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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Listing Act) Financial Services Attachés
Subject:	Listing Act: working party 02.06.2023 - Annotated Agenda

Swedish Presidency of the Council of the European Union

Annotated agenda
29 May 2023

Ministry of Finance
Financial Markets and Institutions Department

In person

Working Party on Financial Services and the Banking Union
Listing Act
02 June 2023, 09.30 – 14:00

Dear colleagues,

The Swedish Presidency is delighted to invite you to a new Working Party meeting on the Listing act file. This WP-meeting at attaché level will be devoted to a general discussion on the new Presidency compromise proposal, as well as on the issue of civil liability of prospectuses.

The civil liability issue is based on the proposal by the German delegation and the message sent by the Presidency on 17 May.

The Presidency's new proposal is presented in four different documents; one for the Regulation amending the Prospectus Regulation, the Market Abuse Regulation and MiFIR, two for the Annexes (one for Annex IX that was issued separately and one with all Annexes assembled, including Annex IX again) to the Prospectus Regulation and one for the Directive amending MiFID II and repealing the Listing Directive. The new proposed amendments to the text are based on previous discussions in the Working Parties, as well as on written input provided by delegations.

At this stage of the negotiations, the Presidency has amended the text with suggestions that are deemed to serve the overall compromise. Several points have been made by Member States that were not retained in light of the overall balance of the text. But all proposals have been thoroughly assessed.

Delegations will be invited to provide their comments with focus on highlighting their remaining main points of concerns that would stand in the way for a general support of the package.

In terms of schedule, we plan to first discuss the civil liability issue prior to turning to the revised proposal itself.

As we have done earlier, this annotated agenda focuses on providing clarity and background to the main amendments proposed by the Presidency, in each part of the proposal. We have not provided elaborated justifications for minor amendments or for all amendments already discussed and explained. Rather, the PCY has focused on issues where we propose to depart from what has been discussed earlier, or where the PCY felt that the complexity of the issue at hand required some written explanations.

1. PCY opening remarks

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2. The prospectus civil liability

Following-up on the questionnaire that the PCY sent to MS on 17 May regarding the draft proposal from the German delegation to amend Art.11 of the Prospectus Regulation, this part of the WP meeting will allow for MS to present their positions on the issue of an harmonization of the civil liability regime.

With the objective in mind of reaching an agreement on the Listing Act before the end of its term, the PCY provided in its questionnaire three alternative ways forward on this issue.

Would there be an agreement in the Council on going forward with a review clause, it has to be noted that a discussion could be held on, within which timeframe the COM should present the report. PCY has chosen to propose a relatively short deadline in order not to lose momentum on this important topic.

3. Consideration of the draft proposal

The Prospectus Regulation

The Presidency's amendments to Art.1 on the exemptions for secondary issuance of fungible securities

In the last WP and in the written comments, the PCY noted broad support for the PCY's compromise proposal regarding the extended exemptions in Art.1(4)(da) and Art.1(5)(a) and (b), setting the percentage threshold to 30 percent for the application of the exemptions and introducing the Annex IX document as a safeguard when the exemption in Art.1(4)(da) is applied.

Several MS also supported the PCY's compromise proposal for the new exemptions in Art.1(4)(db) and Art.1(5)(ba). A few MS were opposed to these exemptions, while some MS proposed to introduce further conditions in order to limit the situations in which they could be applied, or raised the need for additional safeguards. To accommodate the views of the MS that were hesitant to the PCY's compromise, the PCY has considered possible safeguards to further promote, in particular, investor protection.

Based on MS comments and these considerations, the PCY proposes to introduce an additional safeguard for these new exemptions in Art.1(4)(db) and Art.1(5)(ba), in order to ensure increased transparency when making use of the exemption. The safeguard introduced in the new PCY compromise text is an additional disclosure requirement in the Annex IX document that is required to be filed with the competent authority and made available to the public when the exemptions in Art.1(4)(db) and Art.1(5)(ba) are applied. More specifically, the PCY proposes that the disclosure item VIII on risk factors specific to the issuance should be supplemented by risk factors specific to the issuer.

This disclosure requirement has been raised by some MS during the negotiations as a proposal for additional information to be provided under the exemptions. Adding this requirement for the issuer to disclose the risks specific to it provides for more transparency around the risks associated with the specific situation of the issuer, without limiting the scope of the exemptions. Hence, whereas the issuers' opportunity to benefit from simplified access to financing is maintained under the conditions of the exemptions, additional information to investors is ensured as a basis for their investment decision. By consequence of the new disclosure item in the

Annex IX document, its page limit is proposed to be increased from 10 to 12 pages. As the disclosure item is added in the Annex IX, this information will also be provided by the issuers applying the exemption in Art.1(4)(da), where the Annex IX is also required.

Some clarifications related to the exemptions have been provided for in the recitals. Whereas the text already states that the Annex IX document is to be filed with the competent authority, recitals 11 and 13 now clarify that it is not subject to approval by the competent authority.

Regarding the exemptions for secondary issuance of fungible securities, it has also been clarified in recitals 11 and 13 that where there are subscription rights connected to securities covered by the exemption, the exemption should, consequently, also be applicable to subscription rights representing existing shareholders' preferential right to subscribe for the securities covered by the exemption. This applies both for the exemption for the offer to the public and for the admission to trading on a regulated market.

The Presidency's amendments to Art.3 the prospectus threshold

Based on MS comments during the last WP and in writing, the PCY has made further clarifications regarding the calculation of the total aggregated consideration of the securities covered by the exemption from the obligation to publish a prospectus. The calculation shall include all types and classes of securities offered. It has also been clarified that "offers" in this Article regard offers to the public and not other types of offers, such as offers to qualified investors. The same clarifications have been made in Art.1(4) third subparagraph, 1(5) third subparagraph and 15a(1) second subparagraph.

For the sake of clarity, it has been added in recital 9 that Member States have the option to decide if their national disclosure requirements should be scrutinized and approved by their competent authority or not.

The Presidency's amendments to Art.7 on the prospectus summary

In Art.7, the changes by the PCY do not constitute changes in substance.

The change of wording in paragraph 7 and paragraph 12b, last subparagraph, are made to simplify the text for increased clarity of the provision.

The deletion in paragraph 12b, first subparagraph, is made as this addition to the text is not necessary. The paragraph states that an EU Follow-on prospectus shall contain a summary drawn up in accordance with paragraph 12b and that a derogation is made from paragraphs 3 to 12 of Art.7. Hence, as no derogation is made from paragraph 1, it is not necessary to specify that the drawing up of the summary for the EU Follow-on prospectus is subject to paragraph 1, subparagraph 2 points (a) and (b).

The Presidency's amendments to Art.13 on the content and format of the prospectus

In Art.13, the PCY has returned to the COM's proposal to remove the reference to IOSCO in the mandate to the COM to adopt delegated acts regarding the format of the prospectus. The reference to disclosure standards by IOSCO stems from the Prospectus Directive 2003/71/EG but is no longer considered relevant.

The Presidency's amendments to Art.14b on the EU Follow-on prospectus

Compared to the previous PCY compromise text, the PCY has made some adjustments and clarifications to the scope of application of the EU Follow-on prospectus. Art.14b(1) lays down provisions specifying the persons that may draw up an EU Follow-on prospectus. The following changes have been made to Art.14b(1):

- In point (c), based on some MS comments, the requirement for having previously drawn up a prospectus is proposed to be removed for the issuers who seek admission to trading on a regulated market of securities fungible with securities that have been admitted to trading on an SME growth market continuously for at least the last 18 months. This change allows these issuers to transfer to a regulated market with an EU Follow-on prospectus if, for instance, their first offer to the public was subject to an exemption from the requirement to publish a prospectus. In addition, the word "new" is removed for increased clarity of the provision. The purpose of the point (c) is to allow for transfers of fungible securities from an SME growth market to a regulated market.

- Point (e) is proposed to be removed. This amendment is proposed based on some MS comments and questions about the scope of point (e) in relation to that of point (c). In this context, it can be

noted that the scope of point (c) is broader than that of point (e) in terms of issuers as the category of issuers in point (c) encompasses the issuers in point (e). The PCY therefore proposes to remove point (e) to avoid this overlap in scope, while keeping the possibility to draw up an EU Follow-on prospectus in the case of transfers of fungible securities from an SME growth market to a regulated market, in accordance with point (c).

- In the last subparagraph, the sentence limiting the use of the EU Follow-on prospectus by excluding the persons in Art.15a(1) points (c) and (d) is proposed to be removed. Regarding the point (c), the issuers covered by that provision cannot use an EU Follow-on prospectus since they cannot have securities traded on an MTF and by consequence cannot fulfil the condition of 18 months listing for using the EU Follow-on prospectus. Regarding point (d), it refers to offerors of securities issued by issuers in Art.15a(1)(a) and (b) that are allowed to use the EU Follow-on prospectus. Thus, offerors of the same securities should be able to use the EU Follow-on prospectus, in line with the corresponding point (d) of Art.14b(1).

In paragraph 5 of the Article, an amendment is proposed to clarify that the page limit only applies to prospectuses that relate to shares. A corresponding change is proposed in Art.6(4) and Art.15a(5).

On the choice between either specifying the content of the EU Follow-on prospectus in Delegated acts on Level 2 based on the original Annexes IV and V, or, to specify the content only in revised versions of Annexes IV and V on Level 1, MS comments showed that although some MS preferred to specify the content in the Annexes on Level 1 only, there was broader support among MS for further specifying the content in Delegated acts.

In light of this, the PCY's proposal is to:

- Keep the PCY's compromise proposal to delegate to the COM to specify the content of the EU Follow-on prospectus in Delegated acts on Level 2, based on the original Annexes IV and V. These Annexes have been amended to allow for EU Follow-on prospectuses consisting of separate documents.

- Acknowledging the view of the MS that did not prefer the option of Delegated acts, the new PCY compromise proposal for specifying the content of the EU Follow-on prospectus in Delegated acts does not include its summary. By contrast, the summary of the EU Follow-on prospectus would be drawn up in accordance with Art.7 paragraph 12b.

The Presidency's amendments to Art.15a on the EU Growth issuance prospectus

On the choice between either specifying the content of the EU Growth issuance prospectus in Delegated acts on Level 2 based on the original Annexes VII and VIII, or, to specify the content only in revised versions of Annexes VII and VIII, on Level 1, MS comments showed that although some MS preferred to specify the content in the Annexes on Level 1 only, there was broader support among MS for further specifying the content in Delegated acts.

In light of this, the PCY's proposal is to:

- Keep the PCY's compromise proposal to delegate to the COM to specify the content of the EU Growth issuance prospectus in Delegated acts on Level 2, based on the original Annexes VII and VIII.

- Acknowledging the view of the MS that did not prefer the option of Delegated acts, the new PCY compromise proposal for specifying the content of the EU Growth issuance prospectus in Delegated acts does not include its summary. By contrast, the summary of the EU Growth issuance prospectus would be drawn up in accordance with Art.7 paragraph 12b.

In paragraph 5 of the Article, an amendment is proposed to clarify that the page limit only applies to prospectuses that relate to shares. A corresponding change is proposed in Art.6(4) and Art.14b(5).

Furthermore, based on some MS comments, the PCY has clarified in recital 33 that the option to choose a prospectus type, implied by the introductory wording "may choose to", only means that when an issuer falls under a requirement to publish a prospectus, the issuer can choose one of the types

of prospectuses available to the issuer. *A contrario*, it does not constitute an option to either publish a prospectus or not.

The Presidency's amendments to Art.16 on risk factors

The COM's proposal on Art.16 includes the deletion in paragraph 1 of the requirement for issuers to rank the most material risk factors in a prospectus:

In each category the most material risk factors shall be mentioned first according to the assessment provided for in the second subparagraph.

During the negotiations, several MS have opposed this deletion, arguing that it is important that issuers prioritise among risks, in particular to make it easier for investors to identify the most material risks of the issuer when reading the prospectus.

The PCY acknowledges that several MS were opposed to the compromise proposal presented by the PCY in this regard, i.e., the clarification in recital 34 that issuers may on a voluntary basis rank the most material risk factors in a prospectus. These MS instead advocated that the current provision on the ranking of the most material risk factors should be retained. In particular, they stated that clear and comparable information for investors is important for the investors' understanding and ability to make an informed investment decision. Thus, it is an important safeguard for investor protection. Although the responsibility placed on the issuer for making this assessment was raised, it was also noted that only the issuer is in a position to make such ranking and that issuers have coped well with the current requirement.

Based on the comments provided by MS, and in order to ease the burden for issuers compared to the current requirement while ensuring that investors have access to clear information on the issuers' risks, the PCY presents a new compromise proposal implying that:

- The following text is introduced at the end of paragraph 1 of Art.16, thus replacing the current requirement on ranking of the risk factors:

  In each category at least the most material risk factor shall be mentioned first according to the assessment provided for in the third subparagraph.

- This means that the (one) most material risk factor should be mentioned first in each risk category in the prospectus. This provides

both for an easing of the burden and clarity for issuers on the number of most material risk factors to be mentioned first.

- As regards the choice of the number of most material risk factors to be mentioned, the compromise to require one risk factor to be mentioned first serves to ensure that it is feasible for all issuers, acknowledging that issuers may not always have more than one most material risk factor to mention in each category.

- Connected to the choice of requiring one most material risk factor to be mentioned first, the purpose of the wording "at least" is to provide issuers with some flexibility to adapt to their individual situation. For instance, if an issuer would deem two risk factors in a risk category to be of comparable materiality, it may still find it relevant, and prefer, to mention both risk factors first. It should then be allowed to do so.

The Presidency's amendments to Art.17 on the final offer price and amount of securities

During the discussions in the last WP, the PCY took note of the comments regarding the unclarity of the application of the provision in Art.17(2) second subparagraph. Based on those comments and comments made by MS in writing, the PCY has further clarified the purpose of the provision.

Art.17 contains a self-standing withdrawal right, which is not connected to the publication of a supplement pursuant to Art.23. This is clarified in Art.17(1) of the current regulation.

In Art.17(2) first subparagraph, it is stated that the final offer price is to be filed with the NCA of the home MS and made available to the public in accordance with Art.21(2), i.e., in electronic form on one of three websites mentioned in the Article. Art.17(2) second subparagraph, which contains the PCY compromise proposal, makes a reference back to the first subparagraph that states how the final offer price should be filed and made available to the public. Thus, the compromise proposal, read along with Art.17(2) first subparagraph, aims at clarifying that the self-standing withdrawal right also applies where the final offer price differs slightly from the maximum price that was disclosed in the prospectus, which does not constitute a requirement to publish a supplement. When the final offer price is filed and

made available to the public on a website, investors should be able to access that information and exercise their withdrawal right.

The Presidency's amendments to Art.19 on the incorporation by reference

During the last WP, questions were raised regarding the application of the amendments of Art.19(1b). The same comments were also made in writing.

Based on MS comments, the PCY has proposed amendments to the compromise text to clarify the purpose of the provision in line with how the provision is to be applied according to the current regulation.

The PCY would like to highlight that the proposal in Art.19(1b) only refers to base prospectuses and not equity prospectuses. New annual financial statements published during the period of validity of a base prospectus, or a non-equity prospectus, do not require the publication of a supplement. The opposite applies for equity prospectuses that, according to Art.18(1)(a) of Commission Delegated Regulation 2019/979, require a supplement for new annual financial statements. However, the issuer should have the option to make its own materiality assessment pursuant to Art.23(1) of the PR to determine whether a supplement is necessary or not. This has been clarified by ESMA in a Q&A and the compromise text aims at clarifying this in the legal act for the sake of legal clarity. Based on MS comments, the PCY has also replaced the word "updated" with "new" to align the meaning of the notion with the wording in Regulation 2019/979. Clarifications have also been made in recital 37.

The Presidency's amendments to Art.20 on scrutiny and approval of the prospectus

In the discussion during the last WP and in the written comments, several MS have been opposed or hesitant to the proposed consequences for competent authorities that do not take a decision on the prospectus within the set time limits, as introduced in the compromise proposal by the PCY. The resistance mainly concerned the proposal that in these cases the competent authority should notify ESMA of the reasons for not reaching a decision.

Based on the comments by MS, the new PCY compromise proposal implies:

- To remove the requirement in Art.20(2) for the competent authority to notify ESMA where the competent authority fails to take a decision on the prospectus within the set time limits.

Moreover, the comments showed that several MS were opposed or hesitant to the empowerment to the COM in paragraph 11, point (b), on the maximum overall timeframe within which the scrutiny of the prospectus should be finalised and a decision reached by the competent authority. A few MS preferred the timeframe to be established in the Level 1 text or to specify also a time limit for the persons applying for approval of a prospectus to revert with their information. Several MS advocated that some flexibility should be provided by specifying conditions for derogations from the overall timeframe. Questions were also raised concerning the consequences as the timeframe expires.

In light of the comments by MS, the new PCY compromise proposal consists of:

- Inserting "from this timeframe" at the end of point (b). This addition serves to further clarify that the conditions for possible derogations from the overall timeframe will be specified. This will provide for some flexibility regarding the timeframe, under the circumstances to be specified.

- Providing increased clarity on the consequences as the timeframe expires, if the competent authority has not yet taken its decision to approve or refuse the prospectus. For this purpose, a new subparagraph is added: *Where the competent authority fails to take a decision on the prospectus within the maximum timeframe referred to in point (b), such failure shall not be deemed to constitute approval of the prospectus.* That is, this provision is valid both for the time limits in the Level 1 text of Art.20 and for the overall timeframe to be set at Level 2.

In this context, the PCY has considered it relevant to clarify that a competent authority's approval of a prospectus does not include the accuracy of the information in the prospectus. The clarification has been made in Art.2(r) of the Prospectus regulation where the notion *"approval"* is defined.

Regarding the overall timeframe, the PCY would also like to highlight its construction as the maximum duration of the scrutiny procedure overall, covering the activities of both the person applying for approval of a prospectus and the competent authority. Thus, it will also include the time it takes for an issuer to submit supplementary information.

Finally, the PCY has taken note of MS comments showing that a large number of MS were opposed to the provision on the peer review to be conducted by ESMA of the scrutiny and approval procedures of competent authorities. These MS did not agree with the PCY's compromise proposal to require ESMA to conduct one peer review within four years after the entry into force of the amending regulation. As in previous discussions during the negotiations, MS mainly opposed introducing peer reviews in sectoral legislation and referred to the existing mandate for ESMA to conduct peer reviews, as laid down in the ESMA regulation.

In light of MS views, the new PCY compromise proposal consists of:

- Deleting both the COM's proposal and the previous PCY compromise proposal amending Art.20(13) on the peer review to be conducted by ESMA.

- Deleting also the current provision in Art.20(13) in the Prospectus regulation on the peer review by ESMA.

- By consequence, there would be no remaining requirement in the PR for ESMA to conduct a peer review of competent authorities' scrutiny and approval procedures for prospectuses. However, ESMA could still conduct such peer reviews at any time it deems appropriate in accordance with the ESMA regulation.

The Presidency's amendments to Art.23 on the supplements to the prospectus

In light of discussions in the last WP and comments in writing, the PCY has made some amendments to Art.23 and recital 44.

For the sake of clarity, the PCY has returned to the COM's proposal in Art.23(3)(c). Since a supplement can be published after the offer period, the previously proposed amendment could give the inaccurate impression that a supplement can only be published during the offer period and should therefore be removed.

Furthermore, in recital 44, the PCY has exemplified contact by electronic means and has clarified that a supplement can be published on a financial intermediary's website.

The Presidency's amendments regarding the universal registration document

Art.9 of the PR contains provisions about the universal registration document (URD). The URD can be used as a constituent part of a prospectus according to the current regulation. To ensure the continued possibility to use the URD in the revised regime, the PCY has proposed some amendments in the following Articles;

- Art.6 and 14b, i.e., the full prospectus and the EU Follow-on prospectus, which can be used as tripartite prospectus types and where an exemption is proposed for the standardised format, the standardised sequence, and the maximum length for the information in a URD.

- Art.19(1)(a), where a clarification is proposed regarding the mandatory incorporation by reference in a prospectus of a URD which has been approved by a competent authority or filed with it.

- Art.19(1c), where an exemption is proposed from the mandatory incorporation by reference of specified information in Art.19(1)(c)–(i), when a URD is a constituent part of a prospectus.

The Presidency's amendments to Art.50 on transitional provisions and Art.4 of the amending Regulation on entry into force

In Art.50 of the PR, the PCY proposes transitional provisions to ensure the continued usability of prospectuses, which have been approved before the entry into force of the amending Regulation. This is in line with Art.46(3) of the current Regulation.

In Art.4 of the amending Regulation, the PCY proposes a later application date for some provisions which require additional time for Member States to make amendments in their national law or where Member States need to take necessary measures to comply with some provisions in the amending Regulation.

The Presidency's amendments to recitals 58 and 61

In recitals 58 and 61, the notion of sufficient maturity has been deleted to avoid misinterpretations since some MS have interpreted this notion as a legal criterion that would have to be assessed by issuers. Consequently, it should now be clear that the assessment that the issuer has to make as of whether the disclosure obligations is triggered, in relation to inside information in a protracted process, relates to whether the occurrence of the event or the particular circumstances that the protracted process intends to bring about may reasonably be expected.

This amendment is not intended to bring any change in substance in relation to the last PCY compromise proposal.

The Presidency's amendments to Art.17(1a)

The word 'indicative' has been deleted for the list to work as intended. Namely, that there will be a positive presumption of disclosure as regards the situations exemplified in the non-indicative list, as explained by the COM at the last WP-meeting. Moreover, some rephrasing has been made as regards ESMA's involvement when the COM sets out the non-exhaustive list.

Firstly, the background to the PCY's compromise proposal on intermediate steps-regime is that a majority of the MS are supportive of the new regime. As explained in the annotated agenda for the last WP-meeting the PCY chose to not take on board in Art.17(1), elements that would make the intermediate step-regime, too similar to the delay-regime in Art.17(4). While all subsequent comments by MS have been considered and carefully deliberated, the PCY has concluded that there is not sufficient support among MS to include a provision relating to 'misleading the public' or similar exemptions from the proposed carve out of intermediate steps.

The rationale is that if such exemptions from the carve-out were to be introduced, the carve out would be too slim to be merited, in comparison with the delay-regime in Art.17(4). Such a slim carve-out would not provide any significant benefits for issuers in relation to the complexities that the carve out would bring as for the interpretation of MAR regarding issuer's handling and disclosure of inside information.

Neither is there, and for similar reasons, sufficient support among MS to introduce a specific audit trail or a requirement to notify NCA:s in relation to the regime on non-disclosure of intermediate steps.

However, the PCY compromise proposal is meant to accommodate the MS who have been sceptical of the intermediate step-regime by framing the scope of the carve out more clearly, as explained in the annotated agenda for the last WP-meeting.

The Presidency's amendments to Art.17(1b) and Art.17(7) first subparagraph

The second sentence of Art.17(1b) has been deleted. Instead, the PCY has amended Art.17(7) first subparagraph. This intends no change in substance, the amendment has been done only for systematic reasons.

The Presidency's amendments to Art.17(4) and 17(11)

In light of new MS comments, the PCY deems it necessary to amend Art.17(4)(b) and Art.17(11) in order to reach a compromise solution.

The compromise proposal now entails that the wording in the COM:s draft proposal is reintroduced in Art.17(4)(b). Some MS have stressed that introducing these conditions, and replacing the notion of '*misleading the public'*, would provide essential clarity for issuers and NCA:s. The conditions are also already know to the market and have been tested in practice since they are taken from the non-exhaustive list in ESMA:s guidelines from 2016.

However, since some MS have not been comfortable with replacing an open norm, such as '*misleading the public*' with a closed set of three situations, the PCY compromise proposal also entails an amendment in Art.17(11). To avoid potential loopholes and to provide for flexibility, ESMA will therefore have the possibility to define situations where the conditions in Art.17(4)(b) will typically not be met.

A technical amendment has also been made in the fourth subparagraph of Art.17(4) to ensure consistency.

The Presidency's amendments to Art.17(5)

The notion of '*related undertaking*' has been deleted according to the comments of some MS that this notion was ambiguous and in light of the ESMA MAR Review Report.

The Presidency's compromise proposal on Art.18(9)

Some MS have had comments on the alleviated formats that according to the PCY compromise proposal will be extended to all types of insider list. As regards specific data, for example which types of phone numbers that should be included in the alleviated formats, the PCY believes that it is more appropriate to have this discussion at ESMA-level, as the article delegates to ESMA to review the formats.

The Presidency's amendments to Art.19(12)(c)

There has been a slight amendment in the wording to align the article with the recital and to accommodate comments from some MS.

The Presidency's amendments to Art.25a on the CMOBS mechanism

During the last WP, the PCY took note of the many questions raised by MS, regarding trading venues with a cross-border dimension that would fall under the mandatory scope of the provision and, in relation to that, about the costs for the CMOBS mechanism and exchange of order data. After the WP, the PCY sent out slides prepared by the COM with further clarifications. Based on discussions in the last WP and on comments and proposals made by MS in writing, the PCY has made amendments to the provision that aim to address the most important concerns raised by MS and to provide for more clarity. In doing so, the PCY has pursued to find a balanced compromise where different approaches have been proposed by different MS, for instance regarding how to specify the scope of trading venues, which has significance for the issue of costs.

Since this is a new provision regarding a new mechanism to be put in place, the PCY proposes to take a cautious approach to ensure that MS with trading venues that will be a mandatory part of the scope have sufficient time to establish and maintain appropriate arrangements and systems to be able to apply the provision.

Regarding the scope of financial instruments covered, the PCY proposes to start the exchange of data with shares, followed by bonds and futures (after 48 months), with a possible extension to other instruments. Based on this, the PCY proposes to set a specific quantitative criterion for shares at Level 1, which should give MS a better view of what trading venues would be a mandatory part of the scope. The level of the threshold proposed by the PCY constitutes a compromise between different proposals given by different MS.

The objective behind setting differentiated timelines for shares and other asset classes is to give both MS sufficient time to acquire knowledge about the functioning of the exchange of data and the COM to be able to extend the scope of financial instruments based on the experience gained by the MS. The PCY thus proposes to empower ESMA to submit a report to the COM on the functioning of the mechanism, which includes a cost-benefit analysis. In case of challenges in the implementation of the mechanism for shares, ESMA may also propose to postpone the extension of the mechanism to bonds and futures.

The PCY proposes to extend the empowerment to the COM to adopt delegated acts updating both the list of designated trading venues with a significant cross-border dimension and the list of financial instruments. The objective is to ensure flexibility where quick changes in scope may be required.

The PCY also proposes to clarify that those MS that decide to opt-in to the use of the mechanism must comply with the provisions in the Article.

Finally, the PCY proposes some amendments to recital 69 to clarify that MS can delegate to ESMA to set up a centralised hub similar to the example of the TREM/TRACE mechanism.

The Presidency's amendments to Art.30 and recital 71

Art.30 and recital 71 have been amended to accommodate one MS that needed it to be clearer that MS would not necessarily, in their national legislation, have to implement different ranges of sanctions for SME:s as opposed to other types of issuers.

This amendment is not intended to bring any change in substance in relation to the last PCY compromise proposal.

MiFID II and the repeal of the Listing Directive

The Presidency's amendments to Art.24(3a)–(d) and Art.69(2)(a)(v) in MiFID II

The purpose of the amendments is to include that investment firms shall ensure that the issuer-sponsored research that they produce, or that is provided to them by third parties, abide by the code not only when the investment firm distributes the research directly to clients, but also when the research is used by the investment firm when it provides services. In some MS, investment research is more prevalently used by investment firms to make investment decisions on behalf of clients (portfolio management), to issue investment recommendations or to enhance the investment service that they provide to their clients. Therefore, it is not always the case that the clients have direct access to the issuer-sponsored research.

The Presidency's amendments to Art.24(9a)–(c) in MiFID II on rebundling

During the last WP and in the written comments, the PCY noted broad support for the PCY's compromise proposal implying full re-bundling, complemented by the requirement for transparency to the clients on the investment firms' choice of separate or joint payments for execution services and third-party research, as well as provisions for voluntary transparency by investment firms to clients on the costs attributable to research.

Although some MS asked for additional transparency, such as mandatory record keeping of payments and annual information to clients on costs for research, there was overall support for the PCY's compromise. However, for clarity and consistency reasons, a few adjustments have been made to the text of these provisions:

- Recital 4 has been adjusted to clarify that the provision for voluntary record keeping of payments and the provision of annual information to the clients on the payments for research apply regardless of whether the investment firm selects separate or joint payments.

- In Art.24(9a), in the first added subparagraph, the voluntary nature of the provisions for the record keeping of payments and the annual information to the clients on the payments for research has been

clarified. To this end, the word "may" has been inserted preceding the part related to the provision to clients of annual information of costs for research.

- In Art.24(9a), in the last added subparagraph, the reference to the preparation by the COM of an impact assessment has been removed as this would in any case precede the presentation of any legislative proposal.

The Presidency's amendments to Art.51a

The wording of paragraph 1 and 4 has been slightly amended in light of a comments from a few MS and to align the wording with other parts provisions in MiFID (such as Art.51(4)).

Paragraph 6 has been deleted since it would be redundant in light of the new paragraph 5. A subsequent amendment has been made in paragraph 7.

5. PCY closing remarks

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