



Council of the European Union
General Secretariat

**Interinstitutional files:
2022/0405 (COD)**

Brussels, 15 February 2023

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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 Amending Directive: Directive amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC / replies from 18 MS

COM proposal of 07.12.22

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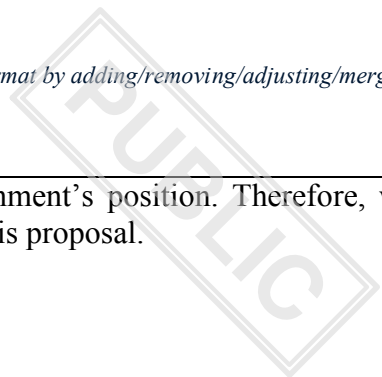
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Commission proposal	Drafting Suggestions Comments
<p align="center">2022/0405 (COD)</p> <p align="center">Proposal for a</p> <p align="center">DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p align="center">amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC</p> <p align="center">(Text with EEA relevance)</p>	<p>SK</p> <p>(Comments):SK</p> <p>SK: The Slovak Republic applies a scrutiny reservation and therefore our comments are still preliminary.</p> <p>Generally Slovakia supports the solutions provided for in this draft directive.</p> <p>CZ</p> <p>(Comments):CZ</p> <p>Our remarks are only of preliminary nature.</p> <p>In general we welcome the initiative.</p> <p>PL</p> <p>(Comments):PL</p> <p>PL: Overall, we support the aim of the amendments proposed in this legislative proposal. We agree with the need to increase the level of investment research. We also believe that repealing Directive 2001/34/EC will provide more legal clarity which will be beneficial to market participants. Finally, we support the introduction of the possibility to register only a segment of an MTF as an SME growth market.</p> <p>Please note that all the comments in this table have a preliminary character, as Poland did not</p>

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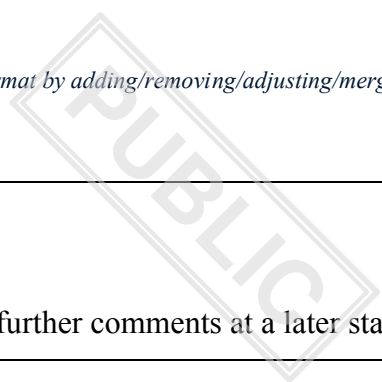


	<p>yet adopt an official Government’s position. Therefore, we may submit further comments at later stages of the work on this proposal.</p> <p>NL (Comments):NL</p> <p>NL (Comments): <u>All our comments are made under parliamentary scrutiny.</u></p> <p>EL (Comments):EL EL Comment: As a general comment, we agree with the rationale and the objective of the proposal.</p> <p>LU (Comments):LU The concept of official listing under the Listing Directive, which is proposed to be repealed by this proposal, should be maintained as it provides a sound legal framework (with no known shortcomings) for issuers wishing to be listed only, without admission to trading. Directive 2001/34/EC is hence not redundant and, on the contrary, has a positive impact on the EU capital markets and the CMU. There is a clear interest in maintaining a distinction between the regimes for listing on official lists and admission to trading on a trading venue, in particular in the interest of the attractiveness and competitiveness of EU capital markets.</p>
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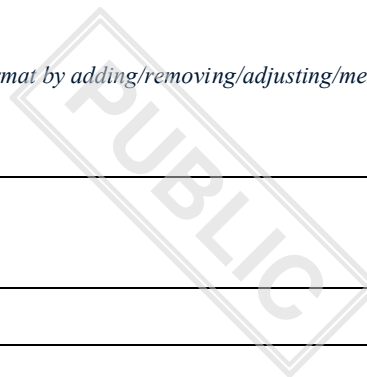


	<p>BE</p> <p>(Comments):BE</p> <p>We might have further comments at a later stage regarding the recitals.</p>
	<p>CZ</p> <p>(Comments):CZ</p> <p>Plese consider, whether it would not be desirable to unify the usesage of articles “a” and “an”. In the text “a MFT” but “an SME” are used in different places throughtout the text. In order to resistent we recommend use of “an MTF” and “an SME”.</p>
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50, 53(1) and 114 thereof,	
Having regard to the proposal from the European Commission,	

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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) Directive 2014/65/EU of the European Parliament and of the Council ² has been amended by Regulation (EU) 2019/2115 of the European Parliament and of the Council ³ , which	

¹ OJ C , , p. .

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

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

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<p>introduced proportionate alleviations to enhance the use of SME growth markets and to reduce the excessive regulatory requirements for issuers seeking admission of securities on SME growth markets, while preserving an appropriate level of investor protection and market integrity. However, to streamline the listing process and to render the regulatory treatment of companies more flexible and proportionate to their size, further amendments to Directive 2014/65/EU are necessary.</p>	
<p>(2) Directive 2014/65/EU and Commission Delegated Directive (EU) 2017/593⁴ set out the conditions under which the provision of investment research by third parties to</p>	<p>CY (Comments):CY Cyprus supports this proposal. However, it should be ensured that conflicts of interest is mitigated.</p>

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

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<p>investment firms providing portfolio management or other investment or ancillary services is not to be regarded as an inducement. In order to foster more investment research on companies in the Union, in particular small and medium capitalisation companies, and to bring those companies greater visibility and more prospect of attracting potential investors, it is necessary to introduce some amendments to that Directive.</p>	<p>NL (Comments):NL NL (Comments): See also our comments on recital 4. We are not convinced by the analysis that this amendment will lead to more and a higher quality of investment research.</p>
<p>(3) The provisions concerning research laid down in Directive 2014/65/EU require investment firms to separate payments which they receive as brokerage commissions from the compensation perceived for providing investment research ('research unbundling rules'), or to pay for investment research from their own resources and assess the quality of the</p>	

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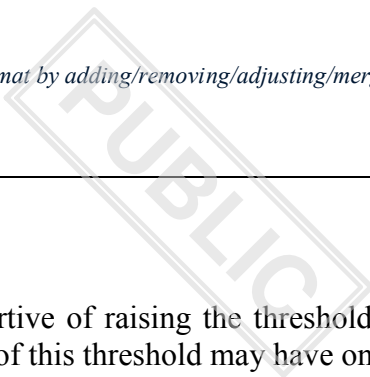
<p>research they purchase based on robust quality criteria and the ability of such research to contribute to better investment decisions. In 2021, those rules have been amended by Directive (EU) 2021/338 of the European Parliament and of the Council⁵ to allow for bundled payments for execution services and research for small and medium capitalisation companies below a market capitalisation of EUR 1 billion. The decline of investment research has, however, not slowed down.</p>	
<p>(4) In order to revitalise the market for investment research and to ensure sufficient research coverage of companies, in particular the small and medium capitalisation companies,</p>	<p>CY (Comments):CY Cyprus is flexible with regard to this proposal, but it should be ensured that conflicts of interest are mitigated.</p>

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

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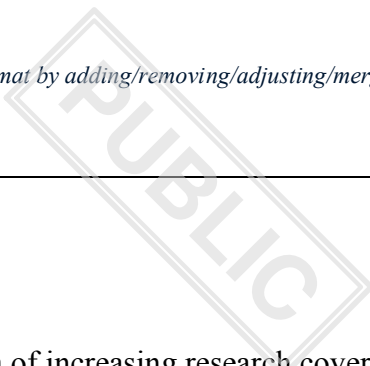


<p>further alleviation of the research unbundling rules are necessary. By increasing from EUR 1 billion to EUR 10 billion the threshold of companies’ market capitalisation below which the unbundling rules do not apply, more small and medium capitalisation companies, and in particular more medium capitalisation companies will benefit from a larger research coverage, bringing those companies more visibility from potential investors and thus increasing their capacity to raise funding in the markets.</p>	<p>PL (Comments):PL PL: In general we are supportive of raising the threshold. However, we are still analysing the impact that such a high level of this threshold may have on the Polish market.</p> <p>NL (Comments):NL NL (Comments): The Netherlands has its doubts whether the proposed increase of the threshold is effective and proportional. We question whether this proposal will lead to more research into smaller listed companies. Recent reports of ESMA show that the current regulations have not had a negative impact on the quantity of research. Moreover, recent amendments – such as the rebundling below EUR 1 billion as part of the Capital Markets Recovery Package – have only recently come into force, so their full effects are still to be seen. Further evaluation is needed to assess whether rebundling is effective, and at which level a threshold should be set.</p> <p>We further would like to see a (qualitative and quantitative) assessment of the foreseen effects of the proposal, that for example addresses these questions: What is the rationale behind this increase and the set level of EUR 10 billion? How many EU companies or what percentage of the companies (per Member State) fall below the EUR 10</p>
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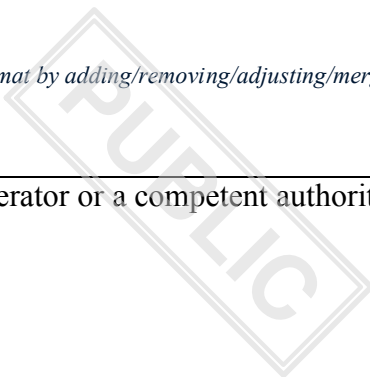


	<p>billion threshold?</p> <p>IE (Comments):IE We generally support the idea of increasing research coverage for SMEs.</p> <p>BE (Comments):BE See our comments below about this increase of the threshold. This recital may need to be amended at a later stage.</p> <p>DE (Comments): DE Increasing the threshold from EUR 1 billion to EUR 10 billion would cover even blue chips of European Prime Standards. Therefore, the new threshold may be set too high if it shall be focused only on SMEs. Currently, further market analysis is necessary on this respect so that Germany reserves the right to make further changes to a new threshold for the future.</p>
<p>(5) In addition, to further support the coverage of small and medium capitalisation companies by investment research, research</p>	<p>CY (Comments):CY Cyprus supports this proposal. However, code of conduct should be developed on a unified</p>

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<p>material paid fully or partially by issuers should be labelled as ‘issuer-sponsored research’. To ensure an adequate level of objectivity and independence of such research material, such material should be produced in line with a code of conduct developed or endorsed by a market operator registered in a Member State or by a competent authority. In order to support more visibility of the issuer-sponsored research, issuers should have the possibility to submit their issuer-sponsored research to the relevant collection body as defined⁶ in [Article 2 (2) of the proposal for a Regulation⁷ on a European Single Access Point].</p>	<p>manner and not by market operator or a competent authority.</p> <p>NL (Comments):NL</p> <p>NL (Comments): Our preliminary view is that the Netherlands is supportive of the initiative to improve the objectivity of research and creating a code of conduct. We have however scrutiny reservations on the details of this code and the desirability of a code of conduct that can differ per market operator or competent authority. How is the risk of divergence mitigated and will there be a register where these codes of conduct can be consulted (e.g. ESMA or in ESAP)?</p> <p>LU (Comments):LU Clarification could be provided as to whether the provision “paid wholly or partly by the issuers” covers all potential situations that may arise in this context (e.g. research paid for by the issuer’s parent company).</p> <p>BE</p>
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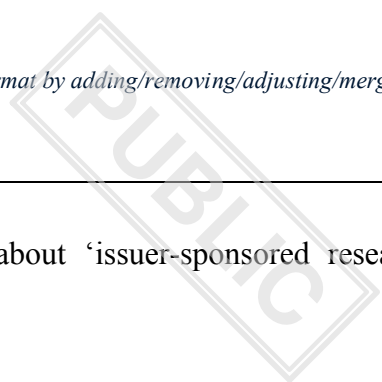
⁶ See Article2.2 o proposal for a Regulation [2021.78.COD]

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

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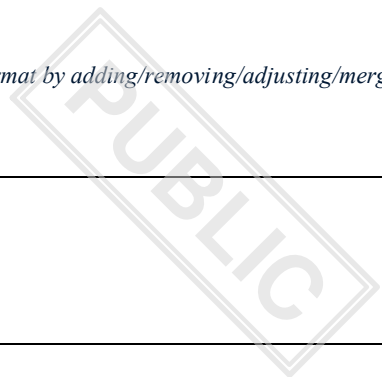


	<p>(Comments):BE See our comments below about ‘issuer-sponsored research’. This recital may need to be amended at a later stage.</p> <p>DE (Comments): DE The content of a code of conduct developed or endorsed by a market operator should be further specified by e.g. ESMA guidelines.</p>
<p>(6) Directive 2014/65/EU introduced the SME growth market category to increase the visibility and profile of markets specialised in SMEs and foster the development of common regulatory standards in the Union of markets specialised in SMEs. SME growth markets play a key function in facilitating access to capital for those smaller issuers by catering for their needs. To foster the development of such specialised markets and to limit the organisational burden for the operators of multilateral trading facilities (MTFs), it is necessary to allow the segment of</p>	<p>CY (Comments):CY Cyprus supports this proposal, as it is already implemented through a q&a issued by ESMA SMSC.</p>

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<p>a MTF to apply to become a SME growth market provided that such segment is clearly separated from the rest of the MTF.</p>	
<p>(7) Directive 2001/34/EC of the European Parliament and of the Council⁸ lays down rules concerning listing on Union markets. That Directive aims at coordinating the rules on the admission of securities to official stock exchange listing and on information to be published on those securities to provide equivalent protection for investors at Union level. That Directive also lays down the rules of the regulatory and supervisory framework for Union primary markets. In the course of the</p>	<p>HU (Comments):HU While the Listing Directive has been amended over the years and some of its functions have been transferred to or replaced by other regimes (in particular the Prospectus Regulation, the Transparency Directive, and MiFID II) there are still important elements that we consider crucial and should be retained. The national regime transposing the Listing Directive provides certain flexibility that, for example, the “admission to trading” regime under MiFID II does not provide. In particular, (i) the role as legal basis of the listing rules of exchanges, (ii) market acceptance of the Listing Directive’s regime, (iii) the ease of dual-listing, and (iv) implications for investment mandates and taxation, still apply.</p>

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

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<p>years, Directive 2001/34/EC has been amended significantly several times. Directives 2003/71/EC of the European Parliament and of the Council⁹ and Directive 2004/109/EC of the European Parliament and of the Council¹⁰ have replaced most of the provisions harmonising the conditions for the provision of information regarding requests for the admission of securities to official stock exchange listing and the information on securities admitted to trading, and have made large parts of Directive 2001/34/EC redundant. Directive 2001/34/EC as a minimum harmonisation Directive gives Member States a rather broad discretion to deviate from the rules laid down in that Directive, which has led to market</p>	
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⁹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).
¹⁰ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

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<p>fragmentation in the Union. To drive market harmonisation at Union level and create a single rule book, Directive 2001/34/EC should be repealed.</p>	
<p>(8) Directive 2014/65/EU, like Directive 2001/34/EC, provides for the regulation of markets of financial instruments and strengthens investor protection in the Union. Directive 2014/65/EU also sets out rules on the admission of financial instruments to trading. By extending the scope of Directive 2014/65/EU to cover specific provisions from Directive 2001/34/EC will ensure that all relevant provisions from Directive 2001/34/EC are maintained. A number of provisions of Directive 2001/34/EC, including the requirements on free float and market capitalisation which still apply, are enforced by competent authorities and are</p>	<p>LU (Comments):LU Please find our detailed comments on this issue in Article 2 of this proposal.</p>

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<p>considered important rules for seeking admission to trading of shares on regulated markets in the Union by market participants. It is therefore necessary to transfer those rules in Directive 2014/65/EU to set out, in a new provision of that Directive, specific minimum conditions for the admission to trading of shares on regulated markets. The application of that new provision should complement the general provisions on the admission of financial instrument to trading laid down in Directive 2014/65/EU.</p>	
<p>(9) To allow for more flexibility for issuers and to make Union capital markets more competitive, the minimum free float requirement should be decreased to 10%, which is a threshold that ensures for a sufficient level of liquidity in the market. The free float</p>	<p>HU (Drafting):HU But there has to ensure a 2 years grace period for the issuer to fulfill the requirement if ongoing operation the percentage of shares held by the public goes under 10% of the subscribed capital. HU (Comments):HU</p>

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<p>requirement laid down in Directive 2001/34/EC that a sufficient number of shares is to be distributed to the public in one or more Member States refers to the public within the Union and the European Economic Area (EU/EEA). That geographical restriction of the free float requirement to the EU/EEA should not be maintained as Directive 2014/65/EU does not provide for such restriction for financial instruments admitted to trading. The requirement that a company is to have published or filed its annual accounts for a specific period of time should not be transferred to Directive 2014/65/EU since Regulation (EU) 2017/1129 of the European Parliament and of the Council¹¹ already contains a provision to that effect. Directive 2014/65/EU already lays down</p>	<p>In some cases, e.g. takeover offer, it may happen that the percentage of shares held by the public goes under 10% of the subscribed capital, it would be unfair to the issuer and the shareholders if the consequence of a successful takeover offer were to lead to a possible delisting from the stock exchange.</p> <p>NL (Comments):NL</p> <p>NL (Comments):</p> <p>We are open to the harmonization of the mandatory free float percentage, but wonder whether the proposed reduced percentage of 10% is not too low. On the one hand, a lower percentage makes it more attractive for companies to list their securities. On the other hand, this may reduce the attractiveness for investors to invest in these companies, given the potentially more limited liquidity. Therefore, we are somewhat hesitant for now to support this percentage and would like to draw attention to maintaining an adequate balance sheet, in which the European capital market remains internationally competitive.</p> <p>DE (Drafting): DE</p>
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¹¹ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

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<p>provisions to designate competent authorities.</p> <p>Thus, the provisions laid down in Directive 2001/34/EC to appoint one or more competent authorities are redundant. The requirement for debt securities that the amount of the loan is not be less than EUR 200 000 are considered obsolete in light of current market practice.</p>	
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<p>(10) The concept of admission of securities to official listing on stock exchanges provided for in Directive 2001/34/EC is no longer frequently used given market developments, as Directive 2014/65/EU already provides for the concept of ‘admission of financial instruments to trading on a regulated market’. The two concepts ‘admission to official listing’ and ‘admission to trading on a regulated market’ are often used interchangeably in some Member States. That</p>	<p>LU (Drafting):LU <u>(10) The concept of admission of securities to official listing on stock exchanges provided for in Directive 2001/34/EC is no longer frequently used given market developments, as Directive 2014/65/EU already provides for the concept of ‘admission of financial instruments to trading on a regulated market’. The two concepts ‘admission to official listing’ and ‘admission to trading on a regulated market’ are often used interchangeably in some Member States. That means that, in some Member States, no distinction is made between the two concepts. Furthermore, the dual regime of admission to trading, on the one hand, and admission to official listing, on the other hand, could lead to legal uncertainty at Union level, in particular, due to the fact that the requirements laid down in Directive 2003/71/EC, Directive 2004/109/EC and Directive 2014/57/EU of the European</u></p>

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<p>means that, in some Member States, no distinction is made between the two concepts. Furthermore, the dual regime of admission to trading, on the one hand, and admission to official listing, on the other hand, could lead to legal uncertainty at Union level, in particular, due to the fact that the requirements laid down in Directive 2003/71/EC, Directive 2004/109/EC and Directive 2014/57/EU of the European Parliament and of the Council¹² do not apply to instruments admitted to official listing, while those requirements apply to instruments admitted to trading on a regulated market.</p>	<p><u>Parliament and of the Council¹³ do not apply to instruments admitted to official listing, while those requirements apply to instruments admitted to trading on a regulated market.</u></p> <p>LU (Comments):LU</p> <p>In line with our comments on recital (8) and Article 2 of this proposal, we do not believe that maintaining two separate regimes (official listing and admission to trading) leads to legal uncertainties. On the contrary, the two regimes serve different purposes and thus contribute to the attractiveness and competitiveness of EU capital markets.</p> <p>Recital 10 should therefore be deleted.</p> <p>Please find our detailed comments on this issue in Article 2 of this proposal.</p>

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

¹³ Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).

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(11) To enhance the visibility of listed companies, in particular SMEs and to adapt the listing conditions to improve requirements for issuers, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Directive 2014/65/EU. The market capitalisation threshold for companies, for which the re-bundling of trading execution and research fees would be possible, to capture small and medium capitalisation companies, and providing a framework for the development of a particular form of research for which the issuer pays should be adapted. The adaption of the listing rules in the Union should also reflect market practice for it to be effective and promote competition. It is of particular importance that the Commission carry out

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<p>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-Making¹⁴. 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.</p>	
<p>(12) Directive 2014/65/EU should therefore be amended accordingly.</p>	

¹⁴ OJ L 123, 12.5.2016, p. 1.

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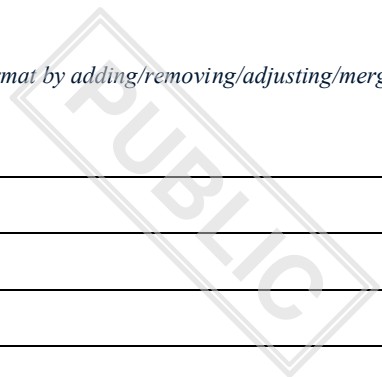


<p>(13) Since the objectives of this Directive, namely to ease Union small and medium capitalisation companies' access to capital markets, and to increase the coherence of Union listing rules cannot be sufficiently achieved by the Member States but can rather, by reason of the improvements and effects sought, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.</p>	
<p>HAVE ADOPTED THIS DIRECTIVE:</p>	
<p>Article 1 Amendments to Directive 2014/65/EU</p>	

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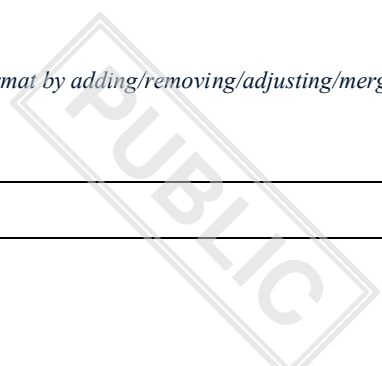


Directive 2014/65/EU is amended as follows:	
(1) in Article 4(1), point (12) is replaced by the following:	
‘(12) ‘SME growth market’ means a MTF, or a segment of a MTF, that is registered as an SME growth market in accordance with Article 33;’;	<p>CZ (Comments):CZ We welcome the legal clarification in the definition.</p> <p>ES (Comments): ES We agree with the proposed amendment.</p>
(2) Article 24 is amended as follows:	<p>ES (Comments): ES In general terms, and on a preliminary basis, we could support the idea of the sponsored research. However, we believe that more detail is needed on the safeguards in the code of conduct.</p>

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<p>(a) the following paragraphs 3a to 3d are inserted:</p>	<p>BE</p> <p>(Comments):BE</p> <p>We welcome the introduction of the concept of ‘issuer-sponsored research’ in MiFID and believe that this could help to improve the level of research related to SMEs. However, we wonder if the general approach proposed (i.e. ‘issuer-sponsored research’ regulated by national codes of conduct) is optimal. Furthermore, the new paragraphs proposed raise several specific questions (some amendments may be needed to ensure more clarity). We would also propose to ensure the coherency of the terminology used here with the terminology already used in other parts of MiFID (see hereunder).</p> <p>Regarding the <u>general approach</u>, our understanding is that it may lead to having several codes of conduct and therefore different requirements in the European Union about ‘issuer-sponsored research’, also bearing in mind that the Commission's proposal does not indicate precisely (i) which specific code of conduct an issuer-sponsored research shall comply with, nor (ii) which market operator or competent authority should endorse which code. This approach would thus imply a certain level of self regulation and a lack of level playing field.</p> <p>For the time being, we have not defined yet our position regarding this self regulation approach, i.e. the fact that ‘issuer-sponsored research’ could be “regulated” by a code developed and/or</p>
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endorsed by a market operator. Amongst others, we are still analyzing if we would prefer a mandatory endorsement by a competent authority or a regulation of ‘issuer-sponsored research’ directly by MiFID (level 1 or level 2), rather than via a “private” code of conduct.

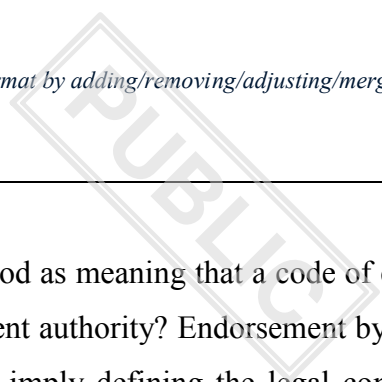
In order to (i) ensure a level playing field between Member States, (ii) ensure the same level of protection for investors across Member States, (iii) avoid that firms active in different Member States need to comply with different requirements according to the Member State where they are active and (iv) preserve the single market, it could be useful to define general minimum standards of independence and objectivity in MiFID, or in a delegated act to be prepared by ESMA (to "guide" the drafting of future codes of conduct) as well as to possibly foresee a role for ESMA to ensure sufficient convergence of codes defined on a national basis.

On more specific issues, first of all, it would seem important to clarify (i) which code of conduct an entity producing issuer-sponsored research has to follow (the code of the Member State where the entity is established? The code of the Member State where the issuer covered by the research is established? Any other code and if so, according to which criteria? What if no code of conduct is developed in one or more Member State(s)?) and (ii) which market operator or competent authority must endorse which code (a market operator or competent authority of the Member State of the entity producing the issuer-sponsored research? A market operator or the competent authority of the Member State of the issuer covered by the research? Other situation?). The new paragraphs proposed by the Commission also raises the following specific

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	<p>questions:</p> <ul style="list-style-type: none"> - Should the text be understood as meaning that a code of conduct can be endorsed equally by a market operator or a competent authority? Endorsement by a competent authority seems to have a different value and would imply defining the legal consequences of such endorsement (for example, what are the consequences in case of non-compliance with a code of conduct endorsed by a national competent authority? Would the national competent authority be empowered to take measures and sanctions? ; - Should the text be understood as meaning that there would be codes developed by market operators in certain Member States and codes endorsed by competent authorities in other Member States? Again, to the extent that codes endorsed by competent authorities could have a different value, this would lead to differences in the treatment of investors between Member States; - One could also ask whether a market operator is not in a situation of conflict of interests (the code concerns research which could lead to increased trading on the market operated by that operator) and whether other parties would not be more appropriate (such as relevant professional associations). <p>The text also raises questions of terminology: it would seem appropriate to ensure that the terms used here are consistent with those already used in MiFID II. Please find some proposals of</p>
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	<p>amendments and explanations hereunder.</p> <p>Article 24(9a) of MiFID II defines the term « research » for the purpose of its application to Article 24 MiFID II (i.e. not only to paragraph 9a).</p> <p>Article 24 MiFID II is implemented at level 2, i.a. by art. 36 and 37 of Delegated Regulation (EU) 2017/565 (hereinafter referred to as “MiFID II DR”) which set out specific requirements regulating the “investment research”.</p> <p>The definitions of the terms “research” and “investment research” are not similar: the term “research” is broader than the concept “investment research” and the latter implies certain guarantees in terms of independence of the research (in line with the requirements set out in article 37 of MiFID II DR).</p> <p>To ensure clarity and avoid potential contradictions and legal uncertainty, it would therefore be key to avoid mixing concepts and ensure a proper use of terminology (please refer in particular to recitals 2 to 5 above). In addition, the current proposal is not always consistent and, on some point, conflicts with the provisions of Art. 36 of MiFID II DR (please see below).</p> <p>LV</p>
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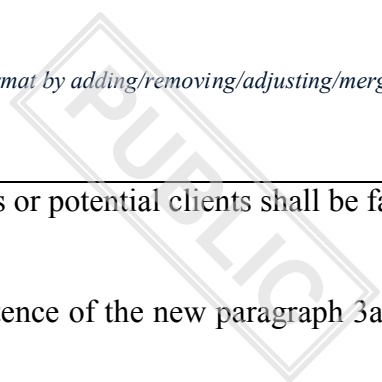
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	<p>(Comments):LV LV: we support broadly the Commission proposal on paragraphs 3a to 3d.</p>
<p>‘3a. research provided by third parties to investment firms providing portfolio management or other investment or ancillary services and research prepared and distributed by such firms shall be fair, clear and not misleading. Research shall be clearly identifiable as such or in similar terms, provided that all conditions applicable to the research are met.</p>	<p>CZ (Drafting):CZ 3a. Research provided by third parties to investment firms providing portfolio management or other investment or ancillary services and research prepared and distributed by such firms shall be fair, clear and not misleading. Research shall be clearly identifiable as such or in similar terms, provided that all conditions applicable to the research are met.</p> <p>CZ (Comments):CZ Typing error at the beginning – the sentence should start with capital letter</p> <p>BE (Comments):BE The proposal stating that any research provided by third parties to investment firms shall be fair, clear and not misleading seems difficult to enforce and sanction since these third parties will in most cases not be regulated under MiFID. In addition, the second part of the first sentence appears redundant as article 24(3) of MiFID II already provides that any information addressed</p>

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	<p>by investment firms to clients or potential clients shall be fair, clear and not misleading.</p> <p>Furthermore, the second sentence of the new paragraph 3a of Article 24 of MiFID II is unclear, in particular:</p> <ul style="list-style-type: none"> (i) With regard to which type of research it applies to and how this relates to the condition set out in article 36(1) and 36(2) of MiFID II DR. In particular, 36(1) a) already states that “investment research” shall be labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation. More significantly, article 36(2) of MiFID II DR states that any investment recommendation (within the meaning of point (35) of Article 3(1) of MAR) that does not meet the conditions to qualify as “investment research” (which implies to meet the requirements set out in article 37 of MiFID II DR) shall be treated as a marketing communication and shall be clearly identified as such. (ii) What conditions are referred to in this provision. <p>AT</p> <p>(Comments):AT</p> <p>It should be clarified that the third parties providing the research are not within the scope of MiFID II and therefore the supervision regarding the requirements for research is not within the remit of the NCAs. It should be clear that it is the responsibility of the investment firms to</p>
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ensure that research provided by third parties complies with requirements stipulated in the proposal.

DE

(Comments): DE

It does not seem to be totally clear whether the wording “such firms” shall mean third parties or investment firms.

MiFID II (such as Articles 34 to 37 of Regulation (EU) 2017/565) requires investment firms to maintain fairness and clarity and to refrain from misleading behaviour. Article 24 (3a) does not concern investment firms, but third parties which are not permanently supervised. For systematic reasons, the obligation should cover only financial analyses submitted or transmitted by investment firms.

Suggestion for an additional amendment to MAR:

Unfortunately, due to the limitation to analyses performed by third parties for investment firms that provide portfolio management or other investment or ancillary services, third-party firms that do not work for this kind of investment firms are not included in this provision. However, the scope of the regulation is also limited by Art. 1 (1) MIFID II. Therefore, such a provision (as in para 3a) would be better or additionally inserted in Art. 20 of MAR.

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	<p>Such a regulation in MAR should also comprise rules concerning the avoidance of conflicts of interest as a matter of principle rather than merely imposing an obligation to provide information.</p>
<p>3b. Where the research is paid, fully or partially, by the issuer and disseminated to the public or to investment firms or to the clients of investment firms providing portfolio management or other investment or ancillary services, such research shall be labelled as “issuer-sponsored research” provided that it is produced in compliance with a code of conduct developed or endorsed by a market operator registered in a Member State or by a competent authority.</p>	<p>CZ (Comments):CZ We welcome the introduction of issuer-sponsored research regulation.</p> <p>FI (Comments):FI We welcome the idea of code of conduct for issuer-sponsored research. We would find it useful to explore the alternative that ESMA would be the one to prepare such code of conduct, instead of market operators or competent authorities.</p> <p>We are unsure about the benefits of having a different code of conduct for each market. In our mind having a single European code of conduct could better ensure convergence and investor protection. Furthermore, if the investment research papers would be distributed through the ESAP in the future, it would be difficult for investors (especially retail ones) to compare the investment research of different issuers under comparison if there are several different code of conducts affecting on the background.</p>

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	<p>Having a single code of conduct for issuer-sponsored research used across Member States could also facilitate provision of such investment research cross-border, since the service provider could rely on a single code of conduct instead of being required to know the code of conduct applied in the given Member State.</p> <p>When preparing framework for issuer-sponsored research, special attention should be given to effective management and disclosure of conflicts of interest.</p> <p>NL (Comments):NL See our comments on recital 5.</p> <p>IE (Comments):IE Could the Presidency and/or Commission please clarify a number of areas relating to the proposed code of conduct as follows: For issuers listed on multiple markets that consist of regulated markets and MTFs, would each market operator or CA be required to develop or endorse the code of conduct? Where a market operator or CA is endorsing a code of conduct, who will be required to develop it? It appears to us that the text as it stands would allow for a number of different possibilities with regard to the responsibilities for developing and endorsing the code.</p> <p>BE</p>
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	<p>(Comments):BE</p> <p>See our comments above.</p> <p>AT</p> <p>(Comments):AT</p> <p>We are critical regarding the implementation of an NCA-endorsed code of conduct as a new soft law instrument, as the legal consequences of non-compliance with the code of conduct seem not to be clear enough and the third parties subject to such code would be mostly not MiFID firms.</p> <p>LV</p> <p>(Comments):LV</p> <p>LV: we support the approach of the Commission proposal on “issuer- sponsored research”, its labelling, and compliance with a code of conduct developed or endorsed by a market operator registered in a Member State or by a competent authority.</p> <p>DE</p> <p>(Drafting): DE</p> <p>3b. Where the research is paid, fully or partially, by the issuer and disseminated to the public or to investment firms or to the clients of investment firms providing portfolio management or other investment or ancillary services, such research shall be labelled as “issuer-sponsored research” <u>Investment firms shall ensure that any research they pass on to their clients which is paid, fully or partially by the issuer is labelled as “issuer-sponsored research”</u> provided that it is produced in compliance with a code of conduct developed or endorsed by a market operator registered in a Member State or by a competent authority.;</p> <p>DE</p>
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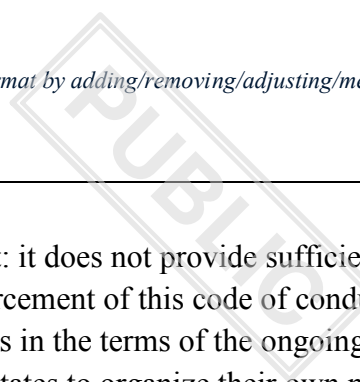
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	<p>(Comments): DE</p> <p>As described above, MiFID II addresses investment firms and not independent research service providers. The obligation should therefore be clearly imposed on investment firms and organisational measures falling within their competence. It would also be important to specify the conditions under which investment firms can rely on the third party's declaration that research was carried out in accordance with its code of conduct.</p>
<p>The code of conduct shall set out minimum standards of independency and objectivity to be complied with by the providers of such research. The market operator or the competent authority shall publish the code of conduct on its website and review and re-endorse it every 2 years.</p>	<p>PT</p> <p>(Comments):PT</p> <p>We are still forming a definitive view on whether the endorsement by a NCA should be a mandatory requirement for all codes of conduct.</p> <p>FR</p> <p>(Drafting):FR</p> <p>The code of conduct shall set out minimum standards of independency and objectivity to be complied with by the providers of such research. The market operator or the competent authority shall publish the code of conduct on its website and review and re-endorse it every 2 years on a regular basis and at least every 5 years.</p> <p>FR</p>

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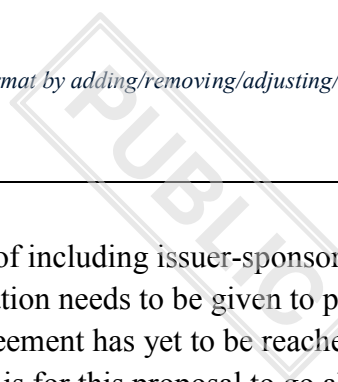


	<p>(Comments):FR</p> <p>A 2-year period is quite short: it does not provide sufficient hindsight to assess the implementation and the enforcement of this code of conduct. A longer period could also give more certainty to stakeholders in the terms of the ongoing code of conduct. We propose to give more flexibility to Member States to organize their own national system and to set a maximum duration to avoid any risk of fragmentation.</p> <p>BE</p> <p>(Drafting):BE</p> <p>The code of conduct shall set out minimum standards of independency and objectivity to be complied with by the providers of such research. The market operator or the competent authority that has endorsed the code of conduct shall publish it the code of conduct on its website and review and re-endorse it every 2 years.</p> <p>BE</p> <p>(Comments):BE</p> <p>See our comments above.</p> <p>Besides that, we would propose to clarify that the entity that must publish the code on its website is the one that has endorsed it.</p>
<p>3c. Member States shall ensure that any</p>	<p>IE</p>

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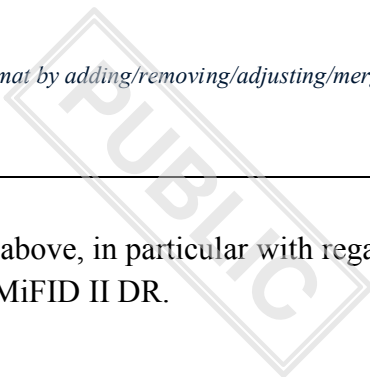
<p>issuer may submit its issuer-sponsored research, as referred to in paragraph 3b of this Article, to the relevant collection body as defined in [Article 2(2) of the proposal for a Regulation on a European Single Access Point¹⁵].</p>	<p>(Comments):IE</p> <p>We understand the rationale of including issuer-sponsored research in the ESAP, however, we believe that careful consideration needs to be given to proposals for adding new items (whether voluntary or not) as final agreement has yet to be reached on this file. Following further consideration, if the decision is for this proposal to go ahead, the date from which inclusion in ESAP should be possible would need to be specified in the legal text. For this, we would propose ensuring consistency with the estimated deadline for the MiFID 2 implementation (Jan 2030), taking into account the time needed for the development of the codes of conduct.</p> <p>BE</p> <p>(Comments):BE</p> <p>Although we understand the goal of enhancing the attractiveness of SME by including « <i>issuer-sponsored research</i> » in ESAP, we also fear that including “marketing-type” information in ESAP may denature that tool (keeping in mind as well that ESAP is financed by public funds). If however it was decided to include « <i>issuer-sponsored research</i> » in ESAP, then we believe that it should be made clear to third-parties that such research is not a regulated information, nor investment reasearch.</p>
<p>3d. Research that is labelled as issuer-</p>	<p>BE</p>

¹⁵ Proposal for a Regulation [2021/0378.COD].

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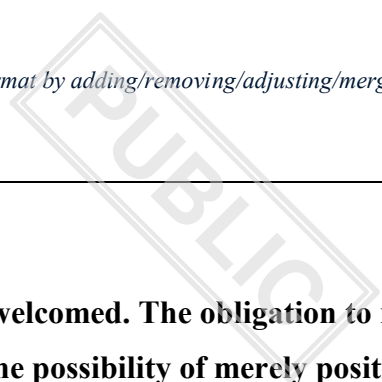


<p>sponsored research shall indicate on its front page in a clear and prominent way that it has been prepared in accordance with a code of conduct. The name of the market operator or competent authority that has developed or endorsed such code of conduct shall also be mentioned. Any other research material paid fully or in part by the issuer but not produced in compliance with a code of conduct as referred to in paragraph 3b shall be labelled as marketing communication.’;</p>	<p>(Comments):BE</p> <p>Please refer to our comments above, in particular with regard to the potential conflict with the provision of Article 36(2) of MiFID II DR.</p> <p>DE</p> <p>(Drafting): DE</p> <p>Research that is labelled as issuer-sponsored research shall indicate on its front page in a clear and prominent way that it has been prepared in accordance with a code of conduct. The name of the market operator or competent authority that has developed or endorsed such code of conduct shall also be mentioned. <u>Any other research material paid in whole or in part by the issuer which has not been produced in accordance with a code of conduct referred to in paragraph 3b shall be marked as ‘marketing communication’. It shall also be pointed out separately that it was not drawn up in accordance with the Code of conduct.</u></p> <p><u>Existing conflicts of interest shall be clearly stated on the front page of research according to sentence 1 and research material according to sentence 3.</u></p> <p>DE</p> <p>(Comments): DE</p> <p>It is not clear whether retail clients will be able to comprehend the consequences of the label “market communication” in this specific relation. At least, the third party provider should highlight that his research hasn’t been produced in compliance with the relevant</p>
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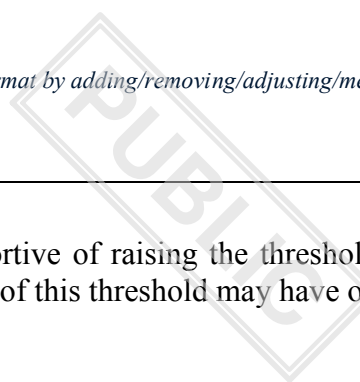


	<p>code of conduct.</p> <p>The proposed rule is to be welcomed. The obligation to make the indications in a prominent place prevents the possibility of merely positioning the conflicts of interest in a more or less hidden place.</p> <p>In addition to referring to the code of conduct, it should also be stipulated that existing conflicts of interest are also clearly stated on the front page. This should also refer to marketing communication.</p>
<p>(b) in paragraph 9a, point (c) is replaced by the following:</p>	
<p>‘(c) the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as</p>	<p>CZ (Comments):CZ We welcome the higher bar for exemption from the ban of re-bundling. We would also not oppose any discussion about further loosening of the 10 billion EUR limit. PL</p>

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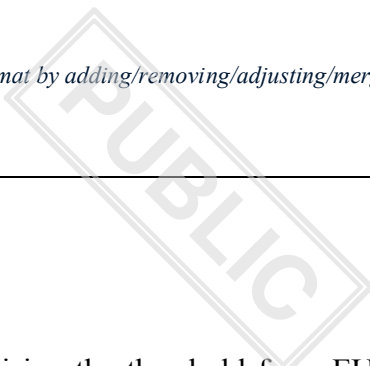


<p>expressed by end-year quotes for the years when those issuers are or were listed or by the own-capital for the financial years when those issuers are or were not listed.’;</p>	<p>(Comments):PL PL: In general we are supportive of raising the threshold. However, we are still analysing the impact that such a high level of this threshold may have on the Polish market.</p> <p>NL (Comments):NL See our comments on recital 4.</p> <p>IE (Comments):IE IE would support the need for more visibility of EU companies, in particular small and medium companies. However, we would welcome further detail on why the EUR 10bn figure was settled on and any analysis or evidence on the number of non-SME firms this is likely to take out of the unbundling rules.</p> <p>FR (Comments):FR Modifications introduced by MiFID II have had large adverse effects on the financial research ecosystem. The legislative proposal goes in the right direction, but we think <u>only a full rebundling of research could address the existing market failure.</u></p> <p>The 10 billion threshold exclude a substantial number of large cap that are the main source of revenue for financial research business unit. Most read analysis contribute to finance SME equity research through internal cross-subsidies. We therefore favor deleting the 10 billion</p>
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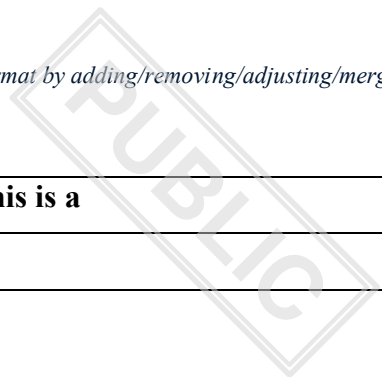


	<p>condition.</p> <p>BE</p> <p>(Comments):BE</p> <p>On some smaller markets, raising the threshold from EUR 1 to 10 billion implies that only a rather limited number of issuers would be « out-of-scope » (i.e. the unbundling requirement will only apply regarding a small minority of issuers). One may wonder if this is justified or if it wouldn't make sense to then simply delete the unbundling requirement.</p> <p>LV</p> <p>(Comments):LV</p> <p>LV: we welcome the Commission proposal on Article 24, paragraph 9a.(c). The proposal will support research activity and availability.</p> <p>ES</p> <p>(Comments): ES</p> <p>We need to further analyse the new threshold put forward by the Commission.</p> <p>DE</p> <p>(Comments): DE</p> <p><u>Preliminary assessment, further examination required (see above):</u> The threshold of EUR 10 billion seems questionable, as even some German blue chips of DAX40 would qualify as SMEs. If the disengagement system only covers the largest blue chips in Europe, it could</p>
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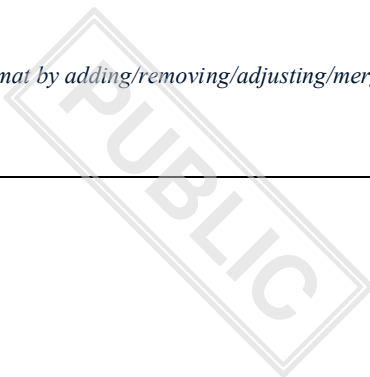


	be completely abolished. This is a
(3) Article 33 is amended as follows:	ES (Comments): ES On a preliminary basis, we can agree with the content of Article 33.
(a) paragraphs 1 and 2 are replaced by the following:	
‘1. Member States shall provide that the operator of a MTF may apply to its home competent authority to have the MTF or a segment thereof, registered as an SME growth market.	CY (Comments):CY Cyprus supports this proposal, as it is already implemented through a q&a issued by ESMA SMSC.
2. Member States shall provide that the home competent authority may register the MTF, or a segment thereof, as an SME growth market if the competent authority receives an	

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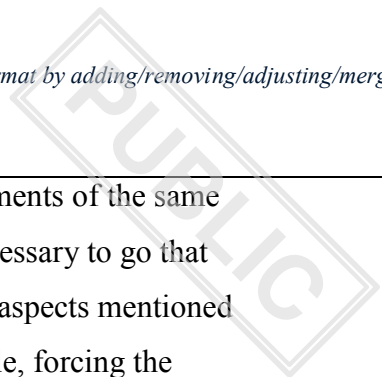


<p>application as referred to in paragraph 1 and is satisfied that the requirements in paragraph 3 are complied with in relation to the MTF, or that the requirements in paragraph 3a are complied with in relation to a segment of the MTF.';</p>	
<p>(b) the following paragraph 3a is added:</p>	
<p>'3a. Member States shall ensure that the relevant segment of the MTF is subject to effective rules, systems and procedures which ensure that the conditions referred to in paragraph 3 and all of the following conditions have been complied with:</p>	
<p>(a) the segment of the MTF registered as 'SME growth market' is clearly separated from the other market segments operated by the MTF operator, which is <i>inter alia</i> indicated by a</p>	<p>ES (Comments): ES We agree that the MTF segment registered as 'SME growth market' should be clearly</p>

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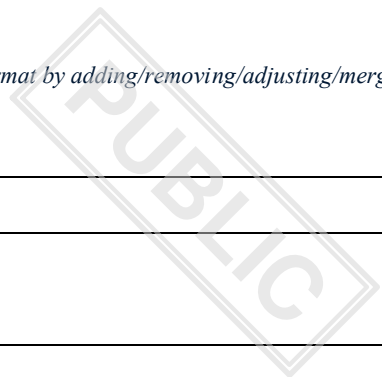


<p>different name, different rulebook, different marketing strategy, and different publicity, as well as a specific allocation of the market identification code to the SME growth market segment;</p>	<p>separated from the other segments of the same market, but it may not be necessary to go that far in relation to some of the aspects mentioned in this paragraph. For example, forcing the segment to have a different rulebook might be excessive.</p>
<p>(b) the transactions made on the specific SME growth market segment are clearly distinguished from other market activity within the other segments of the MTF;</p>	
<p>(c) upon request of the MTF’s home competent authority, the MTF shall provide a comprehensive list of the instruments listed on the SME growth market segment concerned, as well as any information on the operation of the SME growth market segment that the competent authority may request.’;</p>	

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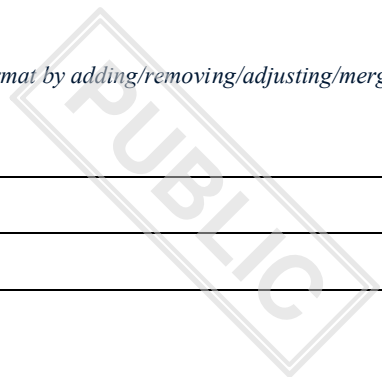


(c) paragraphs 4 to 6 are replaced by the following:	
<p>‘4. The criteria laid down in paragraphs 3 and 3a are without prejudice to compliance by the investment firm or market operator operating the MTF, or a segment thereof, with other obligations under this Directive relevant to the operation of MTFs.</p>	<p>BE (Comments):BE In paragraph 4, one sentence has been removed: <i>4. The criteria in paragraph 3 are without prejudice to compliance by the investment firm or market operator operating the MTF with other obligations under this Directive relevant to the operation of MTFs. They also do not prevent the investment firm or market operator operating the MTF from imposing additional requirements to those specified in that paragraph.</i> Could it be confirmed that the removal of this sentence does not in any way remove the possibility for the MTF to impose additional requirements (e.g. more strict listing/publication requirements that would be imposed on the issuers.</p>
<p>5. Member States shall provide that the home competent authority may deregister a MTF, or a segment thereof, as an SME growth</p>	

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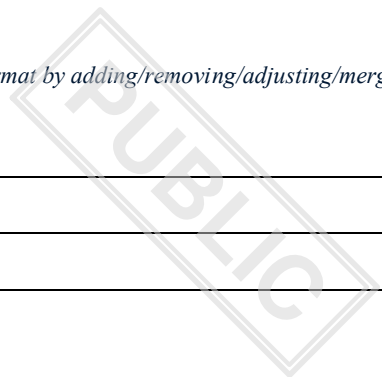


market in any of the following cases:	
(a) the investment firm or market operator operating the MTF, or a segment thereof, applies for its deregistration;	
(b) the requirements in paragraph 3 or 3a are no longer complied with in relation to the MTF, or a segment thereof.	
6. Members States shall require that if a home competent authority registers or deregisters a MTF, or a segment thereof, as an SME growth market under this Article, that authority shall as soon as possible notify ESMA of that registration or deregistration. ESMA shall publish on its website a list of SME growth markets and shall keep that list up to date.’;	

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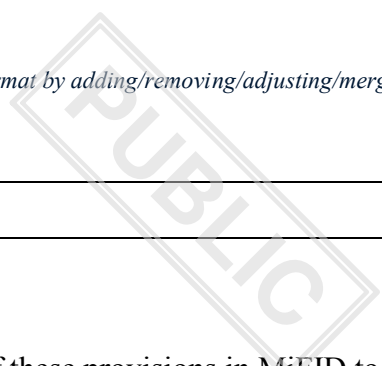


(d) paragraph 8 is replaced by the following:	
<p>‘8. The Commission is empowered to adopt delegated acts in accordance with Article 89 to supplement this Directive by further specifying the requirements laid down in paragraphs 3 and 3a of this Article. Those requirements shall take into account the need to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market. They shall also take into account that de-registrations do not occur nor shall registrations be refused merely because of a temporary failure to comply with the requirement laid down in paragraph 3, point (a), of this Article.’;</p>	
(4) the following Article 51a is inserted:	

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<p><i>Article 51a</i></p> <p>Specific conditions for the admission of shares to trading</p>	<p>FR</p> <p>(Comments):FR</p> <p>We support the integration of these provisions in MiFID to make the whole market regulation packaga (MiFID/R, MAR) more consistent.</p> <p>LU</p> <p>(Comments):LU</p> <p>It should be clear that these are admission requirements to be assessed as part of an application for admission to trading, but not to be monitored afterwards.</p> <p>AT</p> <p>(Comments):AT</p> <p>Given the importance of various newly adopted terms (or terms already used before, but given in that new context) we believe it is important to have precise definitions of the notions „market capitalisation“ (Art. 51a point 1), „class of shares“ (p. 4), „held by the public“ (p. 4) and „distributed to the public“ (p. 5). The definitions should for instance cover the issue of dealing with own shares (or the determination of the relevant price) in the case of „market capitalisation“ as well as provide for more detailed guidance regarding what constitutes a „class of shares“ (for instance <i>bearer</i> and <i>registered</i> shares <i>one</i> class?).</p> <p>Also, regarding the notion „held by the public“ (p. 2) and „free float“ it should be clarified if the</p>
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	<p>(rather unprecise) definition pursuant to Art. 1 para. 2 of the Regulation (EU) 2017/567 is relevant. Furthermore the precise conditions of a „distribution to the public“ (p. 5) should be clarified.</p> <p>In order to foster systematic consistency we furthermore suggest to consider implementing new requirements for admission to trading not in MiFID II but Regulation 2017/568 (that is based upon MiFID II and already deals with admission to trading on regulated markets).</p> <p>LV</p> <p>(Comments):LV</p> <p>LV: While the Commission explained its approach during the CWP meeting on the 27th January, 2023, in particular emphasizing the flexibility of its application, we would like to note the ambiguity in the text on application of Article 51a, as the 10% minimum free float requirement may have unintended consequences if applied to the companies already listed in the market. For the sake of clarity we suggest to clarify the text of directive, to mention certain flexibility in this regard. For illustration, in Latvia, the market includes a separate list for companies with lower free float. This list especially caters for formerly state or municipality owned companies. The privatization of such companies play an important role in developing the Baltic capital market and building an equity culture. For the region it would be counterproductive and even disruptive to introduce a strict 10% free float requirement. Problem may arise for state-owned companies to be listed in future, which is the aim for capital market development in Latvia, because ensuring 10% free float for state owned companies can be challenging.</p> <p>ES</p>
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	<p>(Comments): ES</p> <p>We have a scrutiny reservation. On a preliminary basis, the minimum capitalisation amount of 1 million euros, which has remained unchanged for many years, together with the free-float percentage lowered to 10%, which seems a low threshold, would lead to companies with minimum liquidity.</p>
<p>1. Member States shall require that the foreseeable market capitalisation of the shares for which admission to trading is sought, or if this cannot be assessed, the company’s capital and reserves, including profit and loss, from the last financial year, shall be at least EUR 1 000 000 or an equivalent amount in a national currency other than the Euro.</p>	<p>FR</p> <p>(Comments):FR</p> <p>National option that opened the possibility to require a market cap lower than 1 M € contributes to fragmenetation across the U.E.</p> <p>BE</p> <p>(Drafting):BE</p> <p>1. Member States shall require that the foreseeable market capitalisation of the shares for which admission to trading is sought, or if this cannot be assessed, the company’s capital and reserves, including profit and loss, from the last financial year, shall be at least EUR 1 000 000 or an equivalent amount in a national currency other than the Euro.</p> <p>BE</p> <p>(Comments):BE</p> <p>1) In § 1, the comma between the words « profit and loss » and the words « from the last financial year » should be deleted, as it makes the text unclear.</p>

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	<p>2) The wording used in § 3 is unclear and seems grammatically incorrect (see in particular the words “<i>at least 10 % approximately the value of EUR 1 000 000</i>”).</p> <p>3) §§ 4 and 5 raise the following questions/concerns:</p> <ul style="list-style-type: none"> ○ The wording of those provisions differs significantly from art. 48, § 5 of the listing directive, as those provisions are now formulated as an obligation for the regulated markets (and not the issuers) to permanently ensure a minimum free float and are not drafted as a listing requirement as in the listing directive. ○ The new provision also lacks a provision similar to the first sentence of art. 48 of the listing directive (“<i>A sufficient number of shares must be distributed to the public in one or more Member States not later than the time of admission</i>”), which gives some context and nuance to the requirements. Although the percentage of 25 % is lowered to 10%, the new provision is in fact more stringent than art. 48, § 5 of the listing directive, as it does not allow any derogation to the minimum percentage (other than by a decision by the Commission) and provides that the free float obligation must be complied with permanently. Moreover, art. 48, § 5 of the listing directive only creates a presumption, and does not preclude the requirement of distributing a sufficient number of shares to the public to be met on another way. ○ How can regulated markets ensure that this requirement is met permanently? ○ How does § 4 apply in the context of a takeover bid? Does it prevent a shareholder to acquire or hold more than 90 % of the shares of a company? Are provisions envisioned to cover existing situations where a controlling shareholder holds more than 90% of the
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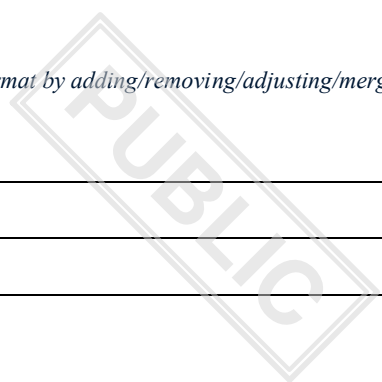
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	<p>shares of a company? Has the provision any impact on controlling shareholders holding more than 90 % of the capital of a company?</p> <ul style="list-style-type: none"> ○ § 5 should be clarified. Does this provision intend to impose capital increases or further admissions? Does it preclude e.g. offerings to qualified investors only or accelerated bookbuildings in certain circumstances? <p>This provision should be reviewed and corrected.</p>
<p>2. Paragraph 1 shall however not apply to the admission to trading of shares fungible with shares already admitted to trading.</p>	
<p>3. Where, as a result of an adjustment of the equivalent amount of the Euro in national currency, the market capitalisation expressed in national currency remains for a period of 1 year at least 10 % approximately the value of EUR 1 000 000, the Member State shall, within the 12 months following the expiry of that period, adjust its laws, regulations or administrative</p>	

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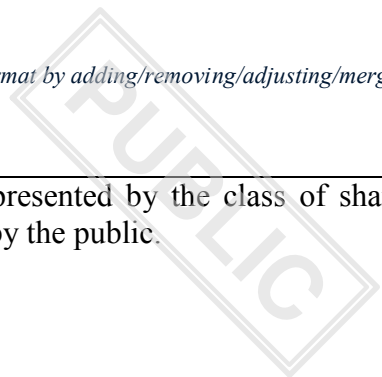


provisions to comply with paragraph 1.	
<p>4. Member States shall require that regulated markets ensure that at any time at least 10% of the subscribed capital represented by the class of shares concerned by the application for admission to trading is held by the public.</p>	<p>PT (Comments):PT We are still assessing the adequacy of this approach.</p> <p>FI (Comments):FI The appropriate level of free float should be further assessed. As a starting point it is good to offer flexibility with this regard, but we should pay attention also to impacts on markets and investors.</p> <p>When determining the appropriate level of free float, differences between different markets should be taken into account. It could also be beneficial to explore the alternative that minimum level of free float could be determined in euros or in in local currency of the Member state other than euro instead of percentage (or a hybrid model) (however we understand that this might be difficult taken into account the fragmentation of EU capital markets).</p> <p>PL (Drafting):PL PL:</p> <p>4. Member States shall require that regulated markets ensure that at any time at least 10%</p>

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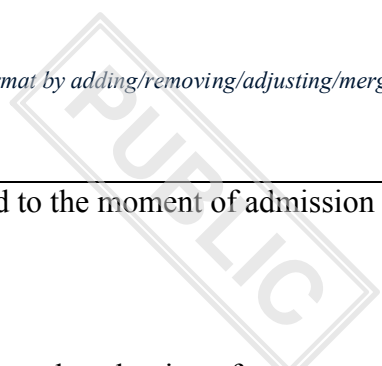


	<p>of the subscribed capital represented by the class of shares concerned by the application for admission to trading is held by the public.</p> <p>PL</p> <p>(Comments):PL</p> <p>PL: We propose to remove the words “at any time”. The proposed wording may suggest that the condition referred to in this provision must be met throughout the entire period of listing the shares of a given company. However, considering the placement of this provision in the chapter “Specific conditions for the admission of shares to trading”, we understand that this condition should be met at the time of admitting the shares of a given company to trading, and not throughout the entire listing period.</p> <p>NL</p> <p>(Comments):NL</p> <p>See our comments in recital 9.</p> <p>LU</p> <p>(Drafting):LU</p> <p>4. Member States shall require that regulated markets ensure that at any time at least 10% of the subscribed capital represented by the class of shares concerned by the application for admission to trading is held by the public.</p> <p>LU</p> <p>(Comments):LU</p> <p>We propose to delete the wording “at any time”, as it could be interpreted as a permanent</p>
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	<p>condition which is not limited to the moment of admission to trading.</p> <p>AT</p> <p>(Comments):AT</p> <p>We would prefer to refrain from the adoption of a <i>permanent</i> free float requirement in Art. 51a point 4 (“<i>at all time</i>”) as this requirement may not only lead to the exclusion of <i>some existing</i> issuers, whose number of shares of the free float have declined, but also to an ending of future listings of <i>upcoming</i> issuers (whenever free float may decline below the threshold of 10%) and therefore deprive <i>investors</i> of a “listed” share and further weaken their position, finally invoking detrimental effects to the overall aim of investor protection.</p> <p>Alternatively we suggest to clarify that a decline in free float required at the time of admission is not detrimental to the admission (with an absolute minimum of f.i. 2% that – if triggered – leads to a revoke of admission due to basic liquidity considerations).</p> <p>With regard to the proposal for a Directive of on multiple-vote share structures we would like to ask for clarification if multiple- and single-vote shares would be deemed as the same “class of shares” (especially in the sense of the Art. 51a point. 4).</p> <p>LV</p> <p>(Comments):LV</p> <p>LV: How the requirement “at any time”, would be implemented and controlled?</p> <p>ES</p>
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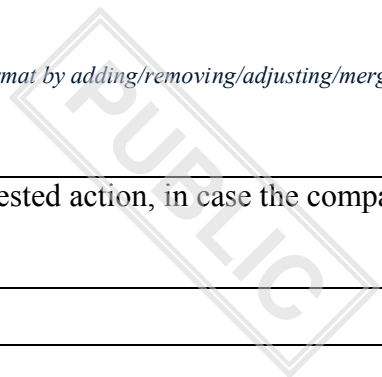
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	<p>(Comments): ES</p> <p>In the WP meeting the Commission explained that the 10% free float requirement would apply only at the moment of the initial admission. This should be reflected in the next text.</p>
<p>5. Where the percentage of shares held by the public is below 10% of the subscribed capital, Member States shall ensure that regulated markets require that a sufficient number of shares is distributed to the public to fulfil the requirement laid down in paragraph 4.</p>	<p>FI</p> <p>(Comments):FI</p> <p>Is this a continuous free float requirement? If yes, what would be the consequences if the threshold is not met?</p> <p>HU</p> <p>(Drafting):HU</p> <p>the paragraph is added:</p> <p>If the percentage of shares held by the public goes under 10% of the subscribed capital during ongoing operation, there must be ensured 2 years grace period for the issuer to fulfill the requirement in paragraph 4.</p> <p>HU</p> <p>(Comments):HU</p> <p>see the point of (9)</p> <p>LV</p> <p>(Comments):LV</p>

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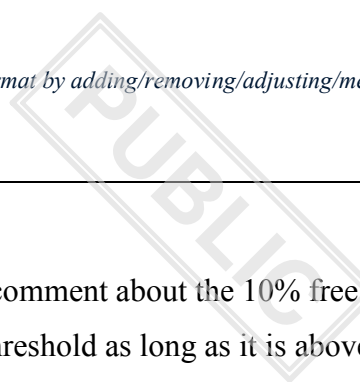


	LV: What would be the suggested action, in case the company does not comply with the requirements of the market?
<p>6. Where admission to trading is sought for shares fungible with shares already admitted to trading, regulated markets shall assess, to fulfil the requirement laid down in paragraph 4, whether a sufficient number of shares has been distributed to the public in relation to all the shares issued and not only in relation to the shares fungible with shares already admitted to trading.</p>	
<p>7. The Commission is empowered to adopt delegated acts in accordance with Article 89 to amend this Directive by modifying the thresholds referred to in paragraphs 1 and 3 or in paragraphs 4 and 5 or in both, when the applicable thresholds impede the liquidity on</p>	<p>PT (Comments):PT This possibility should be coupled with the possibility for MS to introduce similar modification to the thresholds, in order to better ensure its adaptation to national markets.</p> <p>NL (Comments):NL</p>

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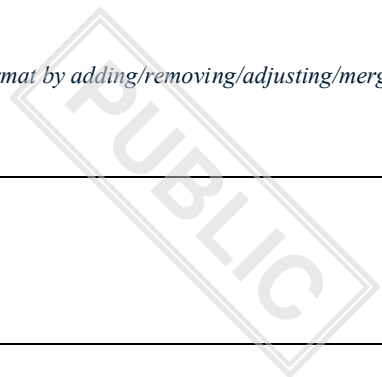


<p>public markets taking into account the financial developments.’;</p>	<p>NL (Comments): With regard to our previous comment about the 10% free float, we suggest that the Commission is empowered to modify the threshold as long as it is above 10% or within a certain bandwidth with a minimum of 10% (i.e., no lowering below 10%).</p>
<p>(5) Article 89 is amended as follows:</p>	
<p>(a) paragraphs 2 and 3 are replaced by the following:</p>	
<p>‘2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6),</p>	

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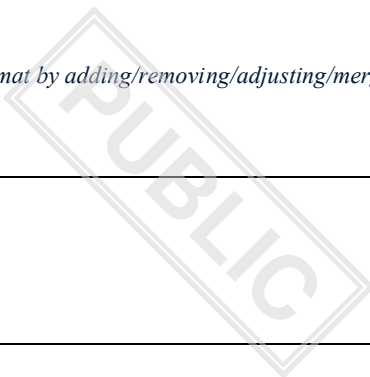


<p>Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an indeterminate period of time.</p>	
<p>3. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4) Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European</i></p>	

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<p><i>Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;</p>	
<p>(b) paragraph 5 is replaced by the following:</p>	
<p>‘5. A delegated act adopted pursuant to Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) or Article 79(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the</p>	

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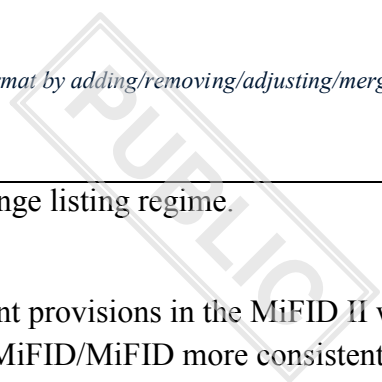


<p>European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.’.</p>	
<p>Article 2 Repeal of Directive 2001/34/EC</p>	<p>NL (Comments):NL</p> <p>NL (Comments): We have a question regarding the repeal of the Listing Directive (2001/34/EC). Since only 1 article is added to MiFID, to what extent are all provisions of the Listing Directive now covered in other regulation(s)?</p> <p>FR (Comments):FR We welcome the repeal of the Listing Directive, which is obsolete. More recent legal acts, such as the Transparency Directive, MAR and MiFID offers a stronger protection for investors than</p>

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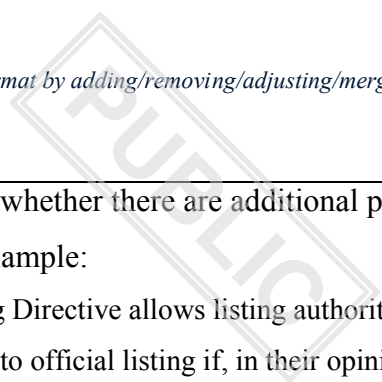


	<p>the admission to stock-exchange listing regime.</p> <p>Transferring the few important provisions in the MiFID II will remove some regulatory loopholes while making the MiFID/MiFID more consistent.</p> <p>LU (Drafting):LU</p> <p>Article 2 Repeal of Directive 2001/34/EC</p> <p>ES (Comments): ES</p> <p>We do support the repeal of Directive 2001/34/EC. Please read our comments on Article 51a.</p>
<p>Directive 2001/34/EC is repealed as of ... [OP please insert the date = 24 months from date of entry into force of this Directive].</p>	<p>IE (Comments):IE</p> <p>IE agrees that much of the Listing Directive has been superseded and we are broadly supportive of removing requirements where these are no longer necessary and consolidating the rules.</p> <p>However, we are currently examining the detail of the proposal to ensure that nothing is lost by way of investor protection and well functioning markets.</p>

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It will be important to assess whether there are additional provisions in the Directive that should be retained elsewhere. For example:

- (1) Article 11 of the Listing Directive allows listing authorities to reject an application for the admission of a security to official listing if, in their opinion, the issuer's situation is such that admission would be detrimental to investors' interests. This provision has the potential to allow NCAs to assume an important gatekeeping function, particularly in respect of complex securities whose sale to retail clients would raise investor protection concerns. We would welcome if the Presidency or Commission could clarify how/where they believe this will be addressed following the repeal of the Listing Directive.
- (2) Articles 49, 56 and 64 ensure equal treatment of all security holders by requiring the admission of all securities of the same class. We would welcome if the Presidency or Commission could clarify how/where they believe this will be addressed following the repeal of the Listing Directive.

In addition, as a result of the repeal, the concept of “listing” will be lost from EU legislation. This could impact market participants if contractual/disclosure documents refer to instruments that are “listed”. We note that this concern was raised by some respondents to the Commission’s consultation. Can the Presidency or Commission clarify whether they are of the view that there will an impact here (e.g. will market participants need to re-paper t&cs/manadates that refer to “listed” securities?) If so, is there a sense of the expected scale of

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	<p>the challenge and/or how it might be addressed?</p> <p>Finally, as a jurisdiction that uses the concept of ‘Listing’, we are analysing the potential practical implications of the repeal across national legislation relating to companies and tax matters.</p> <p>As such we have a scrutiny reservation on this provision at this point.</p> <p>RO (Comments):RO</p> <p>RO Comments</p> <p>Taken into consideration that the Directive 2001/34/CE is referring to an “<i>official stock exchange listing</i>” and that Directive 2014/65/EU (MIFID2), that regulates markets in financial instruments does not expressly contain any references to such “official stock exchange listing”, we agree that the relevant criteria regarding the admission to trading on a regulated market could be analyzed and adequately included in MIFID 2 and the Directive 2001/34/EC could be accordingly repealed.</p> <p>LU (Drafting):LU</p> <p>Directive 2001/34/EC is repealed as of ... [OP please insert the date = 24 months from date of entry into force of this Directive].</p> <p>LU</p>
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	<p>(Comments):LU</p> <p>The concept of official listing under the Listing Directive, which is proposed to be repealed by this proposal, should be maintained as it provides a sound legal framework (with no known shortcomings) for issuers wishing to be listed only without admission to trading, and thus contributes to the development of the CMU.</p> <p>The Listing Directive indeed has a positive impact on the EU capital markets and on the CMU in general, as the concept of official listing fulfils one of the two essential functions of an exchange: In addition to enabling orderly trading, the role of an exchange is to promote transparency and ensure market visibility. The concept of official listing provides such visibility to securities that are usually traded over-the-counter or in private markets, and are otherwise totally opaque. In this context, it is important to stress that through the official list regime, these otherwise potentially opaque securities are subject to transparency requirements (e.g. rule books adopted by stock exchanges) ensuring increased disclosure and investor protection.</p> <p>The listing regime has a significant positive impact on EU capital markets, contributing to their international attractiveness. It is also important to note that the concept of an official list is fundamentally linked to the fixed income ecosystem, whereas the European Commission's proposal and its impact assessment report are almost entirely focused on equities. The relevance and importance of the official list for debt capital markets should thus be analyzed further before taking a decision on the repeal of the regime.</p>
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Similarly, the official list regime supports the green finance agenda and the climate transition path by providing an appropriate platform for GSSS bond issuers. Indeed, for some issuers, access to the official list is the only way (because they are not able to bear the legal/documentary costs of admission to a MiFID II trading platform) to provide full disclosure on the sustainability elements of their bonds and to obtain the necessary visibility. The abolition of the official list would therefore be at the expense of consolidated, centralised and freely accessible sustainability information, which is not legally required but is of increasing importance to investors.

In addition, the official list now provides a gateway to centralised security token documentation and brings confidence to a market where some securities cannot yet be admitted to trading from a regulatory point of view and where investors may have difficulties in accessing information.

Last but not least, the figures show that there is a growing demand for the official list concept and there is no good reason to repeal or change a regime that works well and meets the needs of market participants (investors and issuers). Repealing the Listing Directive would clearly contribute to the EU's competitive disadvantage vis-à-vis other jurisdictions, notably the UK, where this regime will continue to apply.

BE

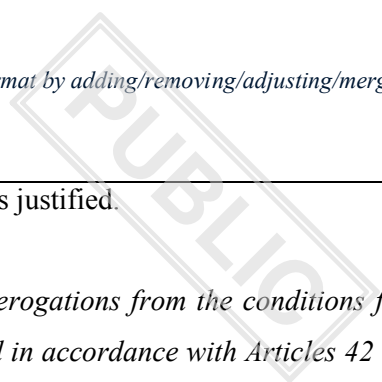
(Comments):BE

Unless we are mistaken, the following Articles of the Listing Directive are not reflected anymore in EU

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	<p>law. We wonder if this is always justified.</p> <p>Art. 9 listing directive: <i>“Any derogations from the conditions for the admission of securities to official listing which may be authorised in accordance with Articles 42 to 63 must apply generally for all issuers where the circumstances justifying them are similar”</i></p> <p>Art. 11, § 1 listing directive: <i>“The competent authorities referred to in Article 105 shall decide on the admission of securities to official listing on a stock exchange situated or operating within their territories.”</i></p> <p>Art. 11, § 2 listing directive: <i>“Without prejudice to the other powers conferred upon them, the competent authorities may reject an application for the admission of a security to official listing if, in their opinion, the issuer's situation is such that admission would be detrimental to investors' interests.”</i></p> <p>Art. 12 listing directive: <i>“By way of derogation from Article 8, Member States may, solely in the interests of protecting the investors, give the competent authorities power to make the admission of a security to official listing subject to any special condition which the competent authorities consider appropriate and of which they have explicitly informed the applicant.”</i></p> <p>Art. 18 listing directive: <i>“1. The competent authorities may decide to suspend the listing of a security where the smooth operation of the market is, or may be, temporarily jeopardised or where protection of</i></p>
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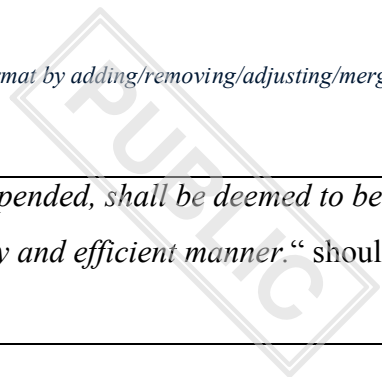
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	<p><i>investors so requires.</i></p> <p><i>2. The competent authorities may decide that the listing of the security be discontinued where they are satisfied that, owing to special circumstances, normal regular dealings in a security are no longer possible”</i></p> <p>Art. 46 listing directive: <i>“1. The shares must be freely negotiable.</i></p> <p><i>2. The competent authorities may treat shares which are not fully paid up as freely negotiable, if arrangements have been made to ensure that the negotiability of such shares is not restricted and that dealing is made open and proper by providing the public with all appropriate information.</i></p> <p><i>3. The competent authorities may, in the case of the admission to official listing of shares which may be acquired only subject to approval, derogate from paragraph 1 only if the use of the approval clause does not disturb the market”.</i></p> <p>Art. 54 listing directive: <i>“1. The debt securities must be freely negotiable.</i></p> <p><i>2. The competent authorities may treat debt securities which are not fully paid up as freely negotiable if arrangements have been made to ensure that the negotiability of these debt securities is not restricted and that dealing is made open and proper by providing the public with all appropriate information.”.</i></p> <p>AT</p> <p>(Comments):AT</p> <p>The reference to Dir. 2001/34/EC in Art. 3 of Reg. 2017/568, which points out, that <i>„a transferable security that is officially listed in accordance with Directive 2001/34/EC, and</i></p>
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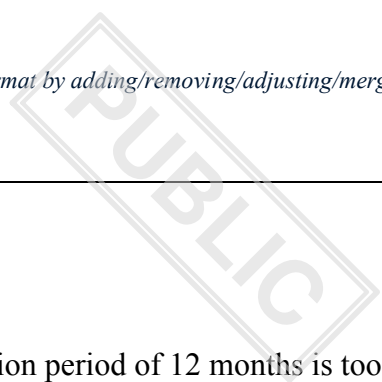


	<p><i>the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.” should be taken into consideration.</i></p>
<p>Article 3 Transposition</p>	
<p>1. Member States shall adopt and publish, by ... [OP please insert the date = 12 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</p>	<p>SK (Comments):SK SK: We propose the transposition period to extent to 24 months because of the length of legislative process.</p> <p>PT (Comments):PT 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.</p> <p>CZ (Comments):CZ We would welcome longer period of 24 months for transposition.</p> <p>NL</p>

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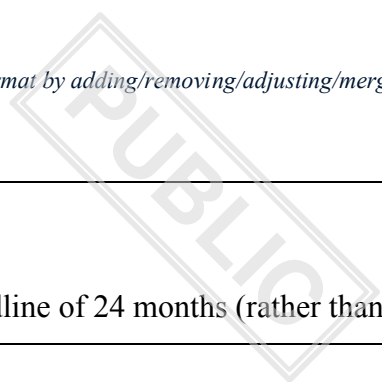


	<p>(Comments):NL</p> <p>NL</p> <p>(Comments):</p> <p>In our view, the implementation period of 12 months is too short. The Netherlands will have to amend some of its legislation for which the formal procedures are quite time consuming. We believe the application period should be extended to (at least) 18 after the date of entry into force.</p> <p>IE</p> <p>(Comments):IE</p> <p>Given that IE may need to amend primary legislation (tax, company law, etc.) we believe that a longer timeframe is required. A 24-month would be more practicable.</p> <p>LU</p> <p>(Comments):LU</p> <p>A longer period would be necessary in case our comments regarding the repeal of the listing directive were not taken into account.</p> <p>BE</p> <p>(Drafting):BE</p> <p>1. Member States shall adopt and publish, by ... [OP please insert the date = 12 <u>24</u> months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</p>
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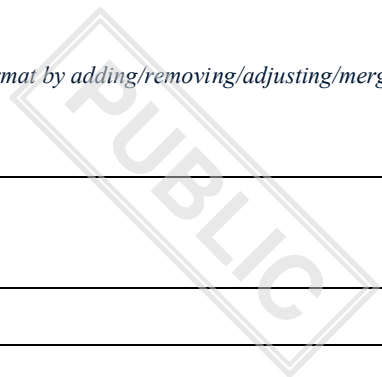


	<p>BE (Comments):BE We propose to foresee a deadline of 24 months (rather than 12 months).</p>
<p>They shall apply those provisions from ... [OP please insert the date = 18 months after the date of entry into force of this Directive].</p>	<p>CZ (Comments):CZ In relation to our previous comment, we would consequently welcome prolongation of this deadline.</p> <p>NL (Comments):NL NL (Comments): We believe the application period should be extended to (at least) 24 months after the date of entry into force.</p>
<p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member</p>	

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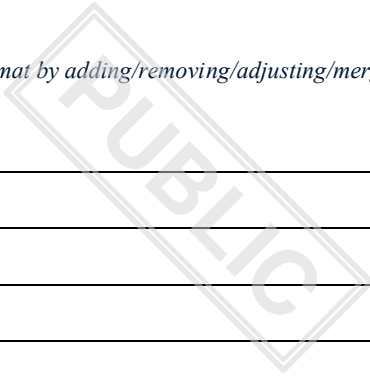


States shall determine how such reference is to be made.	
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	
Article 4 Entry into force	
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
Article 5 Addressees	
This Directive is addressed to the Member	

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States.	
Done at Brussels,	
For the European Parliament For the Council	
The President The President	
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