



Listing Act

Council Working Group

27 January 2023

Outline



1. Context of the proposal
2. Stakeholders' consultations
3. Legislative proposals in detail
 - 2.1. Prospectus Regulation
 - 2.2 Market Abuse Regulation (+ MiFIR)
 - 2.3 MiFID (+ Listing Directive)



PUBLIC

1. Policy context

The European Commission has put forward measures to further develop the EU's Capital Markets Union (CMU)

The measures cover three strands:

- to make EU clearing services more attractive and resilient, supporting the EU's open strategic autonomy and preserving financial stability.
- to harmonise certain corporate insolvency rules across the EU, making them more efficient and helping promote cross-border investment.
- **to alleviate – through a new Listing Act – the administrative burden for companies of all sizes, in particular SMEs, so that they can better access public funding by listing on stock exchanges.**

CWP today

Main objectives of the Listing Act

1. Encourage companies to list and remain listed, while ensuring investor protection and market integrity
2. Facilitate access to public markets, allowing companies to better diversify and complement funding sources
3. Cut unnecessary red tape and costs for companies

Legislative instruments



- i) a proposal for a Regulation amending:
 - the Prospectus Regulation,
 - the Market Abuse Regulation (MAR) and
 - the Markets in financial instruments Regulation (MIFIR);
- ii) a proposal for a Directive:
 - amending the Markets in financial instruments Directive (MiFID), and
 - repealing the Listing Directive

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- iii) a proposal for a Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market

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2. Stakeholder consultations

Views collected





3. Legislative proposals



3.1 Prospectus Regulation (PR)

Prospectus Regulation (PR)



PR in short

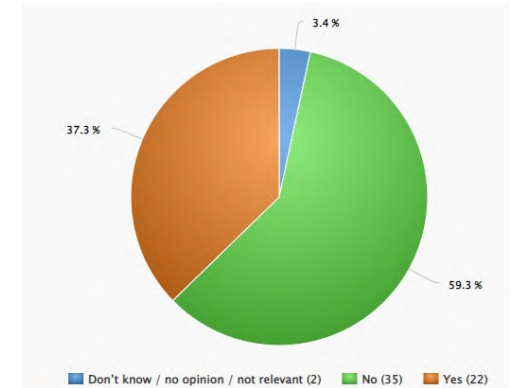
- The PR, introduced in 2017, aims at ensuring investor protection and market efficiency, while enhancing the internal market for capital, and fostering supervisory convergence across the EU.
- A prospectus is a document that must contain the necessary information which is material for an investor to make an informed investment decision.
- Unless an exemption applies, a prospectus is required for an offer of securities to the public or an admission to trading of securities on a regulated market.

Reasons for review

- The PR framework is overall fit for purpose, yet stakeholders' feedback (e.g., CMU HLF, TESSG, targeted consultation) indicates the need to strike the right balance between appropriate level of disclosures for investors and legal obligations on issuers.
- Main shortcomings to be addressed: excessive length and complexity of prospectuses for SMEs and non-SMEs, including for secondary issuances by listed companies.
- Finally, ESMA formulated in 2022 peer review important recommendations on the scrutiny and approval of prospectuses.

The Prospectus for regulated markets

The majority of stakeholders who replied to the targeted consultation do not think that the standard prospectus strikes the right balance between effective investor protection and appropriate administrative burden for issuers



The size of the prospectus may vary depending on the type of document and on the jurisdiction where it is approved

Table 2 - Average length (number of pages) of prospectus documents, March 2019³⁸⁰

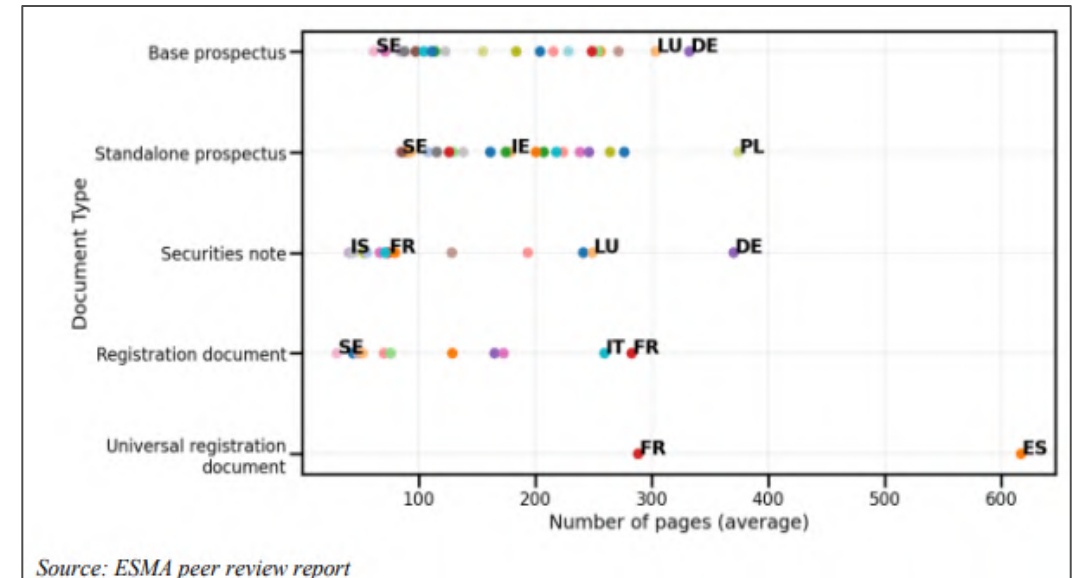
	Total sample			Mean, by market capitalisation		
	Median	Min.	Max.	<€150m	€150m–€1bn	>€1bn
France	447	217	683	376	368	668
Germany	390	183	591	296	392	468
Italy	807	563	1,367	818	831	839
Netherlands	266	105	389	192	249	280
Spain	481	216	674	266	517	500
Total	400	105	1,367	342	577	514

Note: Analysis of most recent ten IPOs in each respective member state as at March 2019.

Source: Assonime (2019), 'Osservazioni di Assonime e Confindustria al documento di consultazione Consob per l'adeguamento al Regolamento (UE) 2017/1129, relativo al prospetto', March, http://www.assonime.it/_layouts/15/Assonime.CustomAction/GetPdfToUrl.aspx?PathPdf=http://www.assonime.it/attivita-editoriale/interventi/Documents/consultazioni%203-2019A.pdf.

Document type	Average	Median	Percentile 10	Percentile 25	Percentile 75	Percentile 90
Standalone prospectus (1144 documents)	147	109	44	66	203	315
Base prospectus without Final terms (878 documents)	220	164	58	105	261	427
EU Growth standalone prospectus (195 documents)	72	59	42	50	74	114
EU Recovery prospectus (15 documents)	32	32	29	31	34	35

Source: ESMA's data for 2021³⁸¹.



Streamlining the prospectus

Problem

- The large size and complexity of prospectus documentation is detrimental for both the sell-side and buy side.
- The TESG report described prospectuses for primary issuances as costly and time-consuming for issuers to produce, and pointed out that the disproportionate length might discourage investors to read them and even to invest.
- Furthermore, the size and complexity of prospectuses might delay the scrutiny and approval process by NCAs.

Changes to Article 13 PR

- The proposal aligns the « full » prospectus to the level of disclosure of the **EU Growth prospectus**
- In that regard, the proposal overhauls the Level 1 prospectus schedules (Annexes I, II and III), on which basis the Level 2 more detailed schedules are built, taking as reference the Annexes of the EU Growth prospectus (i.e., Annexes 24 to 27 of Commission Delegated Regulation (EU) 2019/980).

Standardisation of the format and sequence of the prospectus

Opportunity

- Standardising the information in a prospectus would support the creation of a single market and allow investors to benefit from a familiar format irrespective of the Member State in which the prospectus is approved
- Setting a page-limit for the (streamlined) share prospectus would contribute to eliminating outlier prospectuses of an extreme length that affects its reading and analysis by investors

Changes to Article 6, 7 and 13 PR

- Introduction of a **standardised format and sequence** for the prospectus, to be set out in the delegated acts
- Standardised sequence of information in the prospectus summary (graphs, charts and tables allowed)
- Introduction of a page limit (**300 pages**, using characters of readable size) for prospectuses relating to shares and other transferable securities equivalent to shares in companies. However, the proposal excludes from the page limit obligation the following information: summary, information incorporated by reference, information to be provided where the issuer has a complex financial history or has made a significant financial commitment

Strengthening investor protection: ESG-related information

Problem

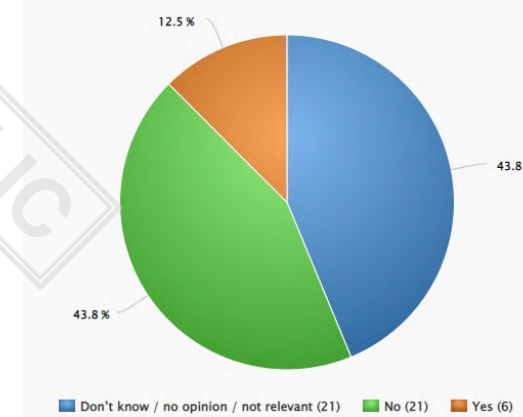
- The lack of information to be disclosed in the prospectus where the securities are advertised as taking into account environmental, social or governance (ESG) factors or pursuing ESG objectives (including on the use of proceeds) might result in greenwashing practices that affect investor protection and investor trust.

Changes to Article 13 PR

- Introduction of **ESG-related criteria** to be taken into account when setting out the prospectus schedules in delegated acts:
 - For **equity issuers**: whether the issuer is required to provide sustainability reporting, together with the related assurance opinion, in accordance with Transparency Directive and Accounting Directive (i.e., sustainable reporting pursuant to the upcoming **Corporate Sustainability Reporting Directive**) – that information is to be incorporated by reference only
 - For **non-equity issuers**: whether non-equity securities offered to the public or admitted to trading on a regulated market are advertised as **taking into ESG factors** or **pursuing ESG objectives**

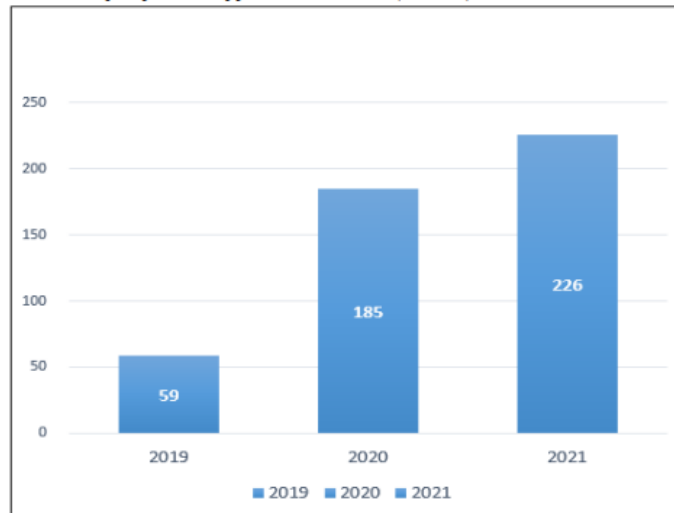
The Prospectus for SME growth markets

The % of stakeholders who believe that the EU Growth prospectus does not strike the right balance between investor protection and the reduction of administrative burdens for SMEs (43,8%) is greater than the % of stakeholders who believe that it does (12,5%)



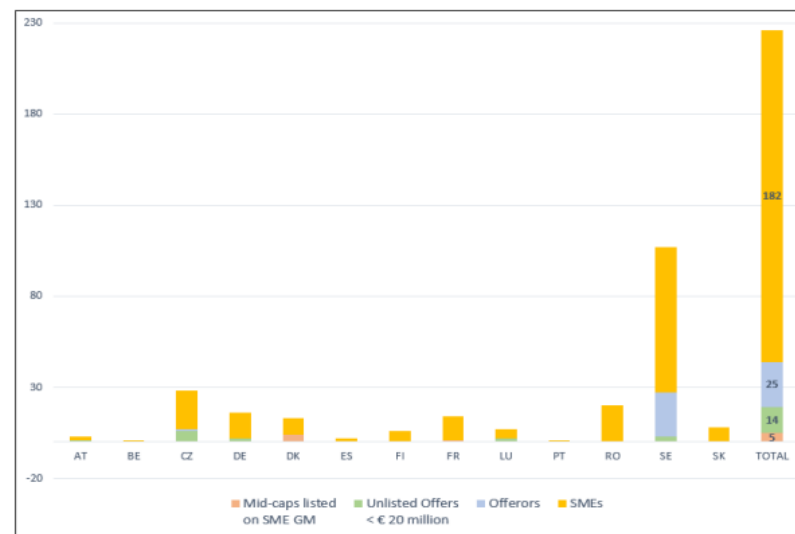
The EU Growth prospectus has had a low uptake since its introduction, mainly concentrated in one MS

Figure 11. EU Growth prospectuses approved in the EEA (exc. UK) from 2019 to 2021



Source: ESMA's EEA prospectus reports for 2019, 2020 and ESMA's data for 2021

Figure 10. EU Growth prospectuses by category of beneficiaries approved in 2021 in the EEA.



Source: ESMA's data for 2021⁴⁰⁴.

Fostering listing on SME growth markets

Problem

- The high costs and burden of producing a prospectus might contribute to the reluctance of SMEs to list on a public market and limit its funding options (overreliance on bank financing)

New Article 15a PR

- Introduction of a new **EU Growth issuance document**, mandatory for specific categories of beneficiaries, in particular SMEs and companies seeking to list on an SME growth market, provided that they have no securities admitted to trading on a regulated market. Disclosure requirements laid down in the Prospectus Regulation (**Annexes VII and VIII**)
- The EU Growth issuance document is a document with a **standardised format and standardised sequence** building on the model of the EU Recovery prospectus, also taking into account the level of disclosure of admission documents required (under a prospectus exemption) by SME growth markets
- The EU Growth issuance document has a bespoke 5-page summary and subject of a **75-page limit** for shares (the summary, the information incorporated by reference and the information to be provided where the issuer has a complex financial history or has made a significant financial commitment are excluded from the page count)

Exemptions for secondary issuances

Full exemption up to % cap

Rationale

- To reduce complexity and to limit unnecessary costs and burdens, the existing exemption for the admission to trading of securities fungible with securities admitted on the same regulated market should apply also to the offer to the public of the concerned securities and the percentage threshold that determines the eligibility for that exemption should be raised from 20% to 40%.
- For the same reason, that exemption should also encompass an offer to the public of securities fungible with securities already admitted to trading on a SME growth market.

New
Article 1(4)(da) PR
+
revised Articles
1(5)(a) and (b) PR

- The exemption applies to an offer of securities to be admitted to trading on a **regulated market or an SME growth market** and that are **fungible with securities already admitted to trading** on the same market, if they represent, over a period of 12 months, less than **40 %** of the number of securities already admitted to trading on the same market.
- The exemption applies to the admission to trading on a **regulated market** (RM) of securities fungible with securities already admitted to trading on the same RM if they represent, over a period of 12 months, less than **40%** of the number of securities already admitted to trading on the same RM (the same threshold is also applied to the existing exemption on shares resulting from the conversion or exchange of securities).

Exemptions for secondary issuances

Exemption subject to investor protection safeguards

Rationale

- Companies whose securities are admitted to trading on a regulated market or on an SME growth market are to comply with the periodic and ongoing disclosure requirements (e.g., Transparency Directive, Market Abuse Regulation).
- Where those companies issue securities fungible with securities already admitted to trading on those trading venues, they should be exempted from the obligation to publish a prospectus, as much of the required content of a prospectus will already be publicly available and investors will be able to consider that information in their decisions.
- Such exemption should be subject to safeguards.
- Such exemption encompasses the transfer from an SME growth market to a regulated market.

New
Art. 1(4)(db) PR
+
New Article
1(5)(ba) PR

- The exemption applies to an **offer of securities fungible** with securities that have been admitted to trading on a RM or an SME GM continuously for at least the 18 months preceding the offer of the new securities
- The exemption applies to the **admission to trading on a regulated market of securities fungible** either with securities that have been **admitted to trading** on a regulated market continuously for at least the last 18 months before the admission to trading of the new securities, **or** with securities that have been **offered to the public with a prospectus** and admitted to trading on an **SME growth market** continuously for at least the last 18 months

Conditions applying to both exemptions:

- (i) not in connection with a takeover, merger or a division
- (ii) no insolvency or restructuring procedure
- (iii) a **summary document (Annex IX)** with key information on the issuer and the securities, together with a statement of compliance with reporting obligations is published and filed with the NCA.

Streamlining the prospectus for secondary issuances

Rationale

- To reduce complexity and to limit unnecessary costs and burdens, for companies that have a track record on a regulated market or an SME growth market, and that are issuing securities that are not fungible with securities already admitted to trading, or that do not fulfil the conditions to benefit from an exemption.

New Article 14b PR

- Introduction of a new **EU Follow-on prospectus**, a new short-form prospectus type optional for secondary issuances. Disclosure requirements laid down in the Prospectus Regulation (**Annexes IV and V**)
- The EU Follow-on prospectus a document with a **standardised format and standardised sequence** building on the model of the EU Recovery prospectus, available for all types of securities
- The EU Follow-on prospectus has a bespoke 5-page summary and subject of a **50-page limit** for shares (the summary, the information incorporated by reference and the information to be provided where the issuer has a complex financial history or has made a significant financial commitment are excluded from the page count)
- The timeline for an NCA to notify the issuer of its decision regarding the approval of the EU Follow-on prospectus is reduced from 10 to 7 days

Making CMRP exemptions permanent

Rationale

- Capital Markets Recovery Package (CMRP), increased that threshold to EUR 150 000 000 for a limited period to foster fundraising for credit institutions and give those institutions breathing space to support their clients in the real economy.
- To continue to support fundraising through capital markets of issuers, including credit institutions, the increased threshold should be made permanent.

Changes to Art. 1(4)(j) and Art. 1(5)(i) PR

- The obligation to publish a prospectus shall not apply to any of the following types of offers of securities to the public/admission to trading on a regulated market of: non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months

Exemptions for small offers of securities to the public

Rationale

- For small offers of securities to the public, the costs of producing a prospectus may be disproportionate in relation to the total consideration of the offer.
- In terms of the upper thresholds set out by Member States, the situation is fragmented, impairing the single market. The varying exemption thresholds have led to creating complexity of adapting to different national thresholds and lack of clarity for both issuers and investors.
- In order to reduce complexity in the application of various thresholds and to foster legal clarity, a single harmonised threshold should be set out at Union level.
- Currently, most EEA Member States set out a threshold of either EUR 8 million (maximum threshold – 47%) or EUR 5 million (27%),
- Feedback from the consultation proposed an average upper threshold of EUR 12 062 500.
- There is currently uncertainty across the EU about whether the threshold refers to the total aggregated offers made by the same issuer or whether it applies to any single offer made by the same issuer.

Changes to Art. 3(2)(b) PR Delete Art. 1(3) PR

- Without prejudice to Article 4, a Member State shall exempt offers of securities to the public from the obligation to publish a prospectus provided that: the total aggregated consideration in the Union of for the securities offered is less than 12 000 000 per issuer or offeror calculated over a period of 12 months.
- The threshold refers to 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.
- Member States may apply national disclosures below that threshold

Incorporation by reference

Rationale

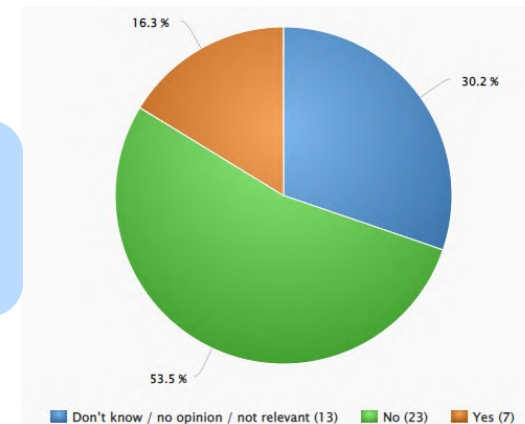
- To avoid duplicating in the prospectus the information that issuers have already disclosed, mostly under EU legislations, and published electronically.
- To take advantage of the upcoming European Single Access Point (ESAP), where most information on the issuer will be published.

Changes to Art. 19 PR

- The incorporation by reference becomes a legal obligation, in accordance with the conditions laid down in Article 19(1) instead of a possibility that the issuer may avail itself of.
- The issuer may incorporate information by reference on voluntary basis, provided that the conditions laid down in Article 19(1) are met, even if that information is not required to be disclosed in the prospectus.
- An issuer, an offeror or a person asking for admission to trading on a regulated market shall not be required to publish a supplement for updating the annual or interim financial information incorporated by reference in a base prospectus that is still valid.

Fostering convergence in the scrutiny and approval of the prospectus

The majority of stakeholders who replied to the targeted consultation replied “No” to the following question: Do you consider that there is alignment in the way national competent authorities assess the completeness, comprehensibility and consistency of the draft prospectuses that are submitted to them for approval?



Rationale

- Streamline, improve regulatory convergence and provide additional clarity on the length of the scrutiny and approval of the prospectus
- Improve monitoring of supervisory convergence by requiring ESMA to conduct peer reviews at regular intervals

Changes to (Art. 20)

- Clarify in the delegated acts the circumstances under which an NCA is allowed to use additional criteria for the scrutiny of the prospectus, where deemed necessary for investor protection, and the type of additional information that may be required to be disclosed in such circumstances
- Clarify the consequences for a competent authority that fails to take a decision on the prospectus
- Specify the maximum timeframe for an NCA to finalise the scrutiny of the prospectus and to reach a decision on whether that prospectus is approved, or whether the approval is refused and the review process terminated
- ESMA to conduct at least once every 3 years one peer review of the scrutiny and approval procedures of competent authorities, including notifications of approval between NCAs

Relaxing language rules

Rationale

- Reduce issuers' burden by allowing them to always publish the prospectus in a language customary in the sphere of international finance, except for the prospectus summary (the document mostly read by retail investors)

Changes to Art. 27 PR

- Issuers are enabled to publish the prospectus in a language customary in the sphere of international finance, for both domestic and cross-border offers.
- The summary of the prospectus, where applicable, shall always be available in one of the official language(s) of the concerned Member State(s), or at least one of its official language(s), or in another language accepted by the competent authority(ies) of that(those) Member State(s)

Supplements – revising and making CMRP measures permanent

Rationale

- To facilitate the fulfillment of the obligation to make contact concerning a supplement to the prospectus.
- To alleviate the burden on financial intermediaries without compromising any investor protection safeguards.
- To grant both the financial intermediaries and investors more flexibility in exercising their respective obligations and rights.
- Overall positive feedback from the consultation on this provision to make CMRP measures permanent.

Changes to Art. 23 PR

- In the event of a publication of a supplement to the prospectus, the financial intermediary is required to inform only those investors who are clients of that financial intermediary, who have withdrawal rights, and agreed to be contacted by electronic means (at least to receive the information on the publication of a supplement).
- The financial intermediary shall inform those investors by the end of the first working day following that on which the supplement is published.
- Those investors who have withdrawal rights exercise them within 3 days from the publication of the supplement

Making the equivalence regime workable

Rationale

- Allow the Commission to take an equivalence decision based on a sound legal basis and clear and straightforward equivalence criteria
- Allow a third country issuer whose prospectus has been approved by the third country authority, and in case an equivalence decision with that third country has been adopted, to only file its prospectus with the NCA of the home MS (no double approval)

Changes to Art. 29 and 30 PR

- General equivalence criteria laid down directly in the PR, encompassing disclosure requirements, supervisory framework, civil liability, publication and supplements
- Equivalence regime available for an admission to trading on a regulated market in the EU, or a public offer accompanied with an admission to trading on either a regulated market or an SME growth market in the EU
- ESMA to establish cooperation arrangements with the supervisory authorities of third countries concerning the exchange of information between ESMA and the supervisory authorities of third countries concerned and the enforcement of obligations arising under the PR

Technical amendments

Supplements

No supplement where the final offer price differs by no more than 20% from the maximum price disclosed in the prospectus.

Electronic format

Prospectus to be published and distributed in an electronic format only.

Base prospectus

A supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus (ESMA's guidelines to provide clarity)

Publication

Reduce the current minimum 6 day-period between the publication of a prospectus and the end of an offer of shares to 3 days

URD

URD to required to be approved for 1 year only by the NCA, filing every year after (unless it is used as part of a prospectus).

Risk factors

Remove the requirement to rank risk factors by materiality in each relevant category.



3.2 Review of the Market Abuse Regulation (MAR)

Market Abuse Regulation



MAR in short

- MAR, introduced in 2016, aims at enhancing market integrity and investor protection.
- Its key objective is to **combat market abuse in financial markets**, including derivatives markets and benchmarks.
- Market abuse is broadly defined in three forms: **insider dealings, market manipulation and unlawful disclosure of inside information**.

Reasons for review

- The MAR framework is overall fit for purpose, yet evidence indicates deviations in the application of some provisions across EU.
- Additionally, discussions with stakeholders (CMU HLF, TESS) revealed certain shortcomings e.g. legal uncertainty and regulatory over-complexity.
- Finally, ESMA formulated in 2020 in its MAR Review important recommendations.

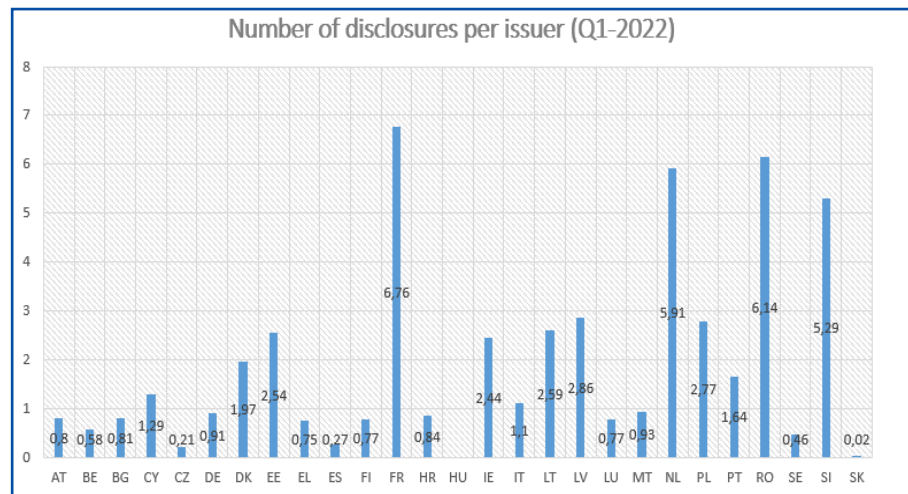
Assessment with regards to disclosure of inside information and delays

Main feedback from stakeholders

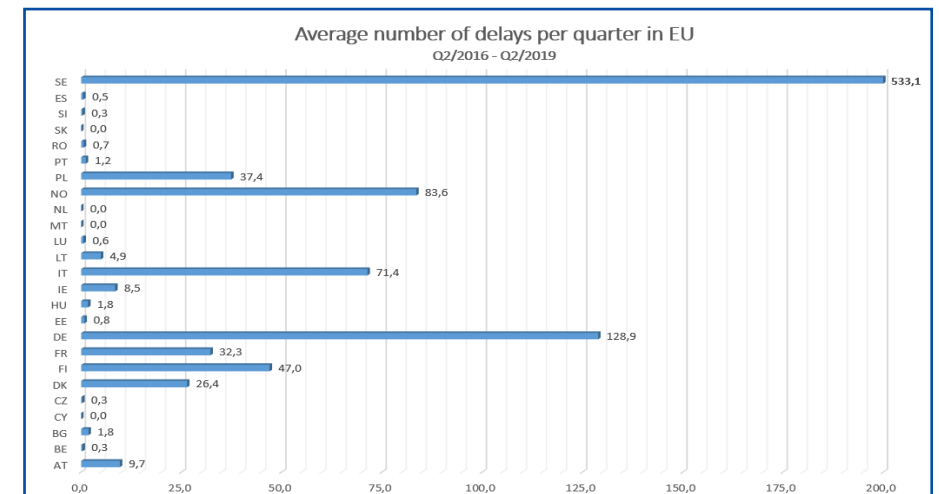
- Overall respondents found most aspects of the current MAR regime burdensome. Most burdensome requirements were the ones related to inside information and the conditions for delay of disclosure.
- On the **disclosure of inside information**, a majority of respondents in the public consultation and stakeholders' meetings considered the issuance of mere guideline would not be sufficient.

Data analyses reveal great disparities in

... issuers' disclosures



... the application of delays



New disclosure obligation – Article 2(38)

Problem

- Uncertainty for issuers evidenced in public consultation as to when disclosure of inside information is required (lack of legal clarity as to which information falls under the scope of the disclosure obligation as well as to the timing of disclosure).
- Practices diverge among Member States, with very big differences in terms of number of disclosures.

New disclosure regime with changes to Article 17

- Reduction of the scope of the disclosure obligation for **protracted processes**: disclosure obligation does not cover **intermediate steps** in such processes - obligation for issuers to disclose only the information relating to the event that is intended to complete a protracted process.
- Obligation for issuers to ensure the confidentiality of inside information (subject to the ban on insider dealing and not disclosed) until the moment of disclosure and to immediately disclose such inside information to the public in the case of a leakage.
- Empowerment for the Commission to adopt a **delegated act to establish a non-exhaustive list of relevant information together with the indication of the moment when disclosure is expected to occur**.

Clarification on the delay of disclosure of inside information – Article 2(38)

Problem

- Large discrepancy among Member States evidenced in the Impact Assessment.
- Uncertainty for issuers around the condition that the delay is not likely to mislead the public.

New regime for delays Article 17(4)

- Clarification of the **conditions for delay of disclosure of inside information** and change of **the timing of the notification** of the delay to the NCA.
- A general condition that the delay is not likely to mislead the public is replaced by a **list of specific conditions** that the inside information that the issuer intends to delay must satisfy.
- The timing of the notification of the delay to the NCA is advanced to the moment immediately after the decision to delay disclosure is taken by the issuer (instead of the moment immediately after the information is disclosed to the public).

New regime of Insider Lists – Article 2(39)

Problem

- Cumbersome regime for issuers with limited benefits in terms of supervision (feedback from consultation and TESG).

Simplified regime of Article 18

- **Extension of the regime today applicable on SME growth markets:** requirement for issuers to draw up and maintain a less burdensome list of ‘permanent insiders’.
- Opt-out for Member States to require, for issuers whose securities have been admitted to trading on a regulated market for at least the last 5 years, the drawing up and maintenance of a ‘full insider list’ where justified by market integrity concerns.

Managers transactions – Article 2(40)

Rationale

- Persons discharging managerial responsibilities (PDMRs or managers) are obliged to notify transactions relating to the issuer to the relevant NCA. The relevant reporting threshold is defined at EUR 5.000 and can be raised at the discretion of the NCA at 20.000 per year; the lower end is deemed impractical and low.
- Trading during a company so called “closed period” (before its periodic reporting) is in principle prohibited. Exemptions exist for certain transactions, however, a number of legitimate activities are not captured.

Amendment (Art. 19)

- Raising thresholds for managers’ transactions from EUR 5.000 to EUR 20.000; and from 20.000 to 50.000.
- Inclusion of certain limited transactions in the exemption of trading during a company’s closed period; transactions in certain employee schemes or where no active investment decisions are taken by the PDMR.

Market soundings – Art. 2(39)

Rationale

- Market soundings likely involve the exchange of inside of information to determine the potential interest by investors.
- Issuers and NCAs flagged different interpretations with regard to MAR market sounding requirements as to whether the regime is obligatory or optional.
- Generally, the market sounding requirements are perceived disproportionate. At the same time, audit trails are an important source for supervisory investigations undertaken by NCAs.

Amendment (Art. 11)

- Clarification as to the optional character of market sounding requirements (safe harbor clause) to offer additional legal protection while processing inside information.
- Definition of minimum due diligence obligations and written record requirements, irrespective of whether the safe harbour clause is applied or not.
- Expansion of scope to cover also transactions that finally are not announced.

Enhancement of cooperation – Article 2(42)

Rationale

- ESMA has a passive role and cannot initiate cooperation.
- Collaboration platforms have already been introduced for EIOPA in Solvency II and have proved an effective tool.

Enhanced cooperation

Amendment of Article 25 to allow ESMA to initiate cooperation, with:

- New paragraph mandating ESMA, at the request an NCA, to contribute to an investigation.
- Possibility for ESMA to decide to coordinate investigation/inspection with a cross border effect.

New Article 25b to allow the creation by ESMA, **of collaboration platforms** with NCAs in the case of concerns about market integrity or the good functioning of markets.

- Possibility also for ESMA to set up such platforms with public bodies that monitor spot markets, to reinforce the exchange of information in the case of concerns related to market integrity or the good functioning of markets.

Cross market order book surveillance (CMOBS) mechanism – Article 2(42)

Problem

- Difficulty for NCAs to access order book data under the existing framework for their investigation.
- Lack of standardisation of the data.

Creation of a CMOBS mechanism

- **New Article 25a** to create a cross market order book surveillance (CMOBS) mechanism **12 months after the entry into force** of the act that allows NCAs to exchange order book data collected from exchanges to detect market abuse in a cross-border context, that should allow **ongoing and timely** exchange of order book data
- Scope limited to shares, bonds and futures at the onset, and to NCAs supervising a market with cross-border dimension.

Technical change to MiFIR

- Article 3(50) and (51): a technical change to Article 25 of MiFIR on obligation to maintain records of order book data to have use a harmonised format

Proportionate sanctions – Article 2(46)

Problem

- Current regime perceived as a deterrent for potential issuers, especially for SMEs that can be sanctioned at the same level as a large company.

More proportionate regime

- Change to Articles 30 and 31 to make administrative sanctions for infringements of disclosure requirements more proportionate. For SMEs, by default, sanctions determined based on the total annual turnover of the company.
- Introduction of lower absolute amounts of the minimum of the maximum pecuniary sanctions for SMEs.

Technical amendments

PUBLIC

Buy-back
Programmes

Simplifications and streamlining of the reporting obligations.

Front running

Enlargement of the definition of persons falling in scope of potential front-running activity.

Benchmarks

Reference to benchmarks in certain MAR provisions

Data protection

Update of data protection rules in light of GDPR developments.

Liquidity contracts

Removal of requirement for SME GM operator to approve the contract.



3.3 Amendments to MiFID II and repeal of the Listing Directive

Markets in Financial Instruments Directive II (MiFID II)

MiFID II in short

- In 2014, MIFID II replaced MIFID I, in view to further strengthen the framework for the regulation of markets in financial instruments. MiFID II was amended in 2021 to address some urgent needs linked to the Covid pandemic (CMRP).
- MiFID II key objective is to harmonise regulation across EU financial markets, increase competition between EU financial markets, increase transparency, better protect investors, reinforce confidence, address unregulated areas and ensure adequate powers for supervisors.

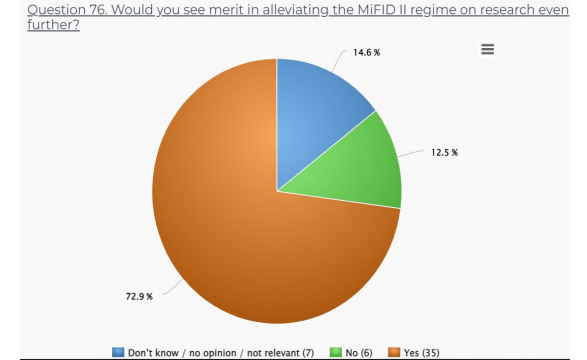
Reasons for review

- While the 2021 amendments to MIFID II addressed some urgent issues linked to the Covid pandemic, they did not seek to harmonise rules, facilitate the access to the markets and increase competition.
- The public consultation on the Listing Act, discussions with stakeholders (on research in particular) and certain recommendations of ESMA on the SME Growth Markets revealed the need to consider improvements in the EU legal framework.

Payment for research and issuer-sponsored research – Article 1(2)

Problem

- The rules for payment on research are dissuasive and the **availability of research on SME is insufficient**: this negatively impacts the funding capacity of SMEs
- The **research market is not diversified enough** : this is detrimental to a healthy competitive environment



Ease the bundling of brokerage and research payment for more companies

Article 24 (3) paragraph 9a, point c) is amended to **increase the threshold of market capitalisation** of companies below which the bundling of brokerage and research payments is allowed.
The threshold is raised **from (currently) Euro 1 billion to Euro 10 billion**

Issuer-sponsored research

Paragraphs 3b to 3d are added to Article 24 (3) to clarify that **issuer-sponsored research** can be labelled as such if **produced in compliance with a code of conduct** developed or endorsed by a registered market operator or by a competent authority.

SME growth markets – Art. 1(1) and 1(3)

Problem

MiFID II introduced the SME GM category to increase visibility and profile of markets specialised in SMEs but it is unclear as to whether an MTF segment can get this label.

Clarification: (Art. 33 MiFID II)

Clarification that an operator of a MTF can apply for a segment of the MTF to be registered as an SME GM under certain conditions.

Listing Directive – Repeal – Art. 2

Rationale

- Listing Directive is an old piece of legislation from 2001.
- The Prospectus and Transparency Directives have replaced most of the provisions of the LD.
- MiFID „admission of financial instruments to trading on a regulated market“ vs Listing Directive „admission to official listing of instruments“
- „Official listing“ under Listing Directive: no transparency requirements are applied, no market abuse requirements are applied.

Repeal of the Listing Directive

Listing Directive – Transfer of relevant provisions to MiFID II – Art. 1(4)

Rationale

The proposal harmonises and consolidates the listing rules transferring certain relevant provisions (the free float and the foreseeable market capitalisation requirement) of the Listing Directive into MiFID II.

Amendment to MiFID II (Art. 51a MiFID II)

The proposal decreases the minimum free float requirement of the Listing Directive from 25% to 10%.

The free float threshold of 10% will not be limited to the public in the EU/EEA.

Foreseeable market capitalisation: The foreseeable market capitalisation of the shares for which admission to official listing is sought or, if this cannot be assessed, the company's capital and reserves, including profit or loss, from the last financial year, must be at least EUR 1 million.

Thank you

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Council of the European Union
General Secretariat

Brussels, 20 January 2023

Interinstitutional files:

2022/0405 (COD)

2022/0411 (COD)

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From:	Commission services
To:	Working Party on Financial Services and Banking Union (Listing Act) Financial Services Attachés

Subject:	Listing Act: working party 27.01.23 - Presentation by the Commission services
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