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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Listing Act) Financial Services Attachés
Subject:	Listing Act: PCY Questionnaire on Free Float / replies from 20 MS

Questionnaire: Listing Act working party meeting on 21 March. *Deadline for comments: 5 April 2023*

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

Question	MS reply
I. Free Float **(Presidency non-paper WK 3662/2023)**	**IE:** **The comments provided by Ireland are indicative, are made with a scrutiny reserve and are non-exhaustive.**
Q.1. Are the MS ready to consider amendments to the COM's proposal along the lines described in section 1.3 of Presidency's non-paper?	CZ: Answer: In the spirit of compromise, we could support the Presidency's idea. But in an ideal scenario we would prefer to set the 10% free float requirement on a continuous basis with the possibility of NCAs to allow trading even below the percentage if liquidity is ensured. Reason: As our goal is to ensure liquidity on the market at all times, not just liquidity at the time of admission to trading, we would rather keep the 10 % on continuous basis. Even though we see the reason behind setting an alternative criteria to ensure liquidity, it is hard for us to imagine, how those criteria (notably the fixed number of shares) would work in practise. We do not regard an absolute number of shares offered to public as a strong insurance of liquidity as the shares admitted to trading might be of a low value – we would have a large nominal number of shares (therefore quantity) but there would be a limited liquidity (= quality) (e.g. in case of 1 EUR shares). SK: Yes, we support the Presidency´s proposal. ES: Yes. BE:

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Question	MS reply
	Yes we are. AT: Yes FI Yes. **NL** **(Drafting):** **ALL OF OUR COMMENTS ARE MADE UNDER PARLIMENTARY SCRUTINY.** Yes, we understand the amendments and support that need to allow more flexibility to prevent the unintended consequence of delisting if for instance suddenly, and only for a short period of time, the free flow drops below the threshold. We were however wondering how the Presidency's approach addresses the concerns raised by several Member States about the low level of the proposed threshold, that could negatively impact the market liquidity. RO We are in favour of amendments to the COM's proposal along the lines described in section 1.3 of Presidency's non-paper. DE

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Question	MS reply
	Q1-Q4: Germany highly supports the reduction of the free float threshold from 25% to 10 %. However, the provision in Art. 51(4) MiFID-II [new] raises considerable questions. So far, the monitoring of free float only takes place when the share is admitted to trading and on an ad hoc basis when there are indications that the free float has fallen significantly below the minimum level, in order to check whether the orderly trading of this share is still guaranteed. From the point of view of the German stock exchanges, there is no need to change this established procedure. It is unclear what purpose the planned ongoing monitoring of the free float is intended to serve. Ongoing monitoring alone does not result in a decision as to whether proper trading of the share is taking place or not. Furthermore, it is unclear how the stock exchanges should monitor the free float criterion on an ongoing basis. This would presumably require the establishment of a system with considerable personnel and financial effort, the benefits of which are unclear and which - compared to the current situation - does not bring any measurable improvement, but could further increase the costs of a stock exchange listing and does not contribute to the promotion of the capital markets. The consequences of falling below the free float criterion for stock exchanges and issuers are also unclear, as specific legal consequences are not regulated in the draft. It is also questionable how an issuer can ensure that such a proportion of its (admitted) securities is freely available to the market on a permanent basis. In terms of legal policy, it also seems extremely questionable whether the conceivable consequence of falling below the 10% threshold, namely suspension of trading or even delisting by the stock exchange, should really represent the result intended by the draft. With a view to the necessity to guarantee orderly stock exchange trading, falling below the free float threshold is not the only criterion for conclusively resolving the issue of proper tradability. Therefore, Germany does not support an ongoing monitoring of the free float requirement.

Question	MS reply
	FR We are open to support such amendments (see other questions) provided that we maintain a sufficient level of harmonisation across Member States. PL The 10% threshold seems too low to ensure an adequate level of liquidity. The regulated market should be identified by investors with the highest possible liquidity among all types of markets. The key condition for this liquidity should be the dispersion of a relatively large amount of shares. The current threshold of 25% seems to be optimal in this regard, because in the case of medium and small companies, a significantly lower threshold (such as the proposed 10%) de facto means very low liquidity. Furthermore, a high level of dispersion of shares creates an incentive for minority shareholders to actively participate and vote at the general meetings because the higher the amount of shares that the minority shareholders hold, the more influence they have on the company. At the same time we could agree to a threshold lower than 25%, subject to the amendments indicated below. IT On Q1 to Q4 we are still assessing the proposal. PT

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Question	MS reply
	We are open to assess the inclusion of criteria other than the free float percentage threshold, however we have reservations regarding the "absolute number of shares" criterion since it can be determined by the issuer through stock splitting. DK: Yes LU: Yes, the Presidency's proposed way forward can be supported. We agree that the free float provisions should provide for the same flexibility as it is currently foreseen in the Listing Directive. The 10% threshold may be an appropriate baseline for the requirement. **BG:** Our preferred solution is to delete Article 51a as in our view it has no added value for achieving the objectives of the Listing act package – namely to facilitate the access of companies to capital market and alleviate the administrative burden for the listed companies in order to stay listed. As a second best option we could support a free float requirement of 10 % which should be designed as in the Listing Directive and provide flexibility. It should be applicable only at the time of admission to trading which has been declared by all Member states commenting on this issue in the Council working party.

Question	MS reply
	Bulgaria considers that the possibility, in accordance with Directive 2001/34/EC, for a company to be admitted to trading with a smaller percentage of shares distributed to the public, when the market can function properly with a lower percentage should be kept. IE: We could support the same approach as that used currently in the Listing Directive being carried into MiFID II, however the proposed threshold of 10% appears somewhat low and we would favour a higher %.
Q.2. Do the MS consider that the percentage threshold should be one way of fulfilling the requirement of sufficient free float (similarly to the situation today under the current Listing Directive)? If not, why?	CZ: Answer: Yes Reason: The percentage requirement represents an easy and transparent indicator of liquidity, at least to some extent. SK: Yes, we agree. ES: The percentage threshold should be one way to fulfil the requirement of sufficient free float. However, for large market capitalisation companies (i.e. above a threshold to be determined), other criteria might be considered (number of shares distributed, number of shareholders, etc.). We believe there is room for flexibility in this aspect.

Question	MS reply
	For small market capitalisation companies, we propose the percentage threshold to be the only fulfilment criteria. However, we think that the combination of a 10% free float requirement + 1 Million Euro as the minimum market capitalisation could lead to companies with very little liquidity or no liquidity at all. As we said in the WP, this poses a problem of low liquidity for certain securities which is not only deleterious for the quality of the markets but also from a supervisory point of view, as there would not be a proper price formation due to lack of liquidity for some securities. We therefore propose to increase the percentage threshold for "*Low market capitalisation companies*". BE: Yes. In general, we would favour keeping the same approach as in the Listing Directive. AT: Basically, we agree with the Presidency's proposal. We would however define a lower minimum percentage threshold, when, in view of the large number of shares of the same class and the extent of their distribution to the public, the market would operate properly with a lower percentage than 10% of shares distributed to the public. So if the 10% threshold does not have to be fulfilled due the large number of shares distributed to the public, at least 5% would have to be distributed in order to ensure that the market is able to operate properly. If no such lower threshold is introduced, Issuer /Market Operators would have too large discretion to define what constitutes „a large amount of shares distributed to the public ". The 10%-threshold resp. the 5%-threshold would need to be fulfilled only at the time of admission, not continuously. FI

Question	MS reply
	Yes, at the time of the admission to trading. NL (Drafting): Yes, we understand that the flexibility could be achieved through allowing for an assessment by MS/NCA/RM of the specific share in relation to the free float percentage. We would still welcome more reasoning by the Commission for the chosen threshold of 10%. RO Yes, we do. DE Yes. Whereas Germany supports the introduction of the chosen threshold of 10%, the percentage threshold should only be one way of fulfilling the requirement of sufficient free float. Particularly in the case of shares of large issuers, this threshold could be violated without having any effect on orderly stock exchange trading, as the large number of shares issued means that there are a sufficient number of shares in circulation that can actually be traded. FR A percentage-based free float requirement should be kept as it remains the easiest way to apply a uniform requirement to all issuers. Using a minimum number of shares could prompt regulatory arbitrage such as stock splits. Non E.U. jurisdiction often have a percentage-based free float requirement.

Question	MS reply
	We should avoid having several definitions when it comes to the free float minimum requirement but rather adopting a holistic approach to assess how this requirement is fulfilled. PL It seems that measuring the level of free float with a percentage threshold is the best solution to ensure that a sufficient number of shares are admitted to trading. At the same time we are open to the introduction of an additional criterion, existing in parallel with the percentage threshold. PT Yes. We are open to assess the inclusion of distribution requirements, which could be taken into consideration if the free float threshold in not complied with, since a distribution through a large number of investors could also be a good indicator of the share's liquidity. DK: Yes LU: Yes, we agree that the percentage threshold can be a way to meet the requirement of a sufficient free float. However, the text should provide for at least the same level of flexibility as currently foreseen in Article 48(5) of the Listing Directive. **BG:**

Question	MS reply
	Please refer to Q1. IE: Yes, in line with our response to Q. 1, we could support the percentage threshold being one means of fulfilling the requirement similar to the current situation.
Q.3. Do the MS consider that the percentage threshold should be an absolute requirement? If so, do the MS consider that this threshold should be fulfilled: a) only at the time of admission to trading; or b) –as the Commission's proposal currently has to be interpreted – also continuously?	CZ: Answer: We do not consider the percentage requirement to be an absolute one, however, as stated in our answer to Q. 1 and 2, we consider it to be an important and the most transparent one. We are for the fulfilment of the 10% requirement on a continuous basis. SK: We prefer the threshold should be fulfilled only at time of admission to trading. HU: We support 10% percentage threshold only at the time of admission and recommend introducing a transition period as follows, if possible: there has to ensure a 2 years grace period for the issuer to fulfill the requirement if ongoing operation the free float goes under 10%. ES:

Question	MS reply
	The threshold should only be fulfilled at the time for admission to trading. Whether it should be an absolute requirement, please read our previous answer. BE: As said above, we would favour keeping the same approach as in the Listing Directive. If the threshold would need to be fulfilled continuously, we believe that it should be clarified how this can be done and what are the consequences if the threshold is not fulfilled at one moment? AT: The 10% threshold should be no absolute requirement, however if it is not met, another lower minimum (5%) should be introduced to in cases „a large amount of shares distributed to the public“ as described in the answer above. Alternatively, we would support that the percentage threshold (of 10%) has to be met as an absolute requirement, but only at the time of admission. We do not support it if it has to be fulfilled continuously. However, we would suggest that a lower percentage threshold (e.g. 2%) needs to be fulfilled continuously. FI Only at the time of admission to trading. NL (Drafting):

Question	MS reply
	Yes, and option B: the threshold should be fulfilled both at the time of admission and continuously over time. We are however in favour of granting some flexibility for exemptional circumstances, which do not need to lead to an immediate delisting. Yet, the continuous fulfillment is necessary to allow for liquid, attractive equity markets. RO We consider that the percentage threshold should be a requirement. We agree with the COM's proposal (letter b)). DE No, see above Q.1. FR We agree with the need to have a holistic approach when assessing the free float. A strict threshold might be too restrictive and free float is only one dimension of liquidity. In case we follow such an approach, level 2 or 3 texts may be necessary to ensure a common understanding of the free float assessment. The free float requirement should apply only at the time of admission to trading. The alternative would entail a need for the exchange and NCA to monitor in a continuous manner, probably in heterogeneous manner. The consequence of a breach is also unclear but could lead to an abrupt delisting – which is not desirable. PL

Question	MS reply
	The requirement to maintain the free float level at any time during the share quotation period is incomprehensible and may have negative consequences for the issuer even in the event of a short-term descent below the required threshold. Therefore we are in favour of introducing the free float requirement only at the time of admission of shares to trading. PT We are in favour of the proposed reduction of the free float threshold from 25% to 10% and would also prefer a further reduction to 5%. We consider that the threshold should be also fulfilled continuously, as to ensures a minimum liquidity, and to mitigate potential reductions in market liquidity in case of difficulties experienced by the issuer (e.g., capital increases). DK: The percentage threshold should only be fulfilled at the time of admission to trading. LU: We prefer option a), the absolute requirement should only be met at the time of admission to trading. There should be adequate leeway to determine whether a security is sufficiently liquid during the life of a company on the public market. **BG:**

Question	MS reply
	Please refer to Q1. IE: We could be open to the threshold being applied at the time of admission to trading. In relation to the Commission's proposal of the threshold being applied "at any time", we would seek further clarity in regards to the supervision of this. We also believe that the consequences of derogation from the threshold are not clear in the text and would seek further clarification on this.
Q.4. If the MS consider that a percentage threshold is not at all necessary an alternative option could be to delete the proposed free float requirement in Articles 51a(4)–(7). A more vague and general requirement as regards the distribution of shares currently applies to transferable securities admitted to trading on regulated markets. This follows from Article 51(1) in MiFID II. Para 2 in that article requires that financial instruments on a regulated market are traded in a fair, orderly and efficient manner. In the Commissions delegated regulation 2017/568 Article 2(2) it is specified that a regulated market, in view of these requirements, shall take into account the distribution of the shares to the public. However, this would mean that the ambition to transpose the design of the free float requirement in the Listing Directive (which is only applicable to shares admitted to	CZ: Answer: We would like to keep the percentage requirement. ES: Please read our previous comments. BE: We don't have strong views but, as already said, we have the impression that keeping the current Listing Directive approach seems to be a pragmatic way forward. AT: We do not support deleting the proposed free float requirement in Art. 51a (4) – (7).

Question	MS reply
official listing) to MiFID II (which applies to shares admitted to trading) would be given up. What is the MS view on this?	We still see a minimum free float requirement as a useful tool for investor/ shareholder protection. As mentioned Art 2 (2) delegated regulation (EU) 2017/568 contains only a vague provision, which may prove difficult to enforce in practice. FI Although we understand that the free float is only one indicator of liquidity, our initial thought is to retain the percentage based requirement at the time of admission to trading. NL (Drafting): We don't have a final position yet and will need to reflect on it further. For the moment, would like to work on alternative drafting to the proposed art. 51a specific for shares admitted to official listing, rather than transposing it to the wider scope of shares admitted to trading. Has the Presidency considered alternative, potentially more simple, ways to address the expressed concerns by Member States? DE See above Q.1. **EL** **EL:** We consider that a minimum free float percentage is important especially for low-liquidity markets, so we do not agree to delete the proposed free float requirement in Articles 51a(4)–(7). Based on that, we would consider that the percentage threshold should be an absolute requirement continuously, in the way set in the Commission's proposal. FR

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Question	MS reply
	Non applicable PL We believe the percentage threshold should be kept. PT We are not convinced that such a significative change from the current regime is warranted. DK: DK does not have a specific opinion on this issue. LU: We could be open to explore the option of a complete abolition of the percentage threshold as long as an orderly functioning market and sufficient liquidity can be ensured. **BG:**

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Question	MS reply
	As stated in the response to Q1 we would prefer deletion not only of Article 51a(4) to (7) but to the whole Article 51a. IE: We support retention of a percentage threshold (albeit subject to exceptions/alternative ways of satisfying the objective, as is currently the case) rather than to delete the percentage threshold altogether. Free float requirements are important in ensuring a minimum level of liquidity in shares that are admitted to trading on a regulated market. Those that invest in such shares should be able to rely on that being in place.
II. Market Abuse Regulation **(Presidency non-paper WK 3663/2023)**	
Cluster 1: Insider Lists	
Q.1.1. What is the view of the MS on the possible way forward laid out in cluster 1 of Presidency non-paper?	CZ: Answer: We could agree to Presidency's way forward. SK: We support the presidency´s possible way forward, i.e. to keep the current wording of MAR. We prefer also to keep the information to be provided in insider lists as it is current. We think changes to the current information in insider lists (for example to use only identification number and not to include name) would be more costly than to keep the current content of

Question	MS reply
	information. We would like to also note that there can be some problems with only using personal identification number. ES: Yes. We support keeping the current regime on insiders lists and eliminating the obligation to publish inside information about intermediate steps in a protracted process. We are not particularly enthusiastic about elaborating the non-exhaustive list regarding inside information due to its complexity and the doubts about the potential binding nature of the list. Nevertheless, if the list were to be agreed, we believe ESMA should be involved. BE: We are in favour of the proposed way forward regarding insider lists, i.e. a status quo of the current regime, with alleviations linked to the identification of the individuals. We are opposed to the changes to article 17(1) and support hereby strongly the views of the Dutch delegation. We cite again that the legal uncertainty does not outweigh the reduced administrative burden. We see also an increased unlevel playing field, due to the inefficiency of the markets. Finally, we fear a negative impact on the enforcement by regulators. AT: We very much welcome the proposed way forward that event-based insider lists should remain the standard form of insider lists on regulated markets. This should in principle apply also to multilateral trading facilities and organised trading facilities.

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Question	MS reply
	We are still sceptical towards the Commission`s proposal on non-disclosure of intermediate steps. Any event can always be seen as a step in a protracted process or as a final event such as, for example, the board`s final decision to make a capital increase may be considered as a final event and at the same time as an intermediary step to. FI We support the PCY's proposal on insider list. We also support the proposal to exclude the intermediate steps from the disclosure regime. NL (Drafting): NL: **Insider lists:** In our view the proposed way forward on insiders lists is acceptable. That means (i) keeping the event-based list as standard for insider lists on regulated markets, (ii) keeping the current MS option for SME growth markets and (iii) keeping the obligation to notify all persons receiving insider information of their legal and regulatory duties. We do however believe that the proposed alleviations should – in part - be reconsidered. Especially the exclusion of using the maiden name. Most of the systems used by the NCAs are set up to compare names. By taking out the maiden name, it will be more difficult to – for instance – see the link between someone that does not use their birth name and a family member using its birth name. As such, risks would be created. This is not solved by using a national identification number. The alleviation on the other hand seems only small.

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Question	MS reply
	Intermediate steps: The Netherlands does <u>not</u> support the proposed way forward on the intermediate steps in a protracted process. As mentioned in previous written comments and during several Working Party meetings, we believe the carve-out for intermediate steps can lead to severe risks, that will likely materialize. To mention just a few: <u>Altering a corner stone of the MAR might have a negative impact on market integrity.</u> Publication as soon as possible of inside information is a corner stone provision within the MAR. Market abuse rules are indispensable for guaranteeing market integrity, which is in its turn essential for confidence in the capital markets and their functioning. The purpose of the obligation for issuers to make inside information public is to ensure that every investor can assess all the relevant information for his or her investment decision. In other words: it creates a level playing field with respect to information and ensures public confidence in financial markets. The longer inside information stays hidden, the higher the risk that the circle of insiders keeps growing and the higher the risk that ultimately someone tries to use the inside information for own advantage. The proposed carve out for information regarding a protracted process will have a negative impact on market integrity, because inside information will remain private for a longer time without the safeguards of two of the three requirements for delay. <u>Vital safeguards of Article 17(4) MAR will no longer apply.</u> The current framework already caters for delay of publication of inside information if certain safeguards are met. This framework functions adequately. By introducing the proposed change, two of these vital safeguards of article 17(4) MAR no longer apply, i.e., (i) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant and (ii) delay of disclosure is not likely to mislead the public. As a result of this

Question	MS reply
	change, inside information need not be published, despite the fact that the absence of such publication is likely to mislead the public and the publication itself wouldn't harm a legitimate interest of the issuer. Undesirable reducing the scope of Article 17 MAR. If information qualifies as inside information, the public should be informed as soon as possible (unless a delay of publication can legitimately be taken), regardless of being part of an intermediate step in a protracted process, since these steps can be (or: are) relevant for investment decisions. To put it more boldly, many decisions/actions (i.e., intermediate steps) that are part of the protracted process are considered relevant for the market. By creating a carve out for information regarding intermediate steps, issuers could have a (perverse) incentive to argue that all actions/decisions are part of a protracted process and as such do not trigger the obligation to inform the public without the use of delay and its safeguarding measures. One could even argue that most (formal) decisions/actions are part of a protracted process which in the end of the process will only be published 'as soon as possible'. That cannot and should not be intended. As a result, we would also like to point out that this unintentionally also limits the effects of the proposed amendment to article 17(4) MAR because of which all delays of publication must be notified to the NCA's immediately after the decision to delay is taken. Creating uncertainty which will not lead to the envisaged relieve for issuers. Replacing twenty years of experience with article 17(1) MAR with certain undefined terms and a new regime for the requirement would lead to uncertainty and will consequently not grant the envisages relieve for issuers. Since the disclosure requirement would no longer apply to intermediate steps in a protracted process, the examples of instances of delay provided in the ESMA Guidelines on delay would no longer be applicable. Undesirable altering of the scope of Article 7(2) MAR.

Question	MS reply
	The wording of the proposal 'where those steps are connected with bringing about a set of circumstances or an event' deviates from the wording in the definition of information of a 'precise nature': 'a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information'. Any deviation from the definition of information of a 'precise nature' can result in a, possible unintended, modification of the definition of inside information for issuers in Article 17(1) MAR. Accordingly, this could provide room for new (mis)interpretation of the definition of information of a precise nature and create legal uncertainty for issuers, the wider public as well as NCA's. RO We agree that event-based insider lists should remain the standard form of insider lists on regulated markets with the obligation for issuers to notify all persons receiving inside information of their legal and regulatory duties. Also, we are in favour to require event-based insider lists for issuers on SME growth markets. As regards the non-disclosure of intermediate steps in a protected process, we are in favour of the Commission proposal, in the sense that issuers should not be required to disclose inside information about intermediate steps. • **CY** • • **Agree with regards to the proposed way forward for insider lists.** • **Disagree with the proposed way forward regarding intermediate steps in a protracted process for the reasons previously explained.**

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	Disagree with the drafting of a non-exhaustive list of relevant information for the reasons previously explained. DE From the information presented by COM, NCAs make use of insider lists very differently. This raises the question if event-based insider lists create a disproportionate efforts for issuers. Germany generally supports the aim of the COM proposal to reduce bureaucratic burden under the MAR for issuers and could also support to reduce the insider list regime as proposed by COM. However, we do not support the option to introduce event-based insider lists 5 years after listing as this would lead to fragmentation on the same trading venue. As a compromise, a pure application of the current insider list on SME growth markets (permanent insider lists with the option to require event-based lists) on regulated markets seems possible. If the current event-based insider list regime on regulated markets is to be retained, at least the information in that insider lists should be significantly reduced. Regarding the exclusion of intermediate steps in a protracted process from the publication obligation the proposed way forward from the SWE Pres to keep COM's proposal is highly supported and absolutely necessary in the Germany view. **EL** **EL:** Insider lists We agree with most of the Presidency's proposed way forward. We also agree with ESMA's views expressed in its Letter of 15/3/2023 (WK 3667/2023 INIT). More specifically:

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Question	MS reply
	• Event-based lists should remain the standard form of insider lists on regulated market. (Insider list is a key tool in market abuse investigations by the NCA. The event-based list is more effective and useful tool to the supervisor as it provides specific information per inside information, regarding all persons having access to it and the time when each inside information exists or ceases to exist. The COM' s proposed insider list will not cover persons working for the issuer that do not have regular access to inside information). • The current MS option to require event based lists for issuers on SME markets should remain unchanged given that it is important for a supervisor to become aware of the persons involved in an event case of market abuse. • The current obligation for issuers to notify all persons receiving inside information of their legal and regulatory duties should also remain. • In our view, information to be provided in the insider list in the current regime, is necessary and we would not be in favour of eliminating any of it. • Intermediate steps in a protracted process: We do not agree with the presidency's proposed way forward. We do not support COM's proposal that Issuers should not be required to disclose inside information about intermediate steps in a protracted process. Reasoning:To rule out the obligation to disclose quite specific information relating to a step in a protracted process, may lead to situations where certain parties who possess inside information are in an advantageous position against other investors who are unaware of it and are able to profit from that information. This approach might also cause legal uncertainty, as far as the definition of inside information .

Question	MS reply
	Moreover, the provision does not seem to reduce the burden from the issuers, who will still have the obligation to properly identify inside information in these processes and to disclose it if they are unable to ensure its confidentiality. According to art.7, a step in a protracted process is considered to be inside information if in itself meets the criteria of inside information. The issuer has always the option to delay the disclosure. FR While insider lists are an important tool for supervisors, we should also recognize that managing insider list is a long and burdensome process that requires dedicated staff and procedures. That obligation is more easily handled by largest companies than smallest ones, which face a disproportionate burden. Given the objective of the Listing Act of reducing the administrative burden and encouraging SME to seek listing, we would see merits in adopting permanent insider lists for SME Growth Markets. Also considering that these are not regulated markets and a lighter investor protection regime also goes in hand with reduced obligations on other aspects (notably period information). Against this backdrop, we also support targeted alleviations to the content of insider lists. For example, we could scrap the hour when access of information took place: this item is often randomly filled for practical reasons. It ends up creating confusion for supervisors. Should it be specified at level 2, we would prefer an empowerment to the Commission and not to ESMA. The content of insider list pertains with considerations that go beyond the competence of supervisors, notably personal protection of privacy. PL As regards the insiders lists, we agree with the Presidency proposal.

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Question	MS reply
	With regard to non-disclosure of confidential information in protracted processes, it does not seem that the Commission's proposals eliminate the issuers' problems with identifying confidential information. As the definition of inside information has not changed, issuers will still have the obligation to properly identify inside information in these processes and to disclose it if they are unable to ensure its confidentiality. In the case of processes stretched over a long period of time, it will probably be impossible for the issuer to keep all information confidential due to other disclosure obligations, such as those related to the provision of periodic information, in particular when "unpublished" confidential information will concern processes generating significant costs for issuers or affecting disclosures in financial statements. These difficulties, in our view, do not occur in case of immediate disclosure of inside information. In addition, we do not agree with the arguments indicated in the recitals to the proposed changes that the broad scope of the concept of inside information results in the obligation of the issuer to disclose information at a very early stage, when information regarding circumstances or events has not yet reached a high degree of certainty. According to Art. 7(2) and (3) of MAR, an intermediate step in a lengthy process is considered inside information if it itself meets the criteria of inside information. Therefore, since the event is at too early stage and has not reached a high degree of certainty, it is difficult to conclude that this event met all the conditions of inside information (including the criterion of precision). It seems, therefore, that issuers' doubts focus on the assessment of a given event in the process in the context of meeting the criteria of inside information. In our opinion, the currently applicable solution contained in Art. 7(2) and (3) of MAR does not impose on the issuer the obligation to publish each intermediate step in the process, but only those steps that have been previously assessed and identified as inside information. Therefore, it is wrong to believe that it is necessary to disclose information devoid of specific nature, including information that would have no influence on the price of financial instruments, to the public. In addition, it can be indicated that issuers will continue to incur costs related to the proper identification of inside information at intermediate stages. The mere publication of confidential

Question	MS reply
	information generates lower costs than the process of its proper identification and maintaining confidentiality, in particular in long-term processes. In addition, at present, if the issuer decides to delay inside information, it is obliged to meet the criteria of Art. 17(4) of MAR. However, the proposed change does not specify the formal rules for non-publication of inside information, i.e. how the issuer is to ensure the confidentiality of "unpublished" information. This may increase the risk of insider trading in lengthy processes. Nevertheless, if it is the intention of the Presidency to keep the changes proposed by the Commission, we recommend at least adding a condition that the non-publication of confidential information in protracted processes should be subject to the condition set out in the current Art. 17(4)(c) of MAR (the issuer or emission allowance market participant is able to ensure the confidentiality of that information). Currently, confidential information identified in a protracted process is delayed pursuant to Art. 17(4) of MAR. This includes safeguards to ensure the confidentiality of delayed information. The procedure provided for in the proposed Article 17(1), second sentence of MAR does not contain such mechanisms. IT On the disclosure regime for intermediate steps in a protracted process, we reiterate our full support to the COM proposal to postpone the time at which the information must be disclosed to the public from the time at which it could be exploited by market abuse strategies to the time at which disclosure is mature for disclosure according to the last step of the related protracted process. As to insider lists, given the critical feedback of other MS on the COM proposal, we express a neutral approach to the possible way forward on the matter. PT

Questionnaire: Listing Act working party meeting on 21 March. *Deadline for comments: 5 April 2023*

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

Question	MS reply
	We can be favourable to the Presidency's proposal to maintain event-based insider lists as the standard form of insider lists on regulated markets, while at the same time easing the amount of information required to be provided in those lists. However, we would need more information on the envisaged specific amendments concerning the information to be provided in the insider lists, namely regarding the individual's identity, in order to assess whether this approach is acceptable. DK: Way forward regarding insider lists: DK supports to leave the current regime on insider lists unchanged. Issuers should not be required to disclose inside information about intermediate steps in a protracted process. This means that issuers on a regulated market shall be required to draw up an event-based insider list, and issuers on a SME growth market shall be entitled to include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information. Way forward regarding intermediary steps: DK supports the COM's proposal that issuers should not be required to disclose information about intermediate steps in a protracted process. LU:

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Question	MS reply
	As regards the proposal for the introduction of permanent insider lists as the standard form, we understand the concerns expressed by other Member States regarding the importance of event-based lists as a tool for monitoring and investigating the circulation of inside information. We can therefore concur with the Presidency, as laid down in its non-paper WK 3663/2023, that event-based insider lists should remain the standard form of insider lists on regulated markets. We also concur with the proposed obligation to inform relevant persons of their duties. Moreover, in accordance with the objectives of the Listing Act to lighten the burden for issuers, we welcome the proposal to provide some relief as to the information to be provided in insider lists. With regard to the proposal to remove the obligation to disclose insider information on intermediate steps in a protracted process, we could accept the Commission's proposal and therefore go ahead with the way proposed by the Presidency. **BG:** We support the proposed way forward. IE: With regard to the proposed way forward for insider lists – we would support the 3 Presidency proposals: I. The event-based insider list should remain II. The MS option to require event based insider lists for SME growth market issuers should remain unchanged

Question	MS reply
	III. The obligation for issuers to notify all persons receiving inside information of their legal and regulatory duties should also remain. We would also support exploring other alleviations for issuers such as simplifying the information required on an insider list as we feel that this will reduce the burden for issuers. With regard to intermediate steps, we would question whether this proposal will result in any significant simplification of compliance or cost for issuers that would justify the potential risk to market integrity, for that reason we would not be supportive of the proposal.
Q.1.2. Is EU harmonisation an important aspect for the MS as regards insider lists? Do the MS considerations differ between regulated markets and SME growth markets?	CZ: Answer: Yes. /We do not have an SME grow market, however we see a certain ration behind the idea to have less strict requirements for issuers on SME growth market. Reason: Harmonised approach is important for us – it helps to avoid uncertainty and unnecessary divergent national approaches which does not contribute to development of the EU capital market. ES: We support keeping the current MS option to require event-based insider lists only for issuers on SME growth markets (Article 18(6), subparagraph 2, of MAR). However, we are not in favour of the proposal of the COM regarding the MS option to require event-based insider lists on regulated markets for issuers who have been listed five years or more, for the reasons previously explained and because and the undesirable fragmentation it would create. BE: As regards to the first sub-question, we thinks that harmonisation as such is important.

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

Question	MS reply
	AT: EU harmonization is very important for us. However, the current MS option to require event-based insider lists for issuers on SME growth markets should remain. FI Discretion for MS regarding SME Growth markets as currently is the case. NL (Drafting): NL: RO We consider that EU harmonization on insider lists is very important for the NCAs ability to enforce the market abuse provisions. In our opinion, the lists of insiders should include the same categories of persons, both in the case of SMEs and in the case of regulated markets. **CY** **Harmonisation is very important with regards to insider lists. In the context of a market abuse investigation, a member state may request from another member state, the insider list maintained by the issuer, so it is important the same approach to be adopted. Our consideration does not differ between regulated markets and SME growth markets.** DE

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Question	MS reply
	In principle, a regulation that is as homogeneous as possible - both with regard to the different MS and with regard to the various markets - is to be welcomed, as it creates legal certainty on the one hand and reduces complexity and thus also costs for issuers on the other hand. **EL** **EL:** We agree that EU harmonisation is an important aspect for the MS as regards insider lists. However, as far as SME growth markets is concerned, there is room for optional different regimes for MS as regards insider lists (as in the current MS option to require event based lists for issuers on SME growth markets) in order to have the flexibility to adapt the rules to local conditions and to the size of issuers and investment firms FR Ideally, we would prefer a harmonized European regime but we should also bear in mind proportionality considerations and the need to take into consideration how investigations are intertwined with national law and legal procedures. PL The current level of harmonisation of the provisions on insider lists is sufficient. In our opinion the existing freedom of the Member States to establish requirements related to the lists should be kept. However, we are open to the proposal to refrain from disclosing certain data on insiders provided for in level 2 acts.

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Question	MS reply
	IT Yes, we do consider EU harmonisation highly desirable. Nonetheless, we do see the need for a simplified approach on insider lists to SME growth markets. PT We consider EU harmonisation to be an important aspect on this regard, as to ensure the protection of investors from a MS different from the issuer MS. Therefore, we would not agree in allowing the obligation to draw a complete insider list on regulated markets to be a MS option as proposed by the COM. We are favourable to the current text of MAR regarding the possibility for issuers in SME growth markets, as a principle of proportionality, to draw a permanent insider list, but would also prefer if there was not a Member State option to impose additional requirements in this regard. DK: Yes. DK supports that the current requirements to insider lists remain. LU:

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Question	MS reply
	We generally recognise the importance of harmonisation in the area of market abuse. However, we understand that the effort required to create an insider list can be burdensome for small companies, and we therefore consider that the requirement to establish event-based insider lists for issuers in SME growth markets could remain optional, as suggested by the Presidency. **BG:** We support the current MS option to require event-based insider lists. IE: We believe that EU harmonisation of the insider list regime for issuers on regulated markets is important for MS. We do consider that alleviations for SMEs should remain, however, issuers on regulated markets should be subject to the full insider list regime, i.e. required to maintain an event specific list.
Q.1.3. Do the MS see the need for a non-exhaustive list of inside information which specifies the moment when the issuer can be reasonably expected to disclose the information? Is it necessary for the MS to ensure involvement from ESMA in drawing up such a list?	CZ: Answer: We see the need for a list of inside information which specifies the moment when the issuer can be reasonably expected to disclose the information. We prefer for such a list to be adopted by delegated act – even if it means the non-exhaustive list would have to be transformed into an exhaustive list (in reaction to the issue highlighted by the Council's legal service during last meeting). But we of course do not rule out some level of involvement of ESMA in drawing up the list.

Question	MS reply
	SK: We agree with the opinion of Legal Services that a non-exhaustive list couldn´t be binding. So we prefer that ESMA should issue guidelines. HU: The non-exhaustive list would be an important tool for increase legal certainty, and we support involvement of ESMA to establish such a list. ES: Please read our previous answer. Although we do not deny its usefulness, we fear it may create more problems than solutions. The list can rise to problems of a legal nature that have a negative effect on the prosecution of market abuse, as the courts may attribute a presumption of compliance to situations that are not included or even consider the list as a closed list of situations. BE: No, see Q.1.1. If yes, at the end, we are in favour of the involvement from ESMA in drawing up such a list. AT: We believe that in any case ESMA should be involved.

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Question	MS reply
	FI Since we understand that we cannot find clarity in level 1 text, we need to find other approaches to find solutions to clarify this regime. Either non-exhaustive list of events in a delegated act or ESMA guidelines. We have serious doubts that this list could be exhaustive. NL (Drafting): NL: In our view the proposed non-exhaustive list has merits within the current text of the proposal. We believe it is best to have ESMA involved through the procedure of creating regulatory technical standards. RO We are in favour of a non-exhaustive list of inside information that specifies the moment when the issuer can reasonably be expected to disclose inside information and we agree that ESMA should be involved in the development of such a list. **CY** **NO need for a non-exhaustive list of inside information which specifies the moment when the issuer can be reasonably expected to disclose the information.** DE

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Question	MS reply
	The proposal to draw up a non-exhaustive list of possible insider information subject to publication is very welcomed. Such a list must ensure a high level of legal certainty so that ESMA guidelines are not sufficient in this respect. The list also needs to be kept flexible for further amendments as well as ESMA's professional advice should be able to flow in. In sum, a DA by COM as proposed seems the best solution. **EL** **EL:** Bearing in mind that we do not support the proposed exemption relating to the steps in a protracted process, we are not in favour of such a list. Making such a list would be a difficult task and we are of the view that legal certainty issues would arise, especially for cases that will not be included in the list . Such a list can only be provided on an indicative basis. If such a list were to be drafted, we are of the view that ESMA's involvement would be helpful given that it will collect relevant data from the NCAs. FR The Commission has proposed a sensible approach to clarify the definition of inside information for disclosures purposes. If properly drafted, the non-exhaustive list will help issuers without undermining NCA supervisory powers. Looking at the broad wording of provisions framing both insider information and delayed disclosure, it can only be burdensome to assess the need to disclose information to public. The premature disclosure of inside information could also have a detrimental effect to the company. Issuers could only benefit from further clarification of the legal framework. We would prefer keeping the approach of the legislative proposal, which means having significant clarifications at level 1 or 2 (with a Commission delegated act).

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Question	MS reply
	On our collective ability to find the right solution for the notion of inside information depends whether the Listing Act will patch or fix the problems of the current framework. PL We are in favour of adopting a non-exhaustive list of inside information and we consider it appropriate to involve ESMA in the process of shaping this list. IT We support the COM proposal on the non-exhaustive list of inside information as it would be an important tool to increase legal certainty and reduce costs for issuers. At the same time, we support the involvement of ESMA in drawing up the list, as it would involve the participation of financial market authorities in the drafting work. In this respect, CESR provided the market with a similar list on July 2007 (see: "*Level 3 – second set of CESR guidance and information on the common operation of the Directive to the market*). PT Regarding the non-exhaustive list of inside information, we welcome this list as we believe it will increase legal certainty. We consider such a list, including instructions on the appropriate moment for disclosing inside information, should be established in ESMA guidelines in order to ensure its easier update. Additionally, we consider drawing such a list is a complex task, that will not cover every possible case, therefore it is essential to be clear in Level 1 about

Question	MS reply
	what is considered an intermediate step, for instance through the provision of some examples, at least in the recitals. DK: Yes as this will increase legal certainty and reduce costs for issuers. The format should be flexible, and the list should draw on the NCAs' experience. We therefore support an ESMA RTS. LU: We support the idea of a non-exhaustive list of inside information specifying when the issuer can reasonably be expected to disclose the information, since such a list could contribute to greater clarity in this regard. We do not consider that ESMA should necessarily be involved in the elaboration of such a list, as this is not, in our view, a purely technical exercise. **BG:** Non-exhaustive list would be a useful tool and in our view it is necessary ESMA to be involved in its drafting. IE:

Question	MS reply
	Yes, we see a need for the non-exhaustive list and believe that this will assist issuers in determining the stages of inside information, which will in turn, reduce the burden for them. We would be in favour of involving ESMA in drawing up such a list.
Cluster 2: Delayed disclosure	
Q.2.1. What are the views of the MS on the possible way forward laid out in cluster 2 of Presidency non-paper?	CZ: Answer: We support the Commission's proposal as it stands. However, we are open to the Presidency's proposal to preserve the ESMA's power to draw up guidelines. SK: Yes, we agree with the proposed solution. HU: We support COM's proposal: the issuer could delay disclosure to the public of inside information provided that all of the conditions are met. (Art. 17,4). As a general principle, if the issuer cannot adequately ensure the confidentiality of inside information and the intermediate step becomes public as inside information, it should be disclosed. ES: We fully agree with the statement in the non-paper saying that a change to the conditions for delayed disclosure would destabilize the existing framework of relevant case law and legal

Question	MS reply
	practice and that the current clarification framework, through Q&A and ESMA guidelines, is sufficient and flexible. BE: Regarding the conditions for delayed disclosure, we agree with the proposed way forward, namely a status quo of the conditions in the current regulation as well as the empowerment for ESMA to draw up guidelines. Regarding the disclosure due to rumours, we agree also with the proposed way forward, namely the removal of the word 'reliable'. AT: We appreciate the possible way forward in the field of delayed disclosure with the result that the conditions for delayed disclosure of inside information should remain as they are according to current regulation. FI We can be flexible. NL (Drafting): NL: The Netherlands can agree with the proposed way forward in keeping the conditions for delayed disclosure as they currently are. If however the choice is made for the COM proposal (i.e. the 3

Question	MS reply
	conditions instead of the open norm), in our view it could have merits to keep the open norm as an addition. This could be used to prevent loopholes. The Netherlands is in favour of option A (i.e. the *ex ante* notification with the clarifications that are provided). The Netherlands is also in favour of deleting the word reliable from the proposed text for Article 17(7) MAR. In addition, the Netherlands would like to point out that in the Impact Assessment it is stated that there are no delays of disclosure in the Netherlands. This is incorrect, and could cloud the discussions. In accordance, with article 17, paragraph 4, issuers in the Netherlands are required to only provide explanation of how the conditions for delay of disclosure are met upon request of our competent authority. This does not however mean that no issuer ever uses the option to delay disclosure of inside information. Despite the fact that explanation is only required upon request, our competent authority received several hundred notifications from issuers concerning the delay of disclosure of inside information in recent years. RO Until now, the legal framework in force as regards the delayed disclosure has worked very well in the supervision area. The general condition that the delay of disclosure is not likely to mislead the public should remain as it is in the current regulation.

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Question	MS reply
	Additional clarifications by ESMA in its guidelines of situations in which delay of disclosure of inside information is likely to mislead the public is welcomed, therefore we are in favor that the empowerment of ESMA to draw up guidelines should remain as it is currently. • **CY** • • **We are of the view that the current framework with regards to the delayed disclosure should remain unchanged.** • **The obligations to notify NCA should also be applicable with regards to the intermediate steps.** • **In addition, we are of the opinion that NCAs are to be notified of the decision to delay disclosure once the information has been disclosed (ex-post), as it is in the current regulation.** **We are of the view that the word reliable should be removed.** DE The COM's proposal concerning Art. 17 (4) b) MAR would allow issuers more certainty in the use of delays, but it mus be ensured that these three conditions are not exhaustive as there may be other situations where a delay can be misleading. One solution could be to keep the current Art. 17(4)(b) MAR and introduce the three conditions as examples. The Presidency's proposal leaves the authorisation for ESMA in place, the Presidency's proposal would also be acceptable. **EL**

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Question	MS reply
	EL: Conditions for delayed disclosure: We agree with the Presidency's proposal *"The conditions for delayed disclosure of inside information should remain as they are in current regulation. The empowerment for ESMA to draw up guidelines should remain as it is currently"* Notification of delayed disclosure to NCAs: Presidency's proposal for a possible way forward is that *"It should be clarified that the obligation to notify the NCA of decisions to delay is not applicable to intermediate steps in a protracted process"*. Since we do not support the COM's proposed exemption as regards disclosure of inside information relating to the steps in a protracted process, we oppose to the above. Disclosure due to rumors: we support the Presidency's proposal FR The proposed modification for protracted process is a source of flexibility for issuers in the U.S. So there is no doubt the Commission's approach has some merits. We are willing to support the approach of the legislative proposal provided that legal concepts are clarified and we have rules ensuring the ability of supervisors to investigate insider dealings cases. The broad language of legislative proposal may open too large inroads in the inside information framework that may weaken the capacity of supervisors to investigate potential insider dealings cases. Bearing in mind that the non-exhaustive list is unlikely to pinpoint adequately the point in time when any intermediate step of a protracted process that constitutes an inside information deserves publication, we believe that the Council general approach should address at least two concerns: i. the loss of audit trail by NCAs (compared to the current situation where intermediate steps of a protracted process are dealt with under the deferral regime of Art. 17(4)), and

Question	MS reply
	ii. the legal unclarity around the scope of a protracted process (hence around the scope of the disclosure exemption) and the moment when it reaches its conclusion (and no longer benefits from an exemption from public disclosure). We propose to first accompany the disclosure exemption with a mandatory audit trail that the issuer would have to maintain throughout the lifetime of the protracted process. Such audit trail would consist in a written record of the analysis (i) leading the issuer to activate the disclosure exemption, (ii) and justifying that each subsequent intermediate step continues to benefit from the disclosure exemption (and does not constitute the conclusion of the protracted process). When the issuer eventually goes public (either because the protracted process has reached its conclusion or because the confidentiality of the inside information is no longer ensured), the issuer would have to notify the NCA (ex-post) of such publication. It shall provide written records of its analysis to the competent authority upon the latter's request. Such an amendment would bring comfort to both NCAs and issuers: • In the current set-up, intermediate steps of a protracted process are dealt with under the deferral regime of Art. 17(4), thus granting NCAs with access to an ex-post justification of why the deferral was compliant with MAR. Our proposal aims to replicate such audit trail, so that NCAs are in a position (i) to monitor insider dealings in cases of protracted process (together with insider lists) and (ii) ensure that the disclosure exemption is not abused. • Our proposal would not represent a high burden for issuers, who will in any case have to assess whether the information at hand qualifies as inside information, both to ascertain which information they have to keep confidential and to help prevent any insider dealing operation. The proposed ex-post justification will hold the issuer accountable and ensure that it carefully monitors the status of any protracted process and assesses the moment when such process has reached its conclusion (as this

Question	MS reply
	represents a critical moment for the purpose of compliance with Art. 17 and the information provided to the market). Proposed amendment - add new paragraph 1c in Article 17 : ***1c. Where an issuer has not disclosed intermediate steps in a protracted process pursuant to the exemption set out in paragraph 1 and immediately after the conclusion of such protracted process is finally disclosed to the public, the issuer shall inform the competent authority specified under paragraph 3 that disclosure of those intermediate steps was exempted and shall provide written explanations of how each intermediate step constituted an inside information and of which circumstance or event was identified by the issuer as the conclusion of the protracted process, and why.*** Second, it is necessary to clarify the scope of the disclosure exemption. As currently drafted, there is a risk that any event or circumstance is qualified as belonging to a protracted process. Such an amendment would bring more legal certainty to both issuers and NCAs, and help prevent the misuse of the disclosure exemption as a way to circumvent any art.17 disclosure obligation. Without such details, the scope of the exemption could be massive, as a boundless range of situations will fall under its scope. We regret that the COM non-paper does not expand on that (through detailed explanations on the application of the exemption in different business cases). PL As regards the grounds for delaying confidential information, we support the Commission's proposal. However, if the Presidency decides that this proposal will not obtain a majority in the

Question	MS reply
	Council, it will be reasonable to at least specify the existing ESMA guidelines in this regard (specify the condition of "not misleading the public" at the level of ESMA guidelines). As regards changes in the definition of rumor, we support the Presidency's approach and we are in favour of removing the word "reliable". IT We don't agree with the possible way forward on the conditions for delayed disclosure, and fully support COM proposal, which addresses relevant enforcement issues that may arise in the event of a misleading delayed disclosure. In particular, we underline that the current condition on "not misleading the public" can not be addressed by ESMA guidance since failures to comply with this condition overlap with the definition of market manipulation. For instance, if the issuer fails to disclose a profit warning it is liable both for Art. 17(4) and for Art. 12(1)(c) MAR, which prohibits "*disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or* ***misleading signals*** *as to the supply of, demand for, or price of, a financial instrument (...)*". Therefore, the COM proposal has the merit of being based on a different wording, other than "*misleading the public*". In view of the doubts expressed by some MS about the closed list of conditions replacing the concept of misleading, we see no significant obstacles to allowing L2 or L3 to define a more flexible list, subject to the replacement of the term misleading by L1.

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Question	MS reply
	Finally, we support the possible way forward on disclosure due to rumours. The word "reliable" should be removed because it could lead to enforcement problems for both NCAs and issuers, and the non-disclosed intermediate steps should be included in the scope of Article 17(7) of MAR for the sake of consistency. PT We do not oppose the new conditions for delayed disclosure presented by the COM, however we consider that in any case that the current requirement concerning the non-misleading nature of the disclosure delay should be kept. DK: Way forward regarding conditions for delayed disclosure: DK supports the COM's proposal, but we do not strongly oppose to the Presidency's suggested way forward, i.e. keeping the current text of art. 17(4) and ESMA guidelines. Way forward regarding notification of delay: DK finds it sufficient clear in the COM's proposal, that the obligation to notify the NCA of decisions to delay is not applicable to intermediate steps in a protracted process. However, DK is not strongly opposed to further clarification. Way forward regarding rumors: DK can support either of the COM's or the Presidency's proposal regarding exclusion of the word "reliable".

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Question	MS reply
	DK supports the Presidency's proposal that non-disclosed intermediate steps should be included in the scope of 17(7). LU: With regard to delayed disclosure, we do not have a strong opinion on the proposed alternatives, but we could support the solution proposed by the Presidency, i.e. that the conditions for delayed disclosure of inside information should remain as they are. As regards rumors, we can also accept the way forward as proposed by the Presidency, i.e. that the word 'reliable' should be deleted and that undisclosed intermediate steps should be included in the scope of Article 17(7) of MAR. **BG:** We support the proposed way forward. IE: With regard to the conditions for delayed disclosure: We would support the proposed way forward. The text is high level and broad however Q&A and Guidance from ESMA should be sufficient in order to provide clarification as to when information is likely or not likely to mislead the public. With regard to disclosure due to rumours:

Question	MS reply
	We would support the removal of the word 'reliable' as this may cause an additional level of complexity for the issuer in determining when a rumour is reliable or not (i.e. subjective rather than objective opinion). With regard to including non-disclosure of intermediary steps in Art 17(7) – this may not be needed as the COM has proposed a new regulation 17(1b) which requires issuers to disclose inside information once confidentiality is no longer ensured.
Q.2.2. Do the MS have a preference between Option A and Option B, with regard to timing of the notification of the NCA of a decision to delay disclosure of inside information (see Section 2.2.4 of Presidency non-paper)?	CZ: Answer: We prefer option A – for the NCAs to be informed ad the time the decision to delay information was taken (not ex-post with the publication of information itself). SK: We prefer option A. HU: We support COM's proposal regarding ex-ante notification. ES: We prefer Option B. BE:

Question	MS reply
	Regarding the timing of the notification of delayed disclosure of inside information, we are in favour of Option A, namely an ex ante notification. AT: Ex-post notification has proven to be well-functioning in practice and therefore we support Option B. FI We prefer the option B. In our opinion, the option A is likely to increase the burden on issuers. It could lead to follow-up communications with the NCA at too early stage. NL (Drafting): NL: The clarified *ex ante* option as stated in Option A is preferred. RO Although we see some benefits of an ex-ante notification of the NCA, including monitoring by the NCA of the postponement conditions throughout this process, the proposed modification could be apparently an "authorization" of the postponement by the Competent Authority. In this context we are in favor of option B - NCAs are to be notified of the decision to delay disclosure once the information has been disclosed (ex-post), as it is in the current regulation. **CY**

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

Question	MS reply
	Option B DE On the issue of notification of delay decisions, Germany agrees with the Presidency assessment that clarification is required both with regard to the handling of intermediate step insider information and with regard to the timing of the delay notification. It is also in line our understanding that if the obligation to publish intermediate step insider information ceases to apply, there should be no delay notice and thus no information to the NCA. In addition, Germany is also in favour of clarifying that the decisions to delay should be transmitted immediately after the delay decision has been made (Option A). Alternatively, instead of the Commission wording "intends to delay", the wording as follows would be possible: *Where an issuer or emission allowance market participant* ***~~intends to~~ has delayed*** *the disclosure of inside information under this paragraph, it shall inform the competent authority specified in accordance with paragraph 3* ***~~of its intention to delay~~*** *that the disclosure of inside information* ***is delayed*** *and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the decision to delay is taken.'* With regard to the reference of Art. 17 (7) MAR to any intermediate steps, we agree with the proposal of the Council Presidency. With the new Art. 17 (1) (b) MAR, such an understanding is mandatory in the interest of transparency on the capital market. **EL**

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Question	MS reply
	EL: We prefer Option B. We agree with the concerns raised that the ex-ante notification could result in an obligation for the NCA to authorise the delay, adding an undue burden on the NCAs. It could place the issuer under the false impression that its decision to delay disclosure has been implicitly "approved" by the NCA, thus taking away the sense of responsibility from the issuer around its decision to delay. Finally, the *ex ante* notifications might result in issues of liability for NCAs. FR We prefer keeping the current ex post notification. An ex-ante notification would not necessarily help the issuer that would need to inform the NCA. This operation could may still give the false impression that the decision to delay the disclosure of inside information is approved by the NCA. With the ex-ante notification, the supervisory officers would also become an insider which may prompt the need to have additional internal procedures to preserve the confidentiality of information. In our view, there is no reason to change a system that suits both issuers and NCAs. PL We are in favour of option B, but option A is also acceptable for us. However, in case of option A it is crucial for us to introduce the amendments proposed by the Presidency regarding the adjustment of the moment of submitting the notification and to clarify that the notification does not imply any form of approval by the NCA. IT

Question	MS reply
	We fully support Option B. The ex-ante notification would risk making the NCA responsible for the issuer's decisions vis-à-vis investors and make ongoing supervision very complex and burdensome. In addition, issuers would be required to notify the delay of public disclosure of inside information even in cases where the same information loses the conditions of article 7 of MAR and a press release is therefore no longer required. This appears to be a burden on the issuers themselves. We agree to clarify that the obligation to notify the NCA of decisions to delay is not applicable to intermediate steps in a protracted process. PT We believe that Option A presents a well-balanced approach that is in line with our past suggestions, and effectively addresses the issues we encountered with the Commission's proposal regarding the requirements surrounding the "intention" and "explanation". On the disclosure due to rumours, we agree with the proposed way forward of removing the term “reliable”, as this provision would excessively expand the situations where an issuer is not required to disclose inside information, while not offering adequate legal clarity regarding scenarios where the issuer may postpone such disclosure. DK: Option B. DK does not find option A viable. Even if it is clearly stated that the NCA would not be required to assess or approve the delay and would not have any lability, the NCA would not in practice

Question	MS reply
	be able remain passive if a delay was not justified. In the case option A will be the way forward, DK supports the alignment to "after the decision is taken". LU: We have a preference for option A, which provides that the notification to the national competition authority should take place immediately after such a decision is taken. IE: We would support option A as this may improve monitoring and detection of potential insider trading cases, whilst also clarifying that issuers only need to disclose after the decision to delay is taken. We also welcome the clarification that there will be no obligation placed on the NCA to approve the decision and that full liability will remain with the issuer. We also believe it is necessary to clarify that the obligation to notify the NCA of decisions to delay is not applicable to intermediate steps in a protracted process.
Cluster 3: NCAs and ESMA cooperation and collaboration	
Q.3.1. What is the view of the MS on the possible way forward laid out in cluster 3 of Presidency non-paper?	SK: We agree with the proposed solution by the Presidency, under the conditions of 18 months for NCA´s to set up the mechanism and longer time for NCA´s to provide requested data. It also important the question of financing. ES:

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Question	MS reply
	We need a better understanding of the functioning of CMOBS, it is not year clear to us how the whole process would work. The proposal needs to be qualified for technical reasons and assess the volume of information exchanged and the different systems involved (competent authorities and trading venues). Besides, we have already highlighted that it is necessary to perform a more rigorous study of costs to be able to properly assess this part of the proposal. BE: We are in favour of the set up of the CMOBS. We think that ESMA should take the lead here to install a hub and that ESMA should also bear all or the majority of the costs. We would like to repeat that we are opposed to a strenghtening of ESMA's role in relation to initiating investigations or inspections. Competent authorities should remain the competent investigatory body. AT: We agree with the way forward. The arguments raised are addressed and changes in the proposal are made. NL (Drafting): NL: The Netherlands is in favour of the proposed option C (setting up CMOBS with the proposed amendments), with the comments on costs made below under Q.3.2. RO

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Question	MS reply
	We support the COM's proposal to set up a mechanism for exchange of order book data **CY** **Please see answers below.** DE Q.3.1 and Q.3.2: Generally, Germany is not convinced that the CMOBS proposal is necessary and appropriate as form the view of the German NCA order data is exchanged with other NCAs without any problems and in an expeditious manner under the currently applicable law. Therefore, a complete elimination of the proposal (Option D) is considerable. If a complete elimination of the CMOBS proposal is not considered, the adjustments proposed under Option C are very reasonable and address the concerns of the German stock exchanges. **EL** **EL:** As mentioned in the Presidency's non-paper, Article 38 of MAR currently requires the COM to explore the possibility to establish a European framework for cross-market order book surveillance. It is however, clear from MS comments that the setting up of the mechanism will require new technical systems for both NCAs and trading venues, which may take time to establish. According to the COM proposal, the technical standards from ESMA will contain the operational arrangements for the mechanism, which NCAs need knowledge about before setting

Question	MS reply
	up the mechanism. Further technical amendments and clarifications are required regarding the scope of markets to which the CMOBS would apply. FR Yes – please below on the CMOBS. As regards to ESMA role in investigations, we support option E. Setting up a collaboration platform could be helpful and facilitate cross—border investigations. The platform would be the natural extension of the current system since it would serve only at the request of NCA. PL We do not have strong views in this regard and we can support the Presidency's proposal. IT Please, refer to the more detailed answers below. PT See comments below. DK: DK agrees that there are uncertainties related to costs, benefits and scope of the mechanism.

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Question	MS reply
	We are positive towards the proposal of prolonging time for implementation. IT resources are scarce. LU: Please refer to our comments below. **BG:** IE: We support the establishment of the CMOBS.
Q.3.2. Regarding the CMOBS issue, would the MS be in favour of option C, D, or another alternative?	CZ: Answer: Ideally, we are for option D, but we can accept option C as long as we are not part of the CMOBS on the obligatory basis. Reason: We are not in favour of the CMOBS, however we do not want to stand in the way of those MSs who wish to be part of it. SK:

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Question	MS reply
	We prefer option C. We prefer to designate trading venues that have a significant cross-border dimension by ESMA ITS. ES: At the current stage we do not have enough information to decide. BE: Regarding the CMOB issue, we are in favour of option C, namely the set up of a mechanism for exchange of order data, including the proposed amendments. We would also like to strengthen that ESMA has an important role here to play in setting up a hub and bearing the costs. AT: We would prefer option C, because we see merits in the mechanism for exchange of order data provided the practical concerns are addressed as proposed by the Presidency. FI Option C. NL (Drafting): NL:

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Question	MS reply
	The Netherlands is in favour of option C – to set up CMOBS with the proposed amendments. As mentioned during the Working Party, we do however once more want to raise awareness to the impact on only a few of the NCA's that will be forced to make a lot of costs. In our view the costs should be divided more equally. RO We are in favour of option C **CY** **We support option D.** **The current possibility to exchange order book data on an-ad hoc basis in accordance with Article 25 of MAR should continue to apply.** DE See above Q.3.1. **EL** **EL:** Option C seems to be more proactive. FR We support the changes outlined in option C.

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

Question	MS reply
	- Implementation: We do not see any problem with providing more leeway to ESMA and participating NCAs, by extending the deadline for submitting ITS and/or by extending the date of application of the whole mechanism; - Lag for the transmission of data: T+1 would not only be hard to manage but also unneeded given the use of that data by supervisions. The mere access to this data, even after a short delay, is largely sufficient for NCA to exercise their supervisory powers. We believe three delays should be distinguished: (i) the delay for passing on a request from a NCA to the relevant trading venue in scope. We propose to set this delay to one week, in order to leave enough time for the NCA to transmit the request for ongoing exchange of data on a specific set of instruments. (ii) the timeframe to implement the ongoing feed once a request has been received: once the feed was implemented and started running, the time lag (in days) between the effective date of the order and the transmission of order data. For example, if the effective date of the order is the 1st of January, the transmission of this order data should come no later than x days (receiving the data even the 1st of February would be appropriate for instance). PL We are in favour of option C. The extension of the date of entry into force of the CMOBS provisions and the extension of the deadline for the submission of information by NCAs are particularly important for us. IT We are in favour of option C, as the implementation of such an exchange mechanism is most needed in our surveillance activity. Nonetheless, we share the doubts and concerns expressed by the other MS supporting the initiative as stated by the Presidency in option C. We also deem that a proper assessment of the initiative can be provided once information about the new

Question	MS reply
	required technical systems and operational arrangements is set forth. A more detailed description of the envisaged mechanism would be important to help provide a more grounded assessment on the whole project. In this respect the following aspects should be clarified: i) The role of ESMA and NCAs in setting up and running the mechanism; ii) The flows of data between trading venues, the mechanism, ESMA and NCAs, iii) The data access mode (e.g. request to ESMA validated by NCA, request to the competent authority of the financial instrument/market, other); iv) The possibility of requesting data for an indefinite subsequent period on a continuous basis (e.g. daily for the next three months); v) The time lag to access data (e.g. t+1, etc.); vi) The storage of data (for how long, by whom); vii) The allocation of costs. PT We consider that several elements of this proposed mechanism need to be further clarified, in order to adequately assess the added value. For instance, the impact assessment of this mechanism should be further densified, and the proposal should provide more specific information on the financial aspects of its implementation and the delegation of tasks to ESMA. In addition, when evaluating the added value of the mechanism it is important to consider the alternative scenario of having no mechanism but rather a standardized framework for order book data in terms of both format and content. Next, we consider that the most significative added value arising from this proposal relates with the establishment of time limits for the swift information sharing. In this context, the proposal concerning the 5 days and 1 month time-sets seems adequate. Still on this regard, we would

Question	MS reply
	appreciate if the COM could provide information on the current usual time-sets in place concerning such information exchange request. If the aforementioned aspects are addressed satisfactorily, then we could potentially agree on Option C as a compromise. That being said, considering the significantly high costs expected for NCAs with this mechanism, we suggest that the PRES and COM consider an alternative solution, which could involve centrally developing the mechanism and having each NCA contribute **proportionally** to its cost structure, if necessary, with the new platform being managed by ESMA, in case this approach would result in a reduction of costs for NCAs, when compared with the specific information on the financial aspects requested above. DK: DK is open for establishing a mechanism to exchange order data, therefor we prefers Option C. DK is still of the opinion that a thorough cost benefit analysis should be made. LU: We are not particularly enthusiastic about the implementation of the CMOBS as there are considerable costs involved but, in terms of compromise, we consider that the amendments proposed under Option C seem reasonable and could be taken into account.

Question	MS reply
	However, before approving the proposal, we consider that ESMA's role in the mechanism as well as the scope of the markets to which it would apply (for all asset classes) should first be clarified. **BG:** Although Bulgaria would not mandatory be part of such cross-market order book supervision (CMOBS) mechanism it is not clear what problems have been identified with the current ad-hoc requests regime and is it necessary to create such a mechanism taking into account the costs. IE: We support option C and are in favour of setting up the CMOBS. This option provides for sufficient time to set up the system and an increased period for responding to requests, which were initial concerns for us.
Q.3.3. Regarding the scope of markets that would be a part of the CMOBS on a mandatory basis, would MS be in favour of the scope proposed by the COM with some amendments and clarifications, or would MS prefer the scope to be defined differently?	CZ: Answer: We can accept the proposed scope (as was presented by the Commission during the last meeting). ES: Scrutiny reservation. BE:

Question	MS reply
	We have no strong views. AT: In general, we agree with the approach on CMOS as suggested. The criteria are high level and need clarification and amendments. It is necessary that all addressees of the provisions are able to foresee whether they are in the scope or not. NL (Drafting): NL: We are in favour of equity, bonds and futures being in scope, as is the case in the EC proposal. RO We are in favour of the scope proposed by the COM with some amendments and clarifications **CY** **N/A- see answer in Q.3.2. above.** DE Concerning the scope of the amendment - it should be already defined at level 1. The classification criteria as to when a trading venue is considered a trading venue within the scope

Question	MS reply
	of Art. 25a MAR has to be defined at an early stage. The criteria should be (a) the size of the trading venue, and (b) the significance of its activity on financial instruments for which the competent authority of the most relevant market referred to in Article 26 of of Regulation (EU) No 600/2014 is different from the competent authority of the trading venue. Nevertheless, a complete elimination of the proposal could also be considered, as order data is exchanged with other NCAs without any problems and in an expeditious manner under the currently applicable law. **EL** **EL:** The scope proposed by the COM is sufficiently drafted. FR The scope should be defined based on criteria that are sufficiently explicit and sound to avoid any doubts on the subsequent list of captured trading venues, without however setting any constraining quantitative elements (such as thresholds). These two types of combined criteria will then be documented for each asset class at level 2. The first is a size test that would capture large trading venues only: for instance, i) for shares, the aggregated turnover; ii) for bonds, the traded nominal on bonds; iii) for futures, the number of traded contracts on futures. The second is a cross-border test that would encompass trading venues where large volume of data transactions are under the supervision of the NCA of another jurisdiction. PL

Question	MS reply
	We do not have strong views in this regard. IT The foreseen limitation to trading venues where only stocks, derivatives and bonds are trades is agreeable. It is deemed of utmost importance that the list of trading venues allows the identification of cross-product cases, not just cross-market cases on the same financial instrument (as shown in the slides provided by the Commission during the 21 March WP). PT In case Option C is selected, we consider that the participation in the mechanism should be decided by each Member State. DK: DK agrees that there should be a specific scope for CMOBS. That is that not all trading venues are automatically in scope. DK see positive element in the presentation made by the COM on the definition of international activities in order to define the trading venues in scope. LU:

Question	MS reply
	Please refer to our response to question 3.2. We believe that all asset classes should benefit from greater clarity regarding the scope of markets that are included on a mandatory basis. IE: We support the scope of markets proposed by the COM in the non-paper with further clarifications provided around the qualitative and quantitative criteria that could be used to increase the probability for inclusion of a trading venue.
Q.3.4 Would MS prefer that ESMA drafts technical standards of a list of trading venues that fall into the scope of markets that would be a part of the CMOBS on a mandatory basis, or would MS prefer the COM to draft such a list as proposed by the COM?	CZ: Answer: Regarding the list of trading venues that falls within the scope, we would prefer for the Commission to draft it. SK: We prefer to designate trading venues that have a significant cross-border dimension by ESMA ITS. HU: We prefer that ESMA drafts technical standards. ES: Scrutiny reservation.

Question	MS reply
	BE: We prefer that ESMA drafts technical standards of a list of trading venues that fall into the scope of markets that would be a part of the CMOBS on a mandatory basis instead of the COM as proposed by the COM. AT: We would prefer technical standards drafted by ESMA where all NCAs are represented. Therefore, there would be close cooperation and exchange between ESMA and NCAs. NL (Drafting): NL: We are in favour of ESMA drafting technical standards. RO We would prefer that ESMA drafts technical standards of a list of trading venues that fall into the scope of markets that would be a part of the CMOBS on a mandatory basis **CY** **N/A- see answer in Q.3.2. above.**

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Question	MS reply
	DE With a view to the draft of a list of trading venues that fall into the scope of markets being part of the CMOBS, it does not matter whether COM or ESMA establishes this list, as long as the list is based on criteria defined in the level 1 text. In case the criteria are not set in the level 1 text, the COM should create the list. **EL** **EL:** The COM should better draft a list. FR We prefer the Commission to be in charge of such operation given the cross-border nature of the topic and to avoid the risk of the list of trading venues being drafted solely based on a cost minimization approach. PL We do not have strong views in this regard. IT A drafting by ESMA to be adopted/amended by the Commission (vs a Delegated act) would be recommended as it allows more flexibility and – through ESMA - a more direct involvement of NCAs - where the needed technical expertise lies - in the issues to be regulated.

Question	MS reply
	PT See comment above. DK: DK believes that there should be a list of trading venues. DK prefers an ESMA technical standard as an RTS/ITS. We believe ESMA would have better insights into establishing this list. LU: We are in favour of the Commission establishing such a list, based on clear criteria to be set at level 1. IE: We would prefer that ESMA draft the technical standards of a list of trading venues that fall into scope.
Q.3.5: Regarding the issue of strengthening ESMA's role, would the MS be in favour of option E, F or another alternative?	CZ: Answer: We have slightly more preference for option E. Reasoning: We see merits in closer cooperation of NCAs, also with the help pf ESMA. However, we strongly believe that ESMA's power to initiate and coordinate on-site inspections according to art. 25b should, in our view, be used only upon request of at least one NCA.

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Question	MS reply
	SK: We prefer option F, as the current system of cooperation between NCA´s and ESMA we consider is sufficient. ES: Option E. BE: Regarding the issue of strengthening ESMA's role, we are in favour of option E, namely to not strengthen ESMA's role to foster cooperation among NCAs. AT: We would prefer option E, because we see merits in establishing collaboration platforms similar to such according to Solvency II. FI We are flexible. NL (Drafting): NL:

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Question	MS reply
	At this time the Netherlands does not have a strong opinion on the issue of strengthening ESMA's role and is flexible on the subject. RO We are in favour of Option E **CY** **We support option F. Since the current regime regarding cooperation between MSs and ESMA is well functioning.** DE With a view to the COM proposal to strengthen ESMA´s role to foster cooperation among NCAs we do not have any severe objections. However, NCAs and ESMA already cooperate well whenever necessary under the currently applicable law. Therefore, any unnecessary formalism should be avoided. Whether Article 25b will really provide any practical added value remains questionable. In any case, it would at least be preferable if ESMA would be involved only on the initiative of an NCA, i.e. Option E is favoured. **EL** **EL:** We are in favour of option F. FR

Question	MS reply
	Option E – Setting up a collaboration platform could be helpful and facilitate cross—border investigations. The platform would be the natural extension of the current system since it would serve only at the request of NCA. PL We are in favour of option E. The creation of cooperation platforms seems to be a good idea, but we agree that NCAs have the main role in ensuring oversight of MAR compliance. At the same time, ESMA should have a coordinating role, but only in situations where NCAs alone are unable to reach an agreement with each other. IT We support Option E as long as the collaboration platforms would function only at the request of the NCAs involved and without ESMA being given the possibility to take own initiative to set up collaboration platforms, assist NCAs in reaching agreements or deciding to initiate and coordinate on-site inspections. PT We favour Option F as we do not see any justification or added value in involving ESMA in the investigation of the case, as NCAs are responsible for the supervision and enforcement of Market Abuse Regulation. Market abuse investigations are quite complex and interrelates with the national criminal law of Member-States. Additionally, we understand that ESMA has no supervisory powers towards the person under a market abuse investigation. The coordination of the investigation should remain with the NCAs. DK:

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Question	MS reply
	Option F DK believe that such cooperation and collaboration already exists today. The added value of expressly putting it in the level 1 is limited. LU: We are of the opinion that in any case, ESMA should not be in a position to initiate or coordinate on-site inspections on their own initiative. These powers should solely be in the hand of the NCAs as they have the best view and knowledge over local markets. The existing provision, under which ESMA may intervene upon the request of a competent authority, is fully sufficient. Moreover, we disagree on the proposal to introduce collaboration platforms at ESMA level. First of all, the proposal is not in line with the outcome of the ESA review. With responsibility for oversight and enforcement of MAR resting with NCAs, it is difficult to see why collaboration platforms at ESMA level would be necessary or justified. Furthermore, it is important to note that the data in question usually contain a large amount of personal data (e.g. bank customer files) to which strict rules apply under the GDPR. In addition, we draw attention to the fact that bilateral cooperation between the competent authorities is currently working very effectively. We therefore fail to identify the possible added value of involving more actors, which would make the exchange of information more complicated. Hence, considering all of the above, we have a clear preference for option F, where the Presidency suggests to not strengthen ESMA's role and to delete the COM proposal regarding collaboration platforms altogether. **BG:**

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Question	MS reply
	We are in favour of option F. IE: We do agree that the current regime regarding cooperation between MSs and ESMA is functioning well as is co-operation between NCAs. We do not see the rationale as expressed in the COM proposal for strengthening ESMA's role. In addition, as outlined in the Presidency paper and noted by MS, it appears to infringe on the NCAs' role of inspection and investigation while ESMA does not have a supervisory role in MAR. Thus, we welcome the Presidency's proposals to address this and to find a way forward; however, we do not have a strong preference on either option in the Presidency proposal.
Cluster 4: Market soundings	
Q.4.1: What are the MS views on keeping the COM's proposal, provided it is clarified as stated in cluster 4 of Presidency non-paper?	CZ: Answer: We are comfortable with the Commission's original proposal, however we will not oppose the clarifications as proposed by Presidency. SK: We agree with the COM´s proposal, we welcome the clarification. HU: We agree with the COM's proposal with the clarifications mentioned in the presidency's non-paper. ES:

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Question	MS reply
	We support the COM proposal. BE: We are of the view that the market sounding regime should remain compulsory. A compulsory market sounding regime is essential to ensure an adequate level of audit trail for competent authorities to be able to effectively investigate any potential abuse. Without an express obligation, the offered protection from the allegation of unlawful disclosure of inside information cannot be per se a sufficient incentive for DMPs to follow the market sounding requirements on a voluntary basis. AT: We support keeping the Commission's proposal on market sounding with the clarifications mentioned in the paper. FI We could support this but in our opinion Article 11 paragraph 5 subparagraph a should also be compulsory. It has come to our knowledge that in market practice when this requirement is not complied with, there is a risk for contamination on the side of the person receiving the information. It might be difficult to prove that the person has not traded on inside information and that the investment decision had been made before the market sounding took place. (Of course, the NCA has discretion in these cases). In our opinion, in context of market sounding, it should always be possible to refuse to receive the inside information. NL

Question	MS reply
	(Drafting): NL: We do not oppose the clarifications. RO We are in favour of COM's proposal. We also agree that, the presumption that unlawful disclosure has not occurred in the light of the provisions of Art. 11 (4), as well as that the provisions of art 11 (3) are compulsory to all issuers, should be clarified as stated in cluster 4 **CY** **Agree** DE We support a clarification regarding the safe harbour rule in points two and three. In contrast, the clarification in point one appears to be rather critical, since it is not mandatory to conclude from the new wording of Article 11 that paragraph 3 of the regulation should be mandatory in the future. This applies in particular in view of the fact that the provision in paragraph 3 would involve a not inconsiderable additional burden for issuers. **EL** **EL:** We are positive towards clarifying the safe-harbour element of the market sounding regime, the way it is proposed. FR

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Question	MS reply
	We support both the approach of the legislative proposal and the clarifications outlined by the Presidency. The latter will close potential loopholes in the market sounding framework and make welcome clarifications as regards to the position of the issuer. PL We are in favour of this proposal. IT We support COM proposal, as clarified in the Presidency non-paper. Such a regime would be more in line with a proportionality criterion, especially when it is immediately clear that the market sounding does not concern inside information. PT We would prefer not keeping the COM's proposal even with the clarifications, as we consider that the market sounding regime should remain compulsory, that is, that a market participant should be required to comply with all the conditions in Art. 11(4), as it is established in the current text of the Regulation. Otherwise, there is no way to determine if inside information was shared with the relevant party during the market sounding. DK:

Question	MS reply
	DK supports the COM's proposal (keeping the safe harbour optional) with the clarifications suggested by the Presidency. IE: We could support the COM's proposal with the clarifications as provided in the presidency non-paper.
Cluster 5: Sanctions	
Q.5.1: Would the MS be opposed to the amendment suggested in cluster 5 of Presidency non-paper?	CZ: Answer: No, we would not oppose the Presidency's suggestion. SK: We agree with Presidency´s proposal, ie amendment to the current proposed wording – to replace „permanent ban" with „ban of at least ten years". HU: We support the proposed amendment with a ban of at least 10 years. ES: We support the COMs proposal. BE:

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

Question	MS reply
	No, we would not be opposed to the amendment suggested in cluster 5 of Presidency non-paper. AT: No, we do not, as we understand that a sanction, which requires "a permanent ban" from certain functions, could raise constitutional problems. FI We do not oppose. NL (Drafting): NL: The Netherlands is not opposed to the proposed amendment as suggested in cluster 5. RO We are in favour to the amendment suggested in cluster 5, namely replacing "permanent ban" with "a ban of at least ten years". **CY**

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Question	MS reply
	No DE Germany would not be opposed to the suggested amendment. Germany would rather appreciate the suggested amendment. **EL** **EL:** We are not opposed to suggested amendments. FR We support the amendment proposed by the Presidency, given the issue raised by another Member State. The 10-year ban is also the standard duration for sanctions pronounced in other areas of financial regulation (e.g. UCITS/AIFM). PL We are not opposed to this proposal. IT We support. PT

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Question	MS reply
	We strongly support the proposed amendment for Article 30(2)(f), as it resolves the issue of the permanent ban, which was incompatible with the Portuguese Constitution that does not allow for criminal or administrative sanctions to be permanent. This issue has been present in previous negotiations and the proposed amendment provides a solution to the constitutional problems that the original proposal maintained. DK: DK is skeptical towards further expanding a permanent ban as it in itself is a highly intrusive sanction on an individual. DK would prefer an approach in line with MiCA, i.e. a time limited ban. LU: We agree to accommodate the amendment suggested in cluster 5 of the Presidency non-paper, where it is proposed to replace the wording "permanent ban" by the wording "a ban of at least ten years". IE: We are supportive of the suggested Presidency proposal. Previously, proposals to introduce a 'permanent ban' have raised some constitutional issues for Ireland. We believe the Presidency's proposed amendment is more measured.