article 7 shall be available in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State. That competent authority shall not require the translation of any other part of the prospectus.	FR (Comments):FR The summary should be available at least in the language of the Home Member States. It is the most important section for retail investors, which are not necessarily fluent in English and/or familiar with financial concepts. A summary drafted only in English will reduce the relevance and the use of the whole prospectus for investors.
2. Where an offer of securities to the public is made or admission to trading on a regulated market is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities of each of those Member States or in a	FR (Comments):FR We can support this modification. It may create a level playing field for companies offering securities in several Member States. LU

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Commission proposal	Drafting Suggestions Comments
language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.	(Drafting): LU 2. Where an offer of securities to the public is made or admission to trading on a regulated market is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by <u>the competent authorities of the home and host Member States or in a language customary in the sphere of international finance</u> the competent authorities of each of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market. LU (Comments): LU The provision should be amended in order to ensure that the prospectus is also drawn up in a language accepted by the home competent authority for scrutiny purposes, which would be consistent with current Articles 27(2) and 27(5) of the Prospectus Regulation. The revised provision then covers the situation where no offer or admission takes place in the home Member State.
The summary referred to in Article 7 shall be available in the official language of each Member State, or at least one of the official languages of each Member State, or in another language accepted by the competent authority of each	FR (Comments):FR The prospectus summary should remain drafted in the official languages of each Member States to maintain an equal level of information for retail investors. Drafting the summary in Member

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Commission proposal	Drafting Suggestions Comments
Member State. Member States shall not require the translation of any other part of the prospectus.';	States languages does not create a significant burden for the issuer since this is only a short section in the whole document.
(b) paragraph 3 is deleted;	
(c) paragraph 4 is replaced by the following:	
'4. The final terms shall be drawn up in the same language as the language of the approved base prospectus.	
The summary of the individual issue shall be available in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.	
When, in accordance with Article 25(4), the final terms are communicated to the competent authority of the host	

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Commission proposal	Drafting Suggestions Comments
Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, the summary of the individual issue annexed to the final terms shall be available in the official language or at least one of the official languages of the host Member State, or in another language accepted by the competent authority of the host Member State in accordance with paragraph 2, second subparagraph.’;	
(22) Article 29 is replaced by the following:	LU (Drafting): LU (22) — Article 29 is replaced by the following: LU (Comments): LU We do not see the need to amend the existing equivalence regime for third country prospectuses, as the current regime where third country issuers can offer or admit securities to trading on a regulated market in the EU by producing a prospectus drawn up in accordance with

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Commission proposal	Drafting Suggestions Comments
	Article 28 of the Prospectus Regulation, is well-functioning and NCAs are best placed to take into account local market practices. Hence, we suggest sticking to the current version of Article 29. Should the equivalence regime be modified, certain aspects should be clarified and reciprocity should be ensured.
<i>'Article 29</i> Equivalence	LU (Drafting): LU <i>'Article</i> <i>29</i> <u>Equivalence</u> LU (Comments): LU Please refer to our comment above.
1. A third country issuer may seek admission to trading of securities on a regulated market established in the Union after prior publication of a prospectus drawn up and approved in	PL (Comments): PL While not denying the possibility of changes in this area of prospectus regulations, we would like to point out the following issues. The prospectus regime in the EU is based on the principle

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Commission proposal	Drafting Suggestions Comments
accordance with, and which is subject to, the national laws of the third country issuer, provided that all of the following conditions are met:	that: • the scope of information in the prospectus is standardized for all Member States, as is the nature and scope of verification and approval of this document, and • verification and approval of the prospectus for a public offering/admission to trading on a regulated market is, in principle, the competence of the issuer's home NCA, which is generally determined by the place of its registration, • prospectus approval by the NCA of one Member State is recognized across the EU. The proposed solution de facto extends this system to third countries, at the same time making a breach in the above-mentioned rules: 1) Verification of the prospectus is based not only on legal regulations, but also on a certain practice resulting from experience related to the functioning of a given market, investors' expectations, etc. The supervisory authority of the third country will carry out verification based on the experience of its own market, and not the EU market or one of the Member States. 2) At the stage of prospectus verification, for the first time for a given issuer, the NCA also "gets to know" such issuer and identifies potential supervisory risks, e.g. in the context of the specificity of its market. The proposed solution deprives the NCA of this possibility. 3) The NCA of the home country for such an issuer will be the authority to which investors will address any objections to the activities of such an issuer, if only because it will be more "available" for them than the supervisory authority of a third country. However, despite the mandatory agreement between ESMA and the third-country supervisory authority, it can be assumed that the possibility of expecting supervisory actions from such an authority will be less

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Commission proposal	Drafting Suggestions Comments
	than in the case of an NCA. All this may cause much greater pressure on NCAs from market participants with a smaller range of tools that NCAs will actually have at their disposal. Therefore we believe it would be appropriate to leave the approval of the prospectus to the NCA of the EU Member State chosen by the third country issuer as the EU home country. LU (Drafting): LU <u>1. A third country issuer may seek admission to trading of securities on a regulated market established in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that all of the following conditions are met:</u> LU (Comments): LU Please refer to our comment above.
	NL (Comments):NL

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Commission proposal	Drafting Suggestions Comments
(a) the Commission has adopted an implementing act in accordance with paragraph 5;	LU (Drafting): LU (a) the Commission has adopted an implementing act in accordance with paragraph 5; LU (Comments): LU Please refer to our comment above.
(b) the third country issuer has filed the prospectus with the competent authority of its home Member State;	LU (Drafting): LU (b) the third country issuer has filed the prospectus with the competent authority of its home Member State; LU (Comments): LU Please refer to our comment above.

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Commission proposal	Drafting Suggestions Comments
(c) the third country issuer has provided a written confirmation that the prospectus has been approved by a third country supervisory authority and has provided the contact details of that authority;	LU (Drafting): LU (c) the third country issuer has provided a written confirmation that the prospectus has been approved by a third country supervisory authority and has provided the contact details of that authority; LU (Comments): LU Please refer to our comment above.
(d) the prospectus fulfils the language requirements set out in Article 27;	LU (Drafting): LU (d) the prospectus fulfils the language requirements set out in Article 27; LU (Comments): LU Please refer to our comment above.

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Commission proposal	Drafting Suggestions Comments
(e) all relevant advertisements disseminated in the Union by the third country issuer comply with the requirements set out in Article 22(2) to (5);	LU (Drafting): LU (e) all relevant advertisements disseminated in the Union by the third country issuer comply with the requirements set out in Article 22(2) to (5); LU (Comments): LU Please refer to our comment above.
(f) ESMA has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.	FR (Drafting):FR (f) ESMA the competent authority of the home Member State has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30. FR (Comments):FR As the third-country prospectus is filed with the competent authority of the home Member

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Commission proposal	Drafting Suggestions Comments
	State, not with ESMA, it is the Home NCA that will intervene, pursuant to the powers of Article 32 PR, if anything goes wrong with the offer or admission, not ESMA. Under such circumstances, the Home NCA will need to interact with the third-country supervisory authorities, and it should not have to rely on ESMA to act as intermediate in that interaction. The cooperation arrangements must therefore be concluded between the relevant supervisory authorities of the third country issuer and the relevant NCA. DE (Comments): DE It appears unclear why no cooperation arrangements should be required between the competent authorities of the Member States and the relevant supervisory authorities of the third country issuer, given that the third country prospectuses are filed with the NCAs of the home Member State. LU (Drafting): LU (f) ESMA has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30. LU (Comments): LU Please refer to our comment above.

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Commission proposal	Drafting Suggestions Comments
	HR (Comments): HR We are not entirely clear on what the effect of this change is, or what the intent is. Does this mean that ESMA will now supervise third country issuers (as NCAs would no longer be the ones concluding cooperation arrangements with the relevant supervisory authorities of the third country issuer)? If yes, this does not follow from the rest of the text. If no, then why is ESMA concluding these cooperation agreements and not the responsible NCA?
2. A third country issuer may also offer securities to the public in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that all the conditions referred to in points (a) to (f) of paragraph 1 are met and that the offer of securities to the public is accompanied with an admission to trading on either a regulated market or an SME growth market established in the Union.	FR (Comments):FR Scrutiny reservation Why is the Commission so adamant to force third-country issuers wishing to extend offers to EU investors with an equivalent third-country prospectus to seek a listing in the EU for the securities they offer ? Will such a provision not deter third-country issuers from making any offer in the EU at all, thus reducing investment opportunities for EU investors ?

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Commission proposal	Drafting Suggestions Comments
	What is the logic behind imposing such a constraint to third-country issuers using the “Article 29” route (use of a third-country prospectus, subject to equivalence), and <u>not</u> to those that use the “Article 28” route (use of an EU prospectus) ? Is this to create an incentive for third-country issuers to use the “Article 28” route in all cases, notwithstanding the existence of an equivalence decision ? LU (Drafting): LU 2. A third country issuer may also offer securities to the public in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that all the conditions referred to in points (a) to (f) of paragraph 1 are met and that the offer of securities to the public is accompanied with an admission to trading on either a regulated market or an SME growth market established in the Union. LU (Comments): LU Please refer to our comment above.
3. Where, in accordance with paragraphs 1 and 2, a third country issuer	LU

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Commission proposal	Drafting Suggestions Comments
offers securities to the public or seeks an admission to trading on a regulated market in a Member State other than the home Member State, the requirements set out in Articles 24, 25 and 27 shall apply.	(Drafting): LU 3. Where, in accordance with paragraphs 1 and 2, a third country issuer offers securities to the public or seeks an admission to trading on a regulated market in a Member State other than the home Member State, the requirements set out in Articles 24, 25 and 27 shall apply. LU (Comments): LU Please refer to our comment above.
4. Where all criteria laid down in paragraphs 1 and 2 are met, the third country issuer shall have the rights and be subject to all obligations in accordance with this Regulation under the supervision of the competent authority of the home Member State.	LU (Drafting): LU 4. Where all criteria laid down in paragraphs 1 and 2 are met, the third country issuer shall have the rights and be subject to all obligations in accordance with this Regulation under the supervision of the competent authority of the home Member State. LU (Comments): LU Please refer to our comment above.

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Commission proposal	Drafting Suggestions Comments
5. The Commission may adopt an implementing act, in accordance with the examination procedure referred to in Article 45(2), determining that the legal and supervisory framework of a third country ensures that a prospectus drawn up in accordance with the national law of that third country (hereinafter ‘third country prospectus’) complies with legally binding requirements which are equivalent to the requirements referred to in this Regulation, provided that all of the following conditions are met:	LU (Drafting): LU 5. The Commission may adopt an implementing act, in accordance with the examination procedure referred to in Article 45(2), determining that the legal and supervisory framework of a third country ensures that a prospectus drawn up in accordance with the national law of that third country (hereinafter ‘third country prospectus’) complies with legally binding requirements which are equivalent to the requirements referred to in this Regulation, provided that all of the following conditions are met: LU (Comments): LU Please refer to our comment above. HR (Comments): HR We have a general remark, linked to a level playing field between EU issuers and third country issuers. Our understanding is that “equivalence” is also a political category and does not necessarily mean equality or a even a high level of comparability with PR requirements. Since it is no longer necessary for the NCA to approve a prospectus of the third country issuer, depending how these criteria are assessed by the Commission, this could disadvantage EU issuers and provide third country issuers with a much easier regime. While we understand the

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Commission proposal	Drafting Suggestions Comments
	intent to open up our market to third country issuers more, if we intend to allow comparatively shorter, and simplified third country prospectuses to be offered to EU investors, we should make an effort to simplify the regime applied to our own issuers.
(a) the third country's legally binding requirements ensure that the third country prospectus contains the necessary information that is material to enable investors to make an informed investment decision in an equivalent way as the requirements laid down in this Regulation;	LU (Drafting): LU (a) the third country's legally binding requirements ensure that the third country prospectus contains the necessary information that is material to enable investors to make an informed investment decision in an equivalent way as the requirements laid down in this Regulation; LU (Comments): LU Please refer to our comment above.
(b) where retail investors are enabled to invest in securities for which a third country prospectus is drawn up, that prospectus contains a summary providing the key information that retail investors need to understand the nature and the	LU (Drafting): LU (b) where retail investors are enabled to invest in securities for which a third country prospectus is drawn up, that prospectus contains a summary providing the key information that

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Commission proposal	Drafting Suggestions Comments
risks of the issuer, the securities and, where applicable, the guarantor, and that is to be read together with the other parts of that prospectus;	retail investors need to understand the nature and the risks of the issuer, the securities and, where applicable, the guarantor, and that is to be read together with the other parts of that prospectus; LU (Comments): LU Please refer to our comment above.
(c) the third country's laws, regulations and administrative provisions on civil liability apply to the persons responsible for the information given in the prospectus, including at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market and, where applicable, the guarantor;	FR (Drafting):FR (c) the third country's laws, regulations and administrative provisions on civil liability apply to the persons responsible for the information given in the prospectus, including at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market and, where applicable, the guarantor, <u>and the prospectus contains a responsibility statement from the persons responsible for the prospectus confirming that those laws, regulations and administrative provisions apply to the prospectus ;</u> FR (Comments):FR

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Commission proposal	Drafting Suggestions Comments
	This is to ensure alignment with Art. 11(1), i.e. that the third-country prospectus contains a statement by the persons responsible for drawing it up. LU (Drafting): LU (c) — the third country's laws, regulations and administrative provisions on civil liability apply to the persons responsible for the information given in the prospectus, including at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market and, where applicable, the guarantor; LU (Comments): LU Please refer to our comment above.
(d) the third country's legally binding requirements specify the validity of the third country prospectus and the obligation to supplement the third country prospectus where a significant new factor, material mistake or material inaccuracy of the information included in	LU (Drafting): LU (d) — the third country's legally binding requirements specify the validity of the third country prospectus and the obligation to supplement the third country prospectus where a significant new factor, material mistake or material inaccuracy of the information included in that prospectus could affect the assessment of the securities, as well as the conditions for

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Commission proposal	Drafting Suggestions Comments
that prospectus could affect the assessment of the securities, as well as the conditions for investors to exercise their withdrawal rights in such a case;	investors to exercise their withdrawal rights in such a case; LU (Comments): LU Please refer to our comment above.
(e) the third country's supervisory framework for the scrutiny and approval of third country prospectuses and the arrangements for the publication of third country prospectuses have an equivalent effect as the provisions referred to in Articles 20 and 21.	LU (Drafting): LU (e) the third country's supervisory framework for the scrutiny and approval of third country prospectuses and the arrangements for the publication of third country prospectuses have an equivalent effect as the provisions referred to in Articles 20 and 21. LU (Comments): LU Please refer to our comment above.
The Commission may make the application of such implementing act subject to the effective and continuous	LU

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Commission proposal	Drafting Suggestions Comments
compliance by a third country with any requirements set out in that implementing act.	(Drafting): LU The Commission may make the application of such implementing act subject to the effective and continuous compliance by a third country with any requirements set out in that implementing act. LU (Comments): LU Please refer to our comment above.
6. The Commission is empowered to adopt delegated acts, in accordance with Article 44, to supplement this Regulation by specifying further the criteria referred to in paragraph 5.’;	LU (Drafting): LU 6. The Commission is empowered to adopt delegated acts, in accordance with Article 44, to supplement this Regulation by specifying further the criteria referred to in paragraph 5.’; LU (Comments): LU Please refer to our comment above.

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Commission proposal	Drafting Suggestions Comments
(23) Article 30 is amended as follows:	LU (Drafting): LU (223) Article 30 is amended as follows: LU (Comments): LU Please refer to our comment below.
(a) paragraph 1 is replaced by the following:	LU (Drafting): LU (a) paragraph 1 is replaced by the following:
‘1. For the purpose of Article 29 and, where deemed necessary, for the purpose of Article 28, ESMA shall establish cooperation arrangements with the supervisory authorities of third countries concerning the exchange of information between ESMA and the supervisory authorities of third countries concerned and the enforcement of obligations	FR (Drafting):FR ‘1.For the purpose of Article 29 and, where deemed necessary, for the purpose of Article 28, ESMA the competent authorities of Member States shall establish cooperation arrangements with the supervisory authorities of third countries concerning the exchange of information between ESMA and the <u>with</u> supervisory authorities of third countries concerned and the enforcement of obligations arising under this Regulation in third countries unless that third

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Commission proposal	Drafting Suggestions Comments
arising under this Regulation in third countries unless that third country, in accordance with a delegated act referred to in Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council^{*4}, is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union. Those cooperation arrangements shall ensure an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.	country, in accordance with a delegated act referred to in Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council^{*4}, is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union. Those cooperation arrangements shall ensure an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation. FR (Comments):FR Cooperation arrangements must be concluded between the relevant supervisory authorities of the third country issuer and the relevant NCA, not ESMA. IE (Comments):IE We are unclear on the rationale for changes in relation to setting up cooperation arrangements. Could the Presidency and/or Commission please clarify: why ESMA should establish/conclude cooperation arrangements with the supervisory authorities of third countries (Art 30) when the home MS is responsible for supervision (Art 29) when it already has a role in facilitating/coordinating the development of these arrangements. DE (Comments): DE

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Commission proposal	Drafting Suggestions Comments
	It appears unclear why no cooperation arrangements should be required between the competent authorities of the Member States and the relevant supervisory authorities of the third country issuer concerning the exchange of information, given that the third country prospectuses are filed with the NCAs of the home Member State. LU (Drafting): LU <u>‘1. For the purpose of Article 29 and, where deemed necessary, for the purpose of Article 28, ESMA shall establish cooperation arrangements with the supervisory authorities of third countries concerning the exchange of information between ESMA and the supervisory authorities of third countries concerned and the enforcement of obligations arising under this Regulation in third countries unless that third country, in accordance with a delegated act referred to in Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council^{*4}, is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union. Those cooperation arrangements shall ensure an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.</u> LU (Comments): LU We should stick to the current regime as referred to in Article 30, paragraph 1, of the Prospectus Regulation, according to which competent authorities of Member States, instead of ESMA,

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Commission proposal	Drafting Suggestions Comments
	conclude cooperation arrangements with the supervisory authorities of concerned third countries. HR (Comments): HR We are not entirely clear on what the effect of this change is, or what the intent is. Does this mean that ESMA will now supervise third county issuers? What is the scope of ESMA's competences here?
^{*4} Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).²;	

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Commission proposal	Drafting Suggestions Comments
(b) paragraph 2 is deleted;	LU (Drafting): LU (b) paragraph 2 is deleted; LU (Comments): LU Please refer to our comment above.
(c) paragraphs 3 and 4 are replaced by the following:	LU (Drafting): LU (c) paragraphs 3 and 4 are replaced by the following; LU (Comments): LU Please refer to our comment above.

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Commission proposal	Drafting Suggestions Comments
‘3. ESMA shall establish cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 35. Such exchange of information shall be intended for the performance of the tasks of competent authorities.	FR (Drafting):FR ‘3. ESMA <u>Competent authorities of Member States</u> shall establish cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 35. Such exchange of information shall be intended for the performance of the tasks of competent authorities. FR (Comments):FR Cooperation arrangements must be concluded between the relevant supervisory authorities of the third country issuer and the relevant NCA, not ESMA. (The last sentence of paragraph rightly refers to “the tasks of competent authorities”) LU (Drafting): LU <u>‘3.ESMA shall establish cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 35. Such exchange of information shall be intended for the performance of the tasks of competent</u>

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Commission proposal	Drafting Suggestions Comments
	<u>authorities.</u> LU (Comments): LU Please refer to our comment above. HR (Comments): HR Does the last sentence of this paragraph imply that ESMA will exchange information with TC supervisory authorities, and then transmit it to the NCAs (the “competent authorities”)? Does this imply that there is no change in supervisory responsibilities? How do the NCA’s monitor compliance with TC law? Or does ESMA do that now?
4. The Commission is empowered to adopt delegated acts in accordance with Article 44 to supplement this Regulation by determining the minimum content of the cooperation arrangements referred to in paragraph 1 and the template document to be used for such cooperation arrangements.’;	IE (Comments):IE Please note related comment in paragraph 1 of Article 30. LU (Drafting): LU <u>4. The Commission is empowered to adopt delegated acts in accordance with Article 44 to supplement this Regulation by determining the minimum content of the cooperation</u>

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Commission proposal	Drafting Suggestions Comments
	arrangements referred to in paragraph 1 and the template document to be used for such cooperation arrangements.; LU (Comments): LU Please refer to our comment above.
(24) in Article 38(1), first subparagraph, point (a) is replaced by the following:	
‘(a) infringements of Article 3, Articles 5 and 6, Article 7(1) to (11) and (12b), Articles 8 to 10, Article 11(1) and (3), Article 14b(1), Article 15a(1), Article 16(1), (2) and (3), Articles 17 and 18, Article 19(1) to (3), Article 20(1), Article 21(1) to (4) and (7) to (11), Article 22(2) to (5), Article 23 (1), (2), (3), (4a) and (5), and Article 27;’;	
(25) in Article 40, the second	

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Commission proposal	Drafting Suggestions Comments
subparagraph is replaced by the following:	
‘For the purposes of Article 20, a right of appeal shall also apply where the competent authority has neither taken a decision to approve or to refuse an application for approval nor has made any request for changes or supplementary information within the time limits set out in Article 20(2), (3), (6) and (6b) in respect of that application.’;	
(26) Article 44 is amended as follows:	
(a) paragraphs 2 and 3 are replaced by the following:	
‘2. The power to adopt delegated acts referred to in Article 1(7), Article 9(14), Article 13(1) and (2), Article 16(5), Article 20(11), Article 29(6) and Article 30(4) shall be	

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Commission proposal	Drafting Suggestions Comments
conferred on the Commission for an indeterminate period from 20 July 2017.	
3. The delegation of powers referred to in Article 1(7), Article 9(14), Article 13(1) and (2), Article 16(5), Article 20(11), Article 29(6) and Article 30(4) 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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;	
	NL (Drafting):NL ‘2.The power to adopt delegated acts referred to in Article 1(7), Article 9(14), Article 13(1) and (2), Article 16(5), Article 20(11), Article 29(6) and Article 30(4) shall be conferred on the Commission for a 5-year period from 20 July 2017 with tacit renewal.

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Commission proposal	Drafting Suggestions Comments
	NL (Comments):NL NL (Comments): Please consider a conferral of power for a 5-year period, with tacit renewal. This makes it possible to duly evaluate these powers.
(b) paragraph 6 is replaced by the following:	
‘6. A delegated act adopted pursuant to Article 1(7), Article 9(14), Article 13(1) and (2), Article 16(5), Article 20(11), Article 29(6) and Article 30(4) shall enter into force only if no objection has been expressed either by the European Parliament or by 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	

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Commission proposal	Drafting Suggestions Comments
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.’;	
(27) Article 47 is amended as follows:	
(a) in paragraph 1, point (a) is replaced by the following:	
‘(a) the types of issuers, in particular the categories of persons referred to in Article 15a(1), points (a) to (d) ;’;	
(b) in paragraph 2, point (a) is replaced by the following:	
‘(a) an analysis of the extent to which the disclosure regimes set out in Articles 14b, 15a, the universal registration document referred to in Article 9 are used throughout the Union;’;	

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Commission proposal	Drafting Suggestions Comments
(c) the following paragraph 3 is added:	
‘3. In addition to the requirements set out in paragraphs 1 and 2, ESMA shall include in the report referred to in paragraph 1 the following information:	
(a) an analysis of the extent to which the exemptions referred to in Article 1(4), first subparagraph, point (db), and in Article 1(5), first subparagraph, point (ba), are used throughout the Union, including statistics on the documents referred to in those Articles that have been filed with competent authorities;	
(b) statistics on the universal registration documents referred to in Article 9 that have been filed with competent authorities.’;	
(28) Article 47a is deleted;	

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Commission proposal	Drafting Suggestions Comments
(29) in Article 48, paragraphs 1 and 2 are replaced by the following:	
‘1. By 31 December...[5 years from date of the entry into force of this amending Regulation] the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied, where appropriate, by a legislative proposal.	
2. The report shall contain an assessment of, inter alia, whether the prospectus summary, the disclosure regimes set out in Articles 14b, 15a and the universal registration document referred to in Article 9 remain appropriate in light of their pursued objectives. The report shall contain all of the following:	
(a) the number of EU Growth issuance documents of persons in each of	

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Commission proposal	Drafting Suggestions Comments
the categories referred to in Article 15a(1), points (a) to (d), and an analysis of the evolution of each such number and of the trends in the choice of trading venues by the persons entitled to use the EU Growth issuance documents;	
(b) an analysis of whether the EU Growth issuance document strikes a proper balance between investor protection and the reduction of administrative burdens for the persons entitled to use it;	
(c) the number of EU Follow-on prospectuses approved and an analysis of the evolution of such number;	
(d) an analysis of whether the EU Follow-on prospectus strikes the proper balance between investor protection and the reduction of administrative burden for the persons entitled to use it;	

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Commission proposal	Drafting Suggestions Comments
(e) the cost of preparing and having an EU Follow-on prospectus and an EU Growth issuance document approved compared to the current costs for the preparation and approval of a standard prospectus, together with an indication of the overall financial savings achieved and of which costs could be further reduced for both the EU Follow-on prospectus and the EU Growth issuance document;	
(f) an analysis of whether the document set out in Annex IX strikes the proper balance between investor protection and the reduction of administrative burden for the persons entitled to use it.';	
(30) the following Article 50 is added:	
'Article 50	
Transitional provisions	

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Commission proposal	Drafting Suggestions Comments
1. Article 14 of Regulation (EU) 2017/1129 as applicable on ... [date of entry into force of this amending Regulation minus one day] shall continue to apply to prospectuses drawn up in accordance with that Article 14 and approved before that date until the end of their validity.	AT (Comments):AT There are only transitional provisions for the Articles 14 and 15. As the Annexes I to V replace the text of Annex I there should also be transitional provisions for prospectuses created under the “old” scheme.
2. Article 15 of Regulation (EU) 2017/1129 as applicable on ... [date of entry into force of this amending Regulation minus one day] shall continue to apply to EU Growth prospectuses approved before that date until the end of their validity.’;	
(31) Annexes I to V are replaced by the text in Annex I to this Regulation;	
(32) Annex Va is deleted;	
(33) the text set out in Annex II to this Regulation is added as Annexes VII to	

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Commission proposal	Drafting Suggestions Comments
IX.	
Article 2 Amendments to Regulation (EU) No 596/2014	RO (Comments):RO RO Comments <u>Amendments to Regulation (EU) 596/2014</u> We are of the opinion that any measures meant to bring more legal clarity and reduce any potential differences in the application in practice of the market abuse provisions are beneficial to the market. Nevertheless, taking into consideration the importance of the market abuse rules for market integrity, the modifications should be carefully considered. BG (Comments): BG BG: GENERAL COMMENTS: We support the amendments in Regulation (EU) No 596/2014 as a means for alleviation of the administrative burden for issuers and reducing the differences in the enforcement of market abuse provisions. Nevertheless, considering the importance of the proposed amendments for the integrity of the market, we note that they should be examined with due care. We support in principle the approach to defining more clearly the conditions under which an

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Commission proposal	Drafting Suggestions Comments
	issuer can delay the disclosure of inside information. The interaction between the individual conditions should be clarified.
Regulation (EU) No 596/2014 is amended as follows:	
(34) Article 5 is amended as follows:	ES (Comments): ES Regarding the proposal to modify the reporting regime for buy-back programmes, we are in favour of centralizing the obligations with respect to the NCA of the most relevant market in terms of liquidity and we support the disclosure to the public in an aggregated form. However, the proposal should clarify that it shall be reported by session and market (MIC Code).
(a) in paragraph 1, point (b) is replaced by the following:	
‘(b) trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public in an aggregated form;’;	FR (Comments):FR We support this change: it will participate to align the disclosure procedure with market activity and thus enhance the quality of supervision by NCA.

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Commission proposal	Drafting Suggestions Comments
	EL (Comments):EL EL: In our view, time frequency of the disclosure in an aggregated form that should be clarified in order to evaluate whether this provision may result in less and non timely information to the public BE (Drafting):BE - BE (Comments):BE BE welcomes this simplification of the reporting mechanism for buy-back programmes. HR (Comments): HR We agree with the simplification of the reporting mechanism that an issuer must follow in order for its buy-back programme to benefit from those exceptions. Under the proposed amendments the issuers must report the information only to the competent authority of the most relevant market in terms of liquidity for their shares and disclose to the public only aggregated information. It is not clear what constitutes „aggregated information“

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Commission proposal	Drafting Suggestions Comments
	therefore we propose that this should be elaborated.
(b) paragraph 3 is replaced by the following:	
‘3. In order to benefit from the exemption laid down in paragraph 1, the issuer shall report all transactions relating to the buy-back programme to the competent authority of the most relevant market in terms of liquidity as referred to in Article 26(1) of Regulation (EU) No 600/2014. The receiving competent authority shall, upon request, forward the information to the competent authorities of the trading venue on which the shares have been admitted to trading and are traded.’;	PT (Comments):PT The reporting requirement solely to the competent authority of the most relevant market in terms of liquidity seems a good way forward to prevent duplication. FR (Comments):FR We support this amendment, since it is an evident consequence of the changes introduced above. BE (Drafting):BE - BE

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Commission proposal	Drafting Suggestions Comments
	(Comments):BE BE welcomes this simplification of the reporting mechanism for buy-back programmes.
(35) in Article 7(1), point (d) is replaced by the following:	ES (Comments): ES We support the changes introduced in Article 7(1), point (d), adding the excerpt " <i>other persons acting on the client's behalf or information known by virtue of management of a proprietary account or of a managed fund</i> ".
'(d) information conveyed by a client or by other persons acting on the client's behalf or information known by virtue of management of a proprietary account or of a managed fund and relating to pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related	PT (Drafting):PT "information conveyed by a client or by other persons acting on the client's behalf <u>to persons charged with the execution of orders concerning financial instrument</u> or information known by virtue of management of a proprietary account or of a managed fund and relating to pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments." PT (Comments):PT

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Commission proposal	Drafting Suggestions Comments
spot commodity contracts, or on the price of related derivative financial instruments.’;	While the addition seems to clarify the text it seems that the current reference to “persons charged with the execution of orders concerning financial instrument” should be kept. PL (Comments):PL PL: We strongly support this proposal. FR (Comments):FR We support this amendment, which should account for the diversity of persons and subjects potentially involved in front-running behaviours. BE (Drafting):BE - BE (Comments):BE BE welcomes this extension of the scope of the front running prohibition. HR (Comments): HR

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Commission proposal	Drafting Suggestions Comments
	We agree with the amendmend of the "front running" definition to include not only persons charged with the execution of orders concerning financial instruments but also other categories of persons that may be aware of a future relevant order.
(36) Article 11 is amended as follows:	FI (Comments):FI If we accept that the market sounding regime is a safe harbour, it should be clarified what safeguards there would be for the person receiving the sounding. When wall-crossing takes place, the person receiving the sounding should be able to control whether or not it wants to receive the information. It should be also clear for the person receiving the information that the information has not been unlawfully disclosed, that obiligation to keep the information confidential applies and whether or not prohibitions on trading apply. The current market sounding regime also ensures that the information has been disclosed equally to all parties receiving the sounding. In our opinion, the dichotomy between market sounding regime being a safe harbour or a mandatory compliance regime does not necessarily culminate to question whether the insider information has been unlawfully disclosed or not (c.f. the current recital 35 of MAR). We could also consider the market sounding regime a mandatory compliance duty. A breach of such duty would constitute <i>a breach of compliance duties</i> but not necessarily the breach of prohibition of unlawful disclosure of inside information. However, we understand that there are not currently any sanctions stipulated in the MAR for the breach of compliance with the market

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Commission proposal	Drafting Suggestions Comments
	sounding regime. We would also like to point out that many proposals to the Prospectus Regulation tend to go more in the direction where retail investor participation is tried to be enhanced. The market sounding is used in private placements. We wonder that if we are trying to enhance the retail investor participation, should we refrain from alleviating the regime applied in private placements. We could be open for exploring the possibility to alleviate the current compliance requirements, instead of making the market sounding regime a safe harbour. The amendment would likely also have negative impact on competent authorities' abilities to combat market abuse since the level of audit trail would be decreased. ES (Comments): ES On a preliminary basis, we are in favour of the clarification of market sounding regime and the proposed wording of the conditions of paragraph 4.
(a) in paragraph 1, the introductory wording is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
	NL (Comments):NL NL (Comments): The Netherlands is in favour of simplifying the market sounding regime. However, the proposed amendments (i.e., making Article 11, par 4. optional) is not necessarily a simplification. While it may give a disclosing market participant a certain amount of flexibility, it ultimately does not provide the disclosing market participant any legal certainty. The Commission proposal states that when a disclosing market participant chooses not to use the safe harbour, there is no presumption that the disclosing market participant has unlawfully disclosed inside information. The Netherlands fails to see how that can be the case. The safe harbour is needed, because disclosing inside information for the purpose of a market sounding does generally not constitute a disclosure made in the normal exercise of a person's employment, profession or duties. Disclosing inside information in the course of a market sounding without the safe harbour will consequently constitute a breach of Article 14 in most cases. Conversely, a disclosing market participant will, generally speaking, only be able to legally disclose information that does not qualify as inside information. In our view a simplification could be easier and more efficiently reached by giving general

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Commission proposal	Drafting Suggestions Comments
	guidelines, rather than detailed conditions.
‘A market sounding comprises the communication of information prior to the announcement of a transaction, if any, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:’;	BE (Drafting):BE - BE (Comments):BE BE welcomes this extension of the market sounding safe-harbour. ES (Comments): ES We welcome the proposal to extend the definition of market sounding to include unannounced transactions, as this measure could help to minimize possible conducts contrary to investor protection (pre-hedge) and, ultimately, possible front-running. HR (Comments): HR We agree with the clarification that the market-sounding regime and the relevant requirements are only a "safe-harbour" option for disclosing market participants ("DMPs") to benefit from

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Commission proposal	Drafting Suggestions Comments
	the protection against the allegation of unlawful disclosure of inside information. We also agree that DMPs must make a written record of the conclusions and underlying reasons and provide it to competent authorities upon their request. We agree with the expansion of the market sounding to include cases where a transaction is not eventually announced.
(b) paragraph 4 is replaced by the following:	
‘4. A market participant may choose to comply with all of the following conditions:	PT (Comments):PT We consider that a market participant should be required to comply with all these conditions, as it is established in the current text of the Regulation. Otherwise there is no way to determine if inside information was shared with the relevant party during the market sounding. BE (Drafting):BE -

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Commission proposal	Drafting Suggestions Comments
	BE (Comments):BE BE is of the view that the market sounding regime should remain compulsory. A compulsory market sounding regime is essential to ensure an adequate level of audit trail for competent authorities to be able to effectively investigate any potential abuse. Without an express obligation, the offered protection from the allegation of unlawful disclosure of inside information cannot be per se a sufficient incentive for DMPs to follow the market sounding requirements on a voluntary basis. AT (Comments):AT In our understanding that provision gives disclosing market participants (DMP) the possibility to choose whether to comply with the market sounding regime or not. However, clarification regarding the nature of the provision is very much appreciated. Does this present a ‘real’ safe harbour? If a DMP chooses to comply with all the requirements named in this Article, they will not be sanctioned under Article 10 MAR. There is still no obligation to sanction compliance with Article 11 MAR. By the proposal, the market sounding requirements are optional. When chosen by the DMP, compliance with the regime leads to the assumption (‘...shall be deemed to have disclosed inside information ...’) of lawful disclosure of inside information. For clarification purposes, we would therefore prefer a more straightforward wording of this

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Commission proposal	Drafting Suggestions Comments
	proposal.
(a) having obtained the consent of the person receiving the market sounding to receive inside information;	PT (Drafting):PT having obtained the consent of the person receiving the market sounding to receive inside information and inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential PT (Comments):PT Drafting suggestion to streamline the establishment of these requirements. BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 11.4.

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Commission proposal	Drafting Suggestions Comments
(b) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;	PT (Drafting):PT b) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by: i) acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information, or ; ii) by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates PT (Comments):PT Please take into consideration the comment above. FR (Comments):FR Although we could show some openness on the overall appreciation of the market soundings regime, we are worried about leaving this specific condition optional. In the current COM proposal, a market participant could convey an inside information to a receiving person without the latter being aware (let alone consenting). This can jeopardise the good functioning of market since an inside information could be on the loose and passed on unwittingly and endlessly.

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Commission proposal	Drafting Suggestions Comments
	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 11.4.
(c) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates;	PT (Drafting):PT (e) ——— having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; PT (Comments):PT Please take into consideration the comment above. BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
	- BE (Comments):BE See comments on introductory subparagraph of Article 11.4.
(d) having informed the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential;	PT (Drafting):PT (d) — having informed the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential; PT (Comments):PT Please take into consideration the comment above. BE (Drafting):BE - BE (Comments):BE

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Commission proposal	Drafting Suggestions Comments
	See comments on introductory subparagraph of Article 11.4.
(e) having made and maintained a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d), and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure;	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 11.4.
(f) having provided that record to the competent authority upon request.	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 11.4.

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Commission proposal	Drafting Suggestions Comments
In case of compliance with all those conditions, the market participant shall be deemed to have disclosed inside information made in the course of a market sounding in the normal exercise of a person's employment, profession or duties for the purposes of Article 10(1).';	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 11.4.
(c) paragraph 5 is deleted;	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 11.4.
(d) paragraphs 6 and 7 are replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
6. Where information that has been disclosed in the course of a market sounding pursuant to paragraph 4 ceases to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible. This obligation shall not apply in cases where the information has been announced publicly otherwise.	PT (Comments):PT Since compliance with paragraph 4 seems to be somewhat optional, does an issuer have to comply with this paragraph if it has chosen not to comply with paragraph 4? BE (Drafting):BE - BE (Comments):BE BE welcomes this waiver of notification requirement.
The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the competent authority upon request.	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 11.4.

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Commission proposal	Drafting Suggestions Comments
7. Notwithstanding this Article, the person receiving the market sounding shall assess for him- or herself whether he or she possesses inside information.’;	BE (Drafting):BE - BE (Comments):BE BE welcomes this clarification.
(37) in Article 13(12), point (d) is replaced by the following:	ES (Comments): ES On the intervention of SME Growth Markets in liquidity contracts between investor and intermediary, we could support the proposed amendment and we are in favour of leaving it at the level of notification and acknowledgement of receipt.
‘(d) the market operator or the investment firm operating the SME growth market acknowledges in writing to the issuer that it has received a copy of the liquidity contract.’;	FR (Comments):FR We support this modification.

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Commission proposal	Drafting Suggestions Comments
	BE (Drafting):BE - BE (Comments):BE BE welcomes this alleviation. HR (Comments): HR We agree with the amendments, considering that the operator of an SME growth market is not a party to a liquidity contract the requirement for such operator to approve the terms and conditions of liquidity contracts should be removed.
(38) Article 17 is amended as follows:	CY (Comments):CY Based on our experience, protracted processes lead, most of the times, to very important events for an issuer, like a merger or an acquisition. Knowledge of intermediate steps, of such processes, is considered critical for an investor in order to shape his/her investment decisions. In our opinion, there should be no distinction between a protracted and a non-protected process.

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Commission proposal	Drafting Suggestions Comments
	Each step of a protracted process should be assessed independently and be subject to disclosure, if the 4 criteria set currently by MAR are met.
(a) in paragraph 1, the first subparagraph is replaced by the following:	FI (Comments):FI In our opinion, clarifying <u>the moment</u> of disclosure of inside information should be a priority in the negotiations. We should avoid replacing current interpretive issues with new kinds of interpretive issues. In order to achieve clarity to this regime, we are open to decouple this regime from the prohibition regime to certain extent. We are open to welcome the indicative list of inside information subject to disclosure purposes and indicative disclosure moments set out in delegated act, but see that the basic principle of <i>when information is matured enough to be disclosed to the public</i> should be defined more precisely at level 1. This links also to the question about disclosure of intermediate steps (see our comments below). E.g. the intermediate step may not as a starting point be matured enough to be disclosed, but if it fulfils the criteria of inside information, it should be disclosed in case of leakage or non-intentional disclosure (e.g. in a road show) (i.e. when the confidentiality of such information is no longer ensured as set out in the proposed recital 60).

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Commission proposal	Drafting Suggestions Comments
‘An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. That requirement shall not apply to intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about a set of circumstances or an event.’;	PT (Comments):PT We consider that level 1 text should specify further the concept of “intermediate steps (...) connected with bringing about a set of circumstances or an event”, for instance through the provision of some examples in the recitals. FI (Comments):FI Intermediate steps of protracted process can constitute inside information (MAR Art. 7(2)–(3)) and such information is subject to prohibitions in Article 14 of MAR. Taken into consideration that this kind of information can in certain cases constitute inside information, we wonder whether it is justified to exclude this categorically from the disclosure duties. Furthermore, in light of the new delaying criteria in the MAR 17(4), if such inside information (or parts of it) is disclosed e.g. in a road show, some investors may end up being in a better information position than others (given that the issuer is not obliged to disclose the same information to the markets). We should also take into account that under the proposed recital 60, the issuer must ensure the confidentiality of information related to intermediate step. We see that if the confidentiality is breached (e.g. information is disclosed in a road show as outlined in our example above), the issuer should be obliged to disclose the information related to intermediate steps to the markets. We would also like to bring up that as a general rule the notion of inside information is purported to apply to all situations where the information is material and precise in its nature. We wonder if it is appropriate to exclude certain types of information from the disclosure

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Commission proposal	Drafting Suggestions Comments
	regime especially taken into account that the inside information nature of intermediate steps is already accepted in Article 7(2)–(3), the Article 14 (and the proposed recital 60). Instead of excluding the intermediate steps from the disclosure regime, we would find it useful to explore the possibilities to clarify when intermediary step is inside information subject to disclosure requirement. The starting point could be that this kind of information is not subject to disclosure requirement. We understand that in practice, the disclosure of this kind of information is typically delayed (see also the proposed recital 60) but if the criteria for delaying the disclosure of information are no longer met (e.g. there has been a leakage or non-intentional disclosure), the information should be disclosed. PL (Comments):PL PL: In our view the proposed changes do not eliminate issuers' problems with identifying confidential information in protracted processes. As the definition of inside information has not changed, issuers will still have the obligation to properly identify inside information in these processes and to disclose it if they are unable to ensure its confidentiality. In the case of processes stretched over a long period of time, it will probably be impossible for the issuer to keep the confidential information identified in this process confidential due to other disclosure obligations, such as those related to the provision of periodic information, in particular when "unpublished" confidential information will concern processes generating significant costs for issuers or affecting disclosures in the financial statements.

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Commission proposal	Drafting Suggestions Comments
	In addition, we do not agree with the argumentation indicated in the recitals to the proposed changes that the broad scope of the concept of inside information results in the obligation of the issuer to disclose information at a very early stage, when information on circumstances or events has not yet reached a high degree of certainty. According to Art. 7(2) and (3) of MAR, an intermediate stage of the extended process is considered confidential information if it itself meets the criteria of confidential information. Therefore, since the event is at too early stage and has not reached a high degree of certainty, it is difficult to conclude that this event met all the conditions of inside information (including the criterion of precision). FR (Comments):FR This amendment is still under scrutiny reservation on our side, this exemption already raises the following concerns / observations on our side: - it questions the existing jurisprudence around MAR since <i>CJEU C-19/11 Markus Gelt v Daimler AG</i> (2012). We would welcome additional explanations by the Commission and/or the opinion of the Council Legal Service; - it encompasses a much greater number of situations than just M&A transactions (e.g. a decision/contract that needs the approval of another body of the issuer, an ongoing negotiation, biotech's trial phases, litigation.), which is used by the COM as the base case to appreciate the effects of this provisions. We would also welcome detailed explanations by the COM on how it envisaged the application/enforcement of this provisions in the different (business) cases listed above.

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Commission proposal	Drafting Suggestions Comments
	EL (Comments):EL EL: The public disclosure of inside information by an issuer is essential to avoid insider dealing and ensure that investors are not mislead. In that regard, prompt and fair disclosure of information to the public enhances market integrity. To rule out the obligation to disclose quite specific information relating to a step in a protracted process, may lead to situations where certain parties who possess inside information are in an advantageous position against other investors who are unaware of it and are able to profit from that information. To our understanding, in the proposed amendments, there seems to be ambiguity and divergence between the proposed provision and its preamble. The proposed provision is unclear and it seems to rule out completely the obligation to disclose during a protracted process. On the other hand, preamble 58 states that <i>“In that case, the issuer should only disclose the information related to the event that this protracted process intends to bring about, at the moment when such information is sufficiently precise, such as when the management board has taken the relevant decision to bring about that event”</i>. So, according to the preamble, there might be situations in a protracted process that fall into the obligation to disclose, as long as the process is not at an early stage and such situations are intended to be defined in the delegated act. This approach might cause legal uncertainty, as far as the definition of inside information is

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Commission proposal	Drafting Suggestions Comments
	concerned, as it undermines the element of “precise nature” for the purposes of insider dealing, given the fact that the definition of inside information is the same for both insider dealing and disclosure obligation. Therefore, special attention is needed, as the time when an information obtains a precise nature, affects equally both insider dealing and disclosure obligation. IE (Comments):IE In our understanding, the proposal would amend Article 17 to clarify that the obligation to disclose all inside information to the public does not cover information relating to the intermediate steps of a protracted process, as it is considered that this information is too preliminary and hence not mature enough for disclosure. Our initial view is that this change may cause confusion for issuers. Currently under Article 17(4), issuers can delay the disclosure of an intermediate step in a protracted process so long as the conditions in Art 17(4) are met. Considering that the information will still be inside information and if this proposal is removing the requirement to disclose the intermediate steps, we would like clarification whether it is also removing the requirement to notify the NCA of a delay in disclosure (the text is not clear on this). This could cause confusion as to when an intermediary step is mature enough to warrant a disclosure. Thus, there is a concern that this proposal goes against the idea of reducing the burden for issuers without affecting market integrity. RO

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Commission proposal	Drafting Suggestions Comments
	(Comments):RO RO Comments - Article 17 Taking into consideration that the main provisions regarding the disclosure of inside information are set at the MAR level and will be further detailed through delegated acts, we consider appropriate to expressly include in the modifications of MAR a specific exemption from the disclosure obligation of inside information in the context of the measures and instruments in relation to the application of certain measures/unfolding of a process of resolution under BRRD, taking into account the public interest and financial stability considerations. BE (Drafting):BE - BE (Comments):BE BE opposes a waiver of the disclosure requirement for intermediate steps in a protracted process. The disclosure obligation and the prohibition of insider dealing are closely related and therefore should not be decoupled. If disclosure is no longer required for intermediate steps of protracted processes, there will be a temporary inefficiency of the market (pending disclosure). Likewise, focusing only on a predefined and arbitrary list of material events for disclosure

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	obligations narrows the scope of information made publically available to the market. This undermines the efficiency of the financial markets: not all necessary information is disclosed to investors to make rationale investment decisions in a timely manner, risk of unlawful behavior of insiders based on events that are not included in the list of material events and therefore not disclosed (though they may significantly influence the price of a financial instrument depending on specific circumstances of the issuer). AT (Comments):AT We are not quite sure what is to be understood by <i>“That requirement shall not apply to intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about a set of circumstances or an event”</i>. In our understanding this could mean that intermediate steps in a protracted process (and consequently any inside information) must only be made public with the occurrence of the final event (e.g. the conclusion of a transaction). In order to avoid legal uncertainty we would appreciate clarification in this regard. ES (Comments): ES We welcome the elimination of the obligation of intermediate publications in a protracted process. Experience with the application of MAR has shown that it is difficult to identify all the intermediate milestones that may constitute inside information. Moreover, in practice, issuers apply the delay to these phased projects, so that, in the absence of leaks, publication occurs at

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Commission proposal	Drafting Suggestions Comments
	the end of the process. BG (Comments): BG BG: We would welcome further clarifications on the interaction of Article 17, para 1 with the requirements of Article 7, para 2, and 3. In particular, the notion of “where those steps are connected with bringing about a set of circumstances or an event” is confusing. LT (Comments): LT We are skeptical about the proposed exemption. In practice, such changes would not impose an additional administrative burden on issuers to assess the need for intermediate inside information notifications during lengthy negotiations, but from a supervisory perspective, such changes would potentially enable market participants to delay disclosure, which could create additional risks of illegal use of inside information. HR (Comments): HR We agree with narrowing down the scope of the disclosure obligation in the case of the so-called protracted process by setting forth that the disclosure obligation does not cover the intermediate steps of that process.

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(b) the following paragraphs 1a and 1b are inserted:	
	NL (Comments):NL NL (Comments): The purpose of the obligation for issuers to make inside information public is to ensure that every investor is able to assess all the relevant information for his or her investment decision. In other words: it creates a level playing field with respect to information. The longer inside information stays hidden, so to speak, the higher the probability that the circle of insiders keeps growing and the higher the probability that ultimately someone tries to use the inside information for own advantage. The proposed carve out for information regarding a protracted process will therefore undoubtedly have a negative impact on market integrity, because inside information will remain private for a longer time. Publication as soon as possible of inside information is a corner stone provision within the MAR. Market abuse rules are indispensable for guaranteeing market integrity, which is in its turn essential for confidence in the capital markets and their functioning. Please note that in our view this amendment leads to a possible decrease in market integrity and

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	is thus not supported by the Netherlands. If information qualifies as inside information, the public should be informed, regardless if this is part of an intermediate step in a protracted process, since these steps can be (or: are) relevant for investment decisions. To put it more boldly, quite a few decisions/actions (i.e. intermediate steps) that are part of the protracted process are to be considered relevant for the market. By creating a carve out for information regarding intermediate steps, parties could have a (perverse) incentive to argue that actions/decisions are part of a protracted process and as such not trigger the obligation to inform the public. One could even argue that most (formal) decisions / actions are part of a protracted process. That can and should not be intended. The current framework already caters for delay of publication of inside information as long as certain safeguards are met. This framework functions adequately. By introducing the proposed change, certain of these vital safeguards of article 17 section 4 MAR no longer apply (1. Immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant and 2. Delay of disclosure is not likely to mislead the public). Please consider deleting this proposed amendmend. If not, please explain to how the market

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Commission proposal	Drafting Suggestions Comments
	integrity can be guaranteed.
‘1a. The Commission shall be empowered to adopt a delegated act to set out and review, where necessary, a non-exhaustive list of relevant information and, for each information, the moment when the issuer can be reasonably expected to disclose it.	PT (Comments):PT For the moment we do not have a definitive view on this regard as we are still assessing whether it is appropriate to establish on such list the expected disclosing time, as it may be difficult to ensure the appropriate correspondence between the specific case and the timing referred in the non-exhaustive list. In addition, we consider that this provision may be redrafted in order to better clarify its interaction with the guidelines described in Article 7(5). Finally, we consider that this list should be elaborated by ESMA in order to ensure its easier update. CY (Comments):CY In our opinion, it would be tremendously difficult to build an appropriate indicative list of relevant information. Further to this, it is highly possible that the non-exhaustive list might be used as an excuse by issuers, for not disclosing inside information which is not included in the list. With regards to providing an indication of the moment when the disclosure is expected to occur, we are strongly against. This should be examined on a case-by-case basis, by the issuer and no guidance can be given on a horizontal basis, without creating room for misjudgement.

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Commission proposal	Drafting Suggestions Comments
	PL (Comments):PL PL: In general, we support the proposed change. Please note, however, that the processes stretched over time cover a spectrum of various processes, which may make it impossible to create one universal catalog. There is a risk that such a catalog will not cover all the cases covered by this provision. Therefore, it is crucial to choose the right legal form for such a list. The proposal indicates that the list is to take the form of a delegated act of the Commission, which may make it difficult in the future to update it on an ongoing basis to meet the needs reported by its users. In our opinion, it might be more reasonable to delegate such an act to ESMA. FR (Comments):FR We are still analyzing the consequences of this proposal, but we see merit in this modification. Our main question concerns the legal clarity and certainty of the new regime for supervisors in cases which will not be covered in the list and depend on the interpretation of supervisors. We also have a technical question : how is the list of relevant information meant to operate? Will there still be room for a materiality analysis from the issuer, or does the appearance of an item on the list mandatorily lead to publication? Regarding the means, we are inclined to think that making the future level 2 act more robuste

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	requires to take into close consideration the feedback from supervisors and private stakeholders. In particular, the implication of ESMA (e.g. to issue new guidelines) seems necessary. IE (Comments):IE We would tend to be supportive on the creation of such a list. However, it may be challenging to compile a list for issuers to follow as real life events can differ greatly. Therefore, we think it is important that, as noted in the text, this list should be non-exhaustive, meaning that issuers still need to assess whether other events/circumstances constitute inside information, triggering a disclosure requirement. RO (Comments):RO RO Comments - Article 17 - we are of the opinion that the provisions enabling the European Commission to adopt a delegated act to set out a non-exhaustive list of relevant information and the moment when the issuer can be reasonably expected to disclose the relevant information could be beneficial to the market as it could help issuers in evaluating the criteria for inside information BE (Drafting):BE -

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	BE (Comments):BE As BE opposes the waiver, there is no need for it to draw up a list of material events. Drawing up such a list of relevant information and the moment of disclosure would also be extremely difficult. AT (Comments):AT In our opinion a non-exhaustive list of relevant information would not be feasible in practice. The legal systems and functioning of the markets throughout the EU are very different. A list that is applicable – although non-exhaustive – for each issuer is not of value for all issuers. They have to be able to assess disclosure of inside information on a case-by-case basis. ES (Comments): ES We have a scrutiny reservation. The specification by means of a delegated act by the COM of the events and situations that could involve inside information and when they should be published is a complex task and not exempt from the risk of leaving out possible cases. In Spain, the pre-MAR regime on inside information included an approach similar to the current COM proposal: a list of situations considered inside information. This approach was eliminated because it did not avoid the necessary case-by-case judgment and also included facts or events

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	that did not always constitute inside information. It is not clear to us that this proposal would add value to the current situation. HR (Comments): HR It might be considered instead of a delegated act to regulate this via ESMA RTS if possible.
1b. An issuer shall ensure the confidentiality of the information which meets the criteria of inside information set out in Article 7 until that information is disclosed pursuant to paragraph 1. Where the confidentiality of that inside information is no longer ensured, the issuer shall disclose that inside information to the public as soon as possible.’;	FR (Comments):FR Technical question : how does the provision interact with the new Art. 17(7) second subparagraph on rumours ? Would a “reliable” rumor force the issuer to disclose the referred information ? IE (Comments):IE BE (Drafting):BE

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	- BE (Comments):BE BE sees the following technical issue: the proposed change will apply when information becomes inside information. Accordingly, issuers should evaluate precisely when the inside nature of the information kicks in. This limits the benefit of the waiver of the disclosure requirements for intermediate steps of protracted processes (opposed by BE). AT (Comments):AT Our understanding is that this paragraph refers to non-disclosed intermediate steps. Otherwise any inside information does not need to be published as long as it is kept confidential. Clarification would be appreciated.
	NL (Comments):NL NL (Comments): In our view the choice for a delegated act should be amended to Regulated Technical Standards, so that the competent authorities are more closely involved.

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	The Netherlands questions why this proposed article refers to a list of ‘relevant information’ rather than ‘inside information’. This adds a new definition and could lead to confusion. Market abuse cases are very case specific and the contents of this non-exhaustive list is going to be very important and needs to be analysed and thought through in detail. In addition, we believe that having a list of relevant information – even though it is called non-exhaustive – could lead to the list being used as exhaustive. Could you please explain how to ensure that the list will be used as <u>non-exhaustive</u>.
(c) paragraph 4 is replaced by the following:	
	NL (Comments):NL NL (Comments): Please note that persons are already prohibited from unlawfully disclosing inside information on the basis of Article 14. Could you please explain the reasoning behind this proposed paragraph?
‘4. An issuer or an emission allowance market participant, may, on its	CY

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Commission proposal	Drafting Suggestions Comments
own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:	(Comments):CY We believe that this needs to be further discussed in light of the content of the list of the specific conditions. BE (Drafting):BE - BE (Comments):BE BE does not support a modification of the conditions for report. A change to the conditions would destabilise the existing framework and relevant case law, which would be harmful for both market participants and authorities. However, BE would welcome any additional clarification by ESMA through a revision of its guidelines on legitimate interests of issuers to delay the disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public. AT (Comments):AT We would appreciate clarification on the connection between the provisions in Art 17 (1) to (4) MAR. In some cases in practice, delayed disclosure of inside information is also associated with the

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Commission proposal	Drafting Suggestions Comments
	intermediate steps in a protracted process. Does the provision of Article 17 (4) MAR apply also to intermediate steps that constitute inside information? Does that further on mean that each intermediate step needs then to be delayed? ES (Comments): ES We have a scrutiny reservation. We consider considered that the current clarification framework, through Q&A and ESMA guidelines, is sufficient and gives flexibility. BG (Comments): BG BG: We would appreciate further clarification on the application of the proposed conditions in paragraph 4 (b) and on the reasons for the substitution of “delay of disclosure is not likely to mislead the public” with the proposed set of conditions. In addition, it should be further clarified how the conditions could be cumulatively met. The proposed amendments have also given rise to the question of whether the obligation to inform the NCA of a delay of disclosure

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	in the case of a protracted process should apply to each intermediate step. HR (Comments): HR In principle we can agree with the amendmends, however poin (a) could be interpreted restrictively (in a way that the delay would never actually be possible). Although the EC proposal foresees ESMA guidelines to establish a non-exhaustive indicative list of the legitimate interests of issuers, we would propose to extend the scope of the guidelines to the clarification of these three conditions.
(a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 17.4.
	PT (Drafting):PT

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	<u>(aa) delay of disclosure is not likely to mislead the public</u> PT (Comments):PT We consider that the current requirement concerning the non-misleading nature of the disclosure delay should be kept. NL (Comments):NL NL (Comments): Please note that the Netherlands does not support this amendment of the Regulation. In our view the condition that is replaced (i.e. Article 17, par. 4, subpar. b: “<i>delay of disclosure is not likely to mislead the public</i>”) by a set of specific conditions, was usefull and already given more substance in jurisprudence. By giving these specific conditions, rather than giving an open norm, the risk could exist that loopholes can be found / remain open. Please consider to add the 3 specific conditions and also keep the current <i>open norm</i> to still make sure that a delay of disclosure is not likely to mislead the public and as such prevent loopholes.
(b) the inside information that the issuer intends to delay meets the	FR

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following conditions:	(Comments):FR The Listing Act must address the shortcomings of the current framework as regards to conditions to delay the disclosure of inside information. However, we are not totally comfortable with replacing the existing high-level principle (not misleading the public) with a closed set of 3 illustrative situations which were taken from a non-exhaustive list of concrete examples included in ESMA's 2016 Guidelines. We note that ESMA made clear in its 2020 Technical Advice that it stood ready to undertake a revision of these Guidelines, which may include adding other illustrative cases. We believe that there may be cases that are not encompassed by the 3 examples and would still be illustrative of a situation where the public is misled by a delayed disclosure of inside information. An alternative solution could be to keep the point (b) (not misleading the public) while (i) adjusting the definition and/or the relevant recitals, and (ii) inserting an empowerment for an RTS providing a non-exhaustive list of cases where the public might be misled. BE (Drafting):BE - BE

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	(Comments):BE See comments on introductory subparagraph of Article 17.4.
(i) it is not materially different from the previous public announcement of the issuer on the matter to which the inside information refers to;	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 17.4.
	NL (Comments):NL NL (Comments): Please consider maintaining the <i>open norm</i> (i.e. “ <i>delay of disclosure is not likely to mislead the public</i> ”) as an addition to the three specific conditions.
(ii) it does not regard the fact that the issuer’s financial objectives are not likely to be met, where such objectives were	BE (Drafting):BE

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previously publicly announced;	- BE (Comments):BE See comments on introductory subparagraph of Article 17.4.
(iii) it is not in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, including interviews, roadshows or any other type of communication organised by the issuer or with its approval;	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 17.4.
(c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.	BE (Drafting):BE - BE (Comments):BE

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	See comments on introductory subparagraph of Article 17.4.
Where an issuer or emission allowance market participant intends to delay the disclosure of inside information under this paragraph, it shall inform the competent authority specified in accordance with paragraph 3 of its intention to delay the disclosure of inside information and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the decision to delay is taken.’;	PT (Drafting):PT Where an issuer or emission allowance market participant intends to delay the disclosure of inside information under this paragraph, it shall inform the competent authority specified in accordance with paragraph 3 of its intention <u>decision</u> to delay the disclosure of inside information and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the decision to delay is taken. PT (Comments):PT We would appreciate a clarification on whether the proposal intention was to delete the regime currently established in the 4th subparagraph of this provision, concerning issuers admitted to SME GM. In addition, the process described in the proposal seems excessively complex as it requires specific requirements concerning the “intention” and the “explanation”, one possible way forward could be to establish all the information obligations immediately after the delay decision is taken. PL (Comments):PL

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Commission proposal	Drafting Suggestions Comments
	PL: In our opinion, there is no need to change the current model of informing the NCA about delaying the disclosure of confidential information. The institution of informing the supervisory authority after the publication of delayed inside information, functioning since July 2016, has proven itself in practice. When delaying inside information, the issuer should devote its strength and resources to the proper conduct of this process. The obligation to notify the supervisory authority post factum also allows for better compliance with this obligation, as the issuer has more time to do so. The following doubts also arise in this regard: - in the case of protracted processes, will the notification concern only the final event identified as inside information or will it also contain a description of intermediate events identified as inside information (some intermediate stages may arise only during the process and cannot be predicted ex ante), - what will be the scope of the notification – whether the issuer will be obliged to indicate in the notification precisely the content of the inside information that it plans to delay or only an overall description of what the inside information is about, - whether Implementing Regulation 2016/1055 remains in force. IT (Comments):IT The reform of the delay, especially the duty to inform immediately the NCA after a decision of invoking the special regime for delay, may rise concerns, because such anticipation of the time

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	of the disclosure may expose NCA to an increased risk of liability. FR (Comments):FR We are inclined to think this modification could end up being counterproductive for issuers, NCA and third-party investors. Such an ex-ante notification would impose a burden on issuers, who would have to allocate resources on bilateral meetings and exchanges with their competent authorities for each inside information which it is considering to delay. The ex ante notification will prompt extensive discussions between the issuer and the NCA (it is incorrect to expect that NCA will remain passive). Imposing an ex-ante notification of the NCA might place the issuer under the false impression that its decision to delay publication has been implicitly “approved” by the NCA, thus taking away all sense of responsibility from the issuer around its decision to proceed with a delay. EL (Comments):EL EL: According to the preamble, NCAs should not be required to authorise those delays. Nevertheless we believe that it should be further clarified that the responsibility for the

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	delay remains only with the issuer. BE (Drafting):BE - BE (Comments):BE BE welcomes this evolution that will facilitate detection of potential insider trading cases. DE (Drafting): DE Where an issuer or emission allowance market participant intends to delay the disclosure of inside information under this paragraph, it shall inform the competent authority specified in accordance with paragraph 3 of its intention to delay that the disclosure of inside information is delayed and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the decision to delay is taken.' DE (Comments): DE Clarification that NCA does not authorize delay (cf. recital 61).

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Commission proposal	Drafting Suggestions Comments
	ES (Comments): ES We have a scrutiny reservation. Regarding the proposal to bring forward the communication of the decision to delay the publication of the inside information to the moment when the issuer decides to delay it, in general it is not perceived as a market failure that needs to be corrected. The majority of Spanish issuers are used to contacting the National Competent Authority to report relevant corporate transactions. While the proposal could improve the NCA ability to monitor price and media, those potential benefits would need to be weighted against the additional administrative burdens it would impose on listed companies and could force the NCA to modify the current reporting model. Additionally, it is relevant to note that the Commission's text would oblige the issuer to provide the NCA with an explanation justifying that the conditions for delay are met. In practice, it could result in an obligation for the NCA to authorize the delay, even though there is no explicit mention of an authorization requirement We consider that this kind of authorization would impose an undue burden on issuers. HR (Comments): HR

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Commission proposal	Drafting Suggestions Comments
	The EC should clarify these amendments and the objectives of the amendments. If the objective was for NCAs to react immediately and to seek the reasons for whether the postponement is justified or not, the responsibility would be transferred to the NCA rather than on the issuer, which should not be the case. The Council should carefully consider the implications for the liability regime i.e. if the NCA becomes liable for any harm to investors considering that it had the information prior to the disclosure to the public. This could also represent a reputational risk to the NCA.
(d) in paragraph 5, the introductory wording is replaced by the following:	
	NL (Comments):NL NL (Comments): Could you please explain why the member state option is deleted in the proposal? Please note that at this stage the Netherlands is in favour of maintaining the member state option.
‘An issuer that is a credit institution or a financial institution or an issuer that is a parent undertaking or related undertaking of such an institution, may, on its own responsibility, delay the public disclosure	PL (Comments):PL PL: We support this proposal.

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Commission proposal	Drafting Suggestions Comments
of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all of the following conditions are met:';	BE (Drafting):BE - BE (Comments):BE BE welcomes this extension. HR (Comments): HR We agree with the proposed amendments, however an obligation to exchange information between NCAs should be established. This poses a risk if a financial institution in one MS chooses to delay the public disclosure of inside information that would have an impact on a related undertaking of such an institution in another MS and the NCA of that undertaking does not have information on the delay or the impact it would have.
(e) in paragraph 7, the second subparagraph is replaced by the following:	
	NL

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Commission proposal	Drafting Suggestions Comments
	(Comments):NL NL (Comments): In the beginning of this section, the words “<i>in order to preserve the stability of the financial system</i>” have seem to be taken out. Is this a deliberate deletion or an omission? The explanation in the receital states that this amendment is made only ‘to include in its scope the case of an issuer that is a parent or related undertaking of a listed or non-listed credit institution or financial institution’. In that case the deleted words could be reinstated? Could you please provide us with adequate explanations?
‘This paragraph includes situations where a rumour explicitly relates to inside information the disclosure of which has been delayed in accordance with paragraph 4 or 5, where that rumour is sufficiently accurate and reliable to indicate that the confidentiality of that information is no longer ensured.’;	PL (Comments):PL PL: In our opinion, the use of evaluative and imprecise adjectives to define a rumor may raise a number of interpretation doubts, in particular with regard to the issue of "reliability" (e.g. whether reliability refers to the source of information or to the truth of a rumor bordering on certainty; on what basis the issuer may consider the rumor to be "reliable"). Therefore, a doubt arises as to whether it is possible to define a "rumour" at all in a way that reflects the reality and intentions of the proposed change. It should also be noted that doubts may arise both in terms of the concept itself and in terms of phrases used in the definition. In our opinion, it would be more reasonable to define "rumors" in ESMA guidelines. FR (Drafting):FR

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Commission proposal	Drafting Suggestions Comments
	‘This paragraph includes situations where a rumour explicitly relates to inside information the disclosure of which has been delayed in accordance with paragraph 4 or 5, where that rumour is sufficiently accurate and reliable to indicate that the confidentiality of that information is no longer ensured.’; FR (Comments):FR We do not know what a “reliable rumour” is. It seems to be a contradictory association of terms. The addition of the term “reliable” will introduce subjectivity in future discussions between issuers and their competent authority over whether confidentiality can be deemed to be ensured or not. We prefer the maintain the rule as currently drafted, to avoid introducing harmful legal uncertainty. BE (Drafting):BE - BE (Comments):BE BE agrees to the inclusion of the reference to the reliable nature of rumours.
(f) paragraph 11 is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
	NL (Comments):NL NL (Comments): Please note that the word “ <i>reliable</i> ” that is added to the paragraph makes it more difficult for the competent authorities and could also lead to a higher burden of proof for them. In our view the amendments should lead to more clear legislation, rather than create more ambiguities. As such, we believe this amendment should be deleted or <u>at least</u> clarified in the recitals.
‘11. ESMA shall issue guidelines to establish a non-exhaustive indicative list of the legitimate interests of issuers, as referred to paragraph 4, point (a).’;	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 17.4.
(39) Article 18 is amended as follows:	CY (Comments):CY Insider lists are critical for enforcement investigations. Thus, we strongly believe that switching

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Commission proposal	Drafting Suggestions Comments
	to a permanent insider list only, will make harder market abuse investigations. In addition, it is important to note, that some insiders, will not be notified by the issuer, for their status as insiders, since they will not be included in the permanent insider list. Thus, the risk for insider trading arises. ES (Comments): ES We have a scrutiny reservation. The reference to "persons who have regular access to inside information" does not fully guarantee that these persons have indeed possessed a certain inside information. In issuers of a certain size, no single person may have access to all inside information at all times, so that the permanent list is unlikely to have any content, or if it does, it will not necessarily mean that the persons included in the permanent insider list have possessed a particular inside information. Not having one list (drawn up by the issuer) and having several lists (one for each legal person having inside information, whatever its relationship with the issuer) with all the persons who have actually possessed a given inside information would make it difficult for the NCAs to supervise. Changing the insider list regime will reduce the ability of issuers to manage inside information,

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Commission proposal	Drafting Suggestions Comments
	as it will be difficult for them to determine whether there is a leak of inside information. Insider lists that only include those who have regular access to inside information will mean that employees who access inside information without knowing its nature will disseminate this information to others acting in good faith they may be unaware of its insider status. It also leaves out advisors, making it difficult for them also to fulfill their own insider listing obligations if they do not know that an event is considered by the issuer to be inside information. In the course of supervisory actions, the NCA will foreseeably request the list of persons who became aware of a given insider information and which will have to be reconstructed ex post, making it more complex for the issuer to compile it. Consequenntly, the only difference between both insider lists of MAR Article 18 and the PDMRs (PDMR) lists of MAR Article 19 would be the contact details of the PDMRs of the latter. Consequently, Article 18 could be eliminated because it would not provide additional/different information. Insider lists of third parties acting on behalf of the issuer would impose greater obligations on these third parties than on issuers themselves, since the same concept of "regular access" does not apply to third parties advising issuers.

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Commission proposal	Drafting Suggestions Comments
	There is no possibility to opt out of this regime except for issuers that have had their instruments listed on regulated markets for 5 years. In any case, it does not seem a good solution to allow different national regimes on insider lists. BG (Comments): BG BG: We welcome the alleviation of administrative burden for the issuers. We are concerned by the multiplication of insider lists - as it is proposed to not have one list (made by the issuer) but several lists (one from each legal person having inside information) – which would make for the supervision by the NCAs more difficult and complex.
(a) paragraph 1 is replaced by the following:	CZ (Comments):CZ We have concerns about the new arrangements. Couldn't it de facto lead to a higher administrative burden as NCAs might require information about ad hoc insiders from issuers on case by case bases as they would not have the possibility to consult the full list of insiders (including ad hoc) without bothering issuers? We would be interested, if this alternative was considered and whether in the end the requirement on ad hoc insider list would not be less burdensome for the issuer than the necessity to clarify and answer the request from the supervisor.

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Commission proposal	Drafting Suggestions Comments
‘1. Issuers shall:	PT (Drafting):PT Issuers whose financial instruments are admitted to trading on an SME growth market shall: PT (Comments):PT While we acknowledge the safeguard presented in paragraph 1b, we deem preferable to limit the possibility of drawing a permanent list for smaller issuers, as currently established in Article 17(6). Indeed, we deem the drawing of the insiders list and important element to ensure the enforcement of the inside information regime. Moreover, it should be taken into consideration that the safeguard presented in paragraph 1b only covers issuers from the MS concerned, which may not ensure due protection of investors from MS different from the issuer MS. BE (Drafting):BE - BE (Comments):BE BE is of the view that event-driven insider lists should be maintained. Insider lists remain a key tool in market abuse investigations. With only permanent insider lists, the information provided to competent authorities will be less reliable. Furthermore, competent authorities will no longer

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Commission proposal	Drafting Suggestions Comments
	be able to identify external service providers based on permanent insider lists. They will have to expressly request their identities to issuers. BE also points out that there will be no more acknowledgment of legal and regulatory duties for issuers' one-off insiders (higher risk of insider trading) and no more internal monitoring of circulation of inside information.
(a) draw up a list of all persons who, due to the nature of their function or position within the issuer, have regular access to inside information (permanent insider list);	FI (Comments):FI We see that the full insider lists are not <i>as such</i> a very expensive compliance duty for issuers. Expenses can be decreased by simplifying the list of required information to be included in the list rather than narrowing down the personal scope. We would also like to point out that e.g. with respect to delaying the disclosure of inside information, the issuer must ensure the confidentiality of the information. Insider lists are used for this purpose. There are usually also other persons working in the issuer than those carrying out managerial responsibilities who might have inside information in their possession. There is also a legal protection point of view in this: persons on the list ought to know that they are not allowed to trade, and on the other hand, not being on the list can be used as an evidence that the person has not been in possession of inside information. We also understand that not all the persons carrying out managerial responsibilities have the same inside information in their possession at all times. Or at least, they do not necessarily become insiders at the same moment. We see that the permanent insider list should always

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Commission proposal	Drafting Suggestions Comments
	cover only those persons who are actually in possession of inside information. Therefore, if the insider list in the issuer is narrowed down to cover only permanent insiders it is necessary to make sure that the insider list is up to date at all times. E.g. if the CEO is in possession of inside information and leaves the company, the CEO cannot be removed from the list merely due the fact that he/she is no longer working for the company. PL (Comments):PL PL: We do not support this proposal. In our opinion the proposed change would lead to a significant reduction in the effectiveness of investor protection against market abuse by preventing complete verification of persons using inside information. As a result, the proposed change would be disproportionate in the context of the overriding principle of investor protection. The supervisory practice shows that behaviors constituting the unauthorized use of inside information are most often undertaken by persons who have incidental access to it. Moreover, the differentiation of persons having access to inside information due to the nature of such access – permanent or incidental – contradicts the purpose of protecting all inside information. EL (Comments):EL EL: We have reservations on this amendments. Insider list is a key tool in market abuse investigations by the NCA. The event-based list is more effective and useful tool to the supervisor as it provides specific information per inside information, regarding all persons

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Commission proposal	Drafting Suggestions Comments
	having access to it and the time when each inside information exists or ceases to exist. The proposed insider list will not cover persons working for the issuer that do not have regular access to inside information This amendment creates additional burden to the supervisors as it hinders their supervisory tasks. IE (Comments):IE IE would have questions generally as to whether the changes to insider lists achieve an appropriate balance between creating alleviations for smaller issuers and maintaining strong market integrity. The requirements for issuers to maintain full insider lists whenever they are in possession of inside information are an essential tool for NCAs to investigate insider dealing and any changes to the rules need to be considered carefully as they could impact on an NCA's ability to do this. The removal of event specific inside lists could result in persons who have access to a specific piece of inside information not being included on an insider list due to them not having regular access to inside information. That person will not have been made aware of their obligation under MAR not to trade on inside information and may not even be aware that the information they are in possession of is in fact inside information. Should that person trade on this information, it would be difficult for an NCA to take any action against that person. While permanent lists may work in smaller issuers where only a few members of staff have

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Commission proposal	Drafting Suggestions Comments
	access to inside information, for large issuers, there could be a sizeable number of people involved in certain transactions and infrequently having access to inside information. BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 18.1. AT (Comments):AT In our view the permanent insider list should not substitute the event-based insider list. The ‘permanent insider list’ is a very short list – more or less only including persons discharging managerial responsibilities. There is a risk that persons who are not on the permanent insider list might not be informed that they are in possession of inside information. Furthermore, we are not sure what is exactly meant here by ‘regular access’ and would appreciate further clarification on that notion.

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Commission proposal	Drafting Suggestions Comments
	HR (Comments): HR We do not support the simplification of the insider lists regime. Since now the proposal narrows down the scope of the disclosure obligation in the case of a protracted process by setting forth that the disclosure obligation does not cover the intermediate steps of that process it is therefore more necessary to have lists for such a period. This lack of information within the issuer leads to a situation of inadequate record-keeping, and if those list are not comprehensive, the NCA's supervision will not be able to demonstrate to whom at which time the information was available.
(b) promptly update the permanent insider list in accordance with paragraph 4; and	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 18.1. AT (Comments):AT A way forward – without substituting the event based list with a permanent list - could be that

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Commission proposal	Drafting Suggestions Comments
	issuers trading or having requested admission to trading on a regulated market would be obliged to have an event-based insider list. All other issuers (MTF and OTF) would then be required to have a permanent insider list. LT (Comments): LT We would like to note that, although such <i>event or project-based</i> inside information notification lists cause a certain administrative burden for market participants, at the same time they perform an important preventive function of violations of the Market Abuse Regulation, which is beneficial for the financial market participant and his employees, since the persons who are included into such lists, at the same time they are compulsorily introduced to the legal regulation and applicable prohibitions. Therefore, when abandoning such lists, it is appropriate to consider alternative measures for the prevention of violations of the Market Abuse Regulation. In addition, it is important to take into account the fact that inside information lists is an important tool for national supervisory authorities to investigate suspected cases of inside information use. Reducing the administrative burden on companies should not have a negative impact on the ability to carry out effective supervision of financial markets and, accordingly, market transparency and integrity.
(c) provide the permanent insider list to the competent authority as soon as possible upon its request.';	BE (Drafting):BE -

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Commission proposal	Drafting Suggestions Comments
	BE (Comments):BE See comments on introductory subparagraph of Article 18.1.
(b) the following paragraphs 1a and 1b are inserted:	
‘1a. Any person acting on the issuer’s behalf or on the issuer’s account shall draw up its own list of all persons having access to inside information that directly concerns that issuer. Paragraph 1, points (b) and (c), shall apply.	BE (Drafting):BE ‘1a. Any person acting on the issuer’s behalf or on the issuer’s account shall draw up its own list of all persons <u>working for them or performing tasks on their behalf who have</u> having access to inside information that directly concerns that issuer. Paragraph 1, points (b) and (c), shall apply. BE (Comments):BE Despite there being no substantial change and despite the fact that BE opposes the waiver, we see a technical issue for inside information re. intermediate steps of protracted process: How will external service providers know when to prepare an insider list if the issuer is no longer required to assess whether the information at hand is inside information? These external service providers are unlikely to be aware of all the relevant elements to assess the nature of the

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Commission proposal	Drafting Suggestions Comments
	information provided by the issuer. Accordingly, they should not be held liable for a failure to draw an insider list if the issuer has not informed them of the insider nature of the relevant information. BE is of the view that the drafting should in any event be slightly amended to ensure that this obligation is limited to staff (see drafting suggestions).
1b. By way of derogation from paragraph 1, and where justified by specific national market integrity concerns, Member States may require issuers whose securities have been admitted to trading on a regulated market for at least the last 5 years to draw up a list of all persons having access to inside information and working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, including advisers, accountants or credit rating agencies (full insider list). Paragraph 1, points (b) and (c), shall apply.’;	CZ (Comments):CZ We miss a clarification as <i>what specific national market integrity concerns</i> means – how to interpret it, what are the prerequisites allowing MS to require a list of all persons having access to inside information. Therefore we would welcome further clarification, preferably in the text of regulation. FR (Comments):FR This provision creates a potential distinction between issuers listed on the regulated same market based on the sole basis of time after IPO. This not creates a breach in the anti-market abuse framework for NCA but also is not consistent with the idea of level playing field. Anti-market abuse rules should apply uniformly on a same

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Commission proposal	Drafting Suggestions Comments
	segment, regardless of the choice of keeping permanente or full insiders list. EL (Comments):EL EL: The optional provision for Member States to require issuers full insider list “<i>where justified by specific national market integrity concerns</i>”, is too restrictive. Moreover the current insider list is preferable to avoid the possibility of divergent regimes among Member States. BE (Drafting):BE - BE (Comments):BE Besides the fact that BE opposes the waiver, it appears counterintuitive to apply a stricter regime to experienced issuers. Moreover, there are no guidelines as to what the concept of “specific national market integrity” covers. HR (Comments): HR We do not support this proposal. Issuers on the same regulated market would be treated differently, only on the basis of how long they were listed on the stock exchange.

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Commission proposal	Drafting Suggestions Comments
	We propose two options: • Keep the “full insider list” on the grounds that a lot is lost from the supervisory aspect and does not have a significant impact on disburdening of issuers Delete the “5 year admitted to trading on a regulated market” condition
(c) in paragraph 2, the first subparagraph is replaced by the following:	
	NL (Comments):NL NL (Comments): Could you please explain why this article speaks of persons persons ‘<i>having access to inside information</i>’, instead of ‘<i>having <u>regular</u> access to inside information</i>’? This omission will most likely lead to uncertainty.
‘Issuers and any person acting on their behalf or on their account shall request from the persons on the insider list the acknowledgement of their legal and regulatory duties entailed in a durable	BE (Drafting):BE -

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Commission proposal	Drafting Suggestions Comments
medium. Persons included in the insider list shall acknowledge their legal and regulatory duties in a durable medium without undue delays.’;	BE (Comments):BE BE welcomes this clarification.
(d) paragraph 6 is deleted;	BE (Drafting):BE - BE (Comments):BE BE does not agree with the deletion of the SME specifics as it is of the view that event-driven insider lists should be maintained.
(e) paragraph 9 is replaced by the following:	BE (Drafting):BE - BE (Comments):BE

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Commission proposal	Drafting Suggestions Comments
	BE does not agree with the review of ESMA ITS on SME's alleviated format of insider lists to extend its use to all issuers' permanent insider lists as BE is of the view that event-driven insider lists should be maintained.
'9. ESMA shall review the implementing technical standards on the alleviated format of the insider lists for issuers admitted to trading on SME growth markets to extend the use of such a format to all insider lists referred to in paragraphs 1, 1a and 1b.	FR (Comments):FR Technical/wording question - The Commission is now calling "permanent insider lists" the list of persons who have "<u>regular</u> access to inside information" (new art.18(1)(a)). On the other hand, art.18(9) gives a mandate to extend the format of the list of "persons having regular access to inside information" (Annexe II of DA 2022/1210), which comprises a section specific to each piece of inside information. How is this supposed to be reconciled? BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 18.9.
ESMA shall submit those draft implementing technical standards to the	BE

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Commission proposal	Drafting Suggestions Comments
Commission [by 9 months after the application/entering into force of this Regulation].	(Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 18.9.
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’;	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 18.9.
(40) Article 19 is amended as follows:	CY (Comments):CY Currently the reporting threshold in Cyprus is €5.000. This threshold matches the characteristics of the Cypriot market which is particularly small.

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Commission proposal	Drafting Suggestions Comments
	BG (Comments): BG BG: We would appreciate a clarification on the appointment of exactly 20 000 euros as a unified threshold in the EU as well as on the alternative threshold of 50 000 euros determined by the relevant NCA in certain circumstances.
(a) paragraphs 8 and 9 are replaced by the following:	
‘8. Paragraph 1 shall apply to any subsequent transaction once a total amount of EUR 20 000 has been reached within a calendar year. The threshold of EUR 20 000 shall be calculated by adding without netting all transactions referred to in paragraph 1.	FR (Comments):FR We support the proposed threshold increase: this will alleviate the administrative burden for both managers and NCA by excluding minor transactions that do not have the potential to create significant harm to investors. BE (Drafting):BE - BE

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Commission proposal	Drafting Suggestions Comments
	(Comments):BE BE has a neutral stance on raising the notification threshold from €5,000 to €20,000. By increasing the threshold to €20,000 the number of notifications will decrease on a yearly basis by approximately 30% (1,600 --> 1,100) with limited impact on the signal function of these notifications. ES (Comments): ES We believe that the transparency regime for PDMR transactions could provide information to the market on the activity on the issuer's securities of those who know the issuer's business (insiders). However, with respect to the prevention of market abuse, Article 19 of MAR is only a marginal tool for authorities that have transaction reporting by entities executing trades or transmitting orders. Given the limited usefulness of Article 19 and that it constitutes an additional administrative burden for issuers and their managers, we consider appropriate to raise the threshold. And, in fact, we would prefer 50 000 EUR. LT (Comments): LT In our opinion further discussions are required on the threshold amount. The threshold must be

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Commission proposal	Drafting Suggestions Comments
	appropriate and proportionate to diversity of the markets. HR (Comments): HR We agree with the proposal, however there should be a possibility for the competent authority to also decrease the threshold. We would also suggest to consider the following possibility: After the first threshold is reached a manager should be required to notify transactions each time the EUR 50 000 threshold is reached, and not every transition after breaching the threshold.
9. A competent authority may decide to increase the threshold set out in paragraph 8 to EUR 50 000 and shall inform ESMA of its decision and the justification for its decision, with specific reference to market conditions, to adopt the higher threshold prior to its application. ESMA shall publish on its website the list of thresholds that apply in accordance with this Article and the justifications provided by competent authorities for such thresholds.’;	PT (Comments):PT We are still assessing whether the amount proposed herein is excessive. IT (Comments):IT We are open to discuss regarding the possibility for NCA to increase the threshold to € 50.000, but we have doubts that this possibility for NCA could not be compatible with the aim of the reform to reduce the divergences between national legal systems. We would like to avoid other reasons for fragmentation.

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Commission proposal	Drafting Suggestions Comments
	We would prefer a totally harmonized threshold. FR (Comments):FR We support this proposal for the same reason we support change to subparagraph 8. BE (Drafting):BE - BE (Comments):BE This proposed change is not relevant for BE as it would not opt in. ES (Comments): ES We have a scrutiny reservation. However, we believe there should be just one threshold for all the UE Member States. As mentioned above, we would prefer a threshold of 50 000 EUR at UE level.
(b) paragraph 12 is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
	NL (Comments):NL NL (Comments): Please note that the basis for implementing technical standards (i.e. Article 18, par. 6 and 9) has been deleted. This appears to be an omission. Could you please amend or explain accordingly?
‘12. Without prejudice to Articles 14 and 15, an issuer may allow a person discharging managerial responsibilities within it to trade or to make transactions on its own account or for the account of a third party during a closed period as referred to in paragraph 11:	BE (Drafting):BE - BE (Comments):BE BE agrees with this extension of the exemption from closed periods. Nevertheless, BE would like to point out the following technical aspect: the transactions covered, on the one hand, by the notification requirement and, on the other hand, by the close period prohibition, will differ to a larger extent. It will be a technical challenge for competent authorities to create different lists for notifications aspects and closed period aspects. HR

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Commission proposal	Drafting Suggestions Comments
	(Comments): HR We agree with the proposal.
(a) on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares; or	BE (Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 19.12.
	NL (Comments):NL NL (Comments): It seems 'to make a transaction' is a new addition to the text. Is this sufficiently consistent with the previous wordings? If not, please explain why this addition is necessary.
(b) due to the characteristics of the trading involved for transactions made	BE

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Commission proposal	Drafting Suggestions Comments
under, or related to, an employee share or saving scheme and employees' schemes concerning financial instruments other than shares, qualification or entitlement of shares and qualifications or entitlements of financial instruments other than shares, or transactions where the beneficial interest in the relevant security does not change; or	(Drafting):BE - BE (Comments):BE See comments on introductory subparagraph of Article 19.12.
(c) where those transactions or trade activities do not imply active investment decisions by the person discharging managerial responsibilities, or result from external factors or third parties, or are the exercise of derivatives based on predetermined terms.';	BE (Drafting):BE (c) where those transactions or trade activities do not imply active investment decisions by the person discharging managerial responsibilities, or result <u>exclusively</u> from external factors or third parties, or are the exercise of derivatives based on predetermined terms.'; BE (Comments):BE BE is of the view that the drafting should be slightly amended to exempt only transactions or activities that result 'exclusively' from external factors or third parties LU

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Commission proposal	Drafting Suggestions Comments
	(Drafting): LU (c) where those transactions or trade activities do not imply active investment decisions <u>or active involvement</u> by the person discharging managerial responsibilities, or result from external factors or third parties, or are the exercise of derivatives based on predetermined terms.’; LU (Comments): LU We consider it is necessary to ensure that the condition under point (c) also covers situations where the manager does not formally take active investment decisions, but is actively involved in the investment process. LT (Comments): LT In our opinion, the concept <i>external factors</i> is very broad and can be interpreted differently by market participants.
(41) in Article 23(2), point (g) is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
‘(g) to require existing recordings of telephone conversations, electronic communications or data traffic records held by investment firms, credit institutions or financial institutions as well as benchmark administrators or supervised contributors;’;	BE (Drafting):BE - BE (Comments):BE BE welcomes this extension of investigatory powers. HR (Comments): HR We agree with the proposal to bring benchmark administrators and contributors into the scope of a MAR administrative sanctioning regime.
	HR (Comments): HR Regarding article 25 , 25a and 25b we do not agree with the following: • ESMA <u>binding mediation</u> on the collaboration platform on its own initiative • The possibility for ESMA to initiate and coordinate on-site inspections of NCA entities. • It is necessary to define the meaning of „a significant cross-border dimension” in Level 1

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Commission proposal	Drafting Suggestions Comments
	• The EC should not be <u>empowered</u> to adopt delegated acts to establish a list of designated trading venues that have a significant cross-border dimension, rather the <u>EC should be mandated</u> to adopt those delegated acts before the ESMA ITS's. the deadline of 5 days, when a competent authority is not part of the mechanism in which it shall still comply with a request of exchange of ongoing order book data pursuant to is too ambitious
(42) Article 25 is amended as follows:	LU (Comments): LU The responsibility for the supervision and enforcement of the Market Abuse Regulation (MAR) rests with the NCAs and introducing collaboration platforms at ESMA level, as well as ESMA own initiative coordination powers is thus neither necessary nor justified. Hence, the proposal is not in line with the principles of necessity and proportionality. Moreover, the fact that the bilateral cooperation between competent authorities is currently operating in a very efficient manner. We thus fail to identify the possible added value to involve more actors, which would notably complicate the exchange of information. Besides, it is also important to stress that the relevant data typically contains a lot of personal data (e.g. client files of banks) to which strict rules under GDPR apply. Last but not least, the proposal is not in line with the outcome of the ESA review and the political decisions taken in that context. In light of the abovementioned arguments we would suggest amending Article 25 MAR as

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Commission proposal	Drafting Suggestions Comments
	described below. ES (Comments): ES In relation to cooperation between competent authorities, ESMA would facilitate and coordinate cooperation and exchange of information. In addition, where required by the case (no conditions are specified), the competent authority may request ESMA to assist in the investigation. In the case of cross-border investigations or inspections, ESMA will be empowered to decide on their coordination. If this reform implies the interposition of ESMA in any collaboration between EU authorities, it could significantly increase bureaucracy. Our experience with cross-border investigations has been positive so far, involving multiple authorities and coordination by ESMA.
(a) the following paragraph 1a is inserted:	
‘1a. ESMA shall facilitate and coordinate the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries. When justified by the character of the case, and at the request of the competent	PT (Comments):PT We see no added value in having ESMA contribute to the investigation of the case. Market abuse investigations are quite complex and interrelates with the national criminal law of Member-States.

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Commission proposal	Drafting Suggestions Comments
authority, ESMA shall contribute to the investigation of the case by the competent authority.’;	BE (Drafting):BE ‘1a. ESMA shall, at the request of one or more competent authorities, facilitate and coordinate the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries. When justified by the character of the case, and at the request of the competent authority, ESMA shall contribute to the investigation of the case by the competent authority.’; BE (Comments):BE BE welcomes this possibility to have ESMA coordinating cooperation and exchange between competent authorities. However, ESMA should only take that coordinating role upon request of a competent authority. LU (Drafting): LU ‘1a. ESMA shall facilitate and coordinate the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries. When justified by the character of the case, and at the request of the competent authority, ESMA shall contribute to the investigation of the case by the competent authority.’; LU

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Commission proposal	Drafting Suggestions Comments
	(Comments): LU Pursuant to our comment above, we would suggest deleting paragraph 1a of Article 25 MAR.
(b) in paragraph 6, the second subparagraph is replaced by the following:	FR (Drafting):FR (b) in paragraph 6, the second subparagraph is replaced by the following: LU (Drafting): LU (b) in paragraph 6, the second subparagraph is replaced by the following: LU (Comments): LU Pursuant to our comment above, we oppose to the proposal that ESMA should be in a position to decide on its own initiative the coordination of an investigation or inspection onsite. These powers should solely be in the hand of the NCAs that have the best view and knowledge over the local markets. The existing provision under which ESMA may intervene upon the request of a competent authority, is fully sufficient. Therefore, we suggest to stick to the existing provision.

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Commission proposal	Drafting Suggestions Comments
‘A requesting competent authority may inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA may decide to coordinate the investigation or inspection.’;	PT (Drafting):PT A requesting competent authority may inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA <u>may, if requested to do so by one of the competent authorities,</u> decide to coordinate the investigation or inspection. PT (Comments):PT ESMA has no supervisory powers towards the person under a market abuse investigation. The coordination of the investigation should remain with the national competent authorities. FR (Drafting):FR ‘A requesting competent authority may inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA may decide to coordinate the investigation or inspection.’; FR (Comments):FR ESMA should only coordinate the investigation or inspection if requested to do so by one of the

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Commission proposal	Drafting Suggestions Comments
	NCA involved in the cross-border case. We therefore ask that Article 25(6) remains unchanged. BE (Drafting):BE - BE (Comments):BE BE is opposed to the proposed change. BE is of the view that competent authorities should remain the competent investigatory body. Accordingly, ESMA should only coordinate a cross-border investigation or inspection upon request from a competent authority. AT (Comments):AT We are hesitant regarding the proposed amendment as it seems unclear. As it is proposed now, ESMA may decide to coordinate investigations or inspections with cross border effect. Although it is an option, ESMA may be able to have a choice about their involvement. Whenever a NCA has a case with cross border effect it will start to send cooperation requests and will liaise with other NCAs. ESMA may be informed or not. Why should ESMA be aware that there is possible need of coordination when they are not aware of such an investigation or inspection? LU

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Commission proposal	Drafting Suggestions Comments
	(Drafting): LU <u>‘A requesting competent authority may inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA may decide to coordinate the investigation or inspection.’;</u> LU (Comments): LU Please refer to our comment above. BG (Comments): BG BG: In our view, ESMA should only coordinate the investigation or inspection if requested to do so by one of the NCA involved in the cross-border case (keep the status quo).
(43) the following Articles 25a and 25b are inserted:	BG (Comments): BG BG:

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Commission proposal	Drafting Suggestions Comments
	Scrutiny reservations on Art. 25a and Art. 25b. We are still assessing the benefits of the new mechanism as we have concerns about the burden and costs it would have for trading venues and NCAs.
<i>'Article 25a</i> Mechanism to exchange order book data	SK (Comments):SK SK: We suggest that, for practical reasons, the legislative regulation of the mechanism to exchange order book data which is proposed under the new Article 25a of the MAR Regulation, be moved to the draft amendments to the MiFIR Regulation, either as an addition to the already existing Article 25 (which is dedicated to this data and which is also modified in the submitted proposal) or as an addition to the new Article 25a of the MiFIR regulation. Considering that the current proposal regulates both regulations, it is necessary to ensure that the legislative proposal is as transparent as possible and as simple as possible to be applied in practice. CZ (Comments):CZ We are not sure of the benefits and we would rather support more efficient use of currently gathered and available data as we are concerned about the burden this will have for trading venues and NCAs.

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Commission proposal	Drafting Suggestions Comments
	But as we understand that this concept uses a slightly different mechanism of reporting data than is currently used under MiFIR, we are open for further discussion and alignment of technical details. CY (Comments):CY We are on a preliminary basis, against. This will be of use for certain NCAs and jurisdictions. Information on the total cost, time horizon for implementation and the required input from each NCA need to be provided in order to further assess the introduction of a relevant provision in MAR. IT (Comments):IT We have some doubts that this new mechanism could not be efficient and therefore it could generate suboptimal results for NCA. Moreover, we think that it is necessary a reflection on the scope, as Systematic Internalizers (as defined in Mifid II) might be attracted into. However, as already stated, at this stage we have only a preliminary view on such a topic. BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
	- BE (Comments):BE BE welcomes the set-up of a mechanism to exchange order book data. As it is related to competent authorities with significant cross-border activity, it will initially not impact the Belgian financial regulator. ES (Comments): ES We have to study this proposal, specially the “continuous order flow exchange”, as it could be too burdensome. We consider that it should be an exchange of orders on request and for limited time ranges depending on the technical capacities available. It could also be explored that the NCA could directly ask the relevante trading venue for the order book data without the intervention of the NCA of the relevant trading venue. Just one calendar day from the date of the request for the submission of the information does not seem reasonable in the context of long-term research. ESMA should play a coordinating role.

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Commission proposal	Drafting Suggestions Comments
1. Competent authorities supervising trading venues with a significant cross-border dimension shall, by [12 months from the date of entry into force of this Regulation], set up a mechanism to permit ongoing and timely exchange of order book data referred to in paragraph 2 and collected from those trading venues in accordance with Article 25 of Regulation (EU) No 600/2014 with respect to the instruments traded in such market. Competent authorities may delegate the set-up of the mechanism to ESMA.	PT (Comments):PT We consider that several elements of this article need to be further clarified. To start it should be determined in level 1 the meaning of “trading venues with a significant cross-border dimension”. Indeed, could small trading venues which are part of a group a highly interconnected withing the group be considered to have a significant cross-border dimension? What happens if a NCA delegates the set-up of the mechanism to ESMA? Is to order book data then to be requested to ESMA instead of the NCA? Does ESMA bare the cost of the NCA’s contribution to the mechanism? If order book data is going to be standardized not only in its format but also in its content is there a need for this mechanism? What is its added value if a competent authority will still have to make the request and have the data delivered by the competent authority of the trading venue? CZ (Comments):CZ We are not clear how to interpret <i>significant cross-border dimension</i>. What are the

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Commission proposal	Drafting Suggestions Comments
	bars/characteristics or prerequisites? FR (Comments):FR We support this proposal which will help competent authorities carrying out a more robust supervision of their markets. The current system whereby competent authorities typically exchange order book data on an ad-hoc basis when such data is related to a specific investigation into a suspected case of market abuse is not satisfactory and fails to ensure an agile surveillance of markets. In this regard, we strongly support the “ongoing” feature of the mechanism, which will enable to transition to a system whereby a case of market abuse can be detected ex-ante, thanks to this exchange of order book data on a specific set of instruments. IE (Comments):IE IE’s supports the setting up of a Cross Market Order Book Surveillance Mechanism (CMOBS), recognising the benefits of sharing data amongst NCAs. We note that the text states that this should be set up by 12 months following entry into force. We would ask whether this will provide sufficient time to develop an IT system following the

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Commission proposal	Drafting Suggestions Comments
	development of an ITS by ESMA for which a draft version must be submitted to the Commission by 9 months following this regulation entering into force. BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change. AT (Comments):AT It has to be kept in mind that cross market orderbook surveillance might not be feasible in practice. The amount of data is immense and different rules regarding price setting mechanisms and the functioning of the markets have to be considered when analysing the data. Corresponding provisions would need to be amended as well. Furthermore we are unsure what is meant by ‘significant cross border dimension’? A defined format (html, xml, ...) for the reports would be needed. Without that the exchange of data will not be possible. DE

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Commission proposal	Drafting Suggestions Comments
	(Comments): DE The new mechanism to exchange order book data needs further assessment. In general, we are sceptical regarding the benefits of the new mechanism in relation to the cost of its establishment. On a preliminary basis, the following technical comments can be made: The scope of the amendment should be already defined at level 1. The classification criteria as to when a trading venue is considered a trading venue within the scope of Art. 25a MAR (proposal) has to be defined at an early stage. A much later determination on level 2 (on proposal of ESMA) would lead to uncertainty and therefore to delays in the technical implementation. Likewise, the question which NCA is meant, as far as "competent authority of the most relevant market" is mentioned, should be also clarified at level 1. It should be further clarified that the data in the sense of Art. 25a MAR (proposal) is identical with the data in relation to Art. 25 MiFIR. Art. 25a MAR (proposal) refers to Art. 25 (2) MiFIR data. In Art. 25 (3) MiFIR (proposal), these data are referred to as "order data". Also under current Art. 25 (2) MiFIR the term "order data" is used as well as in current Delegated Regulation (EU) 580/2017. Therefore to avoid any misunderstandings, the term "order data" should also be used in Art 25a MAR instead of "order book data". Order book data (data from the matching engine) is generally different from order data according to Art. 25 (2) MiFIR: Order book data for example usually do not include MiFIR-specific "long codes" like "Client identification code" (field 3 of Annex Table 2 of Reg. 580/2017), "Investment decision within firm" (field 4), "Execution within firm" (field 5). These important additional pieces of

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Commission proposal	Drafting Suggestions Comments
	information, which can be extremely valuable for detecting and investigating potential market abuse are only included in order data according to Art. 25 (2) MiFIR but not in the order book data. It is appreciated to foster a timely exchange of data, but “banking day” should be used instead of “calendar day”. Furthermore, we consider the "daily deadline" to be clearly too ambitious (keyword: overnight processing). Here, the deadline should be set at one week. Especially when it comes to requests for historical data; here, the data may first have to be retrieved from storage and prepared before being sent. LT (Comments): LT The costs of implementing this mechanism may be disproportionately high compared to its benefits, so we would recommend seeking longer implementation deadlines. Also we would like to note that it is necessary to specify concept <i>significant cross-border dimension</i>.
Where a competent authority submits a request for data under paragraph 2, the requested competent authority shall provide that data in a timely manner and not later than 1 calendar day from the	CZ (Drafting):CZ Where a competent authority submits a request for data under paragraph 2, the requested competent authority shall provide that data in a timely manner and not later than 1 business day

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Commission proposal	Drafting Suggestions Comments
date of the request. The request for ongoing data from a competent authority may be submitted for a specific set of instruments.	from the date of the request. The request for ongoing data from a competent authority may be submitted for a specific set of instruments. CZ (Comments):CZ We find it unusual to set a timelimit of one calendar day, which is quite short. Such stipulated limit does not take into consideration weekends and/or public holidays. We therefore suggest to set the deadline as 1 business day. FR (Comments):FR We support the envisaged scope. BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change. AT

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
	(Comments):AT The timely parameter of 1 calendar day seems very ambitious. In our mind working days would be a better parameter and 2 or up to 5 working days would be a better range. Furthermore clear systems, arrangements and procedures would need to be defined and what has to be done in case of a request for data.
	NL (Comments):NL NL (Comments): In our view the period of application (i.e. <i>12 months from the date of entry into force of this Regulation</i>) is a bit too short. Please consider extending this period to <u>at least</u> 18 months.
2. A competent authority may obtain order book data originating from a trading venue that has a cross-border dimension when that competent authority is the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 for the following financial instruments:	PT (Comments):PT We are assessing whether it is appropriate to limit this possibility to the NCA of the competent authority of the most relevant market. BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
	- BE (Comments):BE BE agrees to this proposed change. AT (Comments):AT We would appreciate clarification on what is covered by this obligation. Trading venues have to deliver data in a given format for the defined instruments. That needs to be implemented and prepared as well. Trading venues as well as NCAs would need sufficient time to meet this obligation.
	NL (Comments):NL NL (Comments): Could you please explain why the choice was made for ‘1 calendar day’? It could be considered to start with a 5 day period and start of with one asset class and gradually extend the scope.

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Commission proposal	Drafting Suggestions Comments
(a) shares;	BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change.
(b) bonds;	BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change.
(c) futures.	BE (Drafting):BE

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
	- BE (Comments):BE BE agrees to this proposed change.
3. A Member State may decide that its competent authority participates in the mechanism set up pursuant to paragraph 1 even if none of the trading venues under the supervision of such competent authority has a significant cross-border dimension. Such decision shall be communicated to ESMA which shall make it public on its website.	PT (Comments):PT As independent authorities the decision to participate should be left to the competent authorities and not to the Member-States. BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change.
When a competent authority is not part of the mechanism set up pursuant to	BE

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Commission proposal	Drafting Suggestions Comments
paragraph 1, it shall still comply with a request of exchange of ongoing order book data pursuant to Article 25 in a timely manner and not later than 5 calendar days from the date of the request.	(Drafting):BE - BE (Comments):BE BE agrees to this proposed change.
4. ESMA shall develop draft implementing technical standards to specify the appropriate mechanism for the exchange of order book data. In particular, the implementing technical standards shall lay down the operational arrangements to ensure the swift transmission of information between competent authorities.	PT (Comments):PT We would like to clarify whether these RTS cover both the exchange mechanisms of paragraph 1 and the second subparagraph of paragraph 3. Additionally, we believe more details on how this mechanism should operate should be defined in level 1. BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change.

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Commission proposal	Drafting Suggestions Comments
ESMA shall submit those draft implementing technical standards to the Commission by [9 months after the application/entering into force of this Regulation].	CZ (Comments):CZ ESMA is given 9 months for submitting the implementing technical standards, but the whole mechanism should be set up and running by 12 months from the date of entry into force of the regulatin. Therefore there is de facto only 3 months for preparation for NCAs (and subsequently trading venues). We would therefore welcome much longer period in para 1 as to ensure enough time for obligeds actors. As they need to adjust their IT and systems. Also it is doubtful that ESMA will manage to submit those technicsal standards in 9 months. The specific length should be discussed among MS. BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change.
Power is delegated to the Commission to supplement this Regulation by adopting the implementing technical standards referred to in the first subparagraph in	BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.	- BE (Comments):BE BE agrees to this proposed change.
5. The Commission is empowered to adopt delegated acts to establish a list of designated trading venues that have a significant cross-border dimension in the supervision of market abuse, by taking into account at least the market share of the trading venues on the instruments. The Commission shall review such list at least every 4 years.	PT (Comments):PT The criteria under which a trading venue should be considered to have a significant cross-border dimension should be further detailed in level 1. BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change.
	NL (Comments):NL

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
	NL (Comments): Articles 10-14 concern 'regulatory standards'. Article 15 concerns 'implementing standards'. It seems that a typing error was made in this paragraph.
6. The Commission is empowered to adopt delegated acts in accordance with Article 35 to amend paragraph 2 by updating the financial instruments, taking into account the developments in financial markets and the capacity of competent authorities to process the data on those financial instruments.	PT (Comments):PT We would like for the Council legal service to confirm if the list of financial instruments could be increased through a delegated act. BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change.
<i>Article 25b</i> Collaboration platforms	LU (Drafting): LU <i>Article</i>

25b

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
	<u>Collaboration platforms</u> LU (Comments): LU In accordance with our comments made above with respect to the proposed amendments to Article 25 of MAR, we consider introducing collaboration platforms at ESMA level is neither necessary nor justified. Bilateral cooperation between competent authorities is currently operating in a very efficient manner, and we thus fail to identify the possible added value to involve more actors, which would in any way complicate the exchange of information. Besides, it is also important to stress that the relevant data typically contains a lot of personal data (eg. client files of banks) to which strict rules under GDPR apply. Last but not least, the proposal is not in line with the outcome of the recent ESA review and the political decisions taken in that context. The Commission's initial proposal at that time which contained similar proposals on 'data storage facility' which were not adopted. We therefore insist on deleting the newly proposed Article 25b altogether. BG (Comments): BG BG: We do not see convincing reasons to give powers to ESMA under MAR. We consider that the bilateral cooperation between NCAs is efficient on these matters that are in their remit. We also have concerns as to the proposal ESMA to initiate on-site inspections on its own decision.

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Commission proposal	Drafting Suggestions Comments
1. ESMA may, on its own initiative or at the request of one or more competent authorities, in the case of concerns about market integrity or the good functioning of markets, set up and coordinate a collaboration platform.	PT (Comments):PT The envisaged scope of this collaboration platform is to cover all matters regulated by MAR except for the mechanism to exchange order book data? BE (Drafting):BE 1. ESMA may, on its own initiative or at the request of one or more competent authorities, in the case of concerns about market integrity or the good functioning of markets, set up and coordinate a collaboration platform. BE (Comments):BE BE welcomes the possibility to set up collaboration platforms. However, competent authorities remain the competent investigatory bodies. Accordingly, only competent authorities should be in a position to initiate the set-up of collaboration platforms. LU (Drafting): LU <u>1. ESMA may, on its own initiative or at the request of one or more competent authorities, in the case of concerns about market integrity or the good functioning of markets, set up and</u>

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Commission proposal	Drafting Suggestions Comments
	coordinate a collaboration platform. LU (Comments): LU Please refer to our comment above.
2. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.	BE (Drafting):BE - BE (Comments):BE BE agrees to this proposed change. LU (Drafting): LU 2. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner. LU

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Commission proposal	Drafting Suggestions Comments
	(Comments): LU Please refer to our comment above.
3. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.	BE (Drafting):BE 3. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010. BE (Comments):BE BE is of the view that competent authorities should remain the competent investigatory body. Accordingly, BE believes that ESMA should assist competent authorities in reaching an agreement solely upon their request. LU (Drafting): LU 3. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in

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Commission proposal	Drafting Suggestions Comments
	reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.
ESMA may also decide to initiate and coordinate on-site inspections. It shall invite the competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform to participate in such on-site inspections.	PT (Comments):PT We do not agree in giving ESMA the possibility to initiate on-site inspections. The supervision of market abuse is the competence of NCAs and not of ESMA. ESMA should stay in its role of coordinator and mediator between NCAs. FR (Comments):FR We are not comfortable with this proposal which would grant ESMA the possibility to initiate and coordinate on-site inspections on matters that do not belong to its remit, without giving competent authorities a say. BE (Drafting):BE ESMA may also, <u>at the request of one or more competent authorities</u>, decide to initiate and coordinate on-site inspections. It shall invite the competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform to participate in such on-site inspections.

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Commission proposal	Drafting Suggestions Comments
	BE (Comments):BE BE is of the view that competent authorities should remain the competent investigatory body. Accordingly, BE believes that ESMA should not initiate any work under these provisions unless requested to do so by a competent authority. LU (Drafting): LU <u>ESMA may also decide to initiate and coordinate on-site inspections. It shall invite the competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform to participate in such on-site inspections.</u> LU (Comments): LU Please refer to our comment above.
ESMA may also set up a collaboration platform jointly with ACER and the public bodies monitoring wholesale commodity markets where the concerns about market integrity and the good functioning of markets affect both	BE (Drafting):BE ESMA may also, at the request of one or more competent authorities, set up a collaboration platform jointly with ACER and the public bodies monitoring wholesale commodity markets where the concerns about market integrity and the good functioning of markets affect both

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Commission proposal	Drafting Suggestions Comments
financial and spot markets.’;	financial and spot markets.’; BE (Comments):BE BE welcomes the possibility to set up collaboration platforms. However, competent authorities remain the competent investigatory bodies. Accordingly, only competent authorities should be in a position to initiate the set-up of collaboration platforms. LU (Drafting): LU ESMA may also set up a collaboration platform jointly with ACER and the public bodies monitoring wholesale commodity markets where the concerns about market integrity and the good functioning of markets affect both financial and spot markets.’; LU (Comments): LU Please refer to our comment above.
(44) Article 28 is deleted	BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
	- BE (Comments):BE BE welcomes this clarification and this alignment with GDPR.
(45) Article 29 is replaced by the following:	
'Article 29	BE (Drafting):BE - BE (Comments):BE BE welcomes this clarification.
Disclosure of personal data to third countries	BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
	- BE (Comments):BE BE welcomes this clarification. HR (Comments): HR We agree
1. Competent authorities of a Member State may transfer personal data to a third country provided the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council^{*7} are fulfilled and only on a case-by-case basis. Competent authorities shall ensure that such a transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the	CZ (Drafting):CZ 1. Competent authorities of a Member State may transfer personal data to a third country provided the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council^{*7} are fulfilled and only on a case-by-case basis. Competent authorities shall ensure that such a transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given expressed written authorisation and complies with the conditions specified by the competent authority of the Member State. CZ (Comments):CZ

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Commission proposal	Drafting Suggestions Comments
conditions specified by the competent authority of the Member State.	Typing error BE (Drafting):BE - BE (Comments):BE BE welcomes this clarification. DE (Drafting): DE 1. Competent authorities of a Member State may transfer personal data to a third country provided the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council^{*7} are fulfilled, <u>in particular that all data protection rights of data subjects and the specific data security are preserved</u>, and only on a case-by-case basis. Competent authorities shall ensure that such a transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State.
2. Competent authorities of a Member State shall only disclose	CZ

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Commission proposal	Drafting Suggestions Comments
personal data received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained express agreement from the competent authority which transmitted the data and, where applicable, provided that the data are disclosed solely for the purposes for which that competent authority gave its agreement.'	(Drafting):CZ 2. Competent authorities of a Member State shall only disclose personal data received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained expressed agreement from the competent authority which transmitted the data and, where applicable, provided that the data are disclosed solely for the purposes for which that competent authority gave its agreement.' CZ (Comments):CZ Typing error BE (Drafting):BE - BE (Comments):BE BE welcomes this clarification.

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Commission proposal	Drafting Suggestions Comments
^{*7} Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).’;	
(46) Article 30 is amended as follows:	ES (Comments): ES We have a scrutiny reservation regarding Articles 30 and 31. However, and on a preliminary basis, we have no initial objection to the introduction of a more proportional approach in the sanctioning regime. BG (Comments): BG BG: On a preliminary basis, we are positive about the introduction of a proportional approach in the sanctioning regime. We still assess the envisaged approach to treat SMEs differently in cases of

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Commission proposal	Drafting Suggestions Comments
	violations of MAR. HR (Comments): HR For the purpose of this Article, ‘small and medium-sized enterprise’ or ‘SME’ means a micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to Commission Recommendation 2003/361/EC therefore we suggest further thresholds within the abovementioned categories: 1. Micro sized enterprise: • for infringements of Article 17 competent authorities may exceptionally impose administrative sanctions of at least EUR 100.000 instead of 2 % of its total annual turnover according to the last available accounts approved by the management body. • for infringements of Articles 18 and 19 competent authorities may exceptionally impose administrative sanctions of at least EUR 50.000 instead of 0,8 % of its total annual turnover according to the last available accounts approved by the management body 2. Small sized enterprise: • for infringements of Article 17 competent authorities may exceptionally impose administrative sanctions of at least EUR 400.000 instead of 2 % of its total annual turnover according to the last available accounts approved by the management body. • for infringements of Articles 18 and 19 competent authorities may exceptionally impose administrative sanctions of at least EUR 100.000 instead of 0,8 % of its total annual turnover

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Commission proposal	Drafting Suggestions Comments
	according to the last available accounts approved by the management body 3. Medium-sized enterprise: • for infringements of Article 17 competent authorities may exceptionally impose administrative sanctions of at least EUR 1.000.000 instead of 2 % of its total annual turnover according to the last available accounts approved by the management body. • for infringements of Articles 18 and 19 competent authorities may exceptionally impose administrative sanctions of at least EUR 400.000 instead of 0,8 % of its total annual turnover according to the last available accounts approved by the management body We agree with the <i>i ne bis idem</i> principle, however the question is, what is the intention. If the intention is that there should not be a parallel criminal proceeding and the procedure of imposing finesse, we agree. However, a MAR fine and another MAR measure should not exclude one another. We would suggest formulations that were recently adopted in the general approach of the council in an AML package.
(a) paragraph 2 is amended as follows:	BE (Drafting):BE The 3rd subparagraph should also be amended as follows: “For the purposes of points (j)(i) to <u>(v)</u> and (ii) of the first subparagraph, where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU (13), the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives –

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Commission proposal	Drafting Suggestions Comments
	Council Directive 86/635/EEC (14) for banks and Council Directive 91/674/EEC (15) for insurance companies – according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.”
(i) points (e) to (g) are replaced by the following:	BE (Drafting):BE - BE (Comments):BE BE welcomes this clarification.
‘(e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms as well as benchmark administrators or supervised contributors;	BE (Drafting):BE - BE (Comments):BE BE welcomes this clarification.

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Commission proposal	Drafting Suggestions Comments
(f) in the event of repeated infringements of Article 14 or 15, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms as well as benchmark administrators or supervised contributors;	PT (Drafting):PT Alternative 1: in the event of repeated infringements of Article 14 or 15, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms as well as benchmark administrators or supervised contributors; Alternative 2: in the event of repeated infringements of Article 14 or 15, <u>an up to 10 years</u> permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms as well as benchmark administrators or supervised contributors; PT (Comments):PT While we acknowledge the approach that is currently established on this Regulation, we have strong reservations concerning the maintenance of the permanent ban as the Portuguese Constitution does not allow for any criminal or administrative sanction to be permanent. We also published in statement in COREPER when MAR was approved in 2014 expressing our deepest concern for this provision. Coherently, during Basel and MiCA negotiations this concerned was supported by the Council and the text was amendment in accordance. Thus we suggest to alternative wording, based on

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Commission proposal	Drafting Suggestions Comments
	the abovementioned legal acts. BE (Drafting):BE - BE (Comments):BE BE welcomes this clarification.
(g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account as well as benchmark administrators or supervised contributors;’;	BE (Drafting):BE - BE (Comments):BE BE welcomes this clarification.
(ii) point (j) is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
'(j) in respect of legal persons, maximum administrative pecuniary sanctions of at least:	
(i) for infringements of Articles 14 and 15, 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body or EUR 15 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;	BE (Drafting):BE - BE (Comments):BE BE welcomes this change.
	NL (Comments):NL NL (Comments): Could you please explain why lower administrative sanctions for SME's are important to reach the goals set out in the listing act initiative?
(ii) for infringements of Article 16, 2 % of its total annual turnover according	BE

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Commission proposal	Drafting Suggestions Comments
to the last available accounts approved by the management body, or EUR 2 500 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;	(Drafting):BE - BE (Comments):BE BE welcomes this change. DE (Comments): DE According to our proposed deletion of (iii) below <u>Article 17</u> would have to be added here.
(iii) for infringements of Article 17, 2 % of its total annual turnover according to the last available accounts approved by the management body. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose administrative sanctions of at least EUR 2 500 000, or, where the legal person is an SME, EUR 1 000 000, or in the Member States whose currency is not the euro, the	BE (Drafting):BE (iii) for infringements of Article 17, 2 % of its total annual turnover according to the last available accounts approved by the management body. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose <u>maximum</u> administrative sanctions of at least EUR 2 500 000, or, where the legal person is an SME, EUR 1 000 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014 if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with

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Commission proposal	Drafting Suggestions Comments
corresponding values in the national currency on 2 July 2014 if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h);	respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h); BE (Comments): BE BE agrees to the proposal that pecuniary sanctions for infringements of disclosure requirements would be by default calculated as a percentage of the total annual turnover of the issuer, to the extent such amount is not disproportionately low. However, the use of the fall back mechanism based on absolute amounts should not be subject to a criterion of exceptionality. A disproportionately low amount should be in itself sufficient to apply an absolute amount. Otherwise, sanctions of infringements of disclosure requirements may no longer have a deterrent effect. Furthermore, depending on the sanction cases at hand, competent authorities may have to divert from the default mechanism – based on a percentage of the annual turnover – more often than "exceptionally" (e.g. cases involving biotech or holding companies that may have no – or low – annual turnover). DE (Drafting): DE (iii) — for infringements of Article 17, 2 % of its total annual turnover according to the last available accounts approved by the management body. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose administrative sanctions of at least EUR 2 500 000, or, where the legal person is an SME, EUR 1 000 000, or in the Member States whose currency is not the euro, the corresponding values in the national

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Commission proposal	Drafting Suggestions Comments
	currency on 2 July 2014 if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h); DE (Comments): DE We propose Deletion. The proposal introduces new elements to the system of turnover-based fines in EU Regulations that seem inconsistent and very unclear to us. We do not understand the paradigmatic change that goes along with the setting of “minimum” amounts within the scheme of “maximum administrative pecuniary sanctions”. The rules on turnover-based fines according to Regulation (EU) No 596/2014 in our national law set a fixed maximum amount for fines and allow for even higher turnover-based fines if a certain percentage of the annual turnover of the company is above the fixed maximum amount. Within this range the fine has to be found according to the principle of proportionality.
(iv) for infringements of Articles 18 and 19, 0,8 % of its total annual turnover according to the last available accounts approved by the management body. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose	BE (Drafting):BE (iv) for infringements of Articles 18 and 19, 0,8 % of its total annual turnover according to the last available accounts approved by the management body. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose

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Commission proposal	Drafting Suggestions Comments
administrative sanctions of at least EUR 1 000 000, or where the legal person is an SME, EUR 400 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014 if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h);	<u>maximum</u> administrative sanctions of at least EUR 1 000 000, or where the legal person is an SME, EUR 400 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014 if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h); BE (Comments):BE BE agrees to the proposal that pecuniary sanctions for infringements of disclosure requirements would be, by default, calculated as a percentage of the total annual turnover of the issuer, to the extent such amount is not disproportionately low. However, the use of the fall back mechanism based on absolute amounts should not be subject to a criterion of exceptionality. A disproportionately low amount should be in itself sufficient to apply an absolute amount. Otherwise, sanctions of infringements of disclosure requirements may no longer have a deterrent effect. Furthermore, depending on the sanction cases at hand, competent authorities may have to divert from the default mechanism – based on a percentage of the annual turnover – more often than "exceptionally" (e.g. cases involving biotech or holding companies that may have no – or low – annual turnover). DE (Drafting): DE (iv) ——— for infringements of Articles 18 and 19, 0,8 % of its total annual turnover according

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Commission proposal	Drafting Suggestions Comments
	to the last available accounts approved by the management body. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose administrative sanctions of at least EUR 1 000 000, or where the legal person is an SME, EUR 400 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014 if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h); DE (Comments): DE See above (and concerning the proposed percentage of the annual turnover, see below).
(v) for infringements of Article 20, 0,8 % of its total annual turnover according to the last available accounts approved by the management body, or EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014.’;	BE (Drafting):BE - BE (Comments):BE BE agrees to the inclusion of the alternative minimum of the maximum level of sanctions. DE

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Commission proposal	Drafting Suggestions Comments
	(Drafting): DE (v) for infringements of Article 20, 0,81 % of its total annual turnover according to the last available accounts approved by the management body, or EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014.’; DE (Comments): DE The proposed percentage of the annual turnover of below 1 % is unknown to us with regard to other EU proposals on turnover-based fines and should not without any need differ from those rates. According to our proposed deletion of (iv) above <u>Articles 18 and 19</u> would have to be added here or otherwise taken into account.
(b) the following paragraph 4 is added:	
‘4. For the purpose of this Article, ‘small and medium-sized enterprise’ or ‘SME’ means a micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to Commission	CY (Comments):CY We remain neutral about the addition of this provision. However, in our view SMEs should not be treated differently than the rest of the issuers, when it comes to violations of MAR and

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Commission proposal	Drafting Suggestions Comments
Recommendation 2003/361/EC* ⁸ .	subsequent sanctions. BE (Drafting):BE - BE (Comments):BE BE agrees to include the reference made to the definition of SME for the purposes of this Article 30.
*⁸ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).’;	
(47) in Article 31, paragraph 1 is replaced by the following:	

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Commission proposal	Drafting Suggestions Comments
‘1. Member States shall ensure that when determining the type and level of administrative sanctions, competent authorities take into account all relevant circumstances, in order to apply proportionate sanctions, including, where appropriate:	BE (Drafting):BE - BE (Comments):BE BE agrees to the inclusion of the reference to the proportionate nature of the sanctions to be imposed. DE (Drafting): DE Member States shall ensure that level and type of administrative sanctions are appropriate and proportionate. They may take into consideration the following criteria: DE (Comments): DE Suggestion for a precise wording.
(a) the gravity and duration of the infringement;	BE

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
	(Drafting):BE - BE (Comments):BE - DE (Drafting): DE the nature, gravity and duration of the infringement DE (Comments): DE Suggestion for wording in other EU legal acts. The type of violation can also be a relevant assessment criterion.
(b) the degree of responsibility of the person responsible for the infringement;	BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
	- BE (Comments):BE - DE (Drafting): DE the degree of the fault responsibility of the person responsible for in the infringement DE (Comments): DE We suggest to use “fault” instead of responsibility and a shorter wording. Within the area of intent and negligence, there are light, moderate and serious cases (e.g. grossly negligent behavior), each of which should be taken into account with the corresponding consequences when calculating the fine. The proposed wording is much more suitable for taking these gradations into account.
(c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual	BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
personal income of a natural person;	- BE (Comments):BE BE welcomes this clarification.
(d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;	BE (Drafting):BE - BE (Comments):BE - DE (Drafting): DE the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined the economic benefits derived from the infringement by the natural person held responsible, insofar as they can be determined

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Commission proposal	Drafting Suggestions Comments
	DE (Comments): DE The meaning is not clear. If economic benefits are meant, we suggest another wording.
(e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;	BE (Drafting):BE - BE (Comments):BE - DE (Drafting): DE in favour of the person held responsible the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person DE

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Commission proposal	Drafting Suggestions Comments
	(Comments): DE Clarification that cooperation is a mitigating assessment criterion: The degree of cooperation of the perpetrator in clarifying the facts can only represent a circumstance that reduces the fine. There is no duty to facilitate proceedings, so someone who defends himself or herself by silence or denial must not be "treated" harsher in the face of it. - For this criterion, it does not seem necessary to mention the second clause on skimming off profits. It is clear that cooperation that reduces the fine, if applicable, cannot lead to withholding of the profit made from the crime.
(f) previous infringements by the person responsible for the infringement;	BE (Drafting):BE - BE (Comments):BE - DE (Drafting): DE previous administrative sanctions for such infringements by the person responsible for the

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Commission proposal	Drafting Suggestions Comments
	infringement where appropriate; DE (Comments): DE - to “administrative sanctions”: It should only be possible to take into account predicate offenses that have led to punishment in the first place - to “such”: An earlier sanction can only be taken into account if it relates to a similar violation. Only then can it be assumed that the perpetrator did not allow himself to be warned about the earlier punishment. -“where appropriate” We believe that the authorities should be given more space; For example, earlier sanctions for similar violations should not have to be taken into account if these sanctions date back a long time and have therefore already been deleted or should be deleted from a register, for example
(g) measures taken by the person responsible for the infringement to prevent its repetition; and	BE (Drafting):BE

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Commission proposal	Drafting Suggestions Comments
	- BE (Comments):BE -
(h) the duplication of criminal and administrative proceedings and penalties for the same breach against the responsible person.';	BE (Drafting):BE - BE (Comments):BE BE agrees to the inclusion of this additional criterion, although its added value remains limited given the non bis in idem principle. DE (Drafting): DE the duplication of criminal and administrative proceedings and penalties for the same breach against the responsible person DE

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Commission proposal	Drafting Suggestions Comments
	(Comments): DE The regulation appears very vague and, in particular, does not fit into the list of other specific individual criteria. It is also unclear what is meant by this. a) Does this mean that a criminal penalty and an administrative penalty should be possible for the same violation? This could amount to an inadmissible double jeopardy. b) Or does that refer to consideration for previous violations? This is already dealt with under letter f). Reference is made to the comments there.
(48) Article 35 is amended as follows:	
(a) paragraphs 2 and 3 are replaced by the following:	
	NL (Comments):NL NL (Comments): We note that not all proposed delegations (i.e. Article 17, par. 1b, Article 25a, par. 5 and Article 25a, par. 6) are added to the amended Article 35. The reasoning is unclear to us. In our view all proposed delegations should be added to Article

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Commission proposal	Drafting Suggestions Comments
	35. Could you please consider adding these proposed delegations to Article 35?
‘2. The power to adopt delegated acts referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), third subparagraph, Article 17(3), Article 19(13) and (14), Article 25a(6) and Article 38 shall be conferred on the Commission for a period of five years from 31 December 20XX. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.	FR (Drafting):FR ‘2.The power to adopt delegated acts referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), third subparagraph, Article 17(3), Article 19(13) and (14), <u>Article 25a(5)</u>, Article 25a(6) and Article 38 shall be conferred on the Commission for a period of five years from 31 December 20XX. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. FR (Comments):FR Technical redrafting – omission BE

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Commission proposal	Drafting Suggestions Comments
	(Drafting):BE - BE (Comments):BE In view of its opposition to the changes in article 17, BE does not agree with the insertion of the reference to article 17.
3. The delegation of power referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), third subparagraph, Article 17(3), Article 19(13) and (14), Article 25a(6) and Article 38, may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts	FR (Drafting):FR 3. The delegation of power referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), third subparagraph, Article 17(3), Article 19(13) and (14), <u>Article 25a(5)</u>, Article 25a(6) and Article 38, may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’; FR (Comments):FR Technical redrafting – omission

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Commission proposal	Drafting Suggestions Comments
already in force.';	BE (Drafting):BE - BE (Comments):BE In view of its opposition to the changes in article 17, BE does not agree with the insertion of the reference to article 17.
(b) paragraph 5 is replaced by the following:	
'5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), third subparagraph, Article 17(3), Article 19(13) or (14), Article 25a(5), Article 25a(6) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and	BE (Drafting):BE - BE (Comments):BE In view of its opposition to the changes in article 17, BE does not agree with the insertion of the reference to article 17.

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Commission proposal	Drafting Suggestions Comments
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 the Council.’;	
(49) Article 38, first subparagraph, is amended as follows:	
(a) the introductory wording is replaced by the following:	
‘By [5 years after entry into force of this amending Regulation], the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation, together with a legislative proposal to amend it if appropriate. That report shall assess, inter alia:’;	BE (Drafting):BE - LU (Drafting): LU ‘By [10 5 years after entry into force of this amending Regulation], the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation,

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Commission proposal	Drafting Suggestions Comments
	together with a legislative proposal to amend it if appropriate. That report shall assess, inter alia:’; LU (Comments): LU We would prefer a report after a ten year period because the five year period is generally too short to gain meaningful practical experience. Thereby, we would suggest to amend the introductory wording of Article 38, first subparagraph, accordingly.
(b) point (d) is replaced by the following:	
‘(d) the functioning of the cross-market order book surveillance mechanism in relation to market abuse, including recommendations for enforcing such mechanism; and’.	BE (Drafting):BE - BE (Comments):BE BE agrees to this inclusion.
<i>Article 3</i>	

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Commission proposal	Drafting Suggestions Comments
Amendments to Regulation (EU) No 600/2014	
Article 25 of Regulation (EU) No 600/2014 is amended as follows:	
(50) paragraph 2 is replaced by the following:	
‘2. The operator of a trading venue shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems. The competent authority of the trading venue may request those data on an ongoing basis. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transactions that stem from that order and the details of which shall be reported in accordance with Article 26(1) and (3).	CZ (Drafting):CZ 2. The operator of a trading venue shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems in an electronic and machine-readable format and using a common template. The competent authority of the trading venue may request those data on an ongoing basis. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transactions that stem from that order and the details of which shall be reported in accordance with Article 26(1) and (3). ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities to information under this paragraph. CZ

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Commission proposal	Drafting Suggestions Comments
ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities to information under this paragraph.’;	(Comments):CZ The proposal does not reflect the change in the text (see the drafting suggestion) agreed by MSs within the general approach to MiFIR review. FR (Comments):FR We support this proposal, which goes hand in hand with art.25a on cross-market order book data. It is important to explicitly recognise that competent authorities can request data from their trading venues on an ongoing basis. BE (Comments):BE The words “The competent authority of the trading venue may request those data on an ongoing basis” have been added here. However, there is no indication as to the costs that may be linked to such provision on an ongoing basis. Is such information to be provided for free? If not, it could be specified that the cost for the provision of such information should be a ‘reasonable cost’ (e.g. not exceeding the effective cost of the provision of those data). ES (Comments): ES Please see above a previous comment. On a preliminary basis, we consider that it should be an “exchange of orders on request and for limited time ranges”.

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MS: SK, PT, CZ, CY, FI, HU, EE, PL, IE, NL, IT, FR, EL, RO, BE, AT, ES, DE, LU, LT, BG, HR

Commission proposal	Drafting Suggestions Comments
	HR (Comments): HR We agree with the introduction of the cross-market order book surveillance mechanism and that a competent authority can request order book data on an ongoing basis to a trading venue under its supervision and to empower ESMA to harmonise the format of the template used to store such data. However, we disagree with giving ESMA the power to decide and to initiate and coordinate on-site inspections of MS NCA supervised entities.
(51) paragraph 3 is replaced by the following:	
‘3. ESMA shall develop draft regulatory technical standards to specify the details and formats of the relevant order data required to be maintained under paragraph 2 of this Article that is not referred to in Article 26.	FR (Comments):FR We support this proposal, which goes hand in hand with art.25a on cross-market order book data. The standardisation of order book data should indeed go beyond the current obligation to standardise the content of data, by also using a prescribed format (through Level 2). This will then make life easier for NCAs to process data requested from their counterparts through MAR (new art.25a).
ESMA shall submit those draft	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
regulatory technical standards to the Commission by [9 months after the date of enter into force of this Regulation].	
Power is delegated to the Commission to supplement this Regulation by adopting regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’.	
<i>Article 4</i> Entry into force and application	
This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	BE (Comments):BE We believe that sufficient time should be left to Member States to amend where needed their national legislations.
Article 1, point(6)(b) and (c), and Article 2, point (38)(a), shall apply from [12 months after the date of entry into force].	PT (Comments):PT

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Commission proposal	Drafting Suggestions Comments
	This time set should be enlarged in order to allow for the due adaptations of market participants and ensure that Level 2 legislation is published enough time before its entering into force.
	NL (Comments):NL NL (Comments): In our view, the application period of this Regulation is too short. Even though it is a regulation, the Netherlands will have to amend some of its legislation (i.e. orders (Dutch: <i>AMvb</i> 's)), for which the formal procedures are quite time consuming. We believe the application period should be extended to (at least) six months following the day of publication in the <i>Official Journal of the European Union</i>. In addition, ample time should be provided to national authorities to make the necessary IT investments (for instance in relation to cross border order book data exchange on the basis of MAR). Furthermore, Article 17 paragraph 1 MAR will apply 12 months after the date of entry into force. This means that intermediate steps in a process won't have to be immediately disclosed (if certain safeguards are met). However, the new article 17 paragraph 4 MAR which requires to notify the NCA's immediately upon taking the decision to delay publication of inside

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Commission proposal	Drafting Suggestions Comments
	information will enter into force 12 months prior to that. This means that potentially NCA's will receive a lot of publication delay notifications the first 12 months (as all decisions to delay notification of intermediate steps in a process which constitute inside information will have to be disclosed immediately). As the two articles seem to be linked to each other (less decisions to delay publication have to be made, but all have to be notified to the NCA's), the entry into force date should also be aligned.
This Regulation shall be binding in its entirety and directly applicable in all Member States.	
Done at Brussels,	
<i>For the European Parliament</i> <i>For the Council</i>	
<i>The President</i> <i>The President</i>	
<u>ANNEX I</u>	
'ANNEX I	LU (Comments): LU

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
THE PROSPECTUS	HR (Comments): HR We would be open to further simplifications of “full disclosure” prospectuses. We believe that prospectuses contain too much information that investor (especially retail) do not read and have problem with the processing of its content. Maybe there is possibility to make standard prospectus more similar to EU Growth prospectus (especially for offers or admittance of les value).
I. Summary	
II. Purpose, persons responsible, third party information, experts' reports and competent authority approval	
The purpose is to provide information on the persons who are responsible for the content of the prospectus and to provide comfort to investors on the accuracy of the information disclosed in the prospectus. In addition, this section	

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Commission proposal	Drafting Suggestions Comments
provides information on the interests of persons involved in the offer, as well as the reasons of the offer, the use of proceeds and the expenses of the offer. Moreover, this section provides information on the legal basis of the prospectus and its approval by the competent authority.	
III. Strategy, performance and business environment	
The purpose is to disclose information on the identity of the issuer, its business, strategy and objectives. Investors should have a clear understanding of the issuer's activities and the main trends affecting its performance, its organisational structure and material investments. Where applicable the issuer shall disclose in this section estimates or forecasts of its future performance.	
IV. Management report, including	

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Commission proposal	Drafting Suggestions Comments
the sustainability reporting (equity securities only)	
The purpose of this section is to incorporate by reference the management reports and consolidated management reports as referred to in Article 4 of Directive 2004/109/EC, where applicable, and in Chapters 5 and 6 of Directive 2013/34/EU, for the periods covered by the historical financial information including, where applicable, the sustainability reporting.	
V. Working capital statement (equity securities only)	
The purpose of this section is to provide information on the issuer's working capital requirements.	
VI. Risk factors	
The purpose is to describe the main risks	

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Commission proposal	Drafting Suggestions Comments
faced by the issuer and their impact on the issuer's future performance, as well as the main risks which are specific to the securities offered to the public or to be admitted to trading on a regulated market.	
VII. Terms and conditions of the securities	
The purpose of this section is to set out the terms and conditions of the securities and provide a detailed description of their characteristics.	
VIII. Details of the offer/admission to trading	
The purpose of this section is to set out the specific information on the offer of the securities, the plan for their distribution and allotment, an indication of their pricing. Moreover, it presents information on the placing of the	

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Commission proposal	Drafting Suggestions Comments
securities, any underwriting agreements and arrangements relating to admission to trading. It also sets out information on the persons selling the securities and dilution to existing shareholders.	
IX. ESG-related information (non-equity securities only, where applicable)	IT (Comments):IT Italy has a reserve on such an inclusion.
Where applicable, ESG-related information in accordance with the delegated act referred to in Article 13(1), second subparagraph, point (g).	DE (Comments): DE General remark regarding similar references to ESG related information in the Annexes: This description seems rather unspecific. It is not entirely clear, whether COM according to Article 13 shall become competent to specify ESG related information not only with respect to its form but also with respect to content. If the latter was the case, COM could have discretion to include completely new types of ESG related information, i.e. in the area of governance.
X. Corporate governance	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
This section shall explain the issuer's administration and the role of the persons involved in the management of the company. For equity securities, it will furthermore provide information on the background of senior management, their remuneration and its potential link to the issuer's performance.	DE (Comments): DE "The scope of the terms "administration", „management“ and "senior management" is not clear. What are the intentions behind the changes to the current wording in II. and VII.? What levels of management shall be covered? Furthermore, what does "background" refer to?"
XI. Financial information	
The purpose is to specify which financial statements must be included in the document covering the two latest financial years (for equity securities) or the last financial year (for non-equity securities) or such shorter period during which the issuer has been in operation and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting	

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Commission proposal	Drafting Suggestions Comments
and auditing standards.	
A. Consolidated statements and other financial information.	
B. Significant changes.	
XII. Shareholder and security holder information	
This section shall provide information on the issuer's major shareholders, the existence of potential conflicts of interest between senior management and the issuer, the issuer's share capital as well as information on related party transactions, legal and arbitration proceedings and material contracts.	
	LU (Drafting): LU <u>XII.bis Dividend policy (equity securities only)</u> <u>A description of the issuer's policy on dividend distributions and any current restrictions</u>

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
	<u>thereon, as well as on share repurchases.</u> LU (Comments): LU In order to be consistent with Item VI of Annex IV, and Item X of Annex VII, the requirements of the standard prospectus regime should not be less strict than the requirements of the lighter disclosure regimes (EU Follow-on prospectus, EU Growth issuance document). Hence we would introduce Item XII.bis into Annex I.
XIII. Information on the guarantor (non-equity securities only, where applicable)	
The purpose is to provide, where applicable, information on the guarantor of the securities including essential information about the guarantee attached to the securities, the risk factors and financial information specific to the guarantor.	
XIV. Information on the underlying securities and the issuer of the underlying securities (where	

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Commission proposal	Drafting Suggestions Comments
applicable)	
The purpose is to provide, where applicable, information on the underlying securities and, where applicable, on the issuer of the underlying securities.	
XV. Information on consent (where applicable)	
The purpose is to provide information on the consent where the issuer or the person responsible for drawing up a prospectus consents to its use in accordance with Article 5(1).	
XVI. Documents available	
The purpose is to provide information on the documents that shall be available for inspection and the website where they can be inspected.	
ANNEX II	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
REGISTRATION DOCUMENT	
I. Purpose, persons responsible, third party information, experts' reports and competent authority approval	
The purpose of this section is to provide information on the persons who are responsible for the content of the registration document and to provide comfort to investors on the accuracy of the information disclosed in the prospectus. Moreover, this section provides information on the legal basis of the prospectus and its approval by the competent authority.	
II. Strategy, performance and business environment	
The purpose of this section is to disclose information on the identity of the issuer,	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
its business, strategy and objectives. By reading this section, investors should have a clear understanding of the issuer's activities and the main trends affecting its performance, its organisational structure and material investments. Where applicable the issuer shall disclose in this section estimates or forecasts of its future performance.	
III. Management report, including sustainability reporting (equity securities only)	
The purpose of this section is to incorporate by reference the management reports and consolidated management reports as referred to in Article 4 of Directive 2004/109/EC, where applicable, and in Chapters 5 and 6 of Directive 2013/34/EU, for the periods covered by the historical financial information including, where applicable, the sustainability reporting.	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
IV. Risk factors	
The purpose of this section is to describe the main risks faced by the issuer and their impact on the issuer's future performance.	
V. Corporate governance	
This section shall explain the issuer's administration and the role of the persons involved in the management of the company. For equity securities, it will furthermore provide information on the background of senior management, their remuneration and its potential link to the issuer's performance.	DE (Comments): DE "The scope of the terms "administration", „management“ and "senior management" is not clear. What are the intentions behind the changes to the current wording in II. and VII.? What levels of management shall be covered? Furthermore, what does "background" refer to?"
VI. Financial information	
The purpose is to specify which financial statements must be included in the document covering the two latest	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
financial years (for equity securities) or the last financial year (for non-equity securities) or such shorter period during which the issuer has been in operation and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.	
A. Consolidated statements and other financial information.	
B. Significant changes.	
VII. Shareholder and security holder information	
This section shall provide information on the issuer's major shareholders, the existence of potential conflicts of interest between senior management and the	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
issuer, the issuer's share capital as well as information on related party transactions, legal and arbitration proceedings and material contracts.	
	LU (Drafting): LU <u>VII.bis Dividend policy (equity securities only)</u> <u>A description of the issuer's policy on dividend distributions and any current restrictions thereon, as well as on share repurchases.</u> LU (Comments): LU In order to be consistent with our proposed amendment regarding Item XII.bis in Annex I, we would suggest adding Item VII.bis to Annex II accordingly.
VIII. Documents available	
The purpose is to provide information on the documents that shall be available for inspection and the website where they can be inspected.	
ANNEX III	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
SECURITIES NOTE	
I. Purpose, persons responsible, third party information, experts' reports and competent authority approval	
The purpose of this section is to provide information on the persons who are responsible for the content of the securities note and to provide comfort to investors on the accuracy of the information disclosed in the prospectus. In addition, this section provides information on the interests of persons involved in the offer, as well as the reasons of the offer, the use of proceeds and the expenses of the offer. Moreover, this section provides information on the legal basis of the prospectus and its approval by the competent authority.	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
II. Working capital statement	LU (Drafting): LU II. Working capital statement (<u>equity securities only</u>) LU (Comments): LU In order to be consistent with Item V of Annex I, which limits the working capital statement to equity securities, we suggest introducing an equivalent amendment to this Item.
The purpose of this section is to provide information on the issuer's working capital requirements.	
III. Risk factors	
The purpose of this section is to describe the main risks which are specific to the securities offered to the public or to be admitted to trading on a regulated market.	
IV. Terms and conditions of the	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
securities	
The purpose of this section is to set out the terms and conditions of the securities and provides a detailed description of their characteristics.	
V. Details of the offer/admission to trading	
The purpose is to provide information regarding the offer or the admission to trading on a regulated market or an MTF, including the final offer price and amount of securities (whether in number of securities or aggregate nominal amount) which will be offered, the reasons for the offer, the plan for distribution of the securities, the use of proceeds of the offer, the expenses of the issuance and offer, and dilution (for equity securities only).	
VI. ESG-related information (non-	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
equity securities only, where applicable)	
Where applicable, ESG-related information in accordance with the delegated act referred to in Article 13(1), second subparagraph, point (g).	
VII. Information on the guarantor (non-equity securities only, where applicable)	
The purpose is to provide information on the guarantor of the securities, where applicable, including essential information about the guarantee attached to the securities, the risk factors and financial information specific to the guarantor.	
VIII. Information on the underlying securities and the issuer of the underlying securities (where applicable)	

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Commission proposal	Drafting Suggestions Comments
The purpose is to provide, where applicable, information on the underlying securities and, where applicable, on the issuer of the underlying securities.	
IX. Information on consent (where applicable)	
The purpose is to provide information on the consent where the issuer or the person responsible for drawing up a prospectus consents to its use in accordance with Article 5(1).	
ANNEX IV	
INFORMATION TO BE INCLUDED IN THE EU FOLLOW-ON PROSPECTUS FOR SHARES AND OTHER TRANSFERABLE SECURITIES EQUIVALENT TO SHARES IN COMPANIES	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
I. Summary	
The EU Follow-on prospectus must include a summary drawn up in accordance with Article 7(12b).	
II. Name of the issuer, Member State of incorporation, link to the issuer's website	LU (Drafting): LU II. Name of the issuer, <u>country</u>Member State of incorporation, link to the issuer's website LU (Comments): LU We would suggest amending the title of Item II considering that the EU Follow-on prospectus is not limited to EU issuers.
Identify the company issuing shares, including its legal entity identifier (LEI), its legal and commercial name, its country of incorporation and the website where investors can find information on the company's business operations, the products it makes or the services it	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
provides, the principal markets where it competes, its major shareholders, the composition of its administrative, management and supervisory bodies and of its senior management and, where applicable, information incorporated by reference (with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus).	
III. Responsibility statement and statement on the competent authority	
1. Responsibility statement	
Identify the persons responsible for drawing up the EU Follow-on prospectus and include a statement by those persons that, to the best of their knowledge, the information contained in the EU Follow-on prospectus is in accordance with the facts and that the EU Follow-on	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
prospectus makes no omission likely to affect its import.	
Where applicable, the statement must contain information sourced from third parties, including the source(s) of that information, and statements or reports attributed to a person as an expert and the following details of that person:	
(a) name;	
(b) business address;	
(c) qualifications; and	
(d) material interest (if any) in the issuer.	
2. Statement on the competent authority	
The statement must indicate the competent authority that has approved, in	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
accordance with this Regulation, the EU Follow-on prospectus, specify that such approval is not an endorsement of the issuer nor of the quality of the shares to which the EU Follow-on prospectus relates, that the competent authority has only approved the EU Follow-on prospectus as meeting the standards of completeness, comprehensibility and consistency imposed by this Regulation, and specify that the EU Follow-on prospectus has been drawn up in accordance with Article 14b.	
IV. Risk factors	
A description of the material risks that are specific to the issuer and a description of the material risks that are specific to the shares being offered to the public and/or admitted to trading on a regulated market, in a limited number of categories, in a section headed 'Risk Factors'.	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
The risks shall be corroborated by the content of the EU Follow-on prospectus.	
V. Financial statements	
The financial statements (annual and half-yearly) published over the period of 12 months prior to the approval of the EU Follow-on prospectus. Where both annual and half-yearly financial statements have been published, only the annual statements must be required where they postdate the half-yearly financial statements.	IE (Comments):IE Could the Presidency or Commission clarify as to why the accounting standards to be used are not identified? In contrast, the auditing standards to be used by auditors are detailed below. We would ask if this is an oversight or there is a reason for allowing a local GAAP to be used in the presentation of the financial statements?
The annual financial statements must be independently audited. The audit report shall be prepared in accordance with Directive 2006/43/EC of the European Parliament and of the Council and Regulation (EU) No 537/2014 of the European Parliament and of the Council.	

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Commission proposal	Drafting Suggestions Comments
Where Directive 2006/43/EC and Regulation (EU) No 537/2014 do not apply, the annual financial statements must be audited or reported on as to whether or not, for the purposes of the EU Follow-on prospectus, they give a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the EU Follow-on prospectus:	
(a) a prominent statement disclosing which auditing standards have been applied;	
(b) an explanation of any significant departures from International Standards on Auditing.	
Where audit reports on the annual financial statements have been refused by the statutory auditors or where they	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
contain qualifications, modifications of opinion, disclaimers or an emphasis of matter, the reason must be given, and such qualifications, modifications, disclaimers or emphasis of matter must be reproduced in full.	
A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, must also be included, or an appropriate negative statement must be included.	
Where applicable, pro forma information must also be included.	LU (Comments): LU Considering that the reference to “where applicable” is not precise, we would appreciate if the Commission could clarify when this requirement should apply.
VI. Dividend policy	

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Commission proposal	Drafting Suggestions Comments
A description of the issuer's policy on dividend distributions and any current restrictions thereon, as well as on share repurchases.	
VII. Trend information	
A description of:	
(a) the most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the EU Follow-on prospectus;	
(b) information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year;	
(c) information on the issuer's short and long-term financial and non-financial	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
business strategy and objectives.	
If there is no significant change in either of the trends referred to in points (a) or (b) of this section, a statement to that effect is to be made.	
VIII. Terms and conditions of the offer, firm commitments and intentions to subscribe and key features of the underwriting and placement agreements.	LU (Drafting): LU <u>VIII. Terms and conditions of the offer and information on the admission to trading, firm commitments and intentions to subscribe and key features of the underwriting and placement agreements.</u> LU (Comments): LU For readability purposes we propose to shorten the title and to refer to the admission to trading for the sake of completeness.
Set out the offer price, the number of shares offered, the amount of the issue/offer, the conditions to which the offer is subject, and the procedure for the	LU (Comments): LU We consider that the conditions to which the offer is subject should be further specified, notably

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Commission proposal	Drafting Suggestions Comments
exercise of any right of pre-emption.	as regard pricing information.
To the extent known to the issuer, provide information on whether major shareholders or members of the issuer's management, supervisory or administrative bodies intend to subscribe for the offer, or whether any person intends to subscribe for more than 5 % of the offer.	
Present any firm commitments to subscribe for more than 5 % of the offer and all material features of the underwriting and placement agreements, including the name and address of the entities agreeing to underwrite or place the issue on a firm commitment basis or under 'best efforts' arrangements and the quotas.	
	LU (Drafting): LU <u>Where applicable, indicate the regulated markets, SME growth Market or the MTF where the</u>

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
	<u>securities are to be admitted to trading and, if known, the earliest dates on which the securities will be admitted to trading.</u> <u>Where applicable, details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.</u> LU (Comments): LU The amendment is consistent with Article 7, paragraph 12b, point (c)(iv), which requires information on the admission to trading in the summary of an EU Follow-on prospectus.
IX. Essential information on the shares and on their subscription	
Provide the following essential information about the shares offered to the public or admitted to trading on a regulated market:	
(a) the international security identification number (ISIN);	
(b) the rights attached to the shares, the procedure for the exercise of those	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
rights and any limitations of those rights;	
(c) where the shares can be subscribed as well as on the time period, including any possible amendments, during which the offer will be open and a description of the application process together with the issue date of new shares.	
Where applicable, information on the underlying securities and, where applicable, the issuer of the underlying securities.	LU (Comments): LU Considering that the scope of this requirement is not clear in our view, which is also the case for Item VIII of Annex V below, we would appreciate if this could be clarified.
A warning that the tax legislation of the investor's Member State and of the issuer's country of incorporation may have an impact on the income received from the shares.	
X. Reasons for the offer and use of proceeds	

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Commission proposal	Drafting Suggestions Comments
Provide information on the reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented in order of priority of such uses.	LU (Drafting): LU Provide information on the reasons for the <u>issuance</u>offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented in order of priority of such uses. LU (Comments): LU In order to be consistent with Article 14b, paragraph 2, point (c), we would suggest slightly amending Item X.
Where the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, it must state the amount and sources of other funds needed. Details must also be given with regard to the use of the proceeds, in particular where proceeds are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of	

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Commission proposal	Drafting Suggestions Comments
other business, or to discharge, reduce or retire indebtedness.	
XI. Working capital statement	
Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how the issuer proposes to provide the additional working capital needed.	
XII. Conflicts of interest	
Provide information about any interests related to the issuance, including conflicts of interest, and details of the persons involved and the nature of the interests.	
XIII. Dilution and shareholding after the issuance	
Present a comparison of participation in share capital and voting rights for	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
existing shareholders before and after the capital increase resulting from the public offer, with the assumption that existing shareholders do not subscribe for the new shares and, separately, with the assumption that existing shareholders do take up their entitlement.	
XIV. Documents available	
A statement that for the term of the EU Follow-on prospectus the following documents, where applicable, can be inspected:	
(a) the up to date memorandum and articles of association of the issuer;	
(b) all reports, letters, and other documents, valuations and statements prepared by an expert at the issuer's request any part of which is included or referred to in the EU Follow-on prospectus.	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
An indication of the website on which the documents may be inspected.	
(*) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).	
(*) Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).	
ANNEX V	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
INFORMATION TO BE INCLUDED IN THE EU FOLLOW-ON PROSPECTUS FOR SECURITIES OTHER THAN SHARES OR TRANSFERABLE SECURITIES EQUIVALENT TO SHARES IN COMPANIES	
I. Summary	
The EU Follow-on prospectus must include a summary drawn up in accordance with Article 7(12b).	
II. Name of the issuer, Member State of incorporation, link to the issuer's website	
Identify the company issuing the securities, including its legal entity identifier (LEI), its legal and commercial name, its country of incorporation and the website where investors can find	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
information on the company's business operations, the products it makes or the services it provides, the principal markets where it competes, its major shareholders, the composition of its administrative, management and supervisory bodies and of its senior management and, where applicable, information incorporated by reference (with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus).	
III. Responsibility statement and statement on the competent authority	
1. Responsibility statement	
Identify the persons responsible for drawing up the EU Follow-on prospectus and include a statement by those persons that, to the best of their knowledge, the	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
information contained in the EU Follow-on prospectus is in accordance with the facts and that the EU Follow-on prospectus makes no omission likely to affect its import.	
Where applicable, the statement must contain information sourced from third parties, including the source(s) of that information, and statements or reports attributed to a person as an expert and the following details of that person:	
(a) name;	
(b) business address;	
(c) qualifications; and	
(d) material interest (if any) in the issuer.	
2. Statement on the competent authority	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
The statement must indicate the competent authority that has approved, in accordance with this Regulation, the EU Follow-on prospectus, specify that such approval is not an endorsement of the issuer nor of the quality of the securities to which the EU Follow-on prospectus relates, that the competent authority has only approved the EU Follow-on prospectus as meeting the standards of completeness, comprehensibility and consistency imposed by this Regulation, and specify that the EU Follow-on prospectus has been drawn up in accordance with Article 14b.	
IV. Risk factors	
A description of the material risks that are specific to the issuer and a description of the material risks that are specific to the securities being offered to the public and/or admitted to trading on a	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
regulated market, in a limited number of categories, in a section headed 'Risk Factors'.	
The risks shall be corroborated by the content of the EU Follow-on prospectus.	
V. Financial statements	
The financial statements (annual and half-yearly) published over the period of 12 months prior to the approval of the EU Follow-on prospectus. Where both annual and half-yearly financial statements have been published, only the annual statements must be required where they postdate the half-yearly financial statements.	IE (Comments):IE Could the Presidency or Commission clarify as to why the accounting standards to be used are not identified? In contrast, the auditing standards to be used by auditors are detailed below. We would ask if this is an oversight or there is a reason for allowing a local GAAP to be used in the presentation of the financial statements?
The annual financial statements must be independently audited. The audit report shall be prepared in accordance with Directive 2006/43/EC of the European Parliament and of the Council and	

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Commission proposal	Drafting Suggestions Comments
Regulation (EU) No 537/2014 of the European Parliament and of the Council.	
Where Directive 2006/43/EC and Regulation (EU) No 537/2014 do not apply, the annual financial statements must be audited or reported on as to whether or not, for the purposes of the EU Follow-on prospectus, they give a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the EU Follow-on prospectus:	
(a) a prominent statement disclosing which auditing standards have been applied;	
(b) an explanation of any significant departures from International Standards on Auditing.	

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Commission proposal	Drafting Suggestions Comments
Where audit reports on the annual financial statements have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers or an emphasis of matter, the reason must be given, and such qualifications, modifications, disclaimers or emphasis of matter must be reproduced in full.	
A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, must also be included, or an appropriate negative statement must be included.	
VI. Trend information	
A description of:	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
(a) the most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the EU Follow-on prospectus;	
(b) information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year;	
If there is no significant change in either of the trends referred to in points (a) or (b) of this section, a statement to that effect is to be made.	
VII. Terms and conditions of the offer, firm commitments and intentions to subscribe and key features of the underwriting and placement agreements.	LU (Drafting): LU VII. <u>Terms and conditions of the offer, and information on the admission to trading firm commitments and intentions to subscribe and key features of the underwriting and placement agreements.</u>

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
	LU (Comments): LU For readability purposes we propose to shorten the title, and to refer to the admission to trading for the sake of completeness.
Set out the offer price, the number of securities offered, the amount of the issue/offer and the conditions to which the offer is subject. If the amount is not fixed, an indication of the maximum amount of the securities to be offered (if available) and a description of the arrangements and the time period for announcing to the public the definitive amount of the offer.	LU (Comments): LU Considering that the reference to conditions to which the offer is subject is vague, we consider that the information should be further specified, notably as regard pricing information.
Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under 'best efforts' arrangements. Indication of the material features of the	

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Commission proposal	Drafting Suggestions Comments
agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.	
	LU (Drafting): LU <u>Where applicable, indicate the regulated markets, SME growth Market or the MTF where the securities are to be admitted to trading and, if known, the earliest dates on which the securities will be admitted to trading.</u> <u>Where applicable, details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.</u> LU (Comments): LU This amendment is consistent with Article 7, paragraph 12b, point (c)(iv), which requires information on the admission to trading in the summary of an EU Follow-on prospectus and Item IX of Annex VIII.
VIII. Essential information on the securities and on their subscription	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
Provide the following essential information about the securities offered to the public or admitted to trading on a regulated market:	
(a) the international security identification number (ISIN);	
(b) the rights attached to the securities, the procedure for the exercise of those rights and any limitations of those rights;	
(c) provide information on where the securities can be subscribed as well as on the time period, including any possible amendments, during which the offer will be open and a description of the application process together with the issue date of new securities;	
(d) An indication of the expected price at which the securities will be	

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Commission proposal	Drafting Suggestions Comments
offered or, in alternative, a description of the method of for determining the price, pursuant to Article 17 of Regulation (EU) 2017/1129 and the process for its disclosure;	
(e) information relating to interest payable or a description of the underlying, including the method used to relate the underlying and the rate, and an indication where information about the past and future performance of the underlying and its volatility can be obtained.	
Where applicable, information on the underlying securities and, where applicable, the issuer of the underlying securities.	
A warning that the tax legislation of the investor's Member State and of the issuer's country of incorporation may have an impact on the income received	

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Commission proposal	Drafting Suggestions Comments
from the securities.	
IX. Reasons for the offer, use of proceeds and, where applicable, ESG-related information	LU (Drafting): LU IX. Reasons for the <u>issuance offer</u>, use of proceeds and, where applicable, ESG-related information LU (Comments): LU We suggest amending the title of Item IX in order to be consistent with Article 14b, paragraph 2, point (c) of the Prospectus Regulation.
Provide information on the reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented in order of priority of such uses.	LU (Drafting): LU Provide information on the reasons for the <u>issuance offer</u> and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented in order of priority of such uses. LU (Comments): LU

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Commission proposal	Drafting Suggestions Comments
	We suggest this amendment in order to be consistent with Article 14b, paragraph 2, point (c) of the Prospectus Regulation.
Where the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, it must state the amount and sources of other funds needed. Details must also be given with regard to the use of the proceeds, in particular where proceeds are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.	
Where applicable, ESG-related information in accordance with the schedule as further specified in the delegated act referred to in Article 13(1), first subparagraph, taking into account the conditions set out in Article 13(1), second subparagraph, point (g).	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
X. Conflicts of interest	
Provide information about any interests related to the issuance, including conflicts of interest, and details of the persons involved and the nature of the interests.	
XI. Documents available	
A statement that for the term of the EU Follow-on prospectus the following documents, where applicable, can be inspected:	
(a) the up to date memorandum and articles of association of the issuer;	
(b) all reports, letters, and other documents, valuations and statements prepared by an expert at the issuer's request any part of which is included or referred to in the EU Follow-on prospectus.	

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Commission proposal	Drafting Suggestions Comments
An indication of the website on which the documents may be inspected.'	
<u>ANNEX II</u>	
'ANNEX VII	
INFORMATION TO BE INCLUDED IN THE EU GROWTH ISSUANCE DOCUMENT FOR SHARES AND OTHER TRANSFERABLE SECURITIES EQUIVALENT TO SHARES IN COMPANIES	
I. Summary	
The EU Growth issuance document must include a summary drawn up in accordance with Article 7(12b).	
II. Information about the issuer	
Identify the company issuing the shares,	

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Commission proposal	Drafting Suggestions Comments
including the place of registration of the issuer, its registration number and legal entity identifier ('LEI'), its legal and commercial name, the legislation under which the issuer operates, its country of incorporation, the address, telephone number of its registered office (or principal place of business if different from its registered office) and the website, if any, with a disclaimer that the information on the website does not form part of the EU Growth issuance document unless that information is incorporated by reference into the EU Growth issuance document.	
III. Responsibility statement and statement on the competent authority	
1. Responsibility statement	
Identify the persons responsible for drawing up the EU Growth issuance document and include a statement by	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
those persons that, to the best of their knowledge, the information contained in the EU Growth issuance document is in accordance with the facts and that the EU Growth issuance document makes no omission likely to affect its import.	
Where applicable, the statement must contain information sourced from third parties, including the source(s) of that information, and statements or reports attributed to a person as an expert and the following details of that person:	
(a) name;	
(b) business address;	
(c) qualifications; and	
(d) material interest (if any) in the issuer.	
2. Statement on the competent	

COM proposal of 07.12.22

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Commission proposal	Drafting Suggestions Comments
authority	
The statement must indicate the competent authority that has approved, in accordance with this Regulation, the EU Growth issuance document, specify that such approval is not an endorsement of the issuer nor of the quality of the shares to which the EU Growth issuance document relates, that the competent authority has only approved the EU Growth issuance document as meeting the standards of completeness, comprehensibility and consistency imposed by this Regulation, and specify that the EU Growth issuance document has been drawn up in accordance with Article 15a.	
IV. Risk factors	
A description of the material risks that are specific to the issuer and a description of the material risks that are	

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Commission proposal	Drafting Suggestions Comments
specific to the shares being offered to the public and/or admitted to trading on a regulated market, in a limited number of categories, in a section headed 'Risk Factors'.	
The risks shall be corroborated by the content of the EU Growth issuance document.	
V. Growth strategy and business overview	
1. Growth Strategy and objectives	
A description of the issuer's business strategy, including growth potential and expectations for the future, and strategic objectives (both financial and non-financial, if any). This description shall take into account the issuer's future challenges and prospects.	

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Commission proposal	Drafting Suggestions Comments
2. Principal activities and markets	
A description of the issuer's principal activities, including: (a) the main categories of products sold and/or services performed; (b) an indication of any significant new products, services or activities that have been introduced since the publication of the latest audited financial statements. A description of the principal markets in which the issuer competes, including market growth, trends and competitive situation.	
3. Investments	
To the extent not covered elsewhere in the EU Growth issuance document a description, (including the amount) of the issuer's material investments from the end of the period covered by the historical financial information included in the EU Growth	

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Commission proposal	Drafting Suggestions Comments
issuance document up to the date of the EU Growth issuance document and, if relevant, a description of any material investments of the issuer's that are in progress or for which firm commitments have already been made.	
VI. Organisational structure	
If the issuer is part of a group and where not covered elsewhere in the EU Growth issuance document and to the extent necessary for an understanding of the issuer's business as a whole, a diagram of the organisational structure.	
VII. Corporate Governance	
Provide the following information for the members of the administrative, management and/or supervisory bodies, any senior manager who is relevant to establishing that the issuer has the appropriate expertise and	

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Commission proposal	Drafting Suggestions Comments
experience for the management of the issuer's business, and, in the case of a limited partnership with a share capital, partners with unlimited liability:	
(a) names, business addresses and functions within the issuer of the following persons, details on their relevant management expertise and experience and an indication of the principal activities performed by them outside of the issuer where these are significant with respect to that issuer;	
(b) details of the nature of any family relationship between any of those persons;	
(c) details, for at least the last five years, of any convictions in relation to fraudulent offences and details of any official public incrimination and/or sanctions involving such persons by statutory or regulatory authorities	

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Commission proposal	Drafting Suggestions Comments
(including designated professional bodies) and whether they have ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer. If there is no such information required to be disclosed, a statement to that effect is to be made.	
VIII. Financial statements	
The financial statements (annual and half-yearly) published over the period of 12 months prior to the approval of the EU Growth issuance document. Where both annual and half-yearly financial statements have been published, only the annual statements must be required where they postdate the half-yearly financial statements.	IE (Comments):IE Could the Presidency or Commission clarify as to why the accounting standards to be used are not identified? In contrast, the auditing standards to be used by auditors are detailed below. We would ask if this is an oversight or there is a reason for allowing a local GAAP to be used in the presentation of the financial statements? DE (Drafting): DE

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Commission proposal	Drafting Suggestions Comments
	[...] <u>Accounting Standards</u> <u>The financial information must be prepared according to International Financial Reporting Standards as endorsed in the Union based on Regulation (EC) No 1606/2002.</u> <u>If Regulation (EC) No 1606/2002 is not applicable the financial information must be prepared according to:</u> <u>(a) a Member State's national accounting standards for issuers from the EEA, as required by Directive 2013/34/EU;</u> <u>(b) a third country's national accounting standards equivalent to Regulation (EC) No 1606/2002 for third country issuers. If such third country's national accounting standards are not equivalent to Regulation (EC) No 1606/2002 the financial statements shall be restated in accordance with that Regulation.</u> <u>Change of accounting framework</u>

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Commission proposal	Drafting Suggestions Comments
	<u>The last audited historical financial information, containing comparative information for the previous year, must be presented and prepared in a form consistent with the accounting standards framework that will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.</u> <u>Changes within the accounting framework applicable to the issuer do not require the audited financial statements to be restated. However, if the issuer intends to adopt a new accounting standards framework in its next published financial statements, at least one complete set of financial statements, (as defined by IAS 1 Presentation of Financial Statements), including comparatives, must be prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements, having regard to accounting standards and policies and legislation applicable to such annual financial statements.</u> <u>Where the audited financial information is prepared according to national accounting standards, they must include at least the following:</u> <u>(a) the balance sheet;</u>

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Commission proposal	Drafting Suggestions Comments
	<u>(b) the income statement;</u> <u>(c) the accounting policies and explanatory notes.</u> <u>Consolidated financial statements</u> <u>If the issuer prepares both stand-alone and consolidated financial statements, include at least the consolidated financial statements in the registration document.</u> <u>Age of Financial Information</u> <u>The balance sheet date of the last year of audited financial information may not be older than one of the following:</u> <u>(a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;</u> <u>(b) 16 months from the date of the registration document if the issuer includes interim financial</u>

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Commission proposal	Drafting Suggestions Comments
	<u>statements in the registration document which is not audited.</u> <u>Where the registration document contains no interim financial information, the balance sheet date of the last year of audited financial statements may not be older than 16 months from the date of the registration document.</u> DE (Comments): DE In terms of investor protection and information that is necessary for an informed investment decision for this type of issuer/prospectus, it is very material to specify the requirements regarding the accounting standards and the age of the financial information, as is currently provided for in Annex 24 Section 5, items 5.1.3 – 5.1.7 of Commission Delegated Regulation 2019/980 regarding the EU Growth prospectuses. Issuers eligible for this regime may not have published any financial information before, may not be listed on any market and therefore not subject to any prior transparency requirements.
The annual financial statements must be independently audited. The audit report must be prepared in accordance with Directive 2006/43/EC of the European Parliament and of the Council and	

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Commission proposal	Drafting Suggestions Comments
Regulation (EU) No 537/2014 of the European Parliament and of the Council.	
Where Directive 2006/43/EC and Regulation (EU) No 537/2014 do not apply, the annual financial statements must be audited or reported on as to whether or not, for the purposes of the EU Growth issuance document prospectus, they give a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the EU Growth issuance document:	
(a) a prominent statement disclosing which auditing standards have been applied;	
(b) an explanation of any significant departures from International Standards on Auditing.	

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Commission proposal	Drafting Suggestions Comments
Where audit reports on the annual financial statements have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers or an emphasis of matter, the reason must be given, and such qualifications, modifications, disclaimers or emphasis of matter must be reproduced in full.	
A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, must also be included, or an appropriate negative statement must be included.	
Where applicable, pro forma information must also be included.	
IX. Management report including,	

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Commission proposal	Drafting Suggestions Comments
where applicable, the sustainability reporting (issuers with market capitalisation above EUR 200 000 000 only)	
The management report as referred to in Chapters 5 and 6 of Directive 2013/34/EU for the periods covered by the historical financial information including, where applicable, the sustainability reporting, must be incorporated by reference.	
This requirement applies only to issuers with market capitalisation above EUR 200 000 000.	
X. Dividend policy	
A description of the issuer's policy on dividend distributions and any current restrictions thereon, as well as on share repurchases.	

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Commission proposal	Drafting Suggestions Comments
XI. Terms and conditions of the offer, firm commitments and intentions to subscribe and key features of the underwriting and placement agreements	
Set out the offer price, the number of shares offered, the amount of the issue/offer, the conditions to which the offer is subject, and the procedure for the exercise of any right of pre-emption.	LU (Comments): LU We refer to our previous comments made in relation to the EU Follow-on prospectus.
To the extent known to the issuer, provide information on whether major shareholders or members of the issuer's management, supervisory or administrative bodies intend to subscribe for the offer, or whether any person intends to subscribe for more than 5 % of the offer.	
Present any firm commitments to subscribe for more than 5 % of the offer and all material features of the	

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Commission proposal	Drafting Suggestions Comments
underwriting and placement agreements, including the name and address of the entities agreeing to underwrite or place the issue on a firm commitment basis or under 'best efforts' arrangements and the quotas.	
Where applicable, indicate the SME growth Market or the MTF where the securities are to be admitted to trading and, if known, the earliest dates on which the securities will be admitted to trading.	
Where applicable, details of any entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	
XII. Essential information on the shares and on their subscription	
Provide the following essential	

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information about the shares offered to the public:	
(a) the international security identification number (ISIN);	
(b) the rights attached to the shares, the procedure for the exercise of those rights and any limitations of those rights;	
(c) where the shares can be subscribed as well as on the time period, including any possible amendments, during which the offer will be open and a description of the application process together with the issue date of new shares.	
Where applicable, information on the underlying securities and, where applicable, the issuer of the underlying securities.	LU (Comments): LU The scope of this requirement is not clear. We have the same comments as for the corresponding requirement under the EU Follow-on prospectus.

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Commission proposal	Drafting Suggestions Comments
A warning that the tax legislation of the investor's Member State and of the issuer's country of incorporation may have an impact on the income received from the shares.	
XIII. Reason for the offer and use of proceeds	
Provide information on the reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented in order of priority of such uses.	
Where the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, it must state the amount and sources of other funds needed. Details must also be given with regard to the use of the proceeds, in particular where proceeds	

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Commission proposal	Drafting Suggestions Comments
are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.	
Provide an explanation about how the proceeds from the offer align with the business strategy and strategic objectives.	
XIV. Working capital statement	
Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how the issuer proposes to provide the additional working capital needed.	
XV. Conflicts of interest	
Provide information about any interests related to the issuance, including conflicts of interest, and details of the	

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persons involved and the nature of the interests.	
XVI. Dilution and shareholding after the issuance	
Present a comparison of participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the assumption that existing shareholders do not subscribe for the new shares and, separately, with the assumption that existing shareholders do take up their entitlement.	
XVII. Documents available	
A statement that for the term of the EU Growth issuance document the following documents, where applicable, can be inspected:	
(a) the up to date memorandum and	

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Commission proposal	Drafting Suggestions Comments
articles of association of the issuer;	
(b) all reports, letters, and other documents, valuations and statements prepared by an expert at the issuer's request any part of which is included or referred to in the EU Growth issuance document.	
An indication of the website on which the documents may be inspected.	
ANNEX VIII	
INFORMATION TO BE INCLUDED IN THE EU GROWTH ISSUANCE DOCUMENT FOR SECURITIES OTHER THAN SHARES OR TRANSFERABLE SECURITIES EQUIVALENT TO SHARES IN COMPANIES	
I. Summary	

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Commission proposal	Drafting Suggestions Comments
The EU Growth issuance document must include a summary drawn up in accordance with Article 7(12b).	
II. Information about the issuer	
Identify the company issuing the securities, including the place of registration of the issuer, its registration number and legal entity identifier ('LEI'), its legal and commercial name, the legislation under which the issuer operates, its country of incorporation, the address, telephone number of its registered office (or principal place of business if different from its registered office) and the website, if any, with a disclaimer that the information on the website does not form part of the EU Growth issuance document unless that information is incorporated by reference into the EU Growth issuance document.	
Any recent events particular to	

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Commission proposal	Drafting Suggestions Comments
the issuer and which are to a material extent relevant to an evaluation of the issuer's solvency.	
Where applicable, credit ratings assigned to the issuer at the request or with the cooperation of the issuer in the rating process.	
III. Responsibility statement and statement on the competent authority	
1. Responsibility statement	
Identify the persons responsible for drawing up the EU Growth issuance document and include a statement by those persons that, to the best of their knowledge, the information contained in the EU Growth issuance document is in accordance with the facts and that the EU Growth issuance document makes no omission likely to affect its import.	

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Commission proposal	Drafting Suggestions Comments
Where applicable, the statement must contain information sourced from third parties, including the source(s) of that information, and statements or reports attributed to a person as an expert and the following details of that person:	
(a) name;	
(b) business address;	
(c) qualifications; and	
(d) material interest (if any) in the issuer.	
2. Statement on the competent authority	
The statement must indicate the competent authority that has approved, in accordance with this Regulation, the EU Growth issuance document, specify that such approval is not an endorsement of	

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Commission proposal	Drafting Suggestions Comments
the issuer nor of the quality of the securities to which the EU Growth issuance document relates, that the competent authority has only approved the EU Growth issuance document as meeting the standards of completeness, comprehensibility and consistency imposed by this Regulation, and specify that the EU Growth issuance document has been drawn up in accordance with Article 15a.	
IV. Risk factors	
A description of the material risks that are specific to the issuer and a description of the material risks that are specific to the securities being offered to the public and/or admitted to trading on a regulated market, in a limited number of categories, in a section headed 'Risk Factors'.	
The risks shall be corroborated by the	

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Commission proposal	Drafting Suggestions Comments
content of the EU Growth issuance document.	
V. Growth strategy and business overview	
A brief description of the issuer's business strategy, including growth potential.	
A description of the issuer's principal activities, including:	
(a) the main categories of products sold and/or services performed;	
(b) an indication of any significant new products, services or activities;	
(c) the principal markets in which the issuer competes.	
VI. Organisational structure	

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Commission proposal	Drafting Suggestions Comments
If the issuer is part of a group and where not covered elsewhere in the EU Growth issuance document and to the extent necessary for an understanding of the issuer's business as a whole, a diagram of the organisational structure.	
VII. Corporate Governance	
Provide a brief description of board practices and governance.	DE (Comments): DE "What do „board practices“ and „governance“ refer to? Both terms seem to be very broad. Furthermore, what exactly and what time period should " principal activities performed by them outside of that issuer where these are significant" cover?"
Provide the names, business addresses and functions within the issuer of the following persons and an indication of the principal activities performed by them outside of that issuer where these are significant with respect to that issuer:	
(a) members of the administrative,	

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Commission proposal	Drafting Suggestions Comments
management and/or supervisory bodies;	
(b) partners with unlimited liability, in the case of a limited partnership with a share capital.	
VIII. Financial statements	
The financial statements (annual and half-yearly) published over the period of 12 months prior to the approval of the EU Growth issuance document. Where both annual and half-yearly financial statements have been published, only the annual statements must be required where they postdate the half-yearly financial statements.	IE (Comments):IE Could the Presidency or Commission clarify as to why the accounting standards to be used are not identified? In contrast, the auditing standards to be used by auditors are detailed below. We would ask if this is an oversight or there is a reason for allowing a local GAAP to be used in the presentation of the financial statements? DE (Drafting): DE [...] <u>Accounting Standards</u> <u>The financial information must be prepared according to International Financial Reporting</u>

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	<u>Standards as endorsed in the Union based on Regulation (EC) No 1606/2002.</u> <u>If Regulation (EC) No 1606/2002 is not applicable the financial information must be prepared according to:</u> <u>(a) a Member State's national accounting standards for issuers from the EEA, as required by Directive 2013/34/EU;</u> <u>(b) a third country's national accounting standards equivalent to Regulation (EC) No 1606/2002 for third country issuers. If such third country's national accounting standards are not equivalent to Regulation (EC) No 1606/2002 the financial statements shall be restated in accordance with that Regulation.</u> <u>Change of accounting framework</u> <u>The last audited historical financial information, containing comparative information for the previous year, must be presented and prepared in a form consistent with the accounting standards framework that will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such</u>

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	<u>annual financial statements.</u> <u>Changes within the accounting framework applicable to the issuer do not require the audited financial statements to be restated. However, if the issuer intends to adopt a new accounting standards framework in its next published financial statements, at least one complete set of financial statements, (as defined by IAS 1 Presentation of Financial Statements), including comparatives, must be prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements, having regard to accounting standards and policies and legislation applicable to such annual financial statements.</u> <u>Where the audited financial information is prepared according to national accounting standards, they must include at least the following:</u> <u>(a) the balance sheet;</u> <u>(b) the income statement;</u> <u>(c) the accounting policies and explanatory notes.</u>

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Commission proposal	Drafting Suggestions Comments
	<u>Consolidated financial statements</u> <u>If the issuer prepares both stand-alone and consolidated financial statements, include at least the consolidated financial statements in the registration document.</u> <u>Age of Financial Information</u> <u>The balance sheet date of the last year of audited financial information may not be older than one of the following:</u> <u>(a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;</u> <u>(b) 16 months from the date of the registration document if the issuer includes interim financial statements in the registration document which is not audited.</u> <u>Where the registration document contains no interim financial information, the balance sheet date of the last year of audited financial statements may not be older than 16 months from the</u>

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Commission proposal	Drafting Suggestions Comments
	<u>date of the registration document.</u> DE (Comments): DE In terms of investor protection and information that is necessary for an informed investment decision for this type of issuer/prospectus, it is very material to specify the requirements regarding the accounting standards and the age of the financial information, as is currently provided for in Annex 25 Section 5, items 5.1.3 – 5.1.7 of Commission Delegated Regulation 2019/980 regarding the EU Growth prospectuses. Issuers eligible for this regime may not have published any financial information before, may not be listed on any market and therefore not subject to any prior transparency requirements.
The annual financial statements must be independently audited. The audit report must be prepared in accordance with Directive 2006/43/EC of the European Parliament and of the Council and Regulation (EU) No 537/2014 of the European Parliament and of the Council.	
Where Directive 2006/43/EC and Regulation (EU) No 537/2014 do not	

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Commission proposal	Drafting Suggestions Comments
apply, the annual financial statements must be audited or reported on as to whether or not, for the purposes of the EU Growth issuance document prospectus, they give a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the EU Growth issuance document:	
(a) a prominent statement disclosing which auditing standards have been applied;	
(b) an explanation of any significant departures from International Standards on Auditing.	
Where audit reports on the annual financial statements have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers or an emphasis of	

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Commission proposal	Drafting Suggestions Comments
matter, the reason must be given, and such qualifications, modifications, disclaimers or emphasis of matter must be reproduced in full.	
A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, must also be included, or an appropriate negative statement must be included.	
IX. Terms and conditions of the offer, firm commitments and intentions to subscribe and key features of the underwriting and placement agreements	LU (Drafting): LU IX. <u>Terms and conditions of the offer, and informaton on the admission to trading firm commitments and intentions to subscribe and key features of the underwriting and placement agreements</u> LU

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Commission proposal	Drafting Suggestions Comments
	(Comments): LU For the sake of readability and to be consistent with the text provided under this Item, we suggest to shorten the title.
Set out the offer price, the number of securities offered, the amount of the issue/offer and the conditions to which the offer is subject. If the amount is not fixed, an indication of the maximum amount of the securities to be offered (if available) and a description of the arrangements and the time period for announcing to the public the definitive amount of the offer.	LU (Comments): LU We have the same comments as for the other Annexes.
Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under 'best efforts' arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a	

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Commission proposal	Drafting Suggestions Comments
statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.	
Where applicable, indicate the SME growth Market or the MTF where the securities are to be admitted to trading and, if known, the earliest dates on which the securities will be admitted to trading.	
Where applicable, details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	
X. Essential information on the securities and on their subscription	
(a) the international security identification number (ISIN);	

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Commission proposal	Drafting Suggestions Comments
(b) the rights attached to the securities, the procedure for the exercise of those rights and any limitations of those rights;	
(c) provide information on where the securities can be subscribed as well as on the time period, including any possible amendments, during which the offer will be open and a description of the application process together with the issue date of new securities;	
(d) an indication of the expected price at which the securities will be offered or, in alternative, a description of the method of for determining the price, pursuant to Article 17 of Regulation (EU) 2017/1129 and the process for its disclosure;	
(d) information relating to interest payable or a description of the underlying, including the method used to	

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Commission proposal	Drafting Suggestions Comments
relate the underlying and the rate, and an indication where information about the past and future performance of the underlying and its volatility can be obtained.	
Where applicable, information on the underlying securities and, where applicable, the issuer of the underlying securities.	
A warning that the tax legislation of the investor's Member State and of the issuer's country of incorporation may have an impact on the income received from the securities.	
XI. Reasons for the offer, use of proceeds and, where applicable, ESG-related information	
Provide information on the reasons for the offer and, where applicable, the estimated net amount of the proceeds	

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Commission proposal	Drafting Suggestions Comments
broken into each principal intended use and presented in order of priority of such uses.	
Where the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, it must state the amount and sources of other funds needed. Details must also be given with regard to the use of the proceeds, in particular where proceeds are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.	
Where applicable, ESG-related information in accordance with the schedule as further specified in the delegated act referred to in Article 13(1), first subparagraph, taking into account the conditions set out in Article 13(1), second subparagraph, point (g).	

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Commission proposal	Drafting Suggestions Comments
XII. Conflicts of interest	
Provide information about any interests related to the issuance, including conflicts of interest, and details of the persons involved and the nature of the interests.	
XIII. Documents available	
A statement that for the term of the EU Growth issuance document the following documents, where applicable, can be inspected:	
(a) the up to date memorandum and articles of association of the issuer;	
(b) all reports, letters, and other documents, valuations and statements prepared by an expert at the issuer's request any part of which is included or referred to in the EU Growth issuance	

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Commission proposal	Drafting Suggestions Comments
document.	
An indication of the website on which the documents may be inspected.	
ANNEX IX	
INFORMATION TO BE INCLUDED IN THE DOCUMENT REFERRED TO IN ARTICLE 1(4), FIRST SUBPARAGRAH, POINT (DB), AND IN ARTICLE 1(5), FIRST SUBPARAGRAH, POINT (BA)	DE (Comments): DE
I. The name of the issuer (including its LEI), country of incorporation, link to the issuer's website.	LU (Drafting): LU I. The name of the issuer (including its LEI), and as the case may be of the guarantor, the country of incorporation, a link to the <u>issuer's and as the case may be, the guarantor's</u> website. LU (Comments): LU For the sake of completeness, reference has been added to the guarantor.

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Commission proposal	Drafting Suggestions Comments
II. A declaration by those responsible for the document that, to the best of their knowledge, the information contained in the document is in accordance with the facts and that the document makes no omission likely to affect its import.	
III. A statement that the document does not constitute a prospectus within the meaning of Regulation (EU) 2017/1129 and that the document has not been subject to the scrutiny and approval by the relevant competent authority in accordance with Article 20 of Regulation (EU) 2017/1129.	LU (Drafting): LU III. <u>The name of the competent authority of the home Member State.</u> A statement that the document does not constitute a prospectus within the meaning of Regulation (EU) 2017/1129 and that the document has not been subject to the scrutiny and approval by the <u>competent authority of the home Member State</u>relevant competent authority in accordance with Article 20 of Regulation (EU) 2017/1129. LU (Comments): LU A clear identification of the home competent authority is necessary for supervision purposes.

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Commission proposal	Drafting Suggestions Comments
IV. A statement of continuous compliance with reporting and disclosure obligations throughout the period of being admitted to trading, including under Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, Commission Delegated Regulation (EU) 2017/565.	HR (Comments): HR Issuer on SME Growth Market can not give a statement of compliance with Transparency directive. Issuer on SME Growth Mrket needs to comply with provisions of the Article 33(3) of MIFID II and can give compliance statemnt in the remit of Mifid II. We should assess if it would be sufficient informationa or Short summary document shoul contain more information regarding SMEs.
V. An indication of where the regulated information published by the issuer pursuant to ongoing disclosure obligations is available and, where applicable, where the most recent prospectus can be obtained.	
	DE (Drafting): DE <u>Va. For equity securities, a statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how the issuer proposes to provide the additional working capital needed.</u> DE

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Commission proposal	Drafting Suggestions Comments
	(Comments): DE In terms of investor protection, for equity securities it is essential, that the issuer also provides a working capital statement, given the extent of this prospectus exemption and the limited information otherwise required. Furthermore, this additional requirement is not too burdensome for the issuer compared to the additional value for investors.
VI. Where there is an offer of securities to the public, a statement that at the time of the offer the issuer is not delaying the disclosure of inside information pursuant to Regulation (EU) No 596/2014.	FR (Comments):FR This item means that any issuer which is in the process of delaying the disclosure of inside information cannot avail itself of the prospectus exemption of Art. 1(4)(db) and 1(5)(ba). Such a precondition to the use of the '18 months' exemption should not be 'hidden' in Annex IX and should be set out explicitly in Art. 1(4)(db) and 1(5)(ba), as it is a substantial feature of the proposed exemption.
VII. The reason for the issuance and use of proceeds.	
VIII. The risk factors specific to the issuance.	PT (Drafting):PT VIII. The risk factors specific to the issuer and the issuance.

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Commission proposal	Drafting Suggestions Comments
	PT (Comments):PT We believe that this document should not only include the risks associated with the issuance of securities, but also the risks associated with the issuer. In our view, this would provide a more comprehensive and transparent representation of the investment opportunity to potential investors.
IX. The characteristics of the securities (including their ISIN).	
X. For shares, the dilution and shareholding after the issuance.	
XI. Where there is an offer of securities to the public, the terms and conditions of the offer.	
XII. Where applicable, any regulated markets or SME growth markets where the securities fungible with the securities to be offered to the public or to be admitted to trading on a regulated market are already admitted to trading.'	

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Commission proposal	Drafting Suggestions Comments
	End