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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 Prospectus Regulation / replies from 20 MS
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Questionnaire: Listing Act working party meeting on 27 March. Deadline for comments: 5 April 2023

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

Question	MS reply
<u>I. Prospectus Regulation</u> <u>(Presidency non-paper WK 4014/2023)</u>	IE: The Listing Act package is a significant suite of measures that has the potential to advance the CMU project by making public capital markets more attractive for EU companies and facilitating companies' (particularly SMEs') access to capital and thus Ireland is generally supportive of it. Our comments reflect this while setting out areas that we believe need to be clarified, and where changes may be required to support the proposals' objectives. We greatly appreciate the work of the Presidency and Commission thus far and are positive towards alleviating regulatory and administrative burden on issuers where this is possible, but it is essential to balance this with maintaining strong investor protection and the capacity to preserve market integrity. <u>The comments provided by Ireland are indicative, are made with a scrutiny reserve and are non-exhaustive.</u>
1. Exemptions from the obligation to publish a prospectus	
Q.1. Would MS prefer Option 1, Option 2 or Option 3, as proposed by the Presidency (see section 1.1.2 of the Presidency non-paper)? Or would MS prefer another option?	<u>CZ:</u> <u>Answer:</u> We consider the option 3 - harmonised 8 mil. EUR threshold - to be the best way forward. In a spirit of compromise, we would also be able to consider option 2 - harmonised threshold of 12 mil. EUR and 5 mil. EUR - even though we would like to stress that this option is not ideal. <u>Reason:</u> Nowadays thresholds for prospectus differentiate among member states between 1 and 8 mil. EUR. We regard a unified threshold across EU as a desirable step forward, however the commission's proposal of 12 mil. EUR might be a disproportionate leap forward for some member states – those that did not opt-in

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	for a higher threshold before. For some member states with smaller market – including the Czech Republic – setting the 8 mil. EUR threshold (the highest level possible under current rules) is already a stretch and an extra mile for the sake of harmonised approach. On the other side, for member states with bigger markets the setting of 8 mil. EUR would not constitute a change – therefore no, or little sacrifice is required. In respect to above stated reason, we are for one step at a time approach – first set a common threshold and then we can, after some time given for assimilation and adjustment of national markets, go for a higher bar. On top of that, it was our understanding that the goal of CMU is to have as unified rules as possible in order to facilitate the functioning of companies on capital market. In our view, higher threshold for prospectus obligation might in its effect lead to lower level of harmonisation, as there is a higher chance for offers to be below the threshold. Those offers would be then treated according to respective national rules which might, and probably will, lead to divergent national treatments. SK: We prefer Option 1 or Option 2, we prefer to set up a threshold at least at level of 5million, it's important to be in line with Crowdfunding regulation. CY: We do not have a strong view for either options. We note that options 1 & 2 could facilitate the existing EUR 5 million threshold in Cyprus. Option 3 could facilitate the harmonisation within the EU; however, the threshold of EUR 8 million is still too high for our market. HU:

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	We suggest to maintain the current rules of the Prospectus Regulation. If the above is not possible then the EUR 12 million threshold should be regulated in the scope of the regulation (Art. 1) and not in Article 3(2). Whenever neither this is possible, we support option 1. ES: We prefer option 2, as it increases the current threshold and makes important advances towards harmonisation. BE: For us, the possible ways forward as suggested by the Presidency are preferable to the COM's proposal. We prefer option 3, which sets a harmonized threshold at a more reasonable level for smaller markets than the COM's proposal and has the advantage of clarity as compared to options 1 and 2. However, options 1 and 2 are also acceptable for us, and especially option 2 as this option would limit the differences between Member States to two thresholds (as opposed to up to 27 different thresholds under option 1). The possibility to set the threshold at 5 MEUR in options 1 and 2 has the benefit of consistency with the prospectus threshold under the Crowdfunding Regulation. AT: For the sake of harmonising the thresholds in the prospectus area, we would prefer to extend the current out-of scope threshold from 1 to 5 million EUR. For issuances

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	below this threshold the EU-Crowdfunding Regulation applies and besides the MS are free to require disclosure requirements on a national level. Instead of forcing MS to set their own national thresholds for exempted offers somewhere between 5 and 12 million EUR, we would prefer to generally allow issuances up to 12 million EUR without a prospectus but with a short document for retail investors. At the same time the treatment of all current and future (Annex IX) prospectus replacing documents should be aligned. Such documents should be treated like whitepapers under the MiCAR (file with the NCA 20 days prior to the start of the public offer / listing). For issuances beyond the 12 million EUR threshold a full prospectus should be required. FI We support the Commission's initial proposal (i.e. the harmonized 12 million threshold). We can be open to consider the option 2. EL

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	EL: We endorse Option 3. As we initially stated (3-2-2023), we also support the threshold of 12.000.000, however for public offerings below the common threshold of 12 000 000 and up to 5 000 000, all member states should require disclosure requirements according to national rules, in order to avoid regulatory arbitrage. FR The legislative proposal is our first best: the harmonized 12 million € threshold put forward by the Commission would give more room to SME to raise capital on public markets while facilitating cross-border offers, which would reduce the cost of capital for companies. This type of offerings is gradually made easier thanks to digitalization and should be promoted to contribute to deepening the Capital Markets Union. However, we also acknowledge the need to apply this threshold in a proportionate manner. Therefore, we could also support the option 2 proposed by the Presidency: the “dual threshold” is a good balance between relief and further harmonization. This solution is superior to the current range from an harmonization perspective. The method of computation of the 12M€ threshold deserves further specification at Level 2 to ensure harmonization. Currently there are divergent practices between Member States as regards which offers should be computed against the 8M€ limit over the preceding 12 months. The 2nd subparagraph of Art. 3(2) attempts to bring clarity in the current confusion, but fails to address the issue properly. For instance: must an issuer add up all offers whose subscription period <u>ended</u> within the 12-month window, or those whose subscription period <u>began</u> during this period? (the proposed text of the Commission is too vague: "<i>all offers that have been made in the 12 months preceding...</i>"). As this is a technical point, we recommend that a Level 2 empowerment be inserted to require an RTS specifying how the cumulated amount of offers “made in

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	the preceding 12 months” should be computed when checking whether the new threshold of 12M€ is reached or not. We propose the following drafting in Article 3 PR: Deletion of the (new) 2nd subparagraph of paragraph 2: The total aggregated consideration for the securities offered, as referred to in the first subparagraph, point (b), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except those offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus pursuant to Article 1(4), first subparagraph. Instead, addition of a new paragraph 4: ‘4. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft regulatory technical standards to specify how the cumulated amount of offers made in the preceding 12 months shall be computed when verifying whether the monetary threshold set out in point (b) of paragraph 2 is reached. Offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus pursuant to Article 1(4), first subparagraph, shall not be taken into consideration in such computation. ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after entry into force]. Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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	(the same amendment could be made in Article 1, by adding the following new paragraph: 8. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft regulatory technical standards to specify how the cumulated amount of offers made in the preceding 12 months shall be computed when verifying whether the monetary thresholds set out in point (j) of paragraph 4 and point (i) of paragraph 5 is reached. Offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus pursuant to the first subparagraph of paragraph 4 and pursuant to Article 3(2) shall not be taken into consideration in such computation. ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after entry into force]. Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.) PL We support options 1 and 2, with our preference being option 1. In our view, harmonizing the prospectus threshold is not the most important objective that the Prospectus Regulation should pursue. Member States should be able to adopt the threshold most appropriate to the conditions on the national market. At the same time, retaining the full national option to set any threshold between EUR 5 and 12 million is

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	a solution that allows for a gradual increase of this threshold so that it actually provides adequate investor protection. If option 2 is adopted, the difference between EUR 5 and 12 million seems so significant that a one-off transition between the two thresholds may be too risky from an investor protection point of view, and this may discourage Member States with the lower threshold from raising it. Nevertheless, we may also support this option, if the majority of Member States consider the proposal to harmonize the threshold important. We also identify a significant risk related to the possibility for issuers to combine various possibilities of raising capital without the prospectus obligation, which may in fact lead them to raise, in a very short time perspective, much higher amounts than it would result from perceiving individual thresholds separately. This would be the case if such an issuer is listed on the SME growth market (which is not a significant barrier), and in a slightly longer time perspective – also transition to a regulated market based on a much simplified prospectus. Such a scenario emerges when the proposed prospectus regulations are applied in the following order: • Public offering worth EUR X million pursuant to Art. 3(2)(b) and admission to the SME growth market; • EUR 0,4*X million public offering pursuant to Art. 1(4)(da) i.e. securities whose number is less than 40% of identical securities already listed on the SME growth market, where the threshold is calculated for the number, not the value, of securities, so it could potentially also be a public offering much larger than simple 0,4*X; • Transition to a regulated market (18 months after admission to the SME growth market) pursuant to Art. 15a, second subparagraph (simplified prospectus), potentially also with a public offering, the value of which would no longer be legally limited. The possibility of correct application of the threshold, regardless of its level, i.e. not abusing it by issuers, will also be affected by the much more precise wording of the rules governing this exception to the prospectus obligation:

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	1) In the proposed method of calculating the value of offers, it is indicated that all offers are to be included, except those carried out on the basis of prospectus exceptions from Art. 1(4). This wording could be interpreted as including public offerings based on a prospectus, which is illogical. It would not raise any doubts if this provision were worded in such a way that all public offerings conducted on the basis of this particular prospectus exception are included in the limit. 2) There is no clear indication which public offerings should be included: commenced, completed or fully ongoing from start to finish within the 12 months. Unfortunately, the phrase “offers of securities to the public that have been made in the 12 months preceding the start date of a new offer” does not explain this, and the lack of clear wording in the provision opens the door to the lack of an effective and unified supervisory approach. 3) There is no precise indication whether the issuer may differentiate securities in such a way that it multiplies the possibility of applying this prospectus exception, recognizing that it applies separately, e.g. to different types of securities – shares and bonds, or even separate application to each security within one type, e.g. individual bonds that differ only in single parameters, such as the method of calculating interest. IT We support the Commission’s proposal to raise the threshold to 12 million and to harmonise it at EU level. Further, we suggest considering that the option for MS to set different disclosure requirements for exempted offers (i.e., below the threshold) (e.g., concerning the features of the securities issued and the terms and conditions of the offer) is an element of fragmentation that, in our view, does not enhance the CMU. In order to address

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	harmonisation in this field, we would suggest deleting the proposed option for MS and at EU level determining what information should be published by issuers (e.g., with reference to the characteristics of the securities issued, and on the conditions and terms of the offer), as per other exemptions under Art. 1.4 of the Prospectus Regulation. RO We would support option 2, with two clear thresholds, but we consider that the minimum of 5 million Euro is too big for a small market like ours. Going from a minimum of 1 million Euro to 5 million will deter small companies from going public DE Under the current Article 3(2)(b) of the Prospectus Regulation, Germany has set the threshold at EUR 8 million to exempt offers from the obligation to publish a prospectus. Therefore, Option 3 would be of no effect for Germany and is not supported. Raising the threshold to EUR 12 million would ease things for issuers. However, adding all offers made by an issuer or offeror within 12 months in order to calculate whether the threshold has been met, will create a more restrictive system than Germany has at the moment. In Germany and some other MS, the threshold is construed to apply to individual offers so that one and the same issuer can make several offers which exceed the EUR 8 million threshold, so long as the individual offer remains below it. But considering deliberations to expand prospectus exemptions in Article 1(4) PR, supports the higher threshold of EUR 12 million as proposed by the Commission or even a higher threshold.

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Question	MS reply
	Alternatively, and for the sake of compromise, we could also agree with Option 2 as second-best option. This allows MS to set just one lower threshold than EUR 12 million, which would reduce the aspects of harmonisation, but not as far as Option 1 would do. <u>NL</u> <u>ALL OF OUR COMMENTS ARE MADE UNDER PARLIMENTARY SCRUTINY.</u> Option 3. We think that option 3 might be a good outcome, considering the Commission's proposal and the objective of the listing act package. We have stated earlier that we had some doubts around the threshold being set as high as 12 million. A threshold of 8 million might be more acceptable for some Member States. We would also not object to option 1. Although we stated earlier that we are in favour of harmonisation, and still are, we do see that flexibility for Member States might make this discussion easier. It would make it possible for MS to set the threshold as high as suitable for the characteristics of their home market. We also would like to note that total harmonisation will still not be the case when choosing one threshold in the EU, because of the option of additional national disclosure requirements. Then there is also the passporting regime to take into account. We are not in favour of option 2 as it neither harmonises the threshold, neither gives enough flexibility to Member States. PT

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Question	MS reply
	We support the COM proposal of a harmonised 12M threshold. However, as a way of compromise, we could favour option 2, and set the default threshold at 12 million euro, as proposed by the COM, while introducing an opportunity for MS to set the threshold level at 5 million euro. We believe that while the prospectus is a relevant piece of information, it should not be considered as the only mechanism able to promote investors' protection. We consider that it is important to find a balance between what is required from issuers and the establishment of a certain level of investor protection. DK: DK prefers Option 3, as this option sets one harmonized threshold. However, DK would prefer a threshold at 10-12 million euros and thereby still at a lower level than proposed by the COM. By consequence, there would only be one threshold within the EU. DK also supports that MS would be allowed to require other disclosure requirements at a national level, to the extent that such requirements do not constitute a disproportionate or unnecessary burden. LU: As regards the prospectus threshold, we can agree with the Commission's proposal to introduce a single harmonized threshold of 12 million euro across the EU. Nevertheless, we can understand other Member States' concerns regarding a higher harmonized threshold. In the spirit of compromise, we could accept either of the three options laid down in the Presidency's non-paper WK 4014/2023. BG:

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Question	MS reply
	Bulgaria prefers to keep the existing provisions on the threshold and the option for the MS to be able to set the appropriate threshold at national level, taking into account the size of their market, but in the event that the majority of MS do not support this, and given that the threshold in Bulgaria has recently been set at €8 million, we would prefer option 1 or option 3. Option 2 is not acceptable for us as we would be obliged to either raise the threshold to 12 mln which is too high or decrease it from 8 mln to 5 mln. IE: We could support Option 3. The harmonised threshold plus the other alleviations proposed comprise a step forward towards making capital markets more accessible for SMEs.
Q.2. Could MS support to amend the threshold for exemptions from the obligation to publish a prospectus for secondary issuances, as proposed by the Presidency (see section 1.2.2 of the Presidency non-paper)?	<u>CZ:</u> <u>Answer:</u> Regarding the exemptions for secondary issuances, we are comfortable with the Commission's proposal of 40% threshold. However, the Presidency's proposal to set the threshold somewhere between 20 % and 40 % is also acceptable for us. <u>Reason:</u> It is our focus to facilitate a secondary issuances – issuances of companies which are already known to investors. We are therefore comfortable with the Commissions original proposal as we see it as well-balanced between support of already listed companies and protection of issuers. However, as we understand other member states' concerns, we are also open to the possibility to set the threshold between 20 % and 40 %, as proposed by the Presidency. SK:

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Question	MS reply
	We agree with Presidency's proposal to set up the threshold between 20 and 40 percent, somewhere about 25 or max 30 percent to ensure investor protection. CY: We support to amend the threshold to a lower one. HU: YES ES: We prefer keeping the 40% threshold proposed by the COM. BE: We can agree with the proposal to set the threshold somewhere between 20 and 40 percent. AT: Extending the thresholds from 20% to 40% and exempting also the public offer prior to listing without safeguards could be detrimental to the interests of retail investors.

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Question	MS reply
	We are sceptical whether it is a good idea to extend exemptions for public offers. Instead, we would rather prefer to discuss extending the exemptions for public offers in Article 1 (4) (a) to (d) also to the listing. It should be discussed whether these exemptions for public offers could also apply for the listing on a regulated market (e.g. qualified investors, 100K minimum investment). Currently an issuer can offer securities to the public e.g. under Article 1(4) (c) or (d) without any prospectus, however needs to make a prospectus just for the subsequent listing on a regulated market. We do not see the added value of such a listing-only prospectus for investors because this prospectus is outdated once the admission to trading is granted. The prospectuses in the PR are designed to ensure investor protection (give investors sufficient information in order to allow an informed investment decision). Any prospectus, which is made for a listing on a regulated market ONLY (where the preceding public offer was exempted and thus made without any prospectus), does not fit into this concept. We think it could be interesting to discuss this important topic. FI We support the Commission's proposal of 40 percent threshold. We see that lower percentage would water down the goals of the proposal.

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	We would also like to point out that usually issuer would be obliged to disclose information on major issuances pursuant to MAR. EL EL: Yes. We propose a lower threshold of 30%. FR In relation to the exemptions for secondary issuance, we support the new 40 % exemption for fungible securities as it will reduce the cost and streamline the process of raising funds on public markets. PL We agree with the Presidency's proposal. IT We support the Commission proposal. However, in a spirit of compromise we would be open to the Presidency's proposal to set a lower threshold, between 30 and 40 percent. RO

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	Yes DE Yes. This appears to be in line with our previous suggestion regarding a 25% - threshold. Germany believes a threshold of 40 % to be too high. Furthermore, a threshold as high as 40% likely exempts situations/capital increases that would otherwise require additional information in a prospectus, e.g. pro forma financial information in case of larger acquisitions. Such information is not available via other transparency requirements (e.g. ad hoc information) outside a prospectus. The same is true for information on risks and recent developments neither included in the latest financial information nor covered by MAR, but potentially relevant when assessing the conditions of the offer (in particular the offer price). NL We cannot fully support raising the threshold. In the case of an offering, and admission on an SME growth market, we are more hesitant in accepting a higher threshold as we see risks for investor protection. For example in the case of an offer of equity to retail investors. We could look into a threshold that is slightly higher than 20%.

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	Amending the threshold from 20% to 40% would be more acceptable if the exemption was for admission to trading. PT For the moment, we consider the 40% threshold proposed by the COM to be adequate and we would prefer the final threshold to be established as close to 40% as possible. DK: DK supports setting the threshold at 40 percent. However, DK can also support the Presidency's proposal to set the threshold somewhere between 20 and 40 percent, as this decreases the scope of the exemption to strike a better balance between investor protection and alleviation of the administrative burden for issuers. DK considers it important that there is the right balance between effective investor protection on the one hand and easy access to capital markets for EU companies, including SMEs on the other. LU: While we could live with the initial Commission's proposal, we remain open to find a compromise on the exact threshold as proposed by the Presidency. BG:

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	We are still analysing this issue. IE: We would support a threshold increase to 25% (i.e. at the mid-point of the Presidency proposal). The Listing Act contains considerable alleviations for secondary issuance prospectus, so it is questionable whether the high threshold of 40% is necessary.
Q.3. Do MS deem appropriate to add safeguards to the COM's proposal to extend exemptions for secondary issuances in Article 1(4)(da) and 1(5)(a) in the PR? If yes, what safeguards would that be?	<u>CZ:</u> <u>Answer:</u> We do not deem it necessary to add additional safeguards to the Commission's proposal. However, we will not be in other member states' way if they wish to do so. <u>Reason:</u> We consider the Commission's proposal to be perfectly acceptable. SK: If the threshold for exemptions from the obligation to publish a prospectus for secondary issuances will be set up according to the Presidency's proposal (somewhere between 20% and 40%) we do not need to add safeguards. CY: We believe that there is a need to define the term fungible securities, as under the current regime there is sometimes a misconception of the term.

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	HU: We do not consider appropriate to add any safeguards to the COM's proposal regarding art 1(4) (da) and 1 (5) (a). ES: No. FI We do not see a need for any additional safeguards. (See also our MAR comment above). EL EL: We do not deem appropriate to add safeguards in Article 1(4)(da) and 1(5)(a). FR The facility created by novel exemptions should be balanced by safeguards to preclude their use when specific explanations may be necessary to fully assess the situation of the issuer. This is the case of an issuer with a <u>complex financial history</u>, or an issuer involved in a <u>significant financial commitment</u>. In the current prospectus regime, both situations require the disclosure of additional information, pursuant to Art. 18 of Delegated Regulation (EU) 2019/980, such as pro forma accounts. Where these

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	situations occur, the issuer should not be able to avail itself of the exemptions of Articles 1(4)(da) and 1(5)(a). We also consider that any of the following issuers should not carry out a capital increase without drawing up a prospectus, at least: (i) an issuer undergoing insolvency or restructuring procedures, or (ii) an issuer which is undertaking intermediate steps in a protracted process which qualify as inside information and benefit from the new disclosure exemption set out in Article 17(1), first subparagraph. An explicit carve-out should be inserted for that purpose. For those reasons, we propose the addition of the following wording in both Article 1(4)(da) and Article 1(5)(a) : “...admitted to trading on the same market, provided that all of the following conditions are met : (i) the issuer is not an issuer with a complex financial history; (ii) the issuer has not made a significant financial commitment; (iii) the issuer is not under an insolvency or restructuring procedure, as defined in articles 1(1) and 1(2) of Directive (EU) 2019/1023 [<i>Directive on restructuring and insolvency</i>];

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	(iv) at the time of the offer, the issuer is not using the exemption set out in the first sub-paragraph of Article 17(1) in relation to intermediate steps in a protracted process. The following definitions would have to be inserted in Article 2 PR. They would be imported from Article 18 of Delegated Regulation (EU) 2019/980 of 14 March 2019: (zb) ‘significant financial commitment’ means a binding agreement to undertake a transaction that is likely to give rise to a variation of more than 25 % relative to one or more indicators of the size of the issuer’s business. (zc) an ‘issuer having a complex financial history’ is an issuer characterised by all of the following conditions: (a) if the issuer were to draw up a prospectus, the information referred to in the relevant Annexes would not represent the issuer’s undertaking accurately at the time of drawing up such prospectus; (b) such inaccuracy would affect the ability of investors to make an informed assessment as referred to in Article 6(1) or reach the understanding referred to in Article 14b(2) and Article 15a(2) of this Regulation; (c) additional information relating to an entity other than the issuer would be needed for investors to make an informed assessment as referred to in

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Question	MS reply
	Article 6(1) or to reach the understanding referred to in Article 14b(2) and Article 15a(2) of this Regulation. PL In our opinion, it would be reasonable to clarify the understanding of the term “fungible”. We have already asked the Commission for such clarifications before and we accept these clarifications. However, due to the growing importance of prospectus exceptions conditioned by the fungibility of securities, we believe that it would be worth adding a brief explanation of this concept in the text of the regulation (at least in the recitals). IT Yes, we do. Unlike the exemption for issuers with securities traded for 18 months on a regulated market or on a SME Growth Market, for these exemptions there is no provision for the publication of a summary exempt document. Especially regarding the new exemption proposed for public offers, we note that periodic and ongoing information under the Transparency Directive, MAR or the disclosure obligations set out by the SME market operator does not necessarily ensure that investors have all material disclosures for their investment decision instead provided by the current regime through a prospectus. Namely, we deem it important that issuers provide investors with summary material information, such as disclosure of the terms and conditions of the offer and the securities offered, the use of proceeds and impact on the issuer, the risk factors related to the issuer and the securities, pro forma financial information where applicable. We consider that the lack of information would be particularly critical for offers undertaken by companies with uncertainties about going concern. Further, we note that investors could not have a withdrawal right under the

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Question	MS reply
	current regime of Articles 17 (omission regime for final offer price disclosure) and 23 (supplement) of the Prospectus Regulation, as it is only applicable when a prospectus is published. Against this background, we believe that the issuer also for exempted secondary issuances should publish a summary (streamlined and standardized) document exempted from the NCA's approval. The publication of an exempt document would also allow NCAs to carry out their supervision on the public offer more effectively and to be able to take measures when issues in terms of investors' protection arise. On the basis of these considerations, we consider that specific investor information safeguards (the latter to be provided in the context of the exemption related to public offers) would allow a better balance to be struck between the reduction of the issuers' burdens (given by the increase of the threshold) and the needs of investor protection. RO No DE Yes. We think that in Article 1(4)(da) an information document ought to be made available in these cases. There must be at least some information on the offer, see in this respect e.g. the requirements in points h) and i) of the current paragraph 4. We suggest adding a similar requirement at the end of the new exemption. NL

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Question	MS reply
	As just mentioned, we see risks for investor protection as it comes to exempting secondary offerings. One of the ways to counter these risks is to not introduce wide exemptions. We can however look into any proposal for additional safeguards. We do warn for extra variants in requirements, as it might make it more complicated for issuers and NCAs. DK: DK does not have a specific opinion on this issue. LU: We can live with the Commission's proposal to extend exemptions for secondary issuances in Article 1(4)(da) and 1(5)(a) of the Prospectus Regulation. However, we could remain open to further discuss about any potential safeguards. BG: Our understanding of the proposal for is that where the securities to be admitted to trading in accordance with Article 1(4)(da) and 1(5)(a) are under the threshold as defined in Article 3, Member states and market operators are allowed to define what kind of document would be required by the issuer and this document should not be a prospectus. In case the offer is above the threshold only the market operator could require an admission document in accordance with the rules of the market. In our view, in order to ensure high level of harmonization, it would be beneficial to have e standardized document which the issuers could use in this case.

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Question	MS reply
	In case the offer is above the threshold it seems that only the market operator could require an admission document. Member states are not allowed to require a document. IE: We had previously indicated the need for safeguards; however, the lowering of the threshold to under 30% is likely to serve as a safeguard in itself.
Q.4. Would MS support the COM's proposed new exemptions in Article 1(4)(db) and 1(5)(ba) in the PR if the notions of a company in insolvency or restructuring procedure were clarified? Or do MS believe that the new exemptions need to be further framed or adjusted in order to be maintained? If so, how?	<u>CZ:</u> <u>Answer:</u> We are ready to support Commission's exemption as stated in art. 1(4)(db) and 1(5)(ba), even without the clarification. If the majority of member states wishes to clarify the notion of a company in insolvency or restructuring procedure, we will not oppose it. <u>Reason:</u> Listed companies already comply with transparency requirements providing the market with some of the information incorporated in a prospectus. The preparation of a simplified disclosure in connection with secondary issuance is less burdensome and would be sufficient from an investor protection perspective. We do not see the necessity for any further clarification of "a company in insolvency or restructuring procedure" as we consider the notion to be clear. <u>CY:</u> We maintain our concern for the COM's proposal for the addition of the new exemptions in Article 1(4)(db) and 1(5)(ba). <u>HU:</u>

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Question	MS reply
	We support the COM's proposal, but in our opinion, it is necessary to specify and clarify what is meant by the concept of a company in insolvency or restructuring procedure. ES: We do not support the new exemptions introduced in articles 1(4) (db) and 1(5)(ba), as they seem to far reaching taking into account the big alleviation already achieved by the means of increasing the current thresholds from 20 to 40%. When the offering of securities or the admission exceeds the 40%, issuers should elaborate a Follow-on prospectus, which is more simplified than the current one. In case these new exemptions were finally agreed, the notions of a company in insolvency or restructuring procedure should be clarified. AT: If the disclosure items in the summary were extended and the notions of a company in insolvency or restructuring procedure were clarified, we could support the new exemptions. FI We can be open for clarifications but do not find the current wording that problematic. EL EL: We have reservations specifically on exemptions for secondary issuances of securities fungible with securities admitted to trading on a regulated market, as under

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Question	MS reply
	the specific exemptions the majority of offers by existing issuers in Greece will take place without the obligation to publish a prospectus. The simplified prospectus regime for secondary issuances should not be lifted. Instead, it should be further simplified. The majority of responses by stakeholders on this issue (51%) supported the prospectus requirement. Therefore, to strike a balance between investor protection and administrative burdens, a less detailed prospectus regime for all types (fungible and non-fungible) of secondary issuances should take the place of the existing simplified disclosure prospectus. The EU Follow on prospectus, as set out in Annex IV or V of the proposal, seems appropriate to this end. FR We do not support the 18-month exemption for SMEs: it is far reaching and could alter the balance between flexibility for issuers and investors protection at the expense of the latter. We understand that the Commission is inspired by the U.S. shelf registration regime. However, it is necessary to keep a safeguard that ensure investor information for large equity operation. Time elapsed since listing is not a relevant metric to assess the risk of a financial operation or a company. Market participants have also less information on SMEs, regardless of the intensity of MAR disclosure. We have deep concerns with the 10-page document to be filed with the NCA, where the '18-month exemption' applies. The exact status of this document remains unclear: - does it serve, like a prospectus, to provide information to make an investment decision? Who is supposed to guarantee its completeness? We are uncomfortable with the fact that the proposal envisages the filing of a mock prospectus of undefined status with an NCA, where the NCA has no right of control over it. - What liability regime is attached to that document ? In the event of a subsequent litigation between the issuer and investors over the prospectus-

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Question	MS reply
	exempt issuance, aggrieved investors will not understand that the NCA did not perform any due diligence, and will be left unprotected. It places NCAs in the uncomfortable role of recipients of a document of indeterminate status that they cannot control or have amended in the event of a clear problem. PL We support the proposal to clarify the notions of insolvency and restructuring procedures and we do not see the need for further clarifications. IT We deem it important that the notion of a company in insolvency or restructuring procedure be clarified. In this regard it could be appropriate to make reference to the definitions included in art. 2 and Annex A Regulation EU 848/2015 (Insolvency Regulation). Further to this, in order to align the definitions of Prospectus Regulation with the ones of Regulation 848/2015 we suggest to modify the expression “restructuring procedure” into “insolvency proceedings” and therefore we suggest to modify Recital 13 accordingly. As an alternative solution we would suggest considering a reference to issuers in the scope of the Restructuring and Insolvency Directive (directive EU 2019/1023). Moreover, we believe that the scope of this exemption should be further limited excluding from its scope issuers with going concern issues. Thus, on the one hand, we support the Presidency’s proposal to make objectively identifiable when an issuer is in financial distress or restructuring. On the other hand, we deem likewise important that also companies having issues of going concerns be ruled out from the scope of this

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Question	MS reply
	exemption because such companies are already in financial distress and, from a substantial point of view, they are in a situation not different from the one where companies are already under an insolvency or restructuring procedure. Issuers with uncertainties about going concern may be identifiable based on objective circumstances: statements in this regard provided by the management in the issuer's financial statements or by auditors in the audit report to the issuer's financial statements. Therefore, taking into account paragraph 25 of International Accounting Standards (IAS) 1, Presentation of Financial Statements, adopted by Commission Regulation (EC) No 1126/2008, and the International Standard on Auditing (ISA) 570, issued by IAASB, and Articles 26 and 28, paragraph 2, point f), of Directive 2006/43/EC, we suggest including the following point as additional condition to be met in order to apply the exemption in question: <i>“any material uncertainty related to events or conditions which may cast significant doubt on the issuer's ability to continue as a going concern is not raised by the management in the last financial statements and/or is not highlighted by the auditors in the audit report”</i>. We would also like to highlight that should this exemption be applicable to issuers with issues of going concern the light content of the exempt document set by Annex IX would not allow to adequately describe the complex financial position and perspectives of such issuers. RO Yes DE

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Question	MS reply
	We believe the term “restructuring procedure” should be further defined or explained in a recital. Furthermore, we suggest excluding any situation that would fall under Article 18 of Commission Delegated Regulation (EU) 2019/980 regarding complex financial history and significant financial commitment, as information on such transactions cannot be provided in a document of 10 pages as set out in Annex IX. NL As just mentioned, we see risks for investor protection as it comes to exempting secondary offerings. Especially offerings that have a large impact on the financial position of the issuer, should fall outside of the scope of these exemptions. One way could be to further frame when the exemption cannot be used. We would be open to discuss. This does however come with its own difficulties of pinpointing the situations in which the exemption cannot be used. Another way to counter these risks is to not introduce wide exemptions. PT Our stance is in favour of the exemptions proposed by the COM for Article 1(4)(db) and 1(5)(ba). Nevertheless, we believe that the recitals should include a definition of "restructuring procedure." In order to achieve this, we suggest including a reference to Regulation 2015/848. In addition, given that Annex IX plays a significant role in granting exemptions from the obligation to publish a prospectus, which would otherwise require approval from NCAs, we consider that Annex IX should still require approval from the NCA even when such exemptions are granted.

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Question	MS reply
	DK: DK does not see the need to have the notions of a company in insolvency or restructuring procedure further clarified. DK does not believe that the new exemptions need to be further framed or adjusted in order to be maintained. LU: In line with our comments above, we can generally live with the Commission's proposals relating to the exemptions for secondary issuances. We could however remain open to further explore clarifications on the new exemptions regime, depending on the type of clarifications. BG: Please see the comment on question 3. IE: Yes, clarification of the insolvency or restructuring procedure would help. In addition, we suggest that it should not be possible to rely on the exemption in Article 1(4)(db) and 1(5)(ba) where the issuer has made a significant financial commitment (defined in Article 18 Commission Delegated Regulation (EU) 2019/980 as being a transaction that is likely to give rise to a variation of more than 25% relative to one or more indicators of the size of the issuer's business) which will be financed by the issuance. For example, where the issuer is using the proceeds to purchase significant assets/businesses from another entity, a prospectus needs to be prepared so that investors can properly understand the prospects of the issuer post capital

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Question	MS reply
	increase/acquisition, especially as this sort of acquisition can change the issuer's business. Where the issuer has received a going concern paragraph in the latest audit report, a working capital statement or detailed use of proceeds should have to be provided. This requirement should be included in Annex IX. We would also note that NCAs need to be able to require amendments to be made to Annex IX disclosures post filing. This does not appear to be catered for in the current list of powers in Article 32. We believe that such a power needs to be added.
Q.5. Do MS agree that issuers that fall under the scope of the new proposed exemptions from the obligation to publish a prospectus (in Article 1(4)(db) and 1(5)(ba)), should be required to publish an EU Follow-on prospectus in the case they transfer from an SME growth market to a regulated market?	<u>CZ:</u> <u>Answer:</u> We fully support the Commission's original proposal, however for the sake of compromise we could accept the idea that in a case of transfer from the SME Growth market to regulated market the Follow-on prospectus would be required. <u>Reason:</u> We find it desirable to support migration from SME growth market on regulated market. If the issuer was admitted to trading complying with applicable rules, we do not see a strong justification to submit the issuer to a different treatment in case of transfer to regulated market. From our point of view, in cases where an issuer was already admitted on SME Growth market and traded there for some time, transfer to regulated market does not necessarily require a (Follow-on) prospectus. <u>CY:</u> Yes. As already noted in our previous comments, the provisions of Article 14(b) could be extended to facilitate offers or admissions that will fall under the new exemptions in Articles 1(4)(db) & 1(5)(ba) so that issuers could benefit from the lighter regime and

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Question	MS reply
	investors have available the necessary information to take an informed investment decision. HU: YES ES: It is not acceptable that issuers can step from a SME growth market to a regulated market without a new prospectus, regardless of the fact that a prospectus was published in some moment before. The simplified document is not sufficient safeguard as the content of the old prospectus can be outdated. Besides, stepping from a SME growth market to a regulated market usually requires important changes that need to be explained to investors, such as accountant principles and governance of the entity. In this cases issuer shall draft an EU Follow-on prospectus. FI We agree and understand that this would not significantly change the current situation. EL EL: Please refer to the above answer. If the proposed exemption of Articles 1(4)(db) and 1(5)(ba) remains, in our opinion it should be required to publish an EU Follow-on prospectus to transfer from an SME growth market to a regulated market.

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Question	MS reply
	FR Issuers should publish a prospectus when transferring on a regulated market. The absence of such requirement would also create a loophole in the new prospectus regime: companies transferring to a regulated market would be able to use the 40 % exemption to raise capital without providing any information to the market. PL We are strongly in favour of maintaining the current general rule that the first admission of securities to trading on a regulated market should be made on the basis of a full prospectus approved by the NCA. Under the current regulations, a transition from an SME growth market to a regulated market is possible on the basis of a secondary offering prospectus, which differs from the standard prospectus only by the obligation to include historical financial information for 2 years instead of 3 years. Such a standard should be maintained so that the regulated market is identified among investors as the most transparent, e.g. because entering this market involves a specific, identical for each company, wide range of information. It is also a kind of selection barrier for companies and a clear message to investors that the most transparent companies are listed on this market. Therefore, we are opposed to the possibility of using only the document referred to in Annex IX for the transition to the regulated market, as well as to the use of the EU Follow-on prospectus. IT

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Question	MS reply
	We do agree. In case of transfer from an SME Growth Market to a regulated market, issuers should publish an EU Follow-on Prospectus. With a view to facilitating the transition from a SME growth market to a regulated market and ensuring that investors have access to the information that is necessary for their investment decisions, we believe the use of the Follow-on prospectus could be the most appropriate tool instead of a mere prospectus exemption. The transition from a SME growth market to a regulated market represents, in fact, a crucial step also for the company, which normally needs to adopt a series of internal presidia aimed at ensuring its compliance with the provisions of the sectoral rules. In our view, the Commission's proposal to allow issuers to transfer their securities from an SME growth market to a regulated market based only upon a summary document, not submitted to the NCA's scrutiny, would not ensure an appropriate investors' protection. In fact, the summary document is extremely short (maximum length of 10 sides) and lacks information that is considered relevant for an investor to make an informed assessment of the proposed investment and which is not publicly available or easily discoverable, such as an update of the issuer's risk factors, the working capital statement, capitalization and indebtedness at a recent date, any information relevant to complex financial histories (pro-forma, combined, carve-out) and corporate governance information. RO Yes DE In general, we support the aim of the Commission's proposal to make the transfer from an SME growth market to a regulated market easier. But it has to be considered, that listing on a regulated market only with the document as currently set out in Annex IX might not be sufficient. Issuers listed at an SME growth market are not required to

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Question	MS reply
	prepare financial information according to IFRS, so that such issuers would prepare their first IFRS (interim) financial information only after the admission to trading on a regulated market. As the document as currently set out in Annex IX requires no such information for a first listing on a regulated market and needs no approval, there would be no pre-ante check of the information by a competent authority. NL As we have stated before, we see risks in case of a transfer from an SME growth market to a regulated market. This proposal of the Presidency for requiring the EU Follow-on prospectus could be a step in the right direction. Though we understand the proposal, we wonder if this solves the problems of the level of disclosure that is needed when transferring to a regulated market. PT Yes. We can deem acceptable that a transfer of an issuer from an SME growth market to a regulated market, in these situations, is accompanied by an approved prospectus, such as the EU Follow-on prospectus. DK: DK does not have a specific opinion on this issue. LU:

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Question	MS reply
	We agree with the Commission's proposal that the short summary document, instead of the EU Follow-on prospectus, could be used by issuers falling under the new proposed exemptions, in case they transfer from an SME growth market to a regulated market. BG: We are still analysing this issue. IE: Yes, issuers moving from SME growth to regulated market should produce an EU Follow-on prospectus as it is important to inform the market. In such a case the working capital statement, as mentioned in point 2 above, would already be required under Annex IV and detailed use of proceeds under Annex V. E.g. official insolvency may not manifest itself until 3 years after the issuer is faced with cashflow and going concern problems, but this may have been disclosed in its prior year's audit report. Investors should be fully informed of the financial state of an issuer.
2. Prospectus types and content of a prospectus, language	
Q.6. Do MS consider that issuers that fall under the scope of the EU Follow-on prospectus in Article 14b should be allowed to transfer from an SME growth market to a regulated market using an EU Follow-on prospectus, according to the COM's proposal? If not, do MS consider that a full prospectus under Article 6 should be required?	<u>CZ:</u> <u>Answer:</u> Yes, in such cases issuers should be allowed to transfer to regulated market with just a Follow-on prospectus. <u>Reason:</u> As we support a reduction of unnecessary administrative burden, we would be pleased if the transfer from SME Growth market to regulated market would be possible with just a Follow-on prospectus. To require a full prospectus in cases of transfer to a regulated market would constitute an unnecessary burden. SK:

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Question	MS reply
	We support COM's proposal. CY: We believe that a full prospectus under Article 6 should be required. HU: We support the COM's proposal. ES: In the case of an issuer whose shares have been admitted to trading in a SME growth market for the last 18 months, it should be required a Follow-on prospectus for the transfer to a regulated market, with no requirement of a previous prospectus. In the rest of the cases of transfer from a SME growth market to a regulated market, issuers should elaborate a standard prospectus. AT: We are generally open to this suggestion but are sceptical about the shortening of the approval period from 10 to 7 working days (as was already the case with the Recovery Prospectus), because all other prospectuses provide for 10 days, including the new EU Growth Issuance Document. FI

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Question	MS reply
	We support the Commission's proposal and think that Follow-on prospectus should be required. Moreover, we understand that if full prospectus would be required, this would be in fact a stricter requirement compared what is currently required under the Article 14 of Prospectus Regulation. EL EL: Yes, we support the proposal of an EU Follow-on prospectus to transfer from an SME growth market to a regulated market, for issuers that fall under the scope of the EU Follow-on prospectus in Article 14b. FR Theoretically a transfer to a regulated market should be accompanied by a disclosure matching additional requirements expected from companies listed on a regulated market (governance, detailed financial information, etc.). This would plead for keeping a full prospectus. However, there is currently little to no transfer and we could be open to support having a EU Follow-on prospectus should the Council be willing to encourage the move from a SME Growth Market to the regulated market. PL

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Question	MS reply
	As we indicated in our answer to Q5, we are opposed to the use of the EU Follow-on prospectus to move from an SME growth market to a regulated market. The obligation to draw up a full prospectus should be maintained. In addition to the arguments presented in our answer to Q5, it should be indicated that in our view the proposal does not seem to take into account such circumstances as: (i) the very short period of validity of the current regulations concerning the EU recovery prospectus and (ii) the economic crisis caused by the COVID-19 pandemic, which in fact make it impossible to draw conclusions as to the real impact of lowering information requirements on the interest of business entities in financing from the capital market and maintaining an appropriate level of investor protection by providing them with access to reliable and understandable information. IT We support the proposal that would allow issuers to use the EU Follow-on prospectus to transfer their securities from an SME growth market to a regulated market. However, when a Follow-on prospectus under Art. 14b is used for such a transfer, we suggest that the time period for the NCA approval is set in 10 days as for the standard prospectus and not in 7 days. Please, consider our previous answer regarding the rationale of such proposal. RO Yes DE

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Question	MS reply
	The same problematic as addressed in the previous answer applies: as issuers on SME Growth markets usually do not issue IFRS financial statements, the PR currently makes sure that they have to issue one IFRS financial statements for the last year prior to admission to the regulated market, provided they are under an obligation to do so after admission. We support the transfer from an SME growth market to a regulated market using an EU Follow-on prospectus, but a requirement for IFRS financial information seems necessary for issuers that are under the obligation to do so after admission to the regulated market, as it is currently also required in Art. 14(2) for such up-listings. NL In the case of a transfer, we would be in favour of a full prospectus. PT Yes. We favour the COM's proposal on this regard, in allowing issuers to transfer from an SME growth market to a regulated market using an EU Follow-on prospectus. We favour the simplification of disclosure requirements for issuers, and we believe the EU Follow-on prospectus still ensures the investor access to the necessary information. DK: DK considers that issuers that fall under the scope of the EU Follow on prospectus in Article 14b should be allowed to transfer from an SME growth market to a regulated market using an EU Follow-on prospectus, according to the COM's proposal. LU:

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Question	MS reply
	Yes, we concur with the Commission's proposal that issuers falling under the scope of the EU Follow-on prospectus in Article 14b should be allowed to transfer from an SME growth market to a regulated market using an EU Follow-on prospectus. Hence, we do not consider that a full prospectus should be required in such case. However, we are of the view that issuers should be allowed to voluntarily make use of the full prospectus, as this would provide issuers with more flexibility. BG: We agree that EU Follow-on prospectus should be used. IE: We would accept the use of the Follow-on prospectus. We believe that Annex IV and V can provide sufficient information for investors to make an informed decision. This is provided that the accounting standards to be used have been specified in Annex IV and V. Admission to trading in the regulated market would require financial statements prepared in IFRS or an equivalent standard on an ongoing basis so it would be preferable to specify that financial statements must be prepared on this basis at the point where the prospectus is prepared.
Q.7. Do MS see the need for any further specification of the delegation to the COM on the adoption of delegated acts as per Article 13(1)? If yes, why?	<u>CZ:</u> <u>Answer:</u> No, however, if other member states wishes to do so, we are open to it. SK:

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Question	MS reply
	We agree with proposed wording, we don't need further specification. CY: We do not have a strong view. HU: We do not consider further clarification necessary. ES: Scrutiny reservation. FI We do not see need for further specification. EL EL: Yes, but only as regards a deadline for the adoption of the COM's proposal. FR

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Question	MS reply
	Yes. The reference to IOSCO standards, currently set out in Art. 13(3) PR and deleted by the Commission in its draft proposal, should be re-inserted to promote international level-playing field. Article 13(3) currently states: <i>“3. The delegated acts referred to in paragraphs 1 and 2 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, in particular by the International Organisation of Securities Commissions (IOSCO), and on Annexes I, II and III to this Regulation.”</i> Many public offers carried out in the EU under the PR are also carried out in parallel in third-country jurisdictions (the US). As is the case in the field of non-financial reporting, consistency between disclosure requirements is an objective we should pursue. PL The delegated act would specify the “standardized sequence” of information. However, it seems that the sequence is already explicitly indicated in the draft Annexes. IT While we support the Commission’s proposal regarding the matters of delegated acts listed in proposed Art. 13.1 (i), we suggest that the content of the information chapters

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Question	MS reply
	of the prospectus set out at L1 continue being defined in more detail at L2 in order to enhance an adequate degree of harmonisation of prospectuses in the EU. The Annexes to the L1 Regulation in fact provide only high-level guidance as to the contents of the prospectus and as such do not make it possible to ensure such harmonisation. Thus, as regards the content of the EU Follow-on prospectus, we deem it important that a delegation to the EC for L2 acts be introduced for a more detailed definition of L1 disclosure rules to foster harmonisation of the prospectus content and so to also lower issuer's and NCAs' burdens. In this regard, it is worth considering that, in the Italian experience, the lack of specific disclosure rules at L2 with regard to the EU Recovery Prospectus rose uncertainties on the content of the information items provided at L1, which required ESMA to publish a specific Q&A to try to reduce the risk of diverging practices among market participants at least with regard to the application of L3 ESMA guidance (ESMA Q&A on Prospectus Regulation, No. 18.1). Please, also consider the following comments not strictly related to Q.7 but raising important issues which may need a delegation to the COM for L2 acts. In our view, making mandatory incorporation of information by reference in the prospectus and lowering to the last two financial years the current disclosure requirement related to the last three years for the historical financial information to the last two years would not allow issuers to have the necessary flexibility in choosing the most appropriate format of the prospectus in the case of a private placement. Moreover, regarding IPO prospectuses relating to shares or equivalent securities, we consider that shortening the issuer's historical financial information therein included to only two financial years would make difficult for an investor a full understanding of the development of the issuer's financial position and performances, as the issuer is not yet well known in the financial market. Thus, we deem it important that L1 Annexes I and II for IPO prospectuses be accordingly amended concerning the issuer's financial information.

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Question	MS reply
	RO No DE A deadline should be set to the Commission to adopt the delegated act as the specifications stipulated by that delegated act are necessary from the day the amendments to the prospectus regulation will be applicable. NL PT Yes. We consider that a deadline should be set to the Commission to adopt the delegated act, as the specifications outlined in it are necessary when the amendments to the prospectus regulation come into effect. DK: DK could see the need for further specification of the delegation to the COM on the adoption of delegated acts as per Article 13(1), as there may be some challenges in setting the disclosure requirements for the two prospectus types in level 1. As a result, information requirements may be described in too general a way and thus different interpretations may arise in MS, which does not promote convergence.

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Question	MS reply
	LU: No, we consider the Commission's proposal is already adequate in this respect. IE: We believe Annex V does not go far enough in providing the necessary information for non-equity securities, especially if these are complex instruments. There is a need to add specific details, however, we are currently analysing how this might be best achieved. We will provide further comments when we have formulated our position.
Q.8. Should the content of the EU Follow-on prospectus be specified only in Annexes IV and V and the content of the EU Growth issuance document be specified only in Annexes VII and VIII, as proposed by the COM, or would MS prefer to introduce an obligation for the COM to further specify the content in a delegated act?	<u>CZ:</u> <u>Answer:</u> We would prefer, if the content was specified in a delegated act. However, we do not have a strong stance. <u>Reason:</u> Even though we are sympathetic to Commission's concern that delegated act might lead to a more cumbersome Follow-on prospectus/ EU Growth issuance document, we would like to keep higher flexibility of any future amendments which comes with the delegated act. SK: Flex – yes. CY:

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Question	MS reply
	The content of the EU Follow-on prospectus and the EU Growth issuance document could be specified in the Annexes, however these should be detailed enough to assist the issuer to draft the prospectus and also promote harmonization. HU: We support COM's proposal to specify the content of those documents in the annexes. ES: We prefer to introduce an obligation for the COM to further specify the content in a delegated act. BE: We would indeed prefer to introduce an obligation for the COM to further specify the content in a delegated act. FI In principle, we agree with the Commission's view and prefer that the content is specified only in annexes. However, we can be flexible on this. We also understand that level 2 could be useful in case urgent amendments to the regime would be needed. EL

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Question	MS reply
	EL: In our opinion, the content of the EU Follow-on prospectus as specified in Annexes IV and V, and the content of the EU Growth issuance document as specified in Annexes VII and VIII is adequate, and there seems to be no need for further specifications in a delegated act. FR No, the context of the different Annexes should remain specified at level 2 and we should keep an empowerment for delegated acts, similar to the approach followed in Art. 14(3) and 15(2) of the current Prospectus Regulation. The contents of Annexes IV, V, VII and VIII are too high level to provide sufficient certainty guidance to preparers as to what disclosure is expected from them. The absence of granular requirements will likely foster proliferation of divergent disclosure practices at the national level, at the expense of harmonisation and integration of EU capital markets union. The co-decision negotiation process is not the right forum to debate the nitty-gritty of prospectus contents, which requires the implication of experts (ESMA & NCAs) and proper consultation of stakeholders. PL It seems that the guidelines contained in the draft Annexes to the Regulation are too general and may lead to uncertainty as to the scope of specific information. We can therefore support the clarification of this scope at level 2. The preparation of a prospectus solely on the basis of these general guidelines may cause a number of doubts and inquiries to the NCAs and ESMA.

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Question	MS reply
	IT Please, refer to our answer to Q.7. Furthermore, we suggest that in the level 1 Annexes relating to equity securities (i.e., IV and VII) additional material information not already available to investors be included, such as disclosures related to: - capitalization and indebtedness (included in the current Prospectus for Secondary issuances and in the EU Recovery Prospectus); - material contracts, significant investments and legal proceedings relating to the period following the last financial information included in the prospectus (as provided by the current Secondary Issuances regime related to more extensive periods); - information on profit estimates and forecasts currently set out by the simplified regime for secondary issuances so as to address issuers on the content of such information, if included in the prospectus. - other information, such as intellectual properties rights and Business Overview. RO We are in favour of the COM's proposal. DE We are open to support the proposal of the COM.

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Question	MS reply
	NL We have concerns with the proposal as is, meaning specification only on level 1. We understand that it could be easier for some issuers if only level 1 requirements have to be taken into account when drafting a prospectus. However, it is also in the interest of issuers that they are guided well in the process of drawing up a prospectus. The information is now very high-level for all types of transactions and we wonder whether it is indeed helpful. Especially in specific situations of offerings, it might be necessary to add additional information. For example the current requirement for property funds to add the expert valuation report of the property. Would this be clear for issuers that this information is needed in the prospectus? There are also other specialist issuers that now have their own requirements, such as shipping companies or investment vehicles. Please see the chapter on specialist issuers in the CESR recommendations.¹ There is also a risk that some NCAs require certain elements and others do not, leading to divergent scrutiny processes and prospectuses. The switchover to level 1 needs to be well-considered and we have some concerns for the issues that may arise in practice. And in the case that issues may arise, there is less flexibility in changing the rules when it comes to level 1 compared to level 2. PT We believe that introducing an obligation for the COM to further specify the content in a delegated act could be beneficial. We would like to express our preference for a delegated act instead of an RTS.

¹ [ESMA update of the CESR recommendations](#), The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospect, paragraph 128-145.

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Question	MS reply
	In relation to summaries, we believe that a relatively standardized and simple summary model, such as the one in the common prospectus, would be preferable. However, we also think that the items in the summaries of the EU Follow-on Prospectus and the EU Growth Prospectus should be further standardized and follow the same sequence as the items in the summary of the common prospectus. This change should be made in the Level 1 text. The summary is a crucial section of the prospectus that investors pay close attention to, and this standardized approach would enhance comparability among all securities offers with a prospectus. DK: See answer to Q.7. LU: We are in principle very much in favour of providing clarity at level 1 in order to avoid the additional complexity that could arise through level 2 texts. We understand however that the scope of the new lighter prospectus regime (EU Follow-on prospectus, EU Growth issuance document) would be significantly broader than the EU Recovery Prospectus regime and therefore recognize that it will be difficult to cover all possible scenarios regarding such lighter prospectuses at level 1. IE: We believe the content of both the EU Follow-on and EU Growth issuance document require further specification, for the reasons described above. However, we have yet to finalise our views on how this might be best achieved and will provide further comments when we have done so.

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Question	MS reply
Q.9. Could MS support to make the EU Growth issuance document a voluntary prospectus type, as proposed by the Presidency?	<u>CZ:</u> <u>Answer:</u> Yes. <u>Reason:</u> Any simplified prospectus or issuance document should according to our view represent only an alternative to the full prospectus. Full prospectus shall represent a universal option for issuers in any case of issuances or offers of securities. <u>SK:</u> Yes, we support this proposal. <u>CY:</u> We support the Presidency's proposal to make the EU Growth issuance document a voluntary prospectus type, and maintain the possibility for the issuers to voluntarily draw up a more comprehensive prospectus. <u>HU:</u> YES <u>ES:</u> Scrutiny reservation. <u>BE:</u>

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Question	MS reply
	We could support this. FI We can support this. EL EL: Yes, we support to make the EU Growth issuance document a voluntary prospectus type. FR We are “pro-choice”: we do not want wish to deter issuers that may prefer the self-inflicted pain of a heavier prospectus. More extensive information also contributes to better information for investors. This also applies to the compatibility of new prospectus formats with the Universal Registration Document. The legislative proposal technically collides with the URD. The tripartite document remains the most advanced, protective information document and its use should not be hampered. PL We support the Presidency’s proposal.

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Question	MS reply
	IT Yes, we support. RO Yes DE Generally, we do not see why people voluntarily drafting a more comprehensive prospectus should be prohibited to do so although the COM proposal creates a higher level of standardisation. We would also support the change the name of the “EU Growth issuance document” into “EU Growth issuance prospectus” to make sure by the name that it is a “full” prospectus and not only a document as set out e.g. in Annex IX. PT Yes. We are in favour of the PRES proposal to allow for issuers to choose between a full prospectus or an EU growth prospectus. DK:

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Question	MS reply
	DK does not necessarily have strong opinions on this issue, since the current regime of voluntariness works fine. In our view, issuers usually choose to prepare a prospectus according to the lightest regime. LU: Yes, we are in favour to make the EU Growth issuance document a voluntary prospectus type as proposed by the Presidency. Thereby, we also agree to maintain the long-established principle that issuers can voluntarily choose to use a stricter prospectus regime. BG: We fully support the proposal of the PCY. IE: Yes. It is our understanding that some issuers prefer to do a full prospectus even when a shorter form prospectus can be provided.
Q10: Could MS support to maintain the current provision on language for domestic offers as proposed by the Presidency?	<u>CZ:</u> <u>Answer:</u> We do not have a strong stance. Our first choice would be for issuers to draw a prospectus only in English. If this is not possible, we would prefer, if issuers were to be given the choice whether to draw up a prospectus in English or in an official language of a member state, or both. However, if there is a desire among member states to ensure on national level for prospectuses to be published in official language, we can support the keeping of current provision.

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Question	MS reply
	<u>Reason:</u> In a spirit of unified approach and reduction of costs and administrative burden for issuers, we would rather prefer a scenario, where issuers would be always guaranteed the option to submit prospectus in English. However, we can imagine a requirement to draw a summary of prospectus in an official language (or in one of the official languages) for only domestic offers. For a record, we would also like to note that we are not that keen on the wording “<i>language customary in the sphere of international finance</i>” as it might in some cases pose a legal uncertainty. We would therefore prefer, if the English language was set in stone to avoid any possible doubts. SK: Yes, we support the presidency’s proposal. HU: YES ES: Yes. AT: Yes. FI

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Question	MS reply
	We prefer the Commission's proposal on this one. Drawing up the prospectus on official language should be only on voluntary basis. Preparing the prospectus in several languages sets a disproportionate administrative burden for issuers. We feel that prospectus summary translated to official language would set the right balance between investor protection and other goals of the proposal. EL EL: We support the COM's proposal that issuers should be allowed to draw up the prospectus in a language customary in the sphere of international finance both for domestic and cross-border offers or admissions to trading. FR We are open as long as the obligation to draft the prospectus summary in the national language remains. PL We strongly support the Presidency's proposal. IT No. We support the Commission's proposal. RO

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Question	MS reply
	Yes DE We support the COM proposal as this would lead to a higher level of standardisation of prospectus in the EU. As the summary will have to be in the domestic language, we see no disadvantage for retail investors. NL We see benefit in giving the issuer the option to choose what language to use. PT We are flexible on the provision on language for domestic offers, but we favour maintaining the current provision on language for domestic offers. We believe that it is important for our NCA to have the option to request the use of Portuguese language in specific cases when deemed necessary. DK: DK supports the COM's proposal where the issuers would be allowed to draw up a prospectus in a language customary in the sphere of international finance (English) both for a domestic and cross-border offer or admission to trading since the summary shall be available in at least one of the official languages of the home member state MS – in DK's case: Danish.

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Question	MS reply
	However, DK could also support to maintain the current provision on language for domestic offers, as proposed by the Presidency. LU: We generally support the Commission's proposal regarding this topic, however we could also live with the Presidency's alternative. BG: We fully support the proposal of the PCY. IE: We could support the Presidency proposal here. However, we would be flexible to the decision of the majority of MS.
3. Scrutiny and publication of a prospectus	
Q.11. Do MS agree with the proposed delegations to the COM on the scrutiny and approval of prospectuses by NCAs? If yes, do MS see a need for further framing the scope of proposed delegations to the COM on a) the use additional criteria for the scrutiny of the prospectus, b) the consequences for a competent authority that fails to take a decision within the time limit,	<u>CZ:</u> <u>Answer:</u> We would prefer it, if the basic elements (such as timeframe) were set in level 1 rather than additionally in a delegated act. <u>Reason:</u> Level 1 acts in our point of view contribute to a higher transparency and legal certainty. We therefore consider it to be desirable to set the cornerstones in level 1.

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Question	MS reply
c) the maximum timeframe for an NCA's scrutiny If no, why not?	SK: We are in favour of current regime, we think that the current requirements lay down in current Regulation 2019/980 are sufficient. In our point of view it's not possible to framing all circumstances. CY: We could support the proposed delegation to the COM for the use of additional criteria for the scrutiny of the prospectus. However, we are against the proposed delegations to the COM for the consequences for a competent authority that fails to take a decision within the time limit and the maximum timeframe for an NCA's scrutiny as it might constrain the ability of the NCAs to exercise judgement. HU: Yes we agree, but we do not consider necessary any further framing. a) ES: - b) c) We agree with the delegation related to the use of additional criteria. d) If the intended consequence is a positive silent, we do not agree. This could lead to NCAs rejecting or refusing prospectus requests due to lack of information – on the basis that it has not yet been fully provided, as this is many times the case-. In the end, this may mean an effective increase in processing times and costs for issuers. Additionally, the Peer Review report does not signal this is as a critical issue that makes it difficult for issuers to access the markets.

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Question	MS reply
	We agree with establishing a maximum timeframe provided that it does not undermine NCAs ability to properly assess the prospectus. BE: We would prefer covering this topic in the level 1 text. However, if a delegation is given to the COM, we are in favor of further framing the scope of such delegations. We have certain reservations with regard to the COM's proposal on this subject: - o on shortening the time limits from 10 to 7 working days, we believe that national competent authorities should have sufficient time to review draft prospectuses. We do not consider it wise to shorten the time limits from 10 to 7 working days, especially for follow-on prospectuses which would be drafted in complex circumstances such as in the context of financial distress (i.e. insolvency or restructuring procedures) or significant transformations (i.e. takeovers, mergers and divisions). - o on setting a maximum total time limit, we believe this could be detrimental to investor protection if this would translate into NCAs having insufficient time to properly review draft prospectuses. If a total maximum timeframe for approval of prospectuses is set, this should take into account the quality of the document upon first submission, the time taken by issuers to submit following versions and other diverging factors over which NCAs have no control. - o on the proposed consequence of a failure to take a decision within the time limit, i.e. the tacit agreement of the prospectus: this entails the risk that NCAs would more often need to decide not to approve a prospectus at the end of the time limit if at that time the document does not meet the standards set out in the Prospectus Regulation. This does not seem beneficial to the access to public funding for companies.

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Question	MS reply
	AT: We are sceptical about the delegation of this issue. However, it would be helpful to set a maximum time limit for approval. If the prospectus has not be changed in a way to satisfy the requirements of NCA based on the PR, the NCA should be allowed to reject the application for approval due to expiry of the deadline. FI On point a), we agree that this could be more precisely defined in a delegated act. As regards point b), the meaning of ‘consequences’ should be clarified; if the word ‘consequences’ refers to automatic approval of prospectus in case the NCA fails to make a decisions in a set time limit, this should be precisely defined because we understand that this is not actually a consequence for the NCA. The word “consequence” used in this sense could be misleading. On point c) we can be flexible. EL EL: We have reservations. We support supervisory convergence on the scrutiny and approval processes. The current level 1 and level 2 legislation provides an efficient and clear framework, in relation to time frames and procedures of scrutiny and approval. FR

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Question	MS reply
	As regards to the time limit, the delegation proposed by the Commission could help but does appear to be absolutely necessary. However, NCAs' discretion over the scrutiny of the prospectus is the consequence of their responsibility in the whole process and should not be restricted. This review will already lead to further standardize prospectus format and thus the scrutiny by NCAs. Mechanically, NCAs will have limited ability to conduct require additional information. We should be cautious not put too much pressure in the syringe and bear in the min the fact that this is a matter where NCA are exposed to a high reputational risk. PL We are not opposed to authorizing the Commission to issue a delegated act, but the text of the Regulation should not leave the Commission too much discretion in shaping its content. In particular, it should be clarified what is meant by: 1) "additional criteria" – if the delegated act is to support NCAs in carrying out prospectus verifications and explain what NCAs should base their activities on, then this term should be clarified in the delegation, because as part of the peer review carried out by ESMA for the application of the prospectus regulations by NCAs, it turned out that there are different understandings of what should be regarded as the "criteria" for verifying the prospectus; 3) "maximum duration" of the prospectus approval procedure (whether it is the maximum sum of times during which the NCA reviews all versions of the prospectus received from the issuer in the course of the procedure, or the maximum duration of the entire verification process, both on the part of the NCA and the issuer).

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Question	MS reply
	IT We support the Commission's proposal as it is consistent with the outcome of the peer review in the prospectus area undertaken by ESMA last year. We suggest including as additional matter of delegation issuers' turnarounds time, as this is a further issue of divergence between NCAs flagged in the said ESMA peer review (<i>"The European Commission is invited to examine how to ensure a common approach regarding issuers' turnaround times"</i>). In alternative, this further issuer might also be dealt with at L1. RO No DE a) We are open to accept a delegation on the use of additional criteria for the scrutiny of prospectuses, taking into account the results of the recent ESMA Peer Review. However, it could be helpful to add a clarification that this shall not restrict the right of NCAs to ensure that a prospectus contains the necessary information in accordance with Article 6. b) As regards the consequences for an NCA that fails to take a decision within the time limit, we took note of the explanation from the COM that this should result in a 'tacit agreement', which probably means that a prospectus is deemed to be approved. We are critical on such a rule and as this would need high safeguards.

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Question	MS reply
	c) We acknowledge the aim to limit the overall timeframe from initial submission of a prospectus till the final approval (or refusal) and to generally streamline the scrutiny procedure at the NCAs. But it has to be safeguarded that streamlining the procedure has no negative impact on issuers. For example, when a draft prospectus cannot be approved at the end of such maximum timeframe because it still does not comply with the requirements, and the NCA would need to refuse the approval, there should be a chance for the issuer to address such shortcomings with a further submission of the draft prospectus. So a maximum timeframe must leave flexibility to take into account the specific reasons why a prospectus cannot be approved within the given time. NL No, not at this stage. The delegation clause needs further explanation and/or details in text. We are in favour of the use of delegated acts on the use of additional criteria for the scrutiny of the prospectus. We could also see that the maximum timeframe for the NCA's scrutiny could be laid down in a delegated act. However: when it comes to the consequences for an NCA that fails to take a decision in time: we feel that: • It is unclear at the moment what is meant by 'the consequences for an NCA' • If it is clear for the Commission, this should be made clear in the level 1 text • We strongly object to tacit approval (automatic approval) by lapse of time In short: we ask for assurance on what is to be laid down in the delegated act, especially when it comes to the consequences for NCA's. We object to tacit approval. PT

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Question	MS reply
	We disagree with the proposed delegations to the COM on the scrutiny and approval of prospectuses, as proposed in points (a) to (c) for the following reasons: - Point (a) significantly restricts the discretion of supervisors when evaluating prospectuses. A delegated regulation cannot assume it can anticipate all situations where it would be appropriate for a competent authority to request additional information or criteria; - Point (b) proposes a tacit approval of a prospectus which does not align with our views, as it could pose a potential risk to investor protection. Additionally, this could pave the way for informal approval procedures to be adopted to circumvent the rejection of prospectuses by NCAs. As for Point (c), we consider that all deadlines for reviewing a prospectus should be established at Level 1 as these are important elements to ensure investor protection and the proper functioning of the market. DK: DK does see a need for further framing the scope of the proposed delegations to the COM on b) - DK refers to point 2 of Art. 20(2) where it is stated that “Where the competent authority fails to take a decision on the prospectus within the time limits laid down in the first subparagraph of this paragraph and paragraphs 3 and 6, such failure shall not be deemed to constitute approval of the application.” - Therefore, DK was a bit surprised that the COM at the WP on 27 February explained that if a NCA fails to take a decision within the time limit, this should result in a “tacit agreement”.

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Question	MS reply
	- In light of the above DK would welcome clarification on how this aligns. Furthermore, DK would prefer to have specific reasons for suspension of the prospectus approval process in level 1. c) - DK believes such a provision, if included, is a matter for level 1, not level 2 as it relates directly to issues of liability for the issuer as well as the NCA. LU: No, we do not agree with the Commission's proposal, as we generally do not see the need for further empowering the Commission to further frame the scope of the scrutiny and approval of prospectuses by NCAs. Any additional powers to the Commission would restrict NCAs in their scrutiny process. More specifically, regarding the use of additional criteria for the scrutiny of the prospectus (point a), we are of the view that the existing Commission delegated Regulation (EU) 2019/980 already provides for an adequate framework. Moreover, with respect to the consequences for a competent authority that fails to take a decision within the time limit (point b), we would like to highlight that the ESMA Peer Review Report noted that NCAs have very rarely missed their legal deadlines. In addition, this situation is already properly addressed by the Prospectus Regulation which states that such a failure shall not constitute approval by the NCA and that a right of appeal applies. Therefore, we do not agree with the Commission's explanations that there should be a tacit agreement whenever an NCA fails to take a decision within the time limit.

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Question	MS reply
	Last but not least, with respect to the maximum timeframe for an NCA's scrutiny (point c), we consider the current regime is appropriate and we do not see the need to shorten the timeframe from 10 to 7 days. All things considered, we do not agree with the Commission's proposal to modify Article 20, paragraph 11, of the Prospectus Regulation. IE: We do not agree with the proposed delegations. While we understand the aim of the proposed changes, we believe they would not provide for an adequate level of investor protection as they would inhibit the capacity for competent authorities (NCAs) to properly fulfil their role. We believe the restrictions may result in NCAs having to approve prospectuses even if they have significant concerns regarding the suitability of products or regarding the compliance with other legislation and requirements. In particular, this may be the case with innovative issuances/securities (that may not be adequately catered for in any delegated regulation). In addition to our concerns for investor protection and for NCAs to properly implement and live their risk appetites, there is potential for this create a precedent for other areas of financial services legislation. As regards the specification of overall timelines: We do not agree that if an NCA fails to take a decision within the time limit, this should result in a tacit agreement. This would be concerning from an investor protection perspective. Investors in all jurisdictions could be negatively affected by this approach if one NCA fails in this regard given that prospectuses may be passported throughout the EU.

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Question	MS reply
	It is unclear how this would work in practice (i.e. will the issuers also have corresponding minimum timeframes within which to respond to comments?). If not, we do not see how it will be possible to specify overall timelines for review
Q.12. Could MS support that the ESMA conducts a peer review at least once every five years, as proposed by the Presidency?	<u>CZ:</u> <u>Answer:</u> We can agree to the Presidency's proposal. <u>Reason:</u> We see the periodicity as set in the Commission's original proposal as overly frequent. We are therefore for a prolongation of the period. We could also support other member states' point of view on the lack of additional value of periodical review obligation of ESMA. SK: Yes, we support the presidency's proposal. CY: Yes. HU: Yes ES: We could support it.

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Question	MS reply
	BE: It should be considered if this clause is necessary as according to the ESMA Regulation, ESMA can decide to organise peer reviews in the areas and with the frequency that ESMA deems necessary and if an obligation for ESMA to conduct a peer review recurrently would not risk crowding out peer reviews in other supervisory areas. In any case, we believe that 3 years is too short given the time needed before and after the peer review. AT: Yes. FI Yes. EL EL: We could support the proposal. FR We support the way forward presented by the Presidency. Organizing revolving peers is very burdensome. The Prospectus Regulation is now a mature topic with level of harmonization and the marginal value of each review is decreasing – fast. The E.U. can live with a longer review period.

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Question	MS reply
	Our guess is that collective efforts five years from now will primarily be focused on other aspect of listed companies' regulation. Against this backdrop, another solution could be to require a single peer review before the review date of PR, so the Commission can prepare its legislative proposal. PL We support the Presidency's proposal. Conducting a peer review on the functioning of the regulations on the verification and approval of prospectuses every 3 years is definitely too short a period, taking into account not only the lack of criteria justifying such frequent analysis in an area that is not subject to significant changes in the short or medium term, but also the need to involve significant human resources both on the part of the NCA and ESMA for this process, which in fact lasts several months. It is also questionable how such an analysis would exclude all other factors affecting the raising of capital in the form of a public offering in order to show the impact of a given practice of reviewing and approving prospectuses. IT We are open to the Presidency's proposal that ESMA carries out peer review at least every five years. RO Yes DE

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Question	MS reply
	Taking into account the high amount of resources that the conduct of a peer review requires, a frequency of 5 years appears appropriate. NL It is a step in the right direction, but we are still of the opinion that it is not necessary to specify a time period. PT We cannot support the proposed way forward as we do not agree with the provision of mandatory peer-reviews in sectorial legislation. This would limit ESMA's ability to undertake peer-reviews in other areas as these are resource-intensive. Additionally, if co-legislators start prescribing peer-reviews in sector-specific legislation, it will render Article 30 of the ESMA regulation meaningless. DK: DK would like to better understand the added value of the peer review also in light of the expected cost for both ESMA and the NCA. . If peer reviews are included, we would prefer a lower frequency and would propose an interval of once every five to seven years. LU:

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Question	MS reply
	No, we do not support that ESMA conducts a peer review at least once every five years. Indeed, considering that according to the ESMA Peer Review Report NCAs' scrutiny and approval of prospectuses are generally satisfactory, we do not agree neither with the Commission's proposal to require ESMA to conduct peer reviews at least once every three years, nor with the Presidency's proposal to extend this timeframe to five years. Peer reviews entail significant administrative burdens and are an extremely resource intensive exercise and we generally believe the current framework of the ESMA Regulation leaves sufficient discretion to ESMA to decide on carrying out peer reviews in the areas and with the frequency that ESMA deems necessary. BG: We do not support the introduction of regular peer reviews. IE: We are not supportive of the requirement for ESMA to conduct a peer review. As outlined in the PRES paper, the ESMA Regulation already provides the Authority with the requisite powers to carry out peer reviews. Thus, this provision is unnecessary, but could also impact on the discretion provided to ESMA in their founding regulation.
Q13: Would MS prefer keeping the current regime to make the prospectus available to the public at least six days before the end of the offer or would MS prefer a shorter time period?	<u>CZ:</u> <u>Answer:</u> We do not have a strong position on this. <u>Reason:</u> We are equally satisfied with the Commission's and Presidency's proposal. SK:

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Question	MS reply
	We prefer the current regime – 6 days. CY: Yes. HU: We prefer keeping the current regime of 6 days. ES: We do not have a strong position, scrutiny reservation. AT: We prefer keeping the current regime. FI No. We prefer shortening the period as proposed by the Commission. We find this an important part of the proposal in enhancing the retail investor participation. EL

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Question	MS reply
	EL: We propose in the case a full prospectus is published to be available to the public according to the current regime and in the case of simplified prospectuses we support the three days period proposed by the COM. FR We strongly support the provision of the legislative proposal shortening the minimum duration of the public offer from 6 to 3 days. 1. <u>The current six days period deter issuers from opting for public offers and deprive retail investors from the possibility to participate to IPO or capital increase.</u> The current regime foresees a delay that is actually close to eight to ten days factoring in that (i) the offering starts the day after the disclosure of the prospectus and (ii) Saturday is deemed a working day. This long delay creates a major execution risk for IPO because it increases the risk of investors changing/cancelling their orders in the event of market stress. This impairs the book building process 2. <u>Shortening the period may increase investment opportunities for retail investors.</u> The current regime deters issuers to opt for a public offer private placement, if they can afford to do so. More secured funding conditions can only foster the number of public offers (<i>ceteris paribus</i>) and increase retail participation to primary market operations. 3. <u>Shortening the period would also increase retail investors protection.</u> The ample time left to professional investors to cancel their orders may leave retail investors with an excessive share of securities. To put it bluntly: it exacerbates adverse selection at the IPO. The 6 working days period was adopted in Prospectus Directive of 2003 when most of the communication was done by post and by telephone but there are now electronic ways to contact clients more quickly. Investors' flexibility to manage their order will

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Question	MS reply
	further increase over time with digitalization. The information about offering companies may also be easier and more precise thanks to ESAP. PL We have no strong views, as we are not aware of any signals from market participants indicating that the current timeframe causes any problems. IT We support the Commission's proposal (3 days). RO Yes DE We acknowledge the need of issuers for more flexibility and, therefore, support the COM proposal for a shorter time period of 3 days. NL No: the shortening of the period to 3 days is of great benefit to issuers and indirectly also retail investors. We support the Commission's proposal.

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Question	MS reply
	PT We have reservations on the COM's proposal of shortening the period of 6 to 3 days. However, we are open to assess a shorter time period than the current 6 days. DK: It is stated in recital (40) which refers to the amendment in Article 21 that the minimum period of 6 days between the publication of the prospectus and the end of an offer of shares should be reduced, without affecting investor protection. DK does not see how a reduction of the publication period from at least 6 to 3 working days before the end of the offer would not affect the investor protection. For this reason, we would prefer to keep the current regime to make the prospectus available to the public at least six days before the end of the offer. LU: Given that we do not have strong views on this topic, we can live with the Commission's proposal of shortening the time period to 3 days. BG: We support the current regime. IE:

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Question	MS reply
	We do not have any concerns with the proposed amendments.
4. Equivalence and cooperation with third countries	
Q14: Do MS agree that the offering of securities within the EU by third country issuers, under an equivalent prospectus, should not have to be accompanied with an admission to trading on a regulated market or an SME growth market established in the Union?	<u>CZ:</u> <u>Answer:</u> Yes. <u>Reason:</u> We consider current regime to be less effective than previewed, therefore we would like to see a less stringent one. We do not consider it to be necessary to tie offering of securities with admission to trading. CY: We do not have a strong view. HU: yes ES: Yes. Otherwise, there can be barriers to entry for third country issuers resulting in fewer investment options for EU investors. BE:

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Question	MS reply
	We agree that no admission to trading is required. AT: Yes. FI We support the Commission's approach on this one. We understand that proceeding according to the Commission's proposal would be important in the light of keeping the Union a competitive alternative for third country issuers EL EL: In our opinion, the home NCA, should conclude cooperation arrangements with the relevant supervisory authorities of the third country issuers. FR We prefer having such distinction between the offering and the admission to trading. We believe regime could deter third-country issuers from making any offer in the EU at all, thus reducing investment opportunities for EU investors. PL It seems that the intention of the Commission was that in the case of issuers from third countries who intend to use in the EU a prospectus not only prepared on the basis of

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Question	MS reply
	the regulations of a third country but also approved by the NCA of that country, making the public offering in the EU conditional on applying for admission to regulated market in the EU was a kind of protection against issuers raising capital and “disappearing” from the EU market. Also in this context, it is reasonable that the prospectus of such an issuer should be verified and approved by the EU NCA. The proposed solution causes a systemic change in the issuer/NCA relationship, making a certain breach in the unwritten rules: • The legal framework recognized by the Commission as “equivalent” to that in force in the EU is not equal to “the same” regulations as in the EU. • Prospectus verification is based not only on legal regulations, but also on a certain practice resulting from experience related to the functioning of a given market, investors’ expectations, etc. The third-country supervisory authority will carry out its verification based on the experience of its own market, and not the EU market or one of the Member States markets. • When verifying a prospectus for the first time for a given issuer, the NCA also “gets to know” such an issuer and identifies potential supervisory risks, e.g. in the context of the specificity of its market. The proposed solution deprives the NCA of this possibility. • The EU NCA of the home country for such an issuer will be the authority to which investors will turn with any objections to the activities of such an issuer, if only because it will be more “available” for them than the supervisory authority of a third country. However, despite the mandatory agreement between ESMA and the third-country supervisory authority, it can be assumed that the possibility of expecting supervisory actions from such an authority will be less than in the case of an EU NCA. All this may cause much greater pressure on NCAs from market participants with a smaller range of tools that NCAs will actually have at their disposal.

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Question	MS reply
	IT We support the Commission's proposal. RO No DE Yes. Once equivalence has been officially recognized, there seems to be no need to impose further requirements (when compared to the regime under Art. 28). PT We agree that an offering of within the EU by third country issuers, under an equivalent prospectus, should not have to be accompanied with an admission to trading on a regulated market or an SME growth market. We do not understand the rationale of the Commission's proposal in this regard and would welcome further clarification. DK: Yes, DK agrees that the offering of securities within the EU by third country issuers, under an equivalent prospectus, should not have to be accompanied with an admission to trading on a regulated market or an SME growth market established in the Union.

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Question	MS reply
	LU: As stated before, we do not see an urgent need to amend Article 29, given that third country issuers can already access EU markets by producing a prospectus pursuant to Article 28 of the Prospectus Regulation. However, should the equivalence regime be revised, we would have a preference to preserve the Commission's proposal where the offering of securities within the EU by a third country issuer should be accompanied with an admission to trading on a regulated market or an SME growth market established in the Union. Moreover, for the sake of level playing field, we reckon the equivalence regime should provide for reciprocity for EU issuers wishing to access public markets of the relevant third country with a Prospectus Regulation compliant prospectus. Besides, we would appreciate if the Commission could clarify how the supplement regime provided for in Article 23 of the Prospectus Regulation is to be applied under the new equivalence regime. IE: We agree. As drafted, we are concerned that the Commission proposal would prevent e.g. third country issuers with securities admitted to trading in the US or the UK from offering shares to EU investors. We do not think this would be a good outcome. This may have a knock-on effect if other countries introduce similar requirements, EU issuers could face barriers in offering securities to investors in third countries.
Q15: Do MS agree that ESMA, instead of the home NCA, should conclude cooperation arrangements with the relevant supervisory authorities of the third country issuers?	<u>CZ:</u> <u>Answer:</u> We support the idea.

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Question	MS reply
	<u>Reason:</u> We are under the impression that ESMA has a stronger negotiation power at international level than NCAs separately. SK: We prefer the current regime, NCA should further conclude cooperation arrangements with relevant supervisory authorities of the third country issuers. CY: Yes. HU: yes ES: Scrutiny reservation. AT: Yes. FI

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Question	MS reply
	Yes, we agree that ESMA should be the one concluding the cooperation arrangements. EL EL: In our opinion, the home NCA, should conclude cooperation arrangements with the relevant supervisory authorities of the third country issuers. FR NCA should remain the authority in charge of concluding cooperation arrangements relevant for third country issuers. There is a principle in EU financial regulation that ESMA is in charge of the equivalence procedure and the NCA in charge cooperation agreements because it is the national supervisor that is ultimately responsible in case of a lawsuit. There is no need to change this state of play. PL We are strongly in favour of the relevant NCA, not ESMA, making arrangements with the third country supervisory authority. We support the arguments presented in this regard in the Presidency document. IT We would agree that NCAs should conclude cooperation arrangements with the relevant supervisory authorities of third country issuers, as NCAs are in task with the

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Question	MS reply
	supervision of such issuers when they undertake an offer to the public/admission to trading in their country. RO Yes DE In general, it seems necessary that cooperation arrangements are concludes between the competent authorities of the Member States and the relevant supervisory authorities of the third country issuer, given that the third country prospectuses are filed with the NCAs of the home Member State and they are responsible for market supervision. But in order to acchive equivalent standards throughout the the Single Market, Germany can support a solution in which ESMA establishes cooperation agreements with the supervisory authorities of third countries that also cover the exchange of information with NCAs and the enforcement of obligations by NCAs NL We support the proposal of the Commission for the new equivalence regime and also support the power for ESMA to conclude cooperation agreements. PT

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Question	MS reply
	No. We consider that since it is the home NCA which supervises the third country issuer, it should be the NCA to conclude the cooperation arrangement with the third country relevant supervisory authorities. DK: No. It is necessary for the relevant NCA to have a cooperation arrangement directly with a third country authority and this cannot be done by ESMA. It could be feasible for ESMA to have cooperation arrangements where ESMA itself has a role to play. LU: No, we do not agree with the Commission's proposal, considering that we are of the view that competent authorities of Member States, instead of ESMA, should conclude cooperation arrangement with the supervisory authorities of concerned third countries. Hence, we consider we should stick to the current regime as referred to in Article 30, paragraph 1, of the existing Prospectus Regulation. BG: We do not agree. IE: No. ESMA has a role in facilitating and coordinating the development of cooperation arrangements between NCAs and third countries, however the home Member States are best placed to draw up bilateral agreements with 3rd countries considering they are responsible for supervision.

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Question	MS reply
<u>II. Issuer-sponsored research and the unbundling rule (Presidency non-paper WK 4016/2023)</u>	
1. Issuer-sponsored research	
Q1: If the MS consider <u>amendments</u> to the COM's current proposal to be the best way forward, which options and clarifications (under item 1.3) do the MS prefer?	<u>CZ:</u> <u>Answer:</u> When it comes to the question of code of conduct for issuer sponsored research, the most preferred option would be for us option C – delegate ESMA to draft a unified code of conduct. However, if this is not an option for other member states, we would be for option B – delegate on ESMA the power to lay down guidelines regarding the content of code of conduct and minimal standards but let the market operators and NCAs to endorse it. <u>Reason:</u> We would like to ensure sufficient protection of investors and unified approach to code of conduct to avoid any unnecessary disparities among national capital markets. SK: We prefer option B CY: In line with our previous comment on 06/02/2023 we are in favour of Option C, ie. ESMA to draft a unified code of conduct. HU:

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Question	MS reply
	We support Option C of preparing ESMA a unified code of conduct, however we are not against Option B with laying down ESMA the guidelines to the code of conduct with a review period of 5 years. ES: We would prefer option 3. However, we think it is very important to clarify a scope issue. We need to determine whether the category of issuer-sponsored research is intended to sit under the MAR definition of investment recommendations (Article 3(1)(35)). As ESMA confirmed in the past concerning the scope of MAR in relation to Mifid categories of investment research, <i>“irrespective of the label attached to a note [an issuer-sponsored research in our case], as long as it meets the MAR definition of “investment recommendations” (Article 3(1)(35)) or of “information recommending or suggesting an investment strategy” (Article 3(1)(34)), is in scope of Article 20(1) and (3) of MAR”</i>. Therefore, in those cases the Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 provisions would – may -apply to the issuer-sponsored research and the codes of conduct. Even though the COM stated that options 2 and 3 would not be compulsory. We believe this potential overlapping of two regimes (issuer sponsored code of conduct and Market Abuse Regulation) should be further analyzed. BE: We would tend to favour option C (i.e. delegate to ESMA to draft a unified code of conduct) but if necessary, we could be open to option B (i.e. delegate to ESMA to lay down e.g. guidelines regarding the content of the code of conduct (on objectivity and independency) but let the market operators and NCAs endorse the codes. Also, clarify at Level 1 that the provider of issuer-sponsored research would be able to choose which code to abide by + make the review period 5 years instead of 2 years). However, if option B was to be followed, then we wonder if it wouldn't be useful to clarify the

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Question	MS reply
	consequences in case of non-compliance with a code of conduct endorsed by a NCA (we have the impression that the endorsement by a NCA could deserve a different treatment than the endorsement by a market operator). AT: We share the concerns presented in the Presidency non-paper regarding the proposed Article 24(3a)-(3d). We do not believe that the current proposal or the proposed amendments constitute a practicable solution for dealing with the inherent conflict arising with issuer-sponsored research. Therefore we are in favour of deleting the articles on issuer-sponsored research until further proposals. FI Option C: Delegate to ESMA to draft a unified code of conduct. We think this would be the best way to ensure convergence and do not see what the added value of having different codes of conducts would be. Moreover, we would like to comment on the Commission's argument presented on the non-paper that having different codes of conduct would create a situation where some would evolve to become the most trustworthy ones. We see that there is risk about the very opposite, meaning that if the research provider would be able to choose the code of conduct freely, it could have an incentive to choose the one with the lowest standards, because those standards would be the easiest to fulfil.

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Question	MS reply
	As regards additional clarifications proposed, we can support adding them. EL EL: Regarding code of conduct (item 1.3.1.), we prefer option C: Delegate to ESMA to draft a unified code of conduct. Furthermore, we support both clarifications regarding scope and enforcement of the code of conduct (item 1.3.2.). FR Option A – Level 1 principles are least bad options. Should the Council decide to empower ESMA, we would favor a soft-touch bottom-up approach such as guidelines (option C) that would interact as little as possible with existing national models. While an ESMA empowerment would make sense in a harmonization perspective, there is little risk that investment service provider will make “forum shopping” given the liability risks and the national specificities of each code. As for the review, a period of 5 years is more sensible from a practical standpoint given the usual length of coverage contracts. PL We are in favour of option A, but we are also open to support option B. For us, it is important that the provisions of the code of conduct are best suited to the conditions of individual national markets, which will be guaranteed if it is possible to endorse the code of conduct by relevant national entities. We agree that the main principles and guidelines that should apply in any case should be at least generally indicated at the

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Question	MS reply
	level of EU law. For greater legal certainty, it seems that they should be indicated directly in the regulation, but we can also accept their adoption by ESMA. We also support the proposals to clarify the provisions on the application of the code of conduct in cross-border situations and to extend the review period of the provisions. IT We support Option C, to delegate to ESMA to draft a unified Code of Conduct. In fact, this Option would allow to reach the maximum level of homogeneity and harmonization at EU level. Furthermore, also with regards to this Option, we deem that it may be helpful to provide some high-level principle on objectivity and independence at Level 1, to which the Code should adhere. Finally, it is our view that the measures included in the Code should be characterized by some kind of enforcement, as otherwise the degree of objectivity and independence of issuer-sponsored researches risks to be compromised. In order to ensure an appropriate level of objectivity and independence of issuer-sponsored researches, we would like to emphasize that another solution, which may be alternative or complementary to the one based on a Code of Conduct is to provide a reference, for this kind of researches, to the provisions included within Article 36, para 1 and Article 37, para 2, of the Commission Delegated Regulation 2017/565, which just deal with conflicts of interest concerning researches. In this respect, only a research which is in compliance with the above requirements should be considered as an issuer-sponsored research. RO Our preference goes to Option A.

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Question	MS reply
	DE We still see weaknesses of the proposal so that a deletion of the articles on issuer-sponsored research might be the best possible way forward (see question 2). With view on the code of conduct, we prefer a unified code of conduct drafted by ESMA (Option C). Giving market operators the freedom to develop their own code of conduct could create a confusing variety of codes that could cause multiple costs for issuers in the European capital market. It could also lead to a race to the bottom where issuers rather use the code with the lowest requirements. NL The Netherlands prefers option B, delegate to ESMA to lay down guidelines on the required content but let the market operators and NCAs develop and endorse the codes themselves. A code that is endorsed by the market operators (and NCA's) would in our view be the optimal option, because it provides the right incentives to market participants to adhere to their own rules, while ensuring sufficient comparability and substance of these codes. PT Code of conduct As for the amendments to the COM's proposal, we favour option B, which is to delegate to ESMA to lay down guidelines regarding the content of the code of conduct

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Question	MS reply
	but let the market operators and NCAs endorse the codes, and to establish a review period of 5 years. We consider that ESMA guidelines could help in set a minimum threshold for all the codes of conducts drafted in the Union. We also believe that a review period of 5 years instead of 2 years is more appropriate. Scope and enforcement We support the Presidency's way forward in terms of scope and enforcement, as we consider that investment firms should be accountable for the research provided by third parties. As such we consider that investment firms should take responsibility for ensuring that the research provided by third parties adheres to the code of conduct and other requirements, outlined in the proposed articles. DK: We believe these principles may be to generic to foster any true measure of comparability thereby leading to unlevel playing field across the Member States. Therefore, of the proposed solutions we can support delegating to ESMA to draft a unified code of conduct (option C). LU: We generally see merit in the Commission's proposal as regards issuer-sponsored research and remain open to discuss alternatives for the setting up of the code of conduct. However we consider that option C, where the drafting of a unified code is delegated to ESMA, is not the best way forward. As the issuer-sponsored regime is new, we are of the view that it is more suitable to first allow market participants to find solutions and to review the regime on a later stage if necessary.

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Question	MS reply
	BG: We could support option C - ESMA to develop. IE: We could support Option B and we agree to moving the review to 5 years. However, we believe there needs to be further clarity around who will develop the guidelines regarding the code of conduct. This option states that the market operator or NCA will endorse the codes but it is not clear if they will also develop them as it is in the original proposal, could the PRES clarify this? Alternatively, is it intended that ESMA will draft the guidelines. We would welcome the development of guidelines regarding the content of the code of conduct may bring a degree of convergence to the codes.
Q2: Or, do the MS consider <u>deletion</u> of the articles on issuer-sponsored research to be the best possible way forward?	<u>CZ:</u> <u>Answer:</u> We do not see the deletion of the articles on issuer-sponsored research to be the best way forward. On the contrary, we would like to keep them. <u>Reason:</u> In our view, it is desirable to support investment researches. This segment is now underperforming and any boost to it would be desirable (provided adequate protection and transparency are being maintained). The issuer-sponsored research might help to increase competitiveness of EU capital market. HU: We can consider deletion as an option as well. ES:

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Question	MS reply
	Scrutiny reservation. BE: We would not be opposed to the deletion of the Articles on issuer-sponsored research as this might be the easiest way to solve the issues raised by those Articles. AT: Yes, deleting the articles on issuer-sponsored research would be the best way forward. FI No, we would not like to delete these articles – we see there is merit in having a code of conduct for issuer-sponsored research, and in best case it would give boost to research industry and at the same time make the quality of investment research better and keep investors better informed on conflicts of interests FR There's no assurance that rebundling will by itself revive research provision in the EU. Issuer-sponsored research is also part of the solution and should not be discarded. PL

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Question	MS reply
	The proposed changes will contribute to increasing the level of research and will have a positive impact on the market, therefore deleting the provisions on the code of conduct does not seem justified. The rules for preparing this type of research, with the proposed amendments, seem to secure their reliability. IT We are not in favour of deletion of the articles on ISRs, because we deem that these provisions, if well engineered in order to ensure the objectivity and independence of this kind of researches, can constitute an appropriate way of increasing research coverage, especially on SMEs. RO If necessary for consensus, we agree to delete the articles on issuer-sponsored research. DE We still see weaknesses of the proposal so that a deletion of the articles on issuer-sponsored research might be the best possible way forward (see question 2). The weaknesses to be solved are: Investment firms preparing and distributing issuer-sponsored research can neither review nor guarantee the requirement laid down in Art. 24(3a) i.e. the information being fair, clear and not misleading. The reason for this is that the firm lacks the knowledge of the author of the research. Furthermore, it seems not possible for investment firms to check, whether the rules of a code of conduct were followed by during the creation of the research (e.g. if the author stayed neutral during the process of creation).

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Question	MS reply
	In addition, the legal basis for the production of investment recommendations is the MAR and the Commission Delegated Regulation (EU) 2016/958. There are already special rules for investment firms in the Commission Delegated Regulation (EU) 2017/565. It is not clear, whether issuer-sponsored research is an investment recommendation within the meaning of Article 3 para. 1 No. 34 and 35 MAR. If so, the envisaged new regulations for issuer-sponsored research would create further special (exemption) rules that would entail further regulatory requirements. In particular, the code of conduct would have to be specified in more detail and subsequently supervised. NL We do not believe that deletion of the articles on issuer-sponsored research is the best way forward. SME investment research could be boost by issuer-sponsored research, which makes investing in Europe still accessible and affordable. It is a worthwhile alternative policy approach that should be further developed. We therefore strongly support preserving the articles on issuer-sponsored research. PT See our comment above. DK: In light of the arguments from the Commission, DK can be open to a majority decision by the Council. LU:

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Question	MS reply
	No, we do not believe that deleting the articles on issuer-sponsored research is the best way forward. BG: We could also support the deletion of the articles if that would be the majority of MS' views. IE: We note the conflict of interest issue which needs to be mitigated, but also acknowledge there is a need to increase the level of investment research. We would question what would the impact be if Article 24(3a)–(3d) were deleted in full? In addition, what would the unintended consequences be?
2. Unbundling	
Q3: What are the views of MS on these ideas by the COM (see section 2 of the Presidency non-paper)?	<u>CZ:</u> <u>Answer:</u> In this regard, we are for option F – repeal the research unbundling rules altogether. <u>Reason:</u> Even though we appreciate the original effort to provide more transparency by introducing unbundling rules, the impact lead to deterioration of position of EU companies. With the prospect of termination of the US exemption for EU companies regarding unbundled payment for broker-supplied research, we need to adapt and support our sector. As in practice it does not, according to Commission's data, make such a difference between raising the threshold up to 10 bil. EUR and repealing the rules altogether, we do not see the reason for keeping the rules which would only lead to an unnecessary differential treatment.

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Question	MS reply
	SK: We are flex – option D or E. CY: We are not in favour of repealing the research unbundling rules. HU: We are not against Option F, to repeal the research unbundling rules. ES: In Spain, with the current threshold of 1,000 million, only companies belonging to the main index are affected and yet these companies do not have a lack of analysis coverage problems. Therefore, there is no perceived benefit from raising the threshold or removing the rule relative to the potential benefits to investors that this rule provides. On the other hand, it is not yet clear to us the potential effects of the increase threshold or the full rebundling for market transparency, best execution or investor's protection, and we believe these are key aspects that should be reflected on. BE:

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Question	MS reply
	We could be flexible regarding both options F (i.e. to repeal the research unbundling rules altogether) and E (i.e. to add broker sales and trading research to the list in the last subparagraph of Article 24(9)). AT: We support Option E. The proposed approach regarding broker-supplied sales and trading research provides for the necessary flexibility. FI Comparing options D and E, we think that option D is a better and clearer choice for maintaining the status quo. Considering option F about repealing the unbundling rules, we currently have only 8 companies in our market exceeding the proposed 10 billion threshold, so it would not make that much of a difference whether the threshold would be set at 10 billion or unbundling rules would be repealed altogether. EL EL: We are in favour of option F: To repeal the research unbundling rules altogether. However, as a second option we could support option E: To add broker sales and trading research to the list in the last subparagraph of Article 24(9). FR

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Question	MS reply
	The full rebundling is the most straightforward and decisive measure. Raising the exemption threshold from 1 billion € to 10 billion € will likely have a limited effect on the financial research ecosystem since it does not fix the the market failure where brokers refuse to cover small and mid-caps due to the absence of cross-subsidies with large caps. From a policy perspective, a full rebundling is more loyal to the problem addressed in the Listing Act and less prone to conflict of interest. Indeed, the cost of sponsored research is generally borne by smallest issuers, which already face higher cost of listing. The conflict of interest stemming from the direct relation between the issuer and the research provider is far more important than the one between the asset manager and its brokers. This would be achieved by specifying in a new paragraph of Article 24 that the provision of research services (in the broadest sense) to investment firms shall not be regarded as a non-monetary benefit provided in relation to the provision of an investment service to the firms' clients. All other options mulled over by the Commission are suboptimal either because they seem legally not robust or because they will generate yet more interpretative debates down the road (e.g. distinguishing between the general concept of research and that of “<i>sales and trading commentary and other bespoke trade advisory services</i>” which is idiosyncratic to a US context, see Option E). In particular, we remain unconvinced by Option D because, in our understanding, <u>the US does not prohibit separate payments to a broker-dealer, strictly speaking</u>. Instead,

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Question	MS reply
	where a broker-dealer receives separate payments (“special compensation”), this triggers the obligation for him to become a registered investment advisor under the Investment Advisers Act. Therefore, the condition upon which Option D is meant to operate (<i>‘the brokerage/research providers is domiciled in a jurisdiction <u>that does not allow</u> for separate payments to a broker-dealer’</i>) would not apply to the US. Lastly, leaving aside the aforementioned legal consideration, Option D is not politically acceptable in our views because it does not treat US and EU research providers on an equal footing. Under Option D, EU research providers would be put at a disadvantage compared to US research providers, as only the latter would indirectly benefit from the unbundling ‘conflict of law’ exemption. The policy intent behind the Listing Act should be to resuscitate the research ecosystem <u>in the EU</u>, not to create the conditions for US research providers to increase their market share amongst EU investment firms. PL We support option F. IT We support Option D to provide for a targeted exemption to solve the current issues related to US brokers/research providers and to prevent possible similar problems with intermediaries which are domiciled in a jurisdiction that does not allow for separate payments to a broker-dealer. This Option seems preferable to Option E, because it concerns all researches and not only specific kind of researches, like commentaries or trading ideas. However, we believe that being this Option able to specifically solve the issues concerning US brokers/providers of researches, it should be considered together

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Question	MS reply
	with the “status quo”, i.e. maintaining the current threshold of EUR 1 billion for the exemption concerning the unbundling regime. In fact, like it was also highlighted by some stakeholders, this threshold has been introduced only around 1 year ago, and therefore it may be necessary to consider a longer period of time, in order to properly assess its possible impact, in terms of expected benefits for researches on SMEs. This would allow to maintain the unbundling rule, which is a measure whose the goal is to increase transparency, for researches on bigger firms but not for a negligible share of them, like it would happen if the threshold was increased to EUR 10 billions. In case the discussion goes into the direction of increasing the threshold to EUR 10 billions, instead, we deem it would be preferable to repeal the research unbundling rule (rather than increasing the threshold) in order to: i) avoid to maintain a dual track system concerning costs of researches, which may be quite complex and expensive; ii) maintain this dual system only for a very low share of EU27 listed companies (estimated at 96,5% of EU27 listed companies based on the data provided by the EC, whereas the current threshold refers to around 86% of EU27 listed companies). RO We are in favour of option D - to provide for a targeted exemption allowing MiFID II firms to pay for brokerage and brokerage-supplied research jointly, if the brokerage/research providers is domiciled in a jurisdiction that does not allow for separate payments to a broker-dealer (‘conflict of laws’ exception). DE

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Question	MS reply
	Germany is very open for a full re-bundling of the rules on investment research. If it is necessary to reach a fast compromise to address the expiration of the SEC no action letter, Germany could also support a bundling carve-out for US research provides as proposed under Option D as this seems to be a reasonable and minimally invasive change to the inducements regime. We strongly oppose to Option E. As German NCA interprets the exemption of “necessary payments” laid down in Art. 24(9) subpara. 3 of MiFID II restrictively, as investment firms try to use this exemption to circumvent the inducements rules, an opening of this exemption could create other loopholes in the inducements regime. We would also like to point out that COM considers a full PFOF ban within the MiFIR review, which would also affect bundled research as non-monetary PFOF. Without any exception in the MiFIR there would be conflicting requirements in these two European Acts. The currently considered exception of benefits in connection with order flow of professional clients might only partly solve this problem. NL We still have a scrutiny reservation on these new options and still have the only mandate that the current unbundling limit of 1 billion should be maintained, not supporting the Commission’s proposal to raise that threshold. However, given the situation in the US, and are currently evaluating which of the options, or an alternative, might be an acceptable possible way forward, and how we can achieve a solution in due time.

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Question	MS reply
	We want to make sure that the outcome allows for a level playing field between US companies and EU companies and guarantees transparency towards investors on the expenditure on research. We are still assessing whether option D and E could fulfill these fundamentals. Option F seems to be too far reaching for this situation, also given the hesitance by other stakeholders to support this option. We are of course open to think along with the Presidency how this can best be worded. One <u>question</u> we had regarding the difference between option D and E. Could you please clarify how option D would be regulated and how the process would look like that makes it the most timely approach? PT We support option F for the following reasons: 1. The benefits of the unbundling regime under MIFID II are not clear, and in smaller markets, this rule may have had more negative impacts than positive. 2. The Commission's initial proposal already excludes the majority of issuers in the EU, making the exception more of a rule. 3. Option D does not address the lack of research within the internal market. 4. Option E, if implemented, would need to be drafted in broad and open terms, which could lead to similar outcomes as option F, but through more convoluted legal phrasing. Therefore, option F is our preferred solution. LU:

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Question	MS reply
	Considering the urgency of this issue and the complex nature of unbundling rules, we consider that option D, where the targeted exemption allows MiFID II firms to pay for brokerage and brokerage-supplied research jointly, might be the best way forward. BG: We support option D as suggested in the PCY non paper. IE: Option E is most preferable to Ireland as it allows flexibility and creates a level playing field between the EU and the US. However, we would like more information on the definition of sales and trading research and how firms could manage the inherent conflicts of interest. We remain concerned about option D as the dual system could lead to an uneven playing field. We would like to see the full outline on how the COM envisage Option D + the original proposal of increasing the threshold working to address the research unbundling issue.
III. Prospectus liability (German non-paper on prospectus liability WK 4017/2023)	
Q1: Are MS interested in exploring ways to address the civil liability issue in the direction presented by the German delegation in its non-paper and orally during the WP on 27 March?	<u>CZ:</u> <u>Answer + reason:</u> We welcome DE invitation to discuss a possible full harmonisation of liability for prospectus. We are aware of certain shortcoming the current legal framework has and therefore we are open to discuss the topic at hand. However as any harmonisation of prospectus liability is in the end a matter of civil law and we are concerned that having specific rules for liabilities for prospectus would lead to foreign elements in the national law of liabilities and to fragmentation of general

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Question	MS reply
	civil-law liability, we are of the opinion that any changes to current provisions should rather entail detailed, well-informed discussion with necessary thorough impact assessments. In respect to the complexity of harmonisation of national liability regimes, we are convinced this question shall be discussed first in different working group with proper mandate for negotiations entailed. We would thus have a preference not to include this matter in this proposal as the implication and interpretation are difficult to foresee. SK: We think specialized legal analysis is needed in this area before legislative proposal. HU: Yes ES: We see merit in further studying the German proposal, although difficulties inherent to any changes in civil liabilities should not be disregarded. BE: We would be open for exploring and discussion. AT:

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Question	MS reply
	We are open to further assess the prospectus liability issue raised by the German delegation. FI In principle, the harmonization could foster convergence at least to certain extent. However, the harmonization of prospectus liability would be a burdensome task. We would also like to point out that we have not harmonized the civil liability elsewhere in the relevant sectoral legislation (e.g. the Transparency Directive and MAR) either. In addition, we see that the level of harmonization would likely remain limited, since member states would still apply their national principles and interpretations of notions to questions that are not regulated in EU legislation (such could be e.g. causality, right of recourse and shared liability). Also the interpretation of ‘negligence’ is likely to vary. EL EL: We have reservations. It is not an easy task and could be many implications in the national legislations. FR The German non paper highlights a point that remain a blind spot of the Prospectus regulation framework. Any progress made in the direction of further harmonization would be welcome given the need of provide certainty for issuers. It could also be a

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Question	MS reply
	significant step to deepen the Capital Markets Union. We support this initiative and we are ready to contribute to the collective effort. PL In principle we are open to discuss this issue. However, it would require an engagement not only of financial market experts, but also civil law experts, and may be too time-consuming to do it in this particular file. IT Yes, we are. The lack of harmonisation at EU level on the prospectus liability regime can undermine the process of correct integration of the EU financial markets, with impacts on the issuers' ability to tap the capital market in the most convenient time windows. Thus, we are willing to go further into the German proposal. In this light, we point out the following aspects and possible improvements: (i) the German proposal to limit prospectus liability only in the event of wilful misconduct or gross negligence appears restrictive (in this regard, a parallel with the liability of rating agencies would be inappropriate) and it would therefore be appropriate to maintain full liability (for wilful misconduct or negligence) towards the issuer and the other persons indicated in art. 11 of the Prospectus Regulation; (ii) while the German proposal provides a minimum list of persons to whom prospectus liability should be attributed, with a view to achieving maximum harmonisation this list should be established as exhaustive (e.g., deleting the adverb "at least" inserted in the German proposal and in Art. 11 of the RP).

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Question	MS reply
	(iii) The German proposal should consider as damage also the loss of opportunity (which includes loss of income and loss of profit). In addition, the proposal could be the opportunity to address the issue of the civil liability regime of the competent national authority, in relation to which there are now major differences between EU legal systems (please, see the outcome of the ESMA peer review on the scrutiny and approval of prospectuses by NCAs in the ESMA final report published in July 2022). The different liability regimes incumbent on the competent Authority may entail divergent practices among NCAs and represent an important slowing down of the prospectus approval process, due to the high risk of litigation, including legal claims against the NCA, deriving from the absence of common criteria aimed at delimiting the boundaries of the liability of the Authority. Thus, to enhance a level playing field, the EU legislation should provide common principles to specify the limits of the civil liability of NCAs and their employees in relation to the prospectus approval process. Among others, we deem important the introduction in L1 of the principle that the competent authority can't be held responsible for the truthfulness of the data and information contained in the prospectus and that an assessment of these data is not included in the scope of the scrutiny carried out by the Authority. DE Of course, Germany is supportive of its own proposal. NL

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Question	MS reply
	In general we are open to exploring and discussing new topics. We would also be open to discuss this topic in more detail. We have do some reservations at the moment on further exploring this topic of civil liability at this time in the negotiations. It is not clear from the non-paper what elements of civil liability now constitute as a problem and how a common approach would add to national law. Opening this discussion and further research within these negotiations could mean a delay for the listing act package. PT We are open to explore the prospectus liability issue, as presented by DE, however we would need to assess the specific amendments to Article 11, considering the following: 1) We consider that Article 11 already covers the case for missing and incorrect information in the prospectus, as well, as infringements committed intentionally or with gross negligence. However, we could be open to assess a clarification on this in the legal text, 2) We consider that the proposed exclusion of liability is not justified. It would be challenging to determine whether an investor's decision to invest was influenced by the prospectus or if they were already aware of the missing or incorrect information in it. 3) We have reservations on the amendment of compensation laws, as proposed in the DE non-paper, as this could create different applications of civil liability regime to situations which are materially identical, such as securities whose issuance is not covered by the prospectus Regulation. We support the proposal presented in the DE non-paper to clarify that responsibility should be attached to one legal person to ensure that any damage to investors can be

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Question	MS reply
	duly compensated, without prejudice of the simultaneous responsibility of natural persons involved in the infringement. DK: We could support an aim of ensuring a more readable prospectus. In light of this, we are open to looking into whether civil liability could be a way forward. However, at this time we are not prepared to provide a more detailed and formal decision. LU: While we generally do not oppose to explore ways forward to address the civil liability issue, we would like to bring to your attention that the introduction of harmonized prospectus liability regimes will be a complex task considering that civil liability laws are strongly embedded in national legal systems. Opening discussions on this topic would risk significantly delaying the work on the Listing Act legislative file. Moreover, in view of the possible implications of revising the civil liability regime, we deem it necessary to see concrete drafting suggestions and would appreciate if we could receive a detailed impact assessment, before discussing the topic in more detail. BG: At this stage we would prefer not to open a new topic for discussion for which there is no impact assessment. Moreover, there would be need to discuss the subject also with the Ministries of Justice as there is no harmonisation in this field at EU level. IE:

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Question	MS reply
	We thank our German colleagues for their paper. We find the proposal interesting, and we will consider further. Our initial thoughts are that it may be somewhat complicated to agree given the diversity of regimes at national level. It would be important to query whether this EU regime would replace national regimes, or sit alongside it (i.e. would a double liability regime apply?). It is our understanding that the intention is for this to replace national regimes. However, this raises the important question of where would investors be able to take an action?
Q2: Is there any major issue of concern that the MS want to bring to the attention of the Presidency? Please provide justification and, if possible, way(s) to solve the situation.	<u>CZ:</u> <u>Answer:</u> See above. HU: no BE: If the prospectus liability regime would be fully harmonised, this regime should offer the same level of investor protection provided by the current Belgian prospectus liability regime. Belgian law provides a special rule on civil prospectus liability that applies in addition to the general rules of tort liability under Belgian law. The persons responsible for the content of the prospectus are liable towards investors for damage caused due to any misleading or inaccurate information in the prospectus or its supplements, or lack of information required to be contained in the prospectus or its supplements. Except if proven otherwise, damage is presumed to result from the absence of information or misleading or inaccurate information if this misleading or

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Question	MS reply
	inaccurate information or lack of information could have created a positive climate on the market or positively affected the price of the investment instruments. PL We have doubts about the proposed changes in Art. 19(12)(c) (transactions by persons discharging managerial responsibilities during a closed period). Firstly, the regulation is in our view internally inconsistent, as it assumes that such a person may obtain permission from the issuer to conclude a transaction (<i>ex ante</i>), and at the same time it is to cover situations in which a person may not have knowledge and influence on the conclusion of a given transaction during a closed period. It is therefore incorrect to assume that in such situations a person should apply for permission to the issuer. Possible introduction of such changes should take place by excluding these situations from the regime of Art. 19(11) of MAR. Secondly, the explicit admission of a person's transactions during a closed period should be assessed negatively in a situation where they result from the actions of third parties or circumstances external to the person and are not the result of the person's activity during the closed period. At present, such situations may be assessed as an exception provided for in point (a) and it is reasonable to leave them to be assessed on an ad-hoc basis. Making it possible for the issuer to allow transactions during a closed period whenever these transactions take place as a result of the actions of third parties or external circumstances will open wide scope for circumvention of these regulations. If the postulated changes are introduced, such situations will not be subject to individual assessment, but will generally qualify for authorization by the issuer by way of a permit. DE -

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Question	MS reply
	LU: Please refer to our comment above. BG: Our main concern is related to the free-float requirement and is addressed in the other questionnaire. IE: We have identified a number of areas in EU legislation where there are references to the Listing Directive/listed securities/ listing (and we have provided a few of these examples below). We would ask if a mapping exercise has been carried out by the Commission or other body to assess the extent of the usage, and whether there are proposals for how to address these? The Listing Directive references are not necessarily uniform across the various acts. We understand that the concept of “listed” securities will disappear following the repeal of the Listing Directive so it may cause confusion in the medium/long term if clarity is not provided as to how these references are to be read going forward. For example: Article 64(1) of the Bank Recovery and Resolution Directive provides for resolution authorities to have the power to “<i>require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to Directive 2001/34/EC...</i>”. We suggest that this should be amended to provide for the possibility to “<i>require the relevant authority to discontinue or suspend the admission to</i>

Questionnaire: Listing Act working party meeting on 27 March. Deadline for comments: 5 April 2023

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

Question	MS reply
	<i>trading on a regulated market or other trading venue</i>". At present, financial instruments may be listed on markets that are not "regulated markets" within the meaning of MIFID e.g. on multilateral trading facilities. Therefore to preserve the meaning, we suggest that the resolution authority be able to direct the relevant authority (in this case the competent authority under MIFID) to suspend admission to trading on any trading venue (as defined in MIFID). There are also a number of cases where legislation refers to securities "listed" on an exchange, for example the following extracts from the Capital Requirements Regulation: Art 197(4)(a) (Eligibility of collateral under all approaches and methods): 4. An institution may use debt securities that are issued by other institutions and that do not have a credit assessment by an ECAI as eligible collateral where those debt securities fulfil all the following criteria: (a) they are listed on a recognised exchange... Article 336 (Own funds requirement for non-securitisation debt instruments): 4. Other qualifying items are: (a) long and short positions in assets for which a credit assessment by a nominated ECAI is not available and which meet all of the following conditions: ... (iii) they are listed on at least one regulated market in a Member State or on a stock exchange in a third country provided that the exchange is recognised by the competent authorities of the relevant Member State.