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Targeted consultation on the listing act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs

Fields marked with * are mandatory.

Introduction

Background for this consultation

EU capital markets remain underdeveloped in size, notably in comparison to capital markets in other major jurisdictions. In particular, EU companies make less use of capital markets for debt and equity financing than their peers in other jurisdictions around the world, with a negative impact on economic growth and macroeconomic resilience.

In recognition of these issues, the Commission's new capital markets union (CMU) action plan of September 2020 has as one of its main objectives to ensure that companies, and in particular small and medium-sized enterprises (SMEs), have unimpeded access to the most suitable form of financing. Given the underdevelopment of market-based finance in the EU, the Commission highlighted the need to support the access of businesses in particular to public markets. Specifically, in Action 2 of the action plan, the Commission announced that it will assess whether the rules governing companies' listing on public markets need to be further simplified. Furthermore, Commission President von der Leyen announced in her letter of intent addressed to Parliament and the Presidency of the Council on 15 September 2021 a legislative proposal for 2022 to facilitate SMEs' access to capital.

In order to inform its further initiatives in this area, the Commission has already taken a number of steps. The Commission has commissioned studies on the topic of how to improve the access to capital markets by companies in the EU and on the functioning of primary and secondary markets in the EU. Furthermore, in October 2020, the Commission set up a Technical Expert Stakeholder Group (TESG) on SMEs to monitor the functioning and success of SME growth markets. In May 2021, the TESG published their final report on the empowerment of EU capital markets for SMEs with twelve concrete recommendations to the Commission and Member States to help foster SMEs' access to public markets. They build on the work already undertaken by the High Level Forum on capital markets union (CMU HLF) and on ESMA's recently published MiFID II review report on the functioning of the regime for SME growth markets.

Structure of this consultation and how to respond

In line with the better regulation principles, the Commission is launching this targeted consultation to gather evidence in the form of stakeholders' views on the need to make listing on EU public markets more attractive for companies and on

ways of doing so. The Commission is also seeking views regarding specific ways of listing, including via Special Purpose Acquisition Companies (SPACs). A special focus is dedicated to SMEs and issuers listed on SME growth markets.

For the purposes of this consultation, the reference to SMEs should be understood as encompassing both SMEs as defined in the Commission Recommendation 2003/361 and SMEs as defined in Article 4(1)(13) of MiFID II. The Commission Recommendation 2003/361 classifies as SMEs companies that employ fewer than 250 people and have a turnover not exceeding EUR 50 million and/or a balance sheet not exceeding EUR 43 million. MiFID II classifies SMEs as companies that had an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years. The concept of SME growth markets was introduced by MiFID II as a new category of multilateral trading facilities (MTFs) to facilitate high-growth SMEs' access to public markets and increase their funding opportunities. In order to be registered as an SME growth market, an MTF must comply with the requirements laid down in Article 33 of MiFID II, including the rule that at least *'50% of issuers are SMEs'*.

This targeted consultation is available in English only. It is split into two main sections. The first section contains general questions and aims at gathering views on stakeholders' experience with the current listing rules and the possible need to adapt those rules. The second section seeks views from stakeholders on various technical aspects of the current listing rules, with questions grouped according to the legal act that they pertain to.

In parallel to this targeted consultation, the Commission is launching an open public consultation which covers only general questions and is available in 23 official EU languages. As the general questions are asked in both questionnaires, we advise stakeholders to reply to only one of the two versions (either the targeted consultation or the open public consultation) to avoid unnecessary duplications. Please note that replies to both questionnaires will be equally considered.

Views are welcome from all stakeholders. You are invited to provide feedback on the questions raised in this online questionnaire. We invite you to add any documents and/or data that you would deem useful to accompany your replies at the end of this questionnaire, and only through the questionnaire. Please explain your responses and, as far as possible, illustrate them with concrete examples and substantiate them numerically with supporting data and empirical evidence. This will allow further analytical elaboration.

You are requested to read the specific privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

The consultation will be open for 12 weeks.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-listing-act@ec.europa.eu.

More information on

- this consultation
- the public consultation running in parallel
- the consultation document
- SME listing on public markets
- the protection of personal data regime for this consultation

About you

* Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ◉ English
- ○ Estonian
- ○ Finnish
- ○ French
- ○ German
- ○ Greek
- ○ Hungarian
- ○ Irish
- ○ Italian
- ○ Latvian
- ○ Lithuanian
- ○ Maltese
- ○ Polish
- ○ Portuguese
- ○ Romanian
- ○ Slovak
- ○ Slovenian
- ○ Spanish
- ○ Swedish

* I am giving my contribution as

- ○ Academic/research institution
- ◉ Business association
- ○ Company/business organisation
- ○ Consumer organisation
- ○ EU citizen

- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Info

* Surname

EUROPEANISSUERS

* Email (this won't be published)

info@europeanissuers.eu

* Organisation name

255 character(s) maximum

EuropeanIssuers

* Organisation size

- (•) Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Djibouti
- Libya
- Saint Martin

- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable)

- [ ] Operator of a trading venue (regulated market, MTF including SME growth markets, OTF)
- [ ] Operator of market infrastructure other than trading venue (clearing house, central security depositary, etc.)
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, pension funds)
- [ ] Broker/market-maker/liquidity provider
- [ ] Financial research provider
- [ ] Investment bank
- [ ] Accounting and auditing
- [ ] Insurance
- [ ] Credit rating agency

- [x] Corporate, issuer
- [ ] Other
- [ ] Not applicable

The Commission will publish all contributions to this targeted consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') is always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

*** Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ( ) **Anonymous**
  Only the organisation type is published: The type of respondent that you responded to this consultation as, your field of activity and your contribution will be published as received. The name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- (•) **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

- [x] I agree with the personal data protection provisions

1. General questions on the overall functioning of the regulatory framework

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The current EU rules relevant for company listing consist of provisions contained in a number of legal acts, such as the Prospectus Regulation, the Market Abuse Regulation (MAR), the Market in Financial Instruments Directive (MiFID II), the Market in Financial Instruments Regulation (MiFIR) the Transparency Directive and the Listing Directive. These rules primarily aim at balancing the facilitation of companies' access to EU public markets with an adequate level of investor protection, while also pursuing a number of secondary or overarching objectives.

Question 1. In your view, has EU legislation relating to company listing been successful in achieving the following objectives?

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Ensuring adequate access to finance through EU capital markets	○	◉	○	○	○	○
Providing an adequate level of investor protection	○	○	○	◉	○	○
Creating markets that attract an adequate base of professional investors for companies listed in the EU	○	◉	○	○	○	○
Creating markets that attract an adequate base of retail investors for companies listed in the EU	◉	○	○	○	○	○
Providing a clear legal framework	○	◉	○	○	○	○
Integrating EU capital markets	○	○	◉	○	○	○

Please explain the reasoning of your answer to question 1:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Generally, EuropeanIssuers takes the view that the regulatory framework needs to be rebalanced to make capital markets more attractive (see also summarising cover letter attached to the formal response to the consultation). Currently, the focus is too much on investor protection and too less on the negative side effects, namely the loss of attractiveness of public markets This general problem has been analysed in depth by a number of expert groups (e.g. TESG, CMU HLF, Oxera Report) which the EU Commission rightly refers to.

Although investor protection increases integrity of capital markets and issuers support an adequate level of investor protection for that reason, too strict rules bear the risk that companies refrain from public markets due to compliance costs and legal uncertainties. The decreasing number of listed companies in Europe is the most prominent sign that there is a need for rebalancing.

As another unintended side effect of overly strict regulation, banks more and more retreat from investment advice. With them, very important advocates of capital market instruments are no longer available. As a result, costs to access capital markets for financing and investing purposes are too high.

Overall, the legislator should strike the right balance between investor protection needs and costs associated for market participants to comply with those rules. Dismantling inappropriate bureaucracy is of urgent need. Therefore, the focus on forthcoming EU capital markets initiatives should lie on better regulation enhancing market access for companies, professional and retail investors. In this regard, we very much welcome the present consultation.

As noted by numerous stakeholders and recognised in the CMU action plan, public listing in the EU is currently too cumbersome and costly, especially for SMEs. The Oxera report on primary and secondary equity markets in the EU stated that the number of listings in the EU-28 declined by 12%, from 7,392 in 2010 to 6,538 in 2018, while GDP grew by 24% over the same period. As a corollary of this, EU public markets for capital remain depressed, notably in comparison to public markets in other jurisdictions with more developed financial markets overall. Weak EU capital markets negatively impact the funding structure and cost of capital of EU companies which currently over rely on credit when compared to other developed economies.

Question 2. In your opinion, how important are the below factors in explaining the lack of attractiveness of EU public markets?

a) Regulated markets:

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Excessive compliance costs linked to regulatory requirements	○	○	○	◉	○	○
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	○	○	○	◉	○	○
Lack of attractiveness of SMEs' securities	◉	○	○	○	○	○
Lack of liquidity of securities	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Please explain the reasoning of your answer to question 2 a):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Excessive compliance costs: Generally, the intensity of regulation for listed companies has increased significantly over the past two decades as has the level of sanctions. For companies already listed this means that a huge amount of additional resources for the compliance with the numerous obligations is necessary which makes listing in public markets less attractive. This holds true especially for MAR and Prospectus Regulation. As a consequence, in particular SMEs are reluctant to raise capital on capital markets due to high regulatory requirements and its associated bureaucratic burden. These companies do not have the necessary resources available to handle this effort.

Listed SMEs struggle with the vast bulk of regulation that has to be implemented immediately after the listing. Following the role model adopted in the US-JOBs-Act it would be helpful to allow the respective SMEs a transition period with a lighter regulation. This transition period would allow companies to get used to the high capital market requirements and would alleviate the implementation of the full set of standards. In line with the TESG and the HLF on CMU recommendations, we suggest that an optional period for a duration of 3 years for SMEs should apply to issuers wishing to transition from a SME GM to a RM, as well for SMEs wishing to list directly on RMs. Also, a broader definition of SMEs, applicable across all financial services legislation, for issuers listed on SME GMs and RM shaping a market capitalisation of below Euro 1 billion.

Investor interest and liquidity: Our response refers to SME shares in particular as it is our experience that liquidity mainly depends on the size of the company and less on the market segment. There is a lack of willingness among retail investors in many member states to invest in shares and other capital market instruments. Missing domestic capital has a negative impact on SMEs in particular. While larger companies are heavily financed by foreign investors, companies especially in the tech sector go for a listing in the country where the investors are. That is the US in particular.

The "remaining" SMEs either do not go public at all or struggle with a vicious circle while being listed. The low level of investor interest has a negative impact on the liquidity of the shares. Low liquidity leads to declining investor interest, which in turn leads to further declining liquidity. This vicious circle must be broken by strengthening the investor base in the EU. This requires measures to make share ownership and investment in growth capital more attractive

b) SME growth markets:

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Excessive compliance costs linked to regulatory requirements	○	○	○	◉	○	○
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	○	○	○	◉	○	○
Lack of attractiveness of SMEs' securities	◉	○	○	○	○	○
Lack of liquidity of securities	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Please explain the reasoning of your answer to question 2 b):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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c) Other markets (e.g. other MTFs, OTFs):

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Excessive compliance costs linked to regulatory requirements	○	○	○	◉	○	○
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	○	○	○	◉	○	○
Lack of attractiveness of SMEs' securities	◉	○	○	○	○	○
Lack of liquidity of securities	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Please explain the reasoning of your answer to question 2 c):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Excessive compliance costs: Generally, the intensity of regulation for listed companies has increased significantly over the past two decades as has the level of sanctions. For companies already listed this means that a huge amount of additional resources for the compliance with the numerous obligations is necessary which makes listing in public markets less attractive. This holds true especially for MAR and Prospectus Regulation. As a consequence, in particular SMEs are reluctant to raise capital on capital markets due to high regulatory requirements and its associated bureaucratic burden. These companies do not have the necessary resources available to handle this effort.

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Companies, in particular SMEs, do not consider listing in the EU as an easy and affordable means of financing and may also find it difficult to stay listed due to on-going listing requirements and costs. More specifically, the new CMU action plan identified factors such as high administrative burden, high costs of listing and compliance with listing rules once listed as discouraging for many companies, especially SMEs, from accessing public markets. When taking a decision on whether or not to go public, companies weigh expected benefits against costs of listing. If costs are higher than benefits or if alternative sources of financing offer a less costly option, companies will not seek access to public markets. This *de facto* limits the range of available funding options for companies willing to scale up and grow.

Question 3. In your view, what is the relative importance of each of the below costs in respect to the overall cost of an initial public offering (IPO)?

a) Direct costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
Fees charged by the issuer's legal advisers for all tasks linked to the preparation of the IPO (e. g. drawing-up the prospectus, liaising with the relevant competent authorities and stock exchanges etc.)	○	○	○	○	◉	○
Fees charged by the issuer's auditors in connection with the IPO	○	○	◉	○	○	○
Fees and commissions charged by the banks for the coordination, book building, underwriting, placing, marketing and the roadshow	○	○	○	○	◉	○

Fees charged by the relevant stock exchange in connection with the IPO	○	◉	○	○	○	○
Fees charged by the competent authority approving the IPO prospectus	○	○	◉	○	○	○
Fees charged by the listing and paying agents	◉	○	○	○	○	○
Other direct costs	○	○	○	○	○	○

b) Indirect costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
The potential underpricing of the shares during the IPO by investment banks	○	○	○	○	○	◉

Cost of efforts required to comply with the regulatory requirements associated with the listing process	○	○	○	○	○	◉
Other indirect costs	○	○	○	○	○	○

Please explain the reasoning of your answer to question 3:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Overall, in particular the creation of the prospectus is a costly and time-consuming process. Also, issuers experience high costs for the various banks' services.
Other elements of costs may depend on national specifics. Some issuers have made the experience that costs charged by authorities are particularly significant (for equity prospectus or secondary offer prospectus no fee are required in France. In Germany the standard fee is Euro 6,500, in Italy the approval fee is Euro 22,755, plus 0,71% of the offer value – if the offer value is higher then Euro 13 million –, up to Euro 6,000,000) while others regard them as negligible. The same holds true for fees charged by stock exchanges that appear to be significant in some markets while they are small in others.
On indirect costs it has also be noted that these might depend on the company in question. Depending on whether the company is known to the public the costs for marketing the share may vary.

After their initial listing, companies continue to incur a number of costs that derive from being listed. These costs can be both indirect such as those derived from compliance and regulation requirements and direct such as fees paid to the listing venue. In some cases companies may choose to voluntarily delist in order to avoid these costs which can be viewed as excessive, especially for SMEs.

Question 4. In your view, what is the relative importance of each of the below costs in respect to the overall costs that a company incurs while being listed?

a) Direct costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable

Ongoing fees due by the issuer to the listing venue for the continued admission of its securities to trading on the listing venue	○	◉	○	○	○	○
Ongoing fees due by the issuer to its paying agent	◉	○	○	○	○	○
Ongoing legal fees due by the issuer to its legal advisors (if post-IPO external legal support is necessary to ensure compliance with listing regulations)	○	○	○	◉	○	○
Fees due by the issuer to auditors if post-IPO, extra auditor work is necessary to ensure compliance with listing regulation	○	○	◉	○	○	○
Corporate governance costs	○	○	◉	○	○	○

Other direct costs (e.g. costs for extra headcount, costs allocated to investors' relationships, development and maintenance of a website)	○	○	◉	○	○	○

Please specify to what other direct costs you refer in your answer to question 4 a):

2000 character(s) maximum

b) Indirect costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
Increased risk of litigation due to investor base and increased scrutiny and supervision derived from being listed	○	○	◉	○	○	○
Other indirect costs	○	○	○	◉	○	○

Please specify to what other costs you refer in your answer to question 4 b):

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain the reasoning of your answer to question 4:

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As with the process of going public (see Q4) there are numerous costs related to being public. Some of them are related to the fact that public companies have to interact with their existing and potential investors (item f), which clearly causes extra headcount and makes additional resources necessary. These costs though significant are generally justified as they can be influenced by the listed companies in deciding on the intensity of communication efforts.

Other costs cannot be influenced as they are linked to specific regulation. Among these costs are costs associated with ongoing compliance (item c and partly also e) such as building up internal resources or paying fees for external advices. It also has to be noted, that in particular SMEs do not have the necessary resources to implement these rules internally, but need external legal advice.
Issuers therefore struggle with the increase in intensity of regulation (like the MAR requirements). The latest development are ESG reporting requirements, which are very costly to implement.

Furthermore, it is important to recognize further costs that are not yet mentioned in the table, most notably the costs associated with regulatory authorities, which, however, might depend on national specifics (see also Q 3)

And finally, the EU Commission is right to ask about indirect costs. Indeed, public companies are generally faced with more scrutiny as side effect of a listing. They thus face higher reputational risk and - though this not linked to regulation - it might be one aspect when considering going public. In contrast to this, sanctions (item h) are an element of regulation which can be addressed. Sanctions basically have two effects: They ensure that companies comply with the law. In that sense they are necessary in order to ensure market integrity. However, sanctions, that are too high, act as a deterrent for companies to enter the capital market at all. There is indeed a wide-spread concern among listed companies that the level of sanctions linked to rather minor or technical misconduct has become too high. Furthermore, especially directly after the IPO, when companies have to "get used to" the implementation of regulations, sanctions for misconduct should be applied with a sense of proportion.

In order to comply with all regulatory requirements such as those included in the MAR or the Prospectus Regulation, companies have to invest time and resources. This may be seen as a disproportionate burden compared to the advantages this may bring in terms of investors protection.

Question 5.1 In your view, does compliance with IPO listing requirements create a burden disproportionate with the investor protection objectives that these rules are meant to achieve?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 5.1:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.2 In your view, does compliance with post-IPO listing requirements create a burden disproportionate with the investor protection objectives that these rules are meant to achieve?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 5.2:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answers to detailed questions.

Public markets are not flexible enough to accommodate companies’ financing needs. This lack of flexibility may be driven by regulatory constraints (e.g. concerning the ability of companies owners to retain control of their business when going public by issuing shares with multiple voting rights), as well as by the lack of legal clarity in relevant legislation (e.g. the conditions under which a company may seek dual listing). Regulatory constraints or legal uncertainty may discourage the use of public markets by firms that find requirements inadequate or unclear.

Question 6. In your view, would the below measures, aimed at improving the flexibility for issuers, increase EU companies’ propensity to access public markets?

	Yes	No	Don't know - No opinion - Not applicable
Allow issuers to use shares with multiple voting rights when going public	◉	○	○
Clarify conditions around dual listing	○	○	◉
Lower minimum free float requirements	◉	○	○
Eliminate minimum free float requirements	◉	○	○
Other	○	○	○

Please explain the reasoning of your answer to question 6:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are generally in favour of the multiple voting rights and lower minimum free float requirements as this makes it easier for founder-owned companies and start-ups to use public markets. See in detail our answers to Q 96.3 & Q 101-102

In addition to that, the EU Commission should recognize that SMEs and start ups are in a completely different situation compared to large cap companies. In relation to the size of the company, compliance costs and efforts typically tie up more resources and changes to existing regulation must be regarded against a generally lower degree of sophistication and specialisation of the legal and IR departments. The Commission thus should seek ways to reduce the hurdles that this creates. Besides generally reducing the burden for all listed companies, one option could be to to implement a transition period for newly listed companies that allow them to adapt to new requirements (see Q 2)

The lack of available company research and insufficient liquidity discourage investors from investing in some listed securities. Many securities issued by SMEs in the EU are characterised by lower liquidity and higher illiquidity premium, which may be the direct result of how these companies are perceived by investors, in particular institutional investors, who do not find them sufficiently attractive. Furthermore, institutional investors may fear reputational risk when investing in companies listed on multilateral trading facilities, including SME growth markets, given the lack of minimum corporate governance requirements for issuers on those venues.

Question 7. In your view, what are the main factors that explain why the level of institutional and retail investments in SME shares and bonds remains low in the EU?

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Lack of visibility and attractiveness of SMEs towards investors leading to a lack of liquidity for SME shares and bonds	◉	○	○	○	○	○
Lack of investor confidence in listed SMEs	◉	○	○	○	○	○
Lack of tax incentives	○	○	○	◉	○	○
Lack of retail participation in public capital markets (especially in SME growth markets)	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Please explain the reasoning of your answer to question 7:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SMEs are particularly dependent on capital from domestic private investors. This makes it all the more important to strengthen the equity culture in the EU for these companies. Tax incentives may help to make share ownership more attractive for retail investors. This includes especially measures to reduce the double taxation of profits, which are most commonly taxed on the company and the investor level.

2. Specific questions on the existing regulatory framework

Please click on the button Next to respond to the rest of the questionnaire.

2.1 Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market)

The Prospectus Regulation (Regulation (EU) 2017/1129), which started applying in July 2019, lays down the rules governing the prospectus that must be made available to the public when a company makes an offer to the public or an admission to trading of transferable securities on a regulated market in the EU. The prospectus is a legal document that contains information about the issuer (e.g. main line of business, finances and shareholding structure) and the securities offered to the public or to be admitted to trading on a regulated market. A prospectus has to be approved by the competent authority of the home Member State before the beginning of the offer or the admission to trading of the securities.

The Prospectus Regulation has been subject to targeted amendments

i. at the end of 2019 under the SME Listing Act
ii. in 2020 under the Crowdfunding Regulation
iii. and in 2021 under the capital markets recovery package

However, the prospectus regime remains to be seen by some as burdensome and unfit for attracting companies, in particular SMEs, to public markets. Both the CMU High Level Forum (HLF) and the TESG have highlighted that the process of drawing up a prospectus and getting it approved by the relevant national competent authority is expensive, complex and time-consuming and that targeted yet ambitious simplification of prospectus rules could reduce significantly compliance costs for companies and lower obstacles to tapping public markets.

This section aims at gathering respondents' views on the costs stemming from the application of the prospectus regime as well as on which requirements are most burdensome and how it would be possible to alleviate them without impairing investor protection and the overall transparency regime. Furthermore, this section aims to examine other aspects of the Prospectus Regulation, such as the functioning of the thresholds for exemptions from the obligation to publish a prospectus, the language regime and rules concerning the approval and publication of prospectuses.

2.1.1. Costs stemming from the drawing up of a prospectus

Analysis conducted by Oxera highlights that the efforts required to comply with the regulatory requirements associated with the listing process, and the litigation risk that could emerge, are often cited by industry practitioners as the most significant indirect costs of listing. In particular, many issuers stressed, as a high and growing cost to listing, the increased length and complexity of the prospectus documentation.

Question 8.1. As an issuer or an offeror, could you provide an estimation for the average cost of the prospectuses listed below (in EUR amount)? If necessary, please provide different estimations per type of prospectus (e.g. prospectus for an IPO, for a right issue, for a convertible bond, for a corporate bond, for an EMTN programme).

Prospectus Type	Estimation for the average cost in EUR
Standard prospectus for equity securities	
Standard prospectus for non-equity securities	
Base prospectus for non-equity securities	
EU growth prospectus for equity securities	
EU growth prospectus for non-equity securities	
Simplified prospectus for secondary issuances of equity securities	
Simplified prospectus for secondary issuances of non-equity securities	
EU recovery prospectus (currently available for shares only)	

Please explain the reasoning of your answer to question 8.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Costs of prospectuses depend to a very limited extent on the type of prospectus since the most important part of the costs are legal costs relating to preparing the placement agreement and audit costs. In this regard the fees paid to investment firms are also among the most important cost factors in an IPO.

Question 8.2 Considering the total costs incurred by an issuer for the drawing up of a prospectus, please indicate what is the relative importance of each of the below costs in respect to the overall costs.

a) IPO prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs	○	○	○	○	○	○
Auditors costs	○	○	○	○	○	○
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)	○	○	○	○	○	○
Competent authorities' fees	○	○	○	○	○	○
Other costs	○	○	○	○	○	○

b) Right issue prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable

Issuer's internal costs						
Auditors costs						
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)						
Competent authorities' fees						
Other costs						

c) Bond issue prospectus

	Less than or equal to 10% of total costs	Greater than 10% and less than or equal to 20% of total costs	Greater than 20% and less than or equal to 40% of total costs	Greater than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs						
Auditors costs						
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)						
Competent authorities' fees						
Other costs						

d) Convertible bond issue prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs	○	○	○	○	○	○
Auditors costs	○	○	○	○	○	○
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)	○	○	○	○	○	○
Competent authorities' fees	○	○	○	○	○	○
Other costs	○	○	○	○	○	○

e) EMTN program prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs	○	○	○	○	○	○
Auditors costs	○	○	○	○	○	○
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)	○	○	○	○	○	○

Competent authorities' fees						
Other costs						

Please explain the reasoning of your answer to question 8.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9. What are the sections of a prospectus that you find the most cumbersome and costly to draft?

	1 (not burdensome at all)	2 (rather not burdensome at all)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
Summary	○	○	○	◉	○	○
Risk factors	○	○	○	○	◉	○
Business overview	○	○	○	◉	○	○
Operating and financial review	○	○	◉	○	○	○
Regulatory environment	○	○	◉	○	○	○
Trend information	○	○	◉	○	○	○
Profit forecasts or estimates	○	○	○	◉	○	○
Administrative, management and supervisory bodies and senior management	○	○	○	◉	○	○
Related party transactions	○	◉	○	○	○	○
Financial information concerning the issuer's assets and liabilities, financial position and profit and losses	○	○	○	◉	○	○
Working capital statement	○	○	◉	○	○	○
Statement of capitalisation and indebtedness	○	○	◉	○	○	○
Others	○	○	○	○	○	○

Please explain the reasoning of your answer to question 9:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10. As an issuer or an offeror, how much money do you consider saving with the EU growth prospectus compared to a standard prospectus (in percentage)?

	Less than or equal to 10%	More than 10% and less than or equal to 20%	More than 20% and less than or equal to 40%	More than 40% and less than or equal to 50%	More than 50%	Don't know - No opinion - Not applicable
EU growth prospectus for equity securities compared to a Standard prospectus for equity securities	○	○	○	○	○	○
EU growth prospectus for non-equity securities compared to a Standard prospectus for non-equity securities	○	○	○	○	○	○

Please explain the reasoning of your answer to question 10:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11. As an issuer or offeror, how much money do you consider saving with the EU recovery prospectus, currently available only for shares, compared to a standard prospectus and a simplified prospectus for secondary issuances of equity securities (in percentage)?

	Less than or equal to 10%	More than 10% and less than or equal to 20%	More than 20% and less than or equal to 40%	More than 40% and less than or equal to 50%	More than 50%	Don't know - No opinion - Not applicable
EU recovery prospectus compared to a standard prospectus for equity securities	○	○	○	○	○	○
EU recovery prospectus compared to a simplified prospectus for secondary issuances of equity securities	○	○	○	○	○	○

Please explain the reasoning of your answer to question 11:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that only few issuances were realised using the recovery prospectus since it came into force. Different reasons can explain why so few companies used the recovery prospectus. The limit regarding the number of pages could raise liability issues whilst the disclosure requirements have not been sufficiently reduced : the recovery prospectus tries to alleviate the burden on issuers mainly by reducing the length of the document (to no more than 30 pages), but it maintains a wide range of information to be provided, some of them are quite complex and costly to produce, such as the working capital statement and the risk factors that are specific to the issuer and the shares. Therefore, companies bear similar liability as for an ordinary prospectus, exacerbated by the need to synthetize the information in a shorter format. Furthermore, companies regularly tapping the markets (not necessarily frequent issuers in the meaning of Article 9 of the prospectus Regulation) don't see significant improvement or alleviation in drafting a recovery prospectus and then – once this transitional measure has expired – reverting to a full prospectus.

2.1.2. Circumstances when a prospectus is not needed

The Prospectus Regulation currently lays down several exemptions for the offer of securities to the public (Article 1(4) and 3(2)) or the admission to trading of securities on a regulated market (Article 1(5)). Moreover, the Prospectus Regulation does not apply to offers of securities to the public below EUR 1 million, in accordance with the conditions laid down in Article 1(3).

Question 12.1 Would you be in favour of adjusting the current prospectus exemptions so that a larger number of offers can be carried out without a prospectus?

a) Exemptions for offers of securities to the public (Article 1(4) of the Prospectus Regulation):

Please select as many answers as you like

- [x] i. An offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors (Article 1(4), point (b))
- [ ] ii. An offer of securities whose denomination per unit amounts to at least EUR 100 000 (Article 1(4), point (c))
- [ ] iii. An offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer (Article 1(4), point (d))
- [x] iv. Other exemptions

Please specify what changes you would propose to the exemption listed in point i. and include, where relevant, your preferred threshold:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers supports the increase of the threshold of 150 persons to 500 natural or legal persons in order to allow companies to raise funds more easily and to align with the US regime following the adoption of the JOBS Act.

Please specify what changes you would propose to the exemption listed in point iv. and include, where relevant, your preferred threshold:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers consider that take-over bids by way of exchange offer and merger/demerger transactions should be outside the scope of the Prospectus Regulation since they are regulated by other pieces or legislation which already require information to be disclosed to the markets or shareholders. An alternative option could be to amend the related provisions of the Prospectus Regulation to clearly prescribe that the information document to be published to benefit from the prospectus exemption is only focused on the characteristics of the securities to be admitted to trading and should not be reviewed by Competent Authorities.

b) Exemptions for the admission to trading on a regulated market (Article 1(5) of the Prospectus Regulation):

Please select as many answers as you like

- [x] i. Securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of securities already admitted to trading on the same regulated market (Article 1(5), first subparagraph, point (a))
- [x] ii. Shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph (Article 1(5), first subparagraph, point (b))
- [x] iii. Other exemptions

Please specify what changes you would propose to the exemption listed in point i. and include, where relevant, your preferred threshold:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers' members consider that the thresholds of 20% should be raised to at least 30% for the admission of securities fungible with securities already admitted to trading on the same regulated market and shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities. Such increase would not lower investor protection since the securities are already listed and therefore the concerned issuer already makes public information regarding its activities, risks and financial situation. Furthermore, when an offer to the public is made prior to the admission, a prospectus would be published.

Please specify what changes you would propose to the exemption listed in point ii. and include, where relevant, your preferred threshold:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers' members consider that the thresholds of 20% should be raised to at least 30% for the admission of securities fungible with securities already admitted to trading on the same regulated market and shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities. Such increase would not lower investor protection since the securities are already listed and therefore the concerned issuer already makes public information regarding its activities, risks and financial situation. Furthermore, when an offer to the public is made prior to the admission, a prospectus would be published.

Please specify what changes you would propose to the exemption listed in point iii. and include, where relevant, your preferred threshold:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers consider that take-over bids by way of exchange offer and merger/demerger transactions should be outside the scope of the Prospectus Regulation since they are regulated by other pieces or legislation which already require information to be disclosed to the markets or shareholders. An alternative option could be to amend the related provisions of the Prospectus Regulation to clearly prescribe that the information document to be published to benefit from the prospectus exemption is only focused on the characteristics of the securities to be admitted to trading and should not be reviewed by Competent Authorities.

c) Exemptions applicable to both the offer of securities to the public and admission to trading on a regulated market:

Please select as many answers as you like

- [ ] i. 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 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities: 1. are not subordinated, convertible or exchangeable; and 2. do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument (Article 1(4), point (j) and Article 1(5), first subparagraph, point (i)).
- [ ] ii. From 18 March 2021 to 31 December 2022, 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, provided that those securities: 1. are not subordinated, convertible or exchangeable; and 2.do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument (Article 1(4), point (l), and Article 1(5), first subparagraph, point (k))
- [ ] iii. Other exemptions

Question 12.2 Would you consider that more clarity should be provided on the application of the various thresholds below which no prospectus is required under the Prospectus Regulation (e.g. on total consideration of the offer and calculation of the 12 month-period)?

- (•) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Question 12.2.1 Please explain on which thresholds and on which elements more clarity is needed and explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12.3 Could any additional types of offers of securities to public and admissions to trading on a regulated market be carried out without a prospectus while maintaining adequate investor protection?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Question 13.1 The exemption thresholds in Articles 1(3) and 3(2) are designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers for small offers. If you consider that these thresholds should be adjusted so that a larger number of offers can be carried out without a prospectus, please indicate your preferred threshold in the table below.

Provision	Preferred Threshold
Article 1(3) of the Prospectus Regulation. Explanation: Offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months, are out of scope of the Prospectus Regulation. **Existing Threshold: EUR 1 000 000**	1 000 000
Article 3(2) of the Prospectus Regulation. Explanation: Member States may decide to exempt offers of securities to the public from the obligation to publish a prospectus provided that such offers do not require notification (passporting) and the total consideration of each such offer in the Union is less than a monetary amount calculated over a period of 12 months which shall not exceed EUR 8 000 000. **Existing Threshold: EUR 8 000 000 (Upper threshold)**	8 000 000

Please explain the reasoning of your answer to question 13.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The thresholds mentioned above are well-established in the EU and EuropeanIssuers considers that they should not be changed in order to ensure legal stability and certainty for companies.

Question 13.2 Do you agree with Member States exercising their discretion over the threshold set out in Article 3(2) of the Prospectus Regulation with a view to tailoring it to national specificities of their markets?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Question 13.2.1 Please make an alternative proposal to the Member States exercising their discretion over the threshold set out in Article 3(2) of the Prospectus Regulation:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain the reasoning of your answer to question 13.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To foster market integration the same threshold should apply in all Member States.

2.1.3 The standard prospectus for offers of securities to the public or admission to trading of securities on a regulated market (primary issuances)

Several industry practitioners have stressed that the increasing length and complexity of the prospectus documentation is one of the most important costs associated to the listing process. According to a survey which analysed the average length of the IPO prospectus for the 10 most recent IPOs in the main EU markets as of March 2019, the median length

of an IPO prospectus was 400 pages in Europe, with significant divergence among countries, ranging from 250 pages in the Netherlands to over 800 pages in Italy.

The excessive length – and thus high cost – of a prospectus is deemed particularly challenging for smaller issuers of both equity and non-equity securities. Data show that there is currently little proportionality with respect to the length of the IPO prospectus based on the size of the issuer: the mean number of pages for issuers with a market capitalisation between EUR 150 million and EUR 1 billion is even higher than for issuers with a market capitalisation above EUR 1 billion (577 versus 514 pages, respectively).

General issues

Question 14.1 Do you think that the standard prospectus for an offer of securities to the public or an admission to trading of securities on a regulated market in its current form strikes an appropriate balance between effective investor protection and the proportionate administrative burden for issuers?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please indicate whether you consider that:

- ○ a) The standard prospectus should be replaced by a more streamlined and efficient type of prospectus (e.g. EU growth prospectus)
- ◉ b) The standard prospectus should be significantly alleviated
- ○ c) The standard prospectus for the admission to trading on a regulated market should be replaced by another document (e.g. an admission document)
- ○ d) Other

If you chose 14.1 b), what are the disclosures that could be removed or alleviated from a standard prospectus? Please explain your reasoning:

(You may take as reference the disclosures outlined in the table on question 9).

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers consider that there should be a prospectus for companies without any securities listed (whether equity or debt) - that would be more detailed but still alleviated compared to the current so called standard prospectus - and a prospectus for companies with securities listed which would only focus on the characteristics of the transaction and of the new securities.
Furthermore, the incorporation by reference regime should be amended in order to allow issuers to incorporate any document available in a public registry in a prospectus.
As regards in particular the content of prospectuses, the following alleviations should be considered:

- Risk factors (Section 3 Annex 1 of Delegated Regulation 2019/980): the presentation of risk factors is important, but the requirements for presentation and categorisation make the prospectus unnecessarily complicated. The required ranking of risk factors imposes an undue burden and, more importantly, liability risk to the issuer.
- Important events in the development of the issuer's business (Item 5.3 Annex 1 of Delegated Regulation 2019/980): all material information is already included in the issuer's financial information and in the description of the issuer's business.
- Capital resources (Section 8 Annex 1 of Regulation (EC) No 2019/980): the information on the issuer's capital resources and of the issuer's cash flows can be taken from the balance sheet and the cash flow statement as part of the IFRS financial statements. Thus, all essential information is already available.
- Administrative, management and supervisory bodies and senior management (Section 12 Annex 1 of Delegated Regulation 2019/980): the information on administrative, management and supervisory bodies as well as senior management appears unnecessarily detailed and can be difficult and time-consuming to compile. The requirements should contain only the information that is material to investors and be reduced to the last 3 years.
- Related party transactions (Section 17 Annex 1 of Delegated Regulation 2019/980): this information is redundant as it is part of the disclosures required by IAS 24 for the issuer's consolidated financial statements and as such should be included in the prospectus.
- Statement of capitalisation and indebtedness (Item 3.2 Annex 11 of Delegated Regulation 2019/980): the statement of capitalisation and indebtedness generates effort and is redundant with the information included in the financial statements. However, the current presentation of capitalisation and indebtedness is not aligned with IFRS accounting and generates additional efforts. This disclosure requirement is even more burdensome when issuers have to prepare a separate new balance sheet, as the statement on capitalisation and indebtedness may not be older than 90 days. If the statement on capitalisation and indebtedness is to be maintained, at least no disclosure beyond the historical financial information or, if applicable, interim financial information should be required (in case of material changes, the general disclosure principles of Article 6 of the Prospectus Regulation applies and updated information would be required under the section related to « Significant change in the issuer’s financial position »).

Question 15. Would you support introducing a maximum page limit to the standard prospectus?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 15:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Prospectus summary

The prospectus summary is one of the three components of a prospectus (alongside the registration document and the securities note). Its purpose is to provide, in a concise manner and in non-technical language, the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered to the public or admitted to trading on a regulated market. The prospectus summary is to be read together with the other parts of the prospectus, to aid investors, particularly retail investors, when considering whether to invest in such securities. Views are welcome as to whether room for improvement exists.

Question 16. Do you believe that the prospectus summary regime has achieved its objectives (i.e. make the summary short, simple, clear and easy for investors to understand)?

	Yes	No	Don't know - No opinion - Not applicable
Summary of the standard prospectus (Article 7 of the Prospectus Regulation, excluding paragraph 12a)	◉	○	○
Summary of the EU growth prospectus (Article 33 of Commission Delegated Regulation (EU) 2019/980)	○	○	◉
Summary of the EU recovery prospectus (Article 7(12a) of the Prospectus Regulation)	○	○	◉

Incorporation by reference

The “incorporation by reference” mechanism allows the information contained in one of the documents listed in Article 19(1) of the Prospectus Regulation to be incorporated into a prospectus by including a reference. However, this information must have already been previously or simultaneously published electronically and drawn up in a language fulfilling the language requirements laid down in Article 27 of the Prospectus Regulation. Incorporation by reference facilitates the procedure of drawing up a prospectus and lowers the costs for issuers.

Question 17. Would you suggest any improvement to the existing rules on incorporation by reference, including amending or expanding the list of information that can be incorporated by reference?

- ◉ Yes
- ○ No
- ○ Don’t know/ no opinion / not relevant

Please explain the reasoning of your answer to question 17:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In order to provide significant alleviation to prospectuses, issuers should be allowed to incorporate by reference all document filed with an official register and publicly available.

The standard prospectus for non-equity securities

In the Prospectus Regulation non-equity securities are subject to specific rules, such as the possibility to draw up a base prospectus (normally for offering programs) and the dual regime for retail non-equity securities versus wholesale non-equity securities. The latter are non-equity securities that have a denomination per unit of at least EUR 100 000 or that are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in those securities. Wholesale non-equity securities are exempted from the prospectus for the offer to the public and are entitled to a lighter prospectus for the admission to trading on a regulated market (e.g. no prospectus summary, flexible language requirement, lighter disclosures), as set out in Commission Delegated Regulation (EU) 2019/980.

Question 18.1 Do you think that the prospectus (including the base prospectus) for non-equity securities, with differentiated rules for the admission to trading on a regulated market of retail and wholesale non-equity securities, has been successful in facilitating fundraising through capital markets?

- (•) Yes
- ( ) No
- ( ) Don't know/ no opinion / not relevant

Please explain the reasoning of your answer to question 18.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 18.2 Would you be in favour of further aligning the prospectus for retail non-equity securities with the prospectus for wholesale non–equity securities, to make the retail prospectus lighter and easier to be read?

- ( ) Yes
- ( ) No
- (•) Don't know/ no opinion / not relevant

Please explain the reasoning of your answer to question 18.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 18.3 Would you consider any other amendment to the existing rules?

- Yes
- No
- Don’t know/ no opinion / not relevant

Please explain the reasoning of your answer to question 18.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.4. Prospectus for SMEs

SMEs and other categories of beneficiaries (e.g. mid-caps listed on an SME growth market) defined in Article 15(1) of the Prospectus Regulation, can choose to draw up an EU growth prospectus for offers of securities to the public, provided that they have no securities admitted to trading on a regulated market. The EU growth prospectus is more alleviated than a standard prospectus, as it contains less disclosures (e.g. board practices, employees, important events in the development of the issuer’s business, operating and financial review) and in some cases more alleviated ones (e.g. principal activities, principal markets, organisational structure, investments, trend information, historical financial information, dividend policy). As this development is relatively recent, there is limited data available to assess whether the introduction of the EU growth prospectus has affected the average length of prospectuses for SMEs. However, feedback from market participants indicates that there has not been a substantial decrease in the length of documents submitted after July 2019.

Question 19. Do you believe that the EU growth prospectus strikes a proper balance between investor protection and the reduction of administrative burdens for SMEs?

- Yes
- (•) No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 19:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers consider that the EU Growth prospectus has not reached its objective. Such a document should be readable and comprehensible for retail investors: short and simple. As mentioned in our answer to question 14 above, we consider that there should be a distinction between public companies with securities listed and non-public companies. In the first case, the prospectus should be a short and simple document focusing on the characteristics of the transaction and of the securities.

Question 19.1 How could the regime for SMEs be amended?

- i. The EU growth prospectus should remain the prospectus for SMEs but should be alleviated and / or a page size limit be introduced
- ii. A new prospectus for SMEs should be introduced and aligned to the level of disclosures required for admission or listing by MTFs, including SME Growth markets
- iii. Instead of a prospectus, another form of admission or listing document should be introduced
- iv. Other

If you selected option 19.1 (iii), which MTFs, including SME Growth markets, in the EU do you consider having the most appropriate admission or listing documents?

Could you please explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If you selected option 19.1 (ii) or (iii), please explain your reasoning and specify what other form of admission or listing document should be introduced:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.5. The format and language of the prospectus

Electronic Prospectus

The Prospectus Regulation sets out an obligation for issuers to provide a copy of the prospectus on either a durable medium or printed upon request of any potential investor. It has been noted that, due to the current prevalence of digital mediums, this may be an unnecessary cost and administrative burden for issuers.

Question 20. Do you agree that the above mentioned obligation should be deleted and that a prospectus should only be provided in an electronic format as long as it is published in accordance with Article 21 of the Prospectus Regulation?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 20:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Language rules for the prospectus

The TESG in its final report argued that publishing a prospectus only in English, as the customary language in the sphere of international finance, independently from the official language of the home or host Member States could reduce the burden on companies offering securities in several Member States and contribute to creating a level playing field amongst market participants.

Question 21. Concerning the language rules laid down in Article 27 of the Prospectus Regulation, with which of the following statements do you agree?

- (●) It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance
- ( ) It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, except for the prospectus summary
- ( ) It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, for any cross-border offer or admission to trading on a regulated market, including when a security is offered/admitted to trading in the home Member State
- ( )

It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, for any cross-border offer or admission to trading on a regulated market, including when a security is offered/admitted to trading in the home Member State, except for the prospectus summary

- There is no need to change the current language rules laid down in Article 27 of the Prospectus Regulation
- Don't know/ no opinion / not relevant

2.1.6. The prospectus for secondary issuances of issuers already listed on a regulated market or an SME growth market and/or for transfer from a SME growth market to a regulated market

The Prospectus Regulation currently lays down a simplified regime for secondary issuances of companies whose securities have already been admitted to trading on a regulated market or on an SME growth market continuously and for at least the last 18 months. Such companies are already subject to periodic and ongoing disclosure requirements, such as under the Transparency Directive and the Market Abuse Regulation. It can therefore be argued that there is less of a need to require a prospectus for secondary issuances. A simplified prospectus for secondary issuances can also be used, in accordance with the conditions laid down in Article 14(1), point (d), of the Prospectus Regulation, to transfer from an SME growth market to a regulated market (aka "transfer prospectus").

Furthermore, the capital markets recovery package introduced the new EU recovery Prospectus regime (Article 14a of the Prospectus Regulation) to allow for a rapid re-capitalisation of EU companies affected by the economic shock of the COVID-19 pandemic. The EU recovery prospectus consists on a single document, of only 30 pages and includes a 2 page-summary (neither the summary nor the information incorporated by reference are taken into account to determine the page-size limit), focusing on essential information that investors need to make an informed decision. This new short-form prospectus is meant to be easy to produce for issuers, easy to read for investors and easy to scrutinise for national competent authorities. The EU recovery prospectus is only available for secondary issuances of shares of issuers listed on a regulated market or an SME growth market continuously and for at least the last 18 months. It is currently intended as a temporary regime.

The TESG in its final report highlighted the need to further simplify the prospectus burden for subsequent admissions to trading or offers of fungible securities and recommended that a new simplified prospectus (replacing the current simplified prospectus for secondary issuances), similar in its form to the EU recovery prospectus, be adopted on a permanent basis for secondary issuances and for transfers from an SME growth market to a regulated market, provided that specific conditions are satisfied.

Question 22. Do you agree that, for issuers that have already been listed continuously and for at least the last 18 months on a regulated market or an SME growth market, the obligation to publish a prospectus could be lifted for any subsequent offer to the public and/or admission to trading of securities fungible with existing securities already issued (with a prospectus) without impairing investors' protection?

- Yes
- No
-

Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 22:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Where the issuer has complied with periodic and on-going disclosure requirements, the full prospectus should be replaced by a short document focusing only on the characteristics of the issuance and of the equity /non-equity securities.
The obligation to draw up a prospectus should be replaced with the obligation to publish an alternative admission or listing document (content to be defined at EU level) for both the offer to the public and the admission to trading on a regulated market or an MTF of securities fungible with existing securities which have been previously issued. Such document should only be filed with the relevant national competent authority (i.e. neither subject to the scrutiny nor to the approval of the latter). This document should be focused on the transaction and securities offered and/or admitted:

- Purpose of the issuance;
- Risks factors specific to the issuance, if any;
- Working capital statement (in case of equity securities);
- Characteristics of the securities;
- Terms and conditions of the offer/admission.

As second best scenario for secondary issuance or listing transfer from a SME growth market issuers shall have the option to publish a simplified prospectus as the recovery prospectus.

Question 23. Since the application of the capital markets recovery package, have you seen the uptake in the use of the EU recovery prospectus?

- Yes
- (•) No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 23:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that only few issuances were realised using the recovery prospectus since it came into force. Different reasons can explain why so few companies used the recovery prospectus. The limit regarding the number of pages could raise liability issues whilst the disclosure requirements have not been sufficiently reduced : the recovery prospectus tries to alleviate the burden on issuers mainly by reducing the length of the document (to no more than 30 pages), but it maintains a wide range of information to be provided, some of them are quite complex and costly to produce, such as the working capital statement and the risk factors that are specific to the issuer and the shares. Therefore, companies bear similar liability as for an ordinary prospectus, exacerbated by the need to synthetize the information in a shorter format. Furthermore, companies regularly tapping the markets (not necessarily frequent issuers in the meaning of Article 9 of the prospectus Regulation) don’t see significant improvement or alleviation in drafting a recovery prospectus and then – once this transitional measure has expired – reverting to a full prospectus.

Question 24. Do you think that the EU Recovery prospectus should:

	Yes	No	Don't know - No opinion - Not applicable
i. Be extended on a permanent basis for secondary issuances of shares	◉	○	○
ii. Be introduced on a permanent basis for secondary issuances of all types of securities (both equity and non-equity securities)	○	○	○
iii. Be used as a simplified prospectus for all cases set out in Article 14(1)	○	○	○
iv. Other	○	○	○

Please explain the reasoning of your answer to question 24:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 24.1 If you replied in the affirmative to question 24 (i), which changes, if any, would be necessary to the EU recovery prospectus? Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.7. Liability regime

The obligation to publish a prospectus entails a civil liability regime for issuers. Infringements to the provisions of the Prospectus Regulation may lead to administrative sanctions and other administrative measures, in accordance with Article 38 of that Regulation and, depending on national law, criminal sanctions. The prospectus is sometimes referred to as a document that serves to shield from liability issues (i.e. the more information the better) rather than to support investors in taking informed investment decisions.

Question 25. Do you think that the current punitive regime under the Prospectus Regulation is proportionate to the objectives sought by legislation as well as the type and size of entities potentially covered by that regime?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 25, notably in terms of costs:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers consider that the maximum pecuniary sanction expressed in % of the total turnover of the legal person is disproportionate and should be repealed: turnover is not an appropriate measure of a company's performance and thus of its ability to bear a sanction. Furthermore, for a company seeking to obtain financing through financial markets, the prohibition or suspension of an offer is the most severe sanction. Therefore there should be no pecuniary sanction. However if a pecuniary sanction is to be maintained, there should be a maximum cap expressed in absolute value for large issuers and, for SMEs, expressed in percentage of the company's market capitalisation.

Question 26. Do you believe that the current civil liability regime under the Prospectus Regulation is adequately calibrated?

- ○ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Question 27. Do you consider that the liability of national competent authorities' (NCAs) in relation to the prospectus approval process is adequately calibrated and consistent throughout the EU?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

If you responded negatively to question 27, which changes would you propose in the context of this initiative? Please explain your reasoning

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 28. According to your opinion, which administrative pecuniary sanctions (as prescribed in Article 38(2) of the Prospectus Regulation) have a higher impact on an issuer's decision to list?

	Pecuniary sanctions in respect of natural persons	Pecuniary sanctions in respect of legal persons
Issuers listed on SME growth markets	○	○
Issuers listed on other markets	○	○

Please explain the reasoning of your answer to question 28:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 29.1 Do you think that the maximum administrative pecuniary sanction for infringements laid down in Article 38(2) of the Prospectus Regulation in respect of legal persons should be decreased?

	Yes	No	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	◉	○	○
Issuers listed on other markets	◉	○	○

Question 29.1.1 Please specify to what level sanctions should be decreased:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Refer to answer to question 25.

Please explain the reasoning of your answer to question 29.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 29.2 Do you think that the maximum administrative pecuniary sanction for infringements laid down in Article 38(2) of the Prospectus Regulation in respect of natural persons should be decreased?

	Yes	No	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	◉	○	○
Issuers listed on other markets	◉	○	○

Question 29.2.1 Please specify to what level sanctions should be decreased:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Refer to answer to question 25.

Please explain the reasoning of your answer to question 29.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 30. Do you think that the possibility of applying criminal sanctions in the case of non-compliance with any of the requirements specified in Article 38(1) of the Prospectus Regulation should be removed?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 30.1 Please specify for which requirements:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For all requirements mentioned in Article 38 (1) of the Prospectus Regulation EuropeanIssuers considers that criminal sanctions are not appropriate as regards infringement to the Prospectus Regulation.

2.1.8. Scrutiny and approval of the prospectus

Article 20 of the Prospectus Regulation lays down harmonised rules for the scrutiny and approval of the prospectus, with a view to fostering supervisory convergence throughout the EU. Article 20 also sets out the timelines for approving the prospectus, depending on the circumstances and type of document (e.g. prospectus for a first time offer of unlisted issuers, prospectus for issuers already listed or that have already offered securities to the public, EU recovery prospectus, prospectus which includes a URD). The criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus are further specified in Chapter V of Commission Delegated Regulation (EU) 2019/980.

Question 31. 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?

- ( ) Yes
- (●) No
- ( ) Don't know / no opinion / not relevant

Question 31.1 Which material differences do you see across EU Member States (e.g. extra requirements and extra guidance being provided by certain national competent authorities)?

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As a pan-European organisation representing the interests of publicly quoted companies across 15 Member States, EuropeanIssuers observe that there are diverging practices between National Competent Authorities.

In this regard, EuropeanIssuers supports supervisory convergence and consider that the priority for ESMA is to strengthen harmonisation between the National Competent Authorities for instance through peer reviews. EuropeanIssuers does not however support a strengthening of ESMA's powers regarding prospectuses.

Question 32. Do you consider the timelines for approval of the prospectus as prescribed in Article 20 of the Prospectus Regulation adequate?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Question 32.1 Please provide concrete suggestions on how to improve the process:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answer to question 31.

Question 33.1 In its June 2020 report, the CMU HLF suggested that prospectuses could be made available to the public closer to the offer (e.g. in three working days). Should the minimum period of six working days between the publication of the prospectus and the end of an offer of shares (Article 21(1) of the Prospectus Regulation) be relaxed in order to facilitate swift book-building processes?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 33.1:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers insists on the fact that the priority is to shorten prospectuses. This said, six working days before the closing of the offering to retail investors is frequently considered as a source of significant execution risk for many issuers particularly under volatile market conditions. Removing this obligation could significantly contribute to the success of the book-building process and of IPOs. Issuers could still have the option to establish a minimum period offer which would be of three working days, as a maximum. This would strike the right balance between offering more flexibility to issuers while maintaining an adequate level of protection for retail investors.

Question 33.2 Should a minimum period of days between the publication of a prospectus and the end of an offer be set out also for offer of non-equity securities, in particular to favour more retail participation?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 33.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Any additional minimum periods or other burdens will deter issues from addressing retail.

Determination of the “Home Member State”

The Prospectus Regulation, Article 2(m), sets out rules for the determination of the home Member State. As a general rule, for issuers established in the EU, the home Member State corresponds to the Member State where the issue has its registered office. However, different rules apply for non-equity securities with a denomination per unit above EUR 1 000 and for certain non-equity hybrid securities for which the ‘Home Member State’ means the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.

Equity issuers established in the EU are therefore currently not able to choose their home Member State, while non-equity issuers established in the EU are allowed to do so, subject to the conditions laid down in Article 2(m), point (iii), of the Prospectus Regulation.

Question 34. Should the dual regime for the determination of the home Member State for non-equity and equity securities featured in Article 2(m) of the Prospectus Regulation be amended?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 34:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.9. The Universal Registration Document (URD)

Effective as of 2019, the co-legislators introduced a URD in the Prospectus Regulation, in line with the shelf registration principles already well-established in other financial markets, particularly in the US. A URD is a document that, after being approved for two consecutive years, is only to be filed each year (i.e. kept 'in the shelf') by frequent issuers. A URD contains information about company's organisation, business, financial position, earnings, etc., and facilitates the approval process of prospectuses of these issuers (e.g. approval time reduced by half) by national competent authorities. As a URD can be used for offers of both equity and non-equity securities, it is currently built on the more comprehensive registration document for equity securities.

The TESG in their Final Report highlighted that the URD regime, as currently designed, does not deliver on its objective, as only a very low number of issuers, and mostly in one Member State, have resorted to it.

Question 35. In your view, what are the main reasons for the lack of use of the URD among issuers across the EU?

Please select as many answers as you like

- ☐ The time period necessary to benefit from the status of frequent issuer is too lengthy
- ☐ The URD supervisory approval process is too lengthy
- ☐ The costs of regularly updating, supplementing and filing the URD are not outweighed by its benefits
- ☐ The URD content requirements are too burdensome
- ☐ The URD is not suitable for non-equity securities as it is built on the more comprehensive registration document for equity securities
- ☐ The URD language requirements are too burdensome
- ☐ Other

Please explain the reasoning of your answer to question 35:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 36. As the URD can only be used by companies already listed, should its content be aligned to the level of disclosures for secondary issuances (instead of primary issuances as currently) to increase its take up by both equity and non-equity issuers?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 36:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 37. Should the approval of a URD be required only for the first year (with a filing every year after)?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 37:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 38. Should a URD that has been approved or filed with the national competent authority be exempted from the scrutiny and approval process of the latter when it is used as a constituent part of a prospectus (i.e. the scrutiny and approval should be limited to the securities note and the summary)?

- Yes
- No

- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 38:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 39. Should issuers be granted the possibility to draw up the URD only in English for passporting purposes, notwithstanding the specific language requirements of the relevant home Member State?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 39:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 40. How could the URD regime be further simplified to make it more attractive to issuers across the EU?

Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.10. Other possible areas for improvement

Supplements to the prospectus

Article 23 of the Prospectus Regulation lays down rules for the supplement to the prospectus. As part of the Capital Market Recovery Package, the new paragraphs (2a) and (3a) were introduced with a view to providing more clarity on the obligation for financial intermediary to contact investors when a supplement is published, to increase the time window to do so and also to increase the time window for investors to exercise their withdrawal rights, where applicable. These new rules are only temporary and due to expire on 31 December 2022.

Question 41.1 Has the temporary regime for supplements laid down in Articles 23(2a) and 23(3a) of the Prospectus Regulation provided additional clarity and flexibility to both financial intermediaries and investors and should it be made permanent?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 41:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 41.2 Would you propose additional improvements?
Please explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Equivalence regime

Article 29 of the Prospectus Regulation enables third country issuers to offer securities to the public in the EU or seek admission to trading on an EU regulated market made under a prospectus drawn up in accordance with the laws of third country, subject to the approval of the national competent authority of the EU home Member State, and provided that

i. the information requirements imposed by those third country laws are equivalent to the requirements under the Prospectus Regulation

ii. and the competent authority of the home Member State has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.

The Commission is empowered to adopt Delegated Acts to establish general equivalence criteria, based on the requirements laid down in Article 6, 7, 8 and 13 (essentially disclosure requirements only). The current rules are considered not workable, including the rules to adopt general equivalence criteria.

Question 42. Do you believe that the equivalence regime set out in Article 29 of the Prospectus Regulation, which is difficult to implement in its current version, should be amended to make it possible for the Commission to take equivalence decisions in order to allow third country issuers to access EU markets more easily with a prospectus drawn up in accordance with the law of a third country?

- Yes
- No
- Don't know / no opinion / not relevant

Other

Question 43. Would you have any other suggestions on possible improvements to the current prospectus rules laid down in the Prospectus Regulation?

Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2. Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse)

The Market Abuse Regulation ('MAR') entered into full application in 2016, it provides requirements for market participants to ensure the integrity of the financial markets.

In view of the periodic review of MAR, the European Commission, in March 2019, requested ESMA to provide a technical advice on the review of MAR on a number of topics (including the notion of inside information, the conditions for delaying the disclosure of inside information, insider lists, managers' transactions and sanctions). On 3 October 2019, ESMA publicly consulted the market on its preliminary view of the technical advice. The consultation ended on 29 November 2019 and received 97 responses. In September 2020, ESMA published its technical advice addressing all

the topics on which the Commission asked advice on and identified several other provisions which were considered important to review in MAR ('ESMA TA'). According to ESMA, both the feedback to the consultation and NCAs experience indicate that, overall, the regime introduced by MAR works well. Accordingly, only a few targeted changes to the legislative framework have been recommended, sometimes to provide guidance at level 3 (e.g. on inside information and delayed disclosure of inside information). However, according to the CMU HLF and the TESG reports, there are a number of MAR provisions and requirements that may sometimes act as a disincentive for companies to list and remain listed on regulated markets and/or MTFs. The cost of complying with these requirements is deemed high, especially for SMEs. The legal uncertainty arising from certain provisions is indicated as an additional source of costs. Finally, the sanctioning regime is considered not proportionate and a discouraging factor for going and remaining public.

While the market abuse regime is crucial to safeguard market integrity and investor confidence, the Commission aims to assess if there is room for some targeted amendments and alleviations in the requirements laid down by MAR, in order to ensure proportionality and reduce burdens.

2.2.1. Costs and burden stemming from MAR

Question 44. For each of the MAR provisions listed below, please indicate how burdensome the EU regulation is for listed companies:

Definition of “inside information”:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Disclosure of inside information:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Conditions to delay disclosure of inside information:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Drawing up and maintaining insiders lists:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	◉	○	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Market sounding:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	◉	○	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Disclosure of managers' transactions:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	◉	○	○
For issuers listed on SME growth markets	○	○	○	◉	○	○

Enforcement:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	○	○
For issuers listed on SME growth markets	○	○	○	○	○	○

If there are other MAR provisions that you find burdensome for listed companies, please specify which ones and indicate to what extent they are burdensome for listed companies:

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers has frequently supported a thorough review of the MAR. We therefore support the EU Commission's consultation and take the opportunity to remind on the key issues that need to be resolved from an issuer's perspective. For detailed answers please refer to the relevant chapters of the consultation paper.

- The legislator should rethink the extension of the scope of MAR to other markets than Regulated markets in order to allow junior markets to be established in environment of low touch regulation. Though most welcomed by EuropeanIssuers, the SME listing package is an incomplete substitute for the junior markets that had been established before 2014; just to make an example the extension of MAR to certain MTFs of bonds discouraged issuers to list their bonds and pushed to delisting some others; some simplifications have been proposed in the context of the SME Listing Package but available only for SMEs on SME Growth Markets. We therefore advocate for excluding non-regulated markets from the scope of certain MAR provisions (especially on managers transactions and insider lists).
- The legislator should seek ways to clarify (and narrow) the definition of inside information to make compliance more affordable for issuers and to better protect the possibility of delaying disclosure of issuers against abusive market practices;
- The legislator should review the regime of insider lists in order to avoid overly burdensome compliance procedures and in order to grant issuers more flexibility in practice;
- The legislator should review the regime of Managers' Transactions in order to reduce bureaucracy and in order to protect the signalling value of notifications.

Please explain the reasoning of your answer to question 44, and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs):

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2.2. Scope of application of MAR (Article 2)

According to Article 2(1)(b), MAR applies to financial instruments traded or admitted to trading on a multilateral trading facility (MTF) or for which a request for admission to trading on an MTF has been made. In the latter case, MAR would start to apply with respect to companies that have only submitted a request but are not yet trading on an MTF. Some stakeholders underline that, as securities are not yet traded at the moment of the submission of a request, investors cannot acquire them and hence the protections under MAR are not necessary.

Question 45. In your opinion, if MAR requirements started applying only as of the moment of trading, would there be potential cases of market abuse between the submission of the request for admission to trading and the actual first day of trading?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 45:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that an issuer's obligation to disclose inside information should not start too early. The prospectus regime obliges issuers to publish a prospectus supplement according to Art. 23 Prospectus Regulation until the later of the end of an offering or the commencement of trading. Until that point in time, an obligation to publicly disclose inside information creates redundant compliance duties.

2.2.3. The definition of "inside information" and the conditions to delay its disclosure

Currently the notion of inside information makes no distinction between its application in the context, on the one hand, of market abuse and, on the other hand, of the obligation to publicly disclose inside information. However, inside information can undergo different levels of maturity and degree of precision through its lifecycle and therefore it might be argued that in certain situations inside information is mature enough to trigger a prohibition of market abuse but insufficiently mature to be disclosed to the public.

According to stakeholders, the current definition of inside information may raise problems, notably (i) for the issuer, the problem of identification of when the information becomes "inside information" and (ii) for the market, the risk of relying on published information which is not yet mature enough to make investment decisions.

ESMA, however, considers that the current definition of inside information "*strikes a good balance between being sufficiently comprehensive to cater for a variety of market abuse behaviours, and sufficiently prescriptive to enable market participants, in most cases, to identify when information becomes inside information*" and recommended to leave the definition unchanged. ESMA however acknowledged that clarifications were sought by stakeholders both on the general interpretation of certain paragraphs of Article 7 of MAR (for instance, as regards intermediate steps, or the level of certainty needed to consider the information as precise), and on concrete scenarios. Therefore, ESMA stands ready to issue guidance on the definition of inside information under MAR.

Question 46. Do you consider that clarifications provided by ESMA in the form of guidance would be sufficient to provide the necessary clarifications around the notion of inside information?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 46:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As we illustrated in previous answers to the CPs regarding MAR issues issuers have identified a number of difficulties with the identification of inside information, especially due to the fact that the concept of inside information is too broadly defined that too much information may be assumed to be required to be published. This is aggravated by having the option to delay far from being a safe counterweight.
As a result, issuers have the experience that their interests (e.g. orderly decision making processes and governance structures, M&A activities, ability and flexibility to raise capital) are not sufficiently protected as they are confronted with a too broad notion of inside information.
Market participants experienced difficulties in the coordination between the Transparency Directive, which objective is to inform investors at predictable time, and MAR, which objective is to disclose the inside information as soon as possible. The question is especially relevant about periodic financial information (annual and half-yearly financial statements). MAR should not interfere with the normal process of financial disclosure and pushes into the direction of a premature disclosure close to the regular publication date.
Against this background, the legislator should seek ways to clarify (and narrow) the definition of inside information to make compliance more affordable for issuers and to better protect their interests and the possibility of delaying disclosure of issuers against abusive market practices. All EI associations realized that the broad definition of inside information raised many problems regarding the identification of when the information becomes an “inside information”; issues requiring clarification include, but are not limited to, the notion of precise information (European case law leads to a great deal of legal uncertainty for issuers), intermediate steps taken in the context of a protracted process, etc.

Question 46.1 Please indicate if you would support the following changes or clarifications to the current definition of “inside information” under MAR:

	I support	I do not support	Don't know - No opinion - Not applicable
MAR should distinguish between a definition of inside information for the purposes of market abuse prohibition and a notion of inside information triggering the disclosure obligation.	○	○	◉
The definition of inside information with a significant price effect should be refined to clarify that “significant price effect” shall mean “information a rational investor would be likely to consider relevant for the long-term fundamental value of the issuer and use as part of the basis of his or her investment decisions”.	◉	○	○

It should be clarified that inside information relating to a multi-stage process need only be made public once the end stage is reached, unless a leakage has occurred.	◉	○	○
Other	○	○	○

Please explain the reasoning of your answer to question 46.1:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers thus welcomes the EC‘s public consultation exploring concrete solutions for better calibrating the definition of inside information and the point of time when information needs to be made public clarifying that only end stages need to be made public.

In some jurisdictions outside the EU, in addition to regulatory quarterly reports, issuers are only under the obligation to publicly disclose, on a rapid and current basis, information about material changes that might take place between quarterly reports, in relation to a pre-determined number of events. Those events are predefined and include the entry into (or termination of) a material definitive agreement, the issuer filing for bankruptcy or receivership, a material acquisition or disposition, a modification of the rights of security holders or the appointment or departure of directors or key managers. There may also be other types of inside information that the company would not be obliged to disclose publicly but may decide to do so nevertheless on a voluntary basis.

Question 47.1 Do you consider that a system relying on the concept of material events for the disclosure of inside information would provide more clarity?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 47.1:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our understanding of the concept is that it implies that a list of material and finalized information will be defined which then needs to be publishes as inside information. Though we welcome that the EU Commission is open to concepts that deviate from the existing MAR, we cannot comment on the proposal without a legislative proposal. This is due to the fact that the implications will depend on how material events are defined and at which point of time publication will become due.

Question 47.2 In your opinion, would such a system pose any challenge to the integrity of the market?

- ○ Yes

- ○ No
- ◉ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 47.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Article 17(4) of MAR allows, under specified conditions, to delay the disclosure of inside information. The regime of delayed disclosure of inside information is intimately interconnected with the definition of inside information. Any clarifications provided on delayed disclosures would thus have *de facto* an impact on when the information has to be considered as inside information.

Some stakeholders underline that there are currently interpretative challenges around the conditions to delay disclosure, especially in relation to when the delay is not likely to mislead the public. ESMA in its final report acknowledged the existence of interpretative challenges, but did not consider it necessary to amend the conditions for the application of the delay finding them reasonable and aligned with the overall market abuse regime. However ESMA engaged into revising its guidelines on delay in the disclosure of inside information.

Question 48. Do you consider that the revision of ESMA’s Guidelines on delay in the disclosure of inside information would be sufficient to provide the necessary clarifications?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 48:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Due to the characters limitation, please see our response below in question 48.1.

Question 48.1 Please indicate what changes you would propose to Article 17 (4) MAR and explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The delay of disclosure creates certain problems in practice:
1) the first one is linked to the “function” of the delay in the MAR. Already the MAD has created a legal setting where the possibility of delaying the publication of inside information must be regarded as the natural counterweight to a rather broad definition of inside information (which is the same both for the market abuse prohibitions and for the duty of disclosure). We believe that it should be clarified at European level that the activation of the delay mechanism should be considered as a logical counterweight of the current definition of inside information. This has not changed with the MAR, but what has changed is that ESMA consider the delay as exceptional. However, this is neither clear from the level 1 text nor it is reasonable from a broader perspective. As the legislator in the MAR, like in the MAD, has opted for a rather broad definition of inside information (covering both the market abuse prohibitions and the duty of disclosure), the delay should be regarded as the natural counterweight to protect the legitimate interests of the issuer. M&A transactions may serve as a perfect example: they cannot take place without the option of delaying the disclosure of inside information; and this is, by the way, also in the interest of investors
2) the second problem is linked to the fact that issuers must react to rumours. ESMA’s interpretation of this provision is that the leak of the rumour has not to come from the sphere of the issuer in order to trigger the duty to disclose the inside information. This wide interpretation creates a massive problem for issuers. They always face the risk that a legitimately delayed information must be disclosed prematurely because of abusive rumour spreading. The review could address this problem by clarifying that the leak must stem from sphere of the issuer and, if it does not, a no comment policy will still be possible; alternatively or additionally the level 1 text should be amended in order to clarify what constitutes a rumour that is “precise enough” to lead to immediate disclosure. This should be the case when it contains the most significant details of the delayed inside information and – in at the same time – does not contain wrong or misleading information.
3) the third problem is related to the condition stating that the delay should not be “likely to mislead the public”. As stressed in the ESME Report and by other authors, this condition - taken literally - it is almost impossible to comply with, because ”the definition of “inside information” per se implies that a reasonable investor would use it as a basis for her decisions: thus, any delay in the dissemination is almost by definition misleading and it is very difficult to think of a circumstance in which delay would be permissible under this test”.
4) finally, concerning the condition of the “prejudice of a legitimate interest of the issuers” ESMA’s guidelines remain overly restrictive. The removal by ESMA of “impending developments that could be jeopardized by premature disclosure” from the list of illustrative examples is unhelpful to issuers. As a result, issuers may assume that impending developments are incapable of constituting a legitimate interest justifying delayed disclosure. Therefore, we think that the case of “impending development should be re-inserted.

2.2.4. Disclosure of inside information for issuers of bonds only

The TESG underlines that plain vanilla bonds are less exposed to risks of market abuse due to the nature of the instrument and, as a consequence, argues that the disclosure of all inside information for debt issuers (either positive or negative) only would be burdensome and not justified.

Question 49. Please specify whether you agree with the following statements:

Issuers that only issue plain vanilla bonds should:

	Yes	No	Don't know - No opinion - Not applicable

have the same disclosure requirements as equity issuers	○	○	○
disclose only information that is likely to impair their ability to repay their debt	◉	○	○

Please explain the reasoning of your answer to question 49, notably in terms of costs (one-off and ongoing costs):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Regarding debt-issuers, we fully support the TESG's proposal according to which such issuers should disclose only information that is likely to impair their ability to repay their debt; this would incentivise debt-issuers to list their bonds on European markets.

2.2.5. Managers' transactions

Under MAR, the Person Discharging Managerial Responsibilities (PDMR) or associated person must notify the issuer (either on a regulated market or a MTF, including SME growth market) and the competent authority of every transaction conducted for their own account relating to those financial instruments, no later than three business days after the transaction. The obligation to disclose a manager's transaction only applies once the PDMR's transactions have reached a cumulative EUR 5 000 within a calendar year (with no netting). A national competent authority may decide to increase the threshold to EUR 20 000. Issuers must ensure that transactions by PDMRs and persons closely associated with are publicly disclosed promptly and no later than two business days after the transaction.

Most respondents to the consultation launched by ESMA in the context of the technical advice for the Review of MAR (ESMA final report on MAR review, paragraph 8.2) considered that the current threshold (EUR 5 000) for managers' transaction is too low and that it could result in disclosing not meaningful transactions. Those respondents prefer a higher thresholds harmonised within the EU (possibly at the optional threshold of EUR 20 000). ESMA, however, recommended not to amend such requirement considering that the current threshold is appropriate in several Member States to provide for a fair picture of managers transactions. ESMA also recommended not to amend the reporting methodology for subsequent transactions or the regime for the disclosure of closely associated persons. On the contrary, both the TESG final report and the CMU HLF final report propose to increase the threshold for managers' transactions. Moreover, the TESG holds that the requirement to keep a list of closely associated persons should be repealed, as it entails costs that are disproportionate to the benefits offered.

In order for the Commission to strike the right balance between the burden associated with these requirements and the specific need for an efficient supervision of the integrity of the financial markets it is useful to gather quantitative data on how much those requirements weight on issuers.

Question 50. Do you believe that the minimum amount of EUR 5 000 provided in Article 19(8) MAR should be increased without harming the market integrity and investor confidence?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 50:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EuropeanIssuers supports the increase of the threshold up to 50.000 euros. Furthermore, we suggest to amend the method of calculating the threshold; once the threshold has been reached, the calculation of the threshold should restart from zero until a new threshold has been reached again (meaning that all the following amounts must be summed up until they reach again the threshold). However, there are a number of issues that need to be resolved. For this, please consult answers to questions 55(1) and 55(2).

Question 50.1 Please specify to what level the minimum amount set out in Article 19(8) should be increased and for which groups of issuers:

	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other	Don't know No opinion Not applicab
Issuers listed on SME growth markets	○	○	○	◉	○	○
Issuers listed on other markets	○	○	○	◉	○	○

Question 51. Do you agree with maintaining the discretion for national competent authorities to increase the threshold set out in Article 19(8)?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 51:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 52.1 If you are an issuer to whom MAR applies or an NCA, please specify how many notifications you have received in the last 2 years according to Article 19(1):

	Threshold of EUR 5 000	Threshold of EUR 20 000
2019		
2020		

Question 52.2 How would the above figures change in case of an increased threshold under Article 19(8) of MAR?

(Percentages represent how many less notifications (in % terms) would you receive in case of an increased threshold under Article 19(8))

	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other	Don't know - No opinion - Not applicable
0% -10%	○	○	○	○	○	○
11% -20%	○	○	○	○	○	○
21% -35%	○	○	○	○	○	○
36% -50%	○	○	○	○	○	○
more than 50%	○	○	○	○	○	○

Please explain the reasoning of your answer to question 52.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 53.1 Please provide the approximate level of costs related to disclosure of managers' transactions in the last 2 years:

	Threshold of EUR 5 000	Threshold of EUR 20 000
2019		
2020		

Please explain the reasoning of your answer to question 53.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 53.2 Please provide the estimated level of cost savings (in % terms) in case of an increased threshold under Article 19(8):

(Percentages represent the estimated cost savings (in % terms) in case of an increased threshold in Article 19 (8))

	EUR 10 000	**EUR 15 000**	**EUR 20 000**	**EUR 50 000**	**Other**	Don't know - No opinion - Not applicable
0% -10%	○	○	○	○	○	○
11% -20%	○	○	○	○	○	○
21% -35%	○	○	○	○	○	○
36% -50%	○	○	○	○	○	○
more than 50%	○	○	○	○	○	○

Please explain the reasoning of your answer to question 53.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 54. Would you consider that public disclosure of managers' transactions should always be done by:

- ○ Issuer
- ◉ National competent authority
- ○ Either by issuer or national competent authority, depending on national law (status quo)
- ○ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 54:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 55. Do you consider that ESMA's proposed targeted amendments to Article 19(12) MAR are sufficient to alleviate the managers' transactions regime?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 55:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Regarding art. 19.12 MAR, ESMA recommends the EC to insert in the exemption financial instruments other than shares. On one side we support the recommendation but on the other side we think that the regime of managers' transactions should be alleviated introducing the modifications as illustrated below:
- the increase of the threshold up to 50.000 euros;
- to amend the method of calculating the threshold; once the threshold has been reached, the calculation of the threshold should restart from zero until a new threshold has been reached again (meaning that all the following amounts must be summed up until they reach again the threshold);
- to make the CA responsible for disclosing managers' transactions to the public (see question 54);
- to exclude from the notification obligation gifts, inheritances and donations that were not included among the transactions to be notified under MAD, are completely passive from the PDMR's point of view;
- to clarify which kind of PDMR transactions need or do not need to be disclosed, taking into account the scope of the relevant provisions in the context of different types of transaction and that transactions that do not send signals to the market should be out of scope. Regarding the guidance on the transaction to be disclosed, it should be clarified that no notification duty is required for shares granted for free; the moment in

which shares are granted for free to PDMRs (meaning the moment in which shares are credited in the account of the PDMR) should not be notified (there is no discretion by the PDMR and there is no signalling value for the market) while when the shares are sold there should be a notification. A different interpretation would imply a duplication of notifications, more work to be done by the issuer's staff and the increase of indirect costs. For phantom stock, the notification duty should be excluded as the PDMR has only the right to receive cash.
(Continuation of the answer in 55.1 comment box).

Question 55.1 Please indicate if you would support the following changes or clarifications to the managers' transactions regime:

	I support	I do not support	Don't know - No opinion - Not applicable
The thresholds should be applied in a non-cumulative way (i.e. each transaction is to be assessed against the threshold)	◉	○	○
Clear guidance should be provided on what types of managers' transactions need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction, beyond the targeted amendments already proposed by ESMA	◉	○	○
The requirement of keeping a list of closely associated persons should be repealed	◉	○	○
Other	○	○	○

Please explain the reasoning of your answer to question 55.1:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

(continuation of answer to question 55)
- as noted by TESG SMEs clear guidance should also be provided on what types of managers' transactions need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction. Moreover, it should be clearly specified that a PDMR may enter into a conditional transaction (e. g. signing of the sale and purchase agreement in a M&A process) during a closed period, if the transaction is only completed (e.g. closing) after the end of the closed period. See TESG Report 2021, p. 78;
- Repeal the requirement of keeping a list of closely associated persons, as per Art. 19(5).

Many of the points above have been supported by the CMU HLF Report and the TESG Report. They suggest to raise the threshold for the notification of managers transactions up to 50.000 euros as well as they suggest modify the method of calculation. Furthermore they converge also on the fact that transactions that do not send signals to the market should be out of scope. The CMU HLF furthermore supported publication by NCAs and the TESG report suggested to repeal the requirement of keeping a list of closely associated persons, as per Art. 19(5).

2.2.6. Insider lists (Article 18)

While insider lists are supposed to assist NCAs in investigating cases of insider trading, stakeholders underline that the maintenance of insiders list require regular monitoring and adjustment and are particularly burdensome. As a result of the SME Listing Act, issuers whose financial instruments are admitted to trading on an SME growth market have been entitled to include in their lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information. At the same time, Member States may opt out from such regime and require more information.

In light of the fact that national competent authorities consider the insider lists to be a key tool in market abuse investigations, in its final report on the review of the Market Abuse Regulation, ESMA did not suggest extensive alleviations to the insiders list rules, proposing only minor adaptations to the current regime.

The TESG however found the costs of the insiders list for smaller issuers too high and recommended to remove the obligation for issuers with a market capitalisation below EUR 1 billion to keep an insider list, and to further reduce and simplify the content of the insider list for other issuers.

Question 56. What is the impact (or if not available – expected impact) of the recent alleviations (under the SME Listing Act) for SME growth market issuers as regards insider lists?

Please illustrate and quantify, notably in terms of (expected) reduction in costs, and please explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 57. Please indicate whether you agree with the statements below:

The insider list regime should…:

	Yes	No	Don't know - No opinion - Not applicable
be simplified for all issuers to ensure that only the most essential information for identification purposes is included	◉	○	○
be simplified further for issuers listed on SME growth markets	○	○	○

be repealed for issuers listed on SME growth markets	○	○	○
other	◉	○	○

Please specify what you mean by 'other' in your answer to question 57:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Answer to the response to question 57 overall will be split between the two comment boxes:

Firstly, we would point out that keeping insider lists is burdensome for issuers. We therefore ask for a reduction of the date to be entered by default. Insider lists are still useful, even if they do not include home addresses, private phone numbers, private email addresses, and possibly even business phone numbers. To require this data by default creates disproportionate burden and is not necessary to identify persons who had contact to inside information. More specific data can be requested in case of suspicion, so that a reduction of data also does not run counter the objectives of insider lists.

Furthermore, we welcome the simplifications provided by SMEs Listing Package to issuers listed on SME growth markets which reduce the burdens to those issuers; according to the by SMEs Listing Package, SMEs on SMEs Growth Markets must keep only insider lists of those persons “who, due to the nature of their function or position within the issuer, have regular access to inside information” (permanent insider list). This requirement allows to provide more extensive insider lists that include all persons who have access to inside information.

We think that this simplification of the so called “permanent insider list” provided by the SMEs Listing Package should be extended to all listed companies in every trading venue; this permanent list, which would replace the list which requires to insert the details of individuals who have access “at all times to all inside information” according to the Regulation EU 2016/347 . This wider insider list, which would be integrated by the deal-specific or event-based inside information, could reduce the burdens for issuers.

(see continuation below)

Please explain the reasoning of your answer to question 57 and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

(Continuation from the previous comment box)
We welcome the interpretation provided in the ESMA Final Report according to which “MAR should be amended to permit the issuer to include only the details of a natural person for each legal person acting on its behalf or on its account having access to inside information and each one of those legal persons should include in their own insiders list the natural persons or one contact of a natural person for legal persons accessing that piece of inside information working for them under a contract of employment or under any other type of arrangement in the same terms” (see. Par. 369). We raised this issue in the answer to the ESMA CP on MAR Review and we therefore appreciate this interpretation and the amendments to art. 18 that ESMA suggests to the EC. This is a simplification that avoids divergent interpretations and prevents problems for issuers related to different supervisory practices related to cross-border provisions of services.

Issuers whose financial instruments are admitted to trading on an SME growth market will be allowed, after the entry into force of the delegated regulation provided for in Regulation 2019/2115, to include in the insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information. The delegated regulation, to alleviate the costs to SMEs ecosystem, shall provide that SMEs should not include persons acting on their behalf or account (e.g. advisors and consultants).

2.2.7. Market sounding

Conducting market soundings may require disclosure to potential investors of inside information. However, market soundings are a highly valuable tool for the proper functioning of financial markets, and, as such, they should not be regarded as market abuse. The current regime requires the disclosing market participant, before engaging in a market sounding, to

i. assesses whether that market sounding involves the disclosure of inside information

ii. inform the person to whom the disclosure is made of the possibility of receiving inside information and of all the consequential requirements

iii. and maintain records of the disclosure

In the context of the public consultation launched in 2017 for the preparation of the SME Listing Act, several stakeholders described the requirements for conducting market sounding as burdensome, particularly in connection with private placements. Due to concerns on the risk of unlawful dissemination of inside information, market sounding rules were then only alleviated for private placements of debt instruments. The TESG, in its final report, however proposed to extend the exemption from market sounding rules to private equity placements.

The public consultation carried out by ESMA in 2020 for the MAR review final report confirmed stakeholders' concerns on the complexity of the market sounding regime and their request to reduce the scope of the market sounding regime. Nonetheless, ESMA recommended to keep the current scope of the market sounding regime unchanged and rather look into ways to simplify the market sounding procedures (ESMA final report paragraphs 6.3.3 and ff.).

Question 58. Do you consider that the ESMA's limited proposals to amend the market sounding procedure are sufficient, while providing a balanced solution to the need to simplify the burden and maintaining the market integrity?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

How would you further amend the market sounding regime?

Issuers listed on SME growth markets:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As we illustrated in our answer to the ESMA's CP on MAR Review and supported by the TESG Report, market sounding regime is particularly burdensome; the SMEs Listing Package excluded private placements of bonds addressed to qualified investors from the scope of the market sounding regime provided that an

adequate non-disclosure agreement is in place. The same exemption should be extended, for the same reasons, to equity placements, as the TESG Report suggests..

Furthermore, ESMA's proposals do not sufficiently address the market participants' concerns. Notably, the proposal "to clarify the obligatory nature of the requirements currently contained in Article 11 of MAR" is contrary to the majority of responses in the consultation and the concept underlying Art. 11 MAR as expressed in Recital 35 MAR. The market sounding regime was introduced to create a safe harbour for those who follow the procedures, it was not intended to make these procedures mandatory.

Issuers listed on regulated markets:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As we illustrated in our answer to the ESMA's CP on MAR Review and supported by the TESG Report, market sounding regime is particularly burdensome; the SMEs Listing Package excluded private placements of bonds addressed to qualified investors from the scope of the market sounding regime provided that an adequate non-disclosure agreement is in place. The same exemption should be extended, for the same reasons, to equity placements, as the TESG Report suggests..

Furthermore, ESMA's proposals do not sufficiently address the market participants' concerns. Notably, the proposal "to clarify the obligatory nature of the requirements currently contained in Article 11 of MAR" is contrary to the majority of responses in the consultation and the concept underlying Art. 11 MAR as expressed in Recital 35 MAR. The market sounding regime was introduced to create a safe harbour for those who follow the procedures, it was not intended to make these procedures mandatory.

Issuers on other markets (MTFs):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As we illustrated in our answer to the ESMA's CP on MAR Review and supported by the TESG Report, market sounding regime is particularly burdensome; the SMEs Listing Package excluded private placements of bonds addressed to qualified investors from the scope of the market sounding regime provided that an adequate non-disclosure agreement is in place. The same exemption should be extended, for the same reasons, to equity placements, as the TESG Report suggests..

Furthermore, ESMA's proposals do not sufficiently address the market participants' concerns. Notably, the proposal "to clarify the obligatory nature of the requirements currently contained in Article 11 of MAR" is contrary to the majority of responses in the consultation and the concept underlying Art. 11 MAR as expressed in Recital 35 MAR. The market sounding regime was introduced to create a safe harbour for those who follow the procedures, it was not intended to make these procedures mandatory.

Question 59. Do you agree with the TESG proposal to extend the exemption from market sounding rules to private equity placements for all issuers?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain and illustrate your reasoning of your answer to question 59, notably in terms of costs:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2.8. Administrative and criminal sanctions

Both the CMU HLF as well as the TESG share the view that in some cases sanctions for market abuse violations are disproportionate and that the risk of an inadvertent breach of MAR (notably in the case of missing deadlines for disclosure of information) and associated administrative sanctions are seen as an important factor that dissuades companies from listing. They both proposed to amend the current framework in order to establish a more proportionate punitive regime. Moreover, the TESG proposed to remove the possibility of applying criminal sanctions in the case of noncompliance with the requirements set out in Articles 17, 18 and 19, as administrative sanctions (including accessory sanctions and the confiscation of the profit made from the unlawful conduct) are sufficiently suitable for sanctioning MAR violations under those provisions.

At the same time, ESMA disagrees that the level of the MAR sanctions is tailored to large companies and stresses that MAR does not oblige NCAs to impose maximum administrative sanctions and, on the contrary, obliges NCAs to take into account all relevant circumstances when determining the type and level of administrative sanctions.

Question 60. Do you think that the current punitive regime (both administrative pecuniary sanctions and criminal sanctions) under MAR is proportionate to the objectives sought by legislation (i.e., to dissuade market abuse), as well as the type and size of entities potentially covered by that regime?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain and illustrate your reasoning of your answer to question 60, notably in terms of costs:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 61. Do you think that the maximum administrative pecuniary sanctions (as prescribed in Article 30 MAR) are an important factor when making a decision by companies concerning potential listing?

	Yes, it has a significant impact	Yes, it has a medium impact	Yes, but it has a low impact	No, it is rather irrelevant	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	○	○	○	○	○
Issuers listed on other markets	○	○	○	○	○

Please explain the reasoning of your answer to question 61:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 62. According to your opinion, which administrative pecuniary sanctions (as prescribed in Article 30 MAR) have a higher impact on a company when making a decision concerning potential listing?

	Pecuniary sanctions in respect of **natural persons**	Pecuniary sanctions in respect of **legal persons**
Issuers listed on SME growth markets	○	○
Issuers listed on other markets	○	○

Please explain the reasoning of your answer to question 62:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 63. Do you think that the maximum administrative pecuniary sanction for infringements of Articles 16-19 (in respect of legal persons) should be decreased?

Issuers listed on SME growth markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	◯	◯	◯
Art. 17	◯	◯	◯
Art. 18	◯	◯	◯
Art. 19	◯	◯	◯

Issuers listed on other markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	◯	◯	◯
Art. 17	◯	◯	◯
Art. 18	◯	◯	◯
Art. 19	◯	◯	◯

Question 64. Should the "total annual turnover according to the last available accounts approved by the management body" as a criterion to define the maximum administrative pecuniary sanctions be replaced with a different criterion?

- ◯ Yes
- ◯ No

- Don’t know / no opinion / not relevant

Question 65. Do you think that the maximum administrative pecuniary sanction for infringements of Article 16-19 (in respect of natural persons) should be decreased?

Issuers listed on SME growth markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16			
Art. 17			
Art. 18			
Art. 19			

Issuers listed on other markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16			
Art. 17			
Art. 18			
Art. 19			

Question 66. Should the level of maximum administrative pecuniary sanctions with respect to natural persons be defined according to a different criterion?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 67. Should the maximum administrative pecuniary sanctions for the other infringements specified in article 30(1)(a) of MAR and different from the infringements of Articles 16, 17, 18 and 19, be decreased accordingly?

	Yes	No	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	○	○	○
Issuers listed on other markets	○	○	○

Please explain the reasoning of your answer to question 67:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 68. Do you think that the possibility of applying criminal sanctions in the case of noncompliance with the requirements set out in Articles 16, 17, 18, 19 and 30(1)(b) of MAR should be removed?

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	○	○	○
Art. 17	○	○	○
Art. 18	○	○	○
Art. 19	○	○	○
Art. 30(1) first subpar. letter (b)	○	○	○

Please explain the reasoning of your answer to question 68:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2.9. Liquidity contracts

Liquidity in an issuer's shares can be achieved through liquidity mechanisms such as liquidity contracts concluded between an intermediary (dealer/broker) and an issuer to support liquidity in that issuer's securities on secondary markets.

The TESG recommended to remove the obligation on market operators to "*agree to the contracts' terms and conditions*" , defined by issuers and investments firms in liquidity contracts used on SME growth markets, given the fact that market operators are not a party to the issuer liquidity contract.

Question 69. Do you agree with the TESG proposal to remove the obligation on market operators to "agree to the contracts' terms and conditions", defined by issuers and investment firms in liquidity contracts used on SME growth markets?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 69:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We support the TESG proposal and the reasoning behind; the market operator is not part of the agreement. Current provisions could be improved by removing the requirement for market operators to review and agree to the terms and conditions of liquidity contracts on SME growth markets, such requirement being difficult to justify and apply in practice, noting that it is not the role of the market operator to review and approve such agreements.

2.2.10. Disclosure obligation related to the presentation of recommendations under MAR

Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 lays down standards on the investment recommendations or other information recommending or suggesting an investment strategy. These standards aims at ensuring the objective, clear and accurate presentation of such information and the disclosure of interests and conflicts of interest. They should be complied with by persons producing or disseminating recommendations.

In order to boost research coverage on smaller issuers, the TESG in their final report argued that investment recommendations or other information recommending or suggesting an investment strategy should be exempted from the requirements laid down in Commission Delegated Regulation (EU) No. 2016/958 when they relate exclusively to instruments admitted to trading on a SME growth market, or at the least alleviated for such instruments.

Question 70. In your opinion, should investment recommendations or other information recommending or suggesting an investment strategy be exempted from the requirements laid down in Commission Delegated Regulation (EU) No. 2016/958 when they relate exclusively to instruments admitted to trading on a SME growth market?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 70:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2.11. Other

Question 71. Would you have any other suggestions on possible improvements to the current rules laid down in the Market Abuse Regulation? Please explain your reasoning:

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.3. MiFID II (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments)

The Directive on Markets in Financial Instruments (MiFID II – Directive 2014/65/EU) is one the pillars of the EU regulation of financial markets. It promotes financial markets that are fair, transparent, efficient and integrated.

However, some stakeholders believe that there is room for targeted adjustments to this directive in order to ease and accommodate listing rules for EU entities. This is particularly true for the SMEs, according to the HLF, the TESG and ES

MA's report on the functioning of the regime for SME growth markets that all bring up specific points within MiFID II that could be modified in order to incentivise listing. In some cases the ESMA's and stakeholder's suggestions were aimed at clarifying certain provisions within MiFID II while in others they sought to increase SMEs' visibility and attractiveness towards investors.

2.3.1. Registration of a segment of an MTF as SME growth market

ESMA in their Q&A provided a clarification setting out the conditions under which an operator of an MTF may register a segment of the MTF as SME growth market: "*the operator of an MTF can apply for a segment of the MTF to be registered as an SME growth market when the requirements and criteria set out in Article 33 of MiFID II and Articles 77 and 78 of the Commission Delegated Regulation 2017/565 are met in respect of that segment*". This clarification has proven useful to market participants based on feedback the ESMA received and has incentivised some MTFs to seek registration as SME growth markets only for a market segment and not for the entire MTF.

ESMA suggested that similar clarification in MiFID II level 1 would be beneficial as it could bring legal certainty and increase the number of registered SME growth markets.

Question 72. Would you see merit in including in MiFID II Level 1 the conditions under which an operator of an MTF may register a segment of the MTF as SME growth market?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 72:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.3.2. Dual listing

Article 33(7) of MiFID sets out provisions for dual listing and potential obligations for issuers. It has been argued that Article 33(7) is being interpreted by the NCAs in a way that company seeking a dual listing can do so only through a third party and not by themselves. Moreover, ESMA in its report on the SME growth market proposed to amend MIFID II to specify that if an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on any other trading venue (as opposed to only on another SME growth market as Article 33(7) of MiFID currently states). This can be done only where the issuer has been informed and has not objected, and complies with any further regulatory requirement compulsory on the second trading venue.

Question 73. Do you believe that Article 33(7) of MiFID II would benefit from further clarification in level 1 to ensure an interpretation whereby the issuers themselves can request a dual listing?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 73:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 73.1 Do you believe that Article 33(7) should clarify that, where the issuers themselves request a dual listing, they shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the second SME growth market?

- ○ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 73.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 74. Do you believe that, subject to the conditions set out in Article 33(7) of MiFID II, financial instruments of an issuer, admitted to trading on an SME growth market, could be traded on another venue (and not necessarily only on another SME growth market)?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 74:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Under one reading of the existing legislation (MiFID II), it may be understood that a company may seek dual listing (i.e. admission to trading on a venue other than the original trading venue) only based on a third-party request. EuropeanIssuers recommends providing legal clarity on the issue of dual listing by amending Article 33(7) of MiFID II to make it explicit that issuers admitted to trading on an SGM may on their own request demand to be admitted to trading on another SGM.

2.3.3. Equity Research coverage for SMEs

Public markets for SMEs need to be supported by a healthy ecosystem (i.e. a network of brokers, equity analysts, credit rating agencies, investors specialised in SMEs) that can bring small firms seeking a listing to the market and support them after the IPO. The absence or limited existence of those local ecosystems that can cater to SMEs' specific needs impedes the functioning and deepening of public markets and reduces the willingness of SMEs to seek a listing. Equity research is of particular importance for SMEs given that they have lower visibility than large cap firms and information is more opaque and scarce.

Today, equity research is produced by brokers on an un-sponsored (independent) as well as sponsored basis (company pays for the research), by independent research houses, and to a lesser extent also in house by fund managers. SMEs are, however, often not covered at all by research analysts as there is not enough market interest to justify the additional cost for the broker.

The capital markets recovery package has introduced a targeted exemption to allow investment firms to bundle research and execution costs when it comes to research on companies whose market capitalisation did not exceed Euro 1 billion for the period of 36 months preceding the provision of the research. This change is intended to increase research coverage for such issuers, and in particular for SMEs, thereby improving their access to capital market finance.

Question 75. Do you consider that the alleviation to the research regime introduced with the capital markets recovery package has effectively helped (or will help) to support SMEs' access to the capital markets?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 75:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Lacking coverage by analysts is one of the key problems for smaller issuers. We would like to see the temporary exemption to the unbundling requirement in the Recovery package become permanent. Under the Recovery package, investment firms have the choice to continue to unbundle research from brokerage for SMEs or to take advantage, under certain conditions, of the exemption by combining the two: investment firms must inform their clients about the joint payments for execution services and research; the research must concern issuers whose market capitalisation for the last period of 36 months did not exceed EUR 1 billion.
Alleviation to the research regime could help, but will not be enough to come to pre-MiFID II environment. There should be additional measures undertaken to build back the infrastructure for SMEs analyst coverage. See answer to Q76(3) for details.

Question 76. Would you see merit in alleviating the MiFID II regime on research even further?

- (•) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 76:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, at least for SMEs.

Question 76.1 Please indicate whether you consider that written material other than the one currently falling under the minor non-monetary benefits regime could be added to that list.

- ( ) Yes
- ( ) No
- (•) Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 76.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 76.2 Please indicate whether you consider that FICC (fixed income, currencies and commodities) research and research provided by independent research providers should be exempted from the unbundling regime introduced by MiFID II.

- ( ) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 76.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 76.3 Please indicate whether you have any further concrete proposal, explaining your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The regulations should allow to prepare analyses for SMEs (not only listed at SME growth markets) by market professionals, i.e. licensed natural persons like investment advisors or portfolio managers. Such a change would give investors additional research to base their investment decisions on and should contribute to increased liquidity, thus limiting volatility.
There could be doubts, whether licensed professionals as natural persons should be allowed to prepare analyses for SMEs. Yes, they should, since:

- They are professionally prepared to do so, in particular in relation to smaller companies
- They would be tempted to deliver best quality, since their name would be at stake – there is no chance for rebranding
- Any inaccuracy in preparing recommendations could be subject to administrative proceeding by the NCA licensing given person
- Even in the event of fraud there is no systemic risk, since in case of SMEs both the value at stake and the number of investors harmed would be limited.

Question 77. As an investor, what type(s) of research do you find useful for your investment decisions?

	Useful	Not useful	Don't know - No opinion - Not applicable
Independent research	◉	○	○
Venue-sponsored research	◉	○	○
Issuer-sponsored research	◉	○	○

Other	○	○	○

Please explain the reasoning of your answer to question 77:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Any above market research could be useful for investors provided that potential conflict of interest is disclosed to them. Obviously the more unbiased research, the better, but sponsored research could also be very useful source of information.

Question 78. How could the following types of research be supported through legislative and non-legislative measures?

	Legislative measures	Non-legislative measures	Don know opini no appli
Independent research	○	○	◉
Venue-sponsored research	○	○	◉
Issuer-sponsored research	○	○	◉
Other	○	○	○

Please explain the reasoning of your answer to question 78:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is a need for legislative measures to allow preparing research by licensed professional natural persons – see answer to Q76(3) for details.

Question 79. In order to make the issuer-sponsored research more reliable and hence more attractive for investors, would you see merit in introducing rules on conflict of interest between the issuer and the research analyst?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 79:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, there should be introduced rules on conflict of interest and on disclosing it to investors.

Question 80. What should be done, in your opinion, to support more funding for SMEs research?

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.3.4. Other

Question 81. Would you have any other suggestions on possible improvements to the current rules laid down in MiFID II to facilitate listing while assuring high standards of investor protection? Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MiFID II introduced very high requirements relating to providing investment services. Such standards are too high for smaller markets and harm their development. Many provisions should be amended to implement proportionality principle. From the perspective of issuer there should be introduced real alleviations for SMEs listed not only on growth markets, but also on regulated markets. In case alleviations for SMEs listed on regulated markets were not possible, these issuers should have the right to move to growth markets. It should be noted, that standard of investor protection on growth markets is higher, than it was when the issuers were joining regulated market a decade ago.
To align SME definition across EU legislations, we suggest increasing the current market capitalisation threshold of Eur 200 million to the one billion market capitalisation threshold used for exempting investment firms from the unbundling requirement when carrying out research for SMEs.
As mentioned above in particular SMEs are highly dependent of domestic share demand. Although more and more investors use so called neo brokers for their share transactions, many retail investors need investment advice by investment firms for their share engagement.
Nevertheless, due to excessive regulation investment firms more and more refrain from offering shares in their investment advice and reduce their range of other products like corporate bonds, UCIT funds and index ETFs. Due to the documentation processes clients are often annoyed by lengthy investment advice.
This could be solved by a client category semi-professional investor in MiFID, which is already discussed by

the EU Commission. The semi-professional investor could be allowed to waive certain or all documentation and information requirements. This would allow investment firms more cost-efficient investment advice to the benefit of retail investors.

2.4 Other possible areas for improvement

2.4.1 Transparency Directive (Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market)

Transparency of publicly traded companies' activities is essential for the proper functioning of capital markets. Investors need reliable and timely information about the business performance and assets of the companies they invest in and about their ownership.

The Transparency Directive (Directive 2004/109/EC) requires issuers of securities traded on EU regulated markets to make their activities transparent, by regularly publishing certain information. The information to be published includes

i. yearly and half-yearly financial reports

ii. major changes in the holding of voting rights

iii. ad hoc inside information which could affect the price of securities

This information must be released in a manner that benefits all investors equally across the EU.

The Transparency Directive was amended in 2013 by Directive 2013/50/EU to reduce the administrative burdens on smaller issuers, particularly by abolishing the requirement to publish quarterly financial reports, and make the transparency system more efficient, in particular as regards the publication of information on voting rights held through derivatives.

The Commission has recently adopted a harmonised electronic format for annual financial reports developed by ESMA (the European Single Electronic Format, ESEF). The ESEF has been applicable since 1 January 2021, except for 23 Member States who opted for a 1-year postponement. It makes reporting easier and facilitates accessibility, analysis and comparability of reports.

The Commission published in April 2021 a fitness check report accompanying the Commission report to the European Parliament and the Council on – inter alia – the operation of the 2013 amendment to the Transparency Directive. These reports indicate an overall good effectiveness of the corporate reporting framework, while highlighting areas for potential improvement, for instance in relation to supervision and enforcement.

Question 82. Do you consider that there is potential to simplify the Transparency Directive's rules on disclosures of annual and half-yearly financial reports and on the ongoing transparency requirements for major changes in the holders of voting rights, keeping in mind the need to facilitate accessibility, analysis and comparability of issuers' information and to maintain a high level of investor protection on these markets?

- (●) Yes
- ( ) No

Don’t know / no opinion / not relevant

Question 82.1 Please explain which changes would you propose as well as your reasoning:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First of all, we doubt that the introduction of ESEF has made reporting easier and has facilitated accessibility, analysis and comparability of reports for investors. Thus, our request here is that the additional iXBRL-tagging obligation must be avoided and existing duties must stay as easy to comply with as possible. One way to make the obligation more cost-effective for issuers would be to clarify the ESEF is only a filing format and that there is not obligation to audit the respective ESEF-Files. Also in the US which has served as a role model for the European regulation XBRL data are excluded from the certifications provided by the main managers as part of the annual reports and are not audited by auditors. They are consequently and rightly only regarded as another exhibit of the original accounts.

Second, major holding notification have indeed proven to be complex. The Commission thus should seek ways to simplify the regime without reducing the information content. For issuers and other market participants the most important information generally is what amount of voting rights a certain investor has on an aggregate level. Thus, it is less important to know details of holdings of investor which might be organised as a group of a number of legal entities as long as the aggregate holdings are transparent and known.

Question 83. Would you have any other suggestion to improve the current rules laid down in the Transparency Directive?

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to Q 82.

Also, we consider to adopt a different and more proportionate regime for major shareholdings disclosure for SMEs, in order to encourage investors to enter the capital of SMEs and reduce their administrative burden.

In this respect, a higher threshold (for instance 10%) triggering notification obligation should be fixed and a reduction of the number of following thresholds should be provided.

Different thresholds would appear to be consistent with different ownership structures of SMEs and less liquidity of their market.

2.4.2 Special Purpose Acquisition Companies (SPACs)

In the course of the COVID-19 pandemic, the capital markets saw a surge of SPACs listings. If this SPACs’ phenomenon was much stronger in the US, some EU markets also saw the rise of the listing of these particular vehicles. The fact that privately held operating companies were seeking a reverse merger to access public markets by means of a listed shell company such as SPAC appeared for some as a sign that the traditional IPO process was in need of reform. However, after a promising trend during the first half of 2021, the second half of 2021 showed that SPACs IPOs were already losing some steam, at least on the EU markets, in favour of more traditional IPOs.

Some argue that SPACs may play a useful role, in particular for start-ups and scale-ups, when the economic situation is dire and access to public markets becomes more difficult.

Although SPAC IPOs present weaknesses and risks that investors, in particular retail ones, should be aware of. Although, if SPACs' offers in the EU are mainly addressed to professional investors, SPACs' shares may be available for purchase by retail investors on the secondary markets. In that respect, in July 2021, ESMA published the statement "SPACs: prospectus disclosure and investor protection considerations" (ESMA32-384-5209) to promote coordinated action by EU regulators on the scrutiny of prospectus disclosures relating to SPACs and provide guidance to manufacturers and distributors of SPAC shares and warrants about MiFID II product governance provisions.

The purpose of this consultation is to get your view as to the appropriateness of the current listing regime when considering an IPO via a SPAC.

Question 84. Do you believe that SPACs are an effective and efficient alternative to traditional IPOs that could facilitate more listings on public markets in the EU?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 84:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 85.1 What would you see as being detrimental to the SPACs development in the EU?

Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 85.2 What could be done in terms of policies to contain risks for investors while encouraging the efficient and safe development of SPACs' activity in the EU?

Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 86. Do you believe that investing in SPACs, via an IPO or on the secondary market, should be reserved to professional investors only?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 86:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 87. In the case of investments in SPACs (whether on the primary or the secondary markets), would you see the need to reinforce some safeguards and/or to further harmonise the disclosure regime in the EU?

	Yes, even if an investment is open to professional investors only	**Yes**, for an investment open to both professional and retail investors	**No**	Don't know - No opinion - Not applicable
Reinforce safeguards	○	○	○	○
Harmonise the disclosure regime	○	○	○	○

Please explain the reasoning of your answer to question 87 and list additional safeguards, if any, you may find relevant:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 88. As part of the SPAC's IPO process, it is common practice for SPACs to issue warrants subscribed by the sponsors and/or the initial shareholders, which can subsequently have significant dilutive effects for the shareholders post IPO. Do you believe measures should be put in place to ensure that post IPO shareholders get a clear information about the dilutive effects of those warrants and that the dilutive effect of those warrants remains limited?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 88:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 89. Do you see the need for a clear framework for the deposit and management of the securities and proceeds held in escrow by a SPAC?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 89:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 90. Some recent SPACs IPOs have relied on the sustainability-related characteristics of the contemplated target companies. Do you believe that SPACs putting forward sustainability as a selling point should be subject to specific/different disclosures and/or standards in this regard?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 90:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 91. Do you have any other proposal on how to improve the current listing regime when considering an IPO via a SPAC?
Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4.3 Listing Directive (Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities)

The Listing Directive (Directive 2001/34/EC) concerns securities for which admission to official listing is requested and those admitted, irrespective of the legal nature of their issuer. The Listing Directive aims to coordinate the rules with regard to

i. admitting securities to official stock-exchange listing

ii. the information to be published on those securities in order to provide equivalent protection for investors at EU level.

The Prospectus Directive and the Transparency Directive further consolidated rules harmonising the conditions for the provision of information regarding requests for the admission of securities to official stock-exchange listing and the information on securities admitted to trading. Therefore, those directives amended the Listing Directive removing

overlapping requirements (i.e. deleting Articles 3, 4, 20 to 41, 65 to 104 and 108 of the Listing Directive). Furthermore, MiFID replaced the notion of 'admission to the official listing' with 'admission to trading on a regulated market'.

The Listing Directive is a minimum harmonisation directive. It allows EU Member States to put in place additional requirements for admission of securities to official listing, provided that

i. such additional conditions apply to all issuers

ii. and they have been published before the application for admission of such securities

Question 92. Do you consider that the Listing Directive, in its current form, achieves its objectives and does not need to be amended?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 92:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 92.1 Do you believe that the Listing Directive should be:

- ○ Repealed
- ◉ Amended as a Directive
- ○ Amended and transformed in a Regulation
- ○ Incorporated in another piece of legislation
- ○ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 92.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4.3.1. Definitions

Question 93. Do you consider that the definitions laid down in Article 1 of the Listing Directive are outdated?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

2.4 3.2. Listing conditions

Question 94. Do you consider that the broad flexibility that the Listing Directive leaves to Member States and competent authorities on the application of the rules for the admission to the official listing of shares and debt securities is appropriate in light of local market conditions?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 94:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Specific conditions for the admission of shares

Chapter II of Title III of the Listing Directive sets out specific rules for the admission to the official listing of shares of companies. However, a rather broad discretion is given to Member States or competent authorities to deviate from those rules to take into account specific local market conditions. The Listing Directive sets out, among others, rules on the foreseeable market capitalisation of the shares to be admitted to the official listing, (Article 43), on the publication or filing of the company’s annual accounts (Article 44), on the free transferability of the shares (Article 46), on the minimum free float (Article 48) and on shares of third country companies (Article 51).

Question 95.1 How relevant do you still consider the following requirements?

	1 (not relevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (very relevant)	Don't know - No opinion - Not applicable
a) Expected 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 one million euro (Article 43(1)).	○	○	◉	○	○	○
b) Disclosure pre-IPO: A company must have published or filed its annual accounts in accordance with national law for the three financial years preceding the application for official listing. (…) (Article 44).	○	○	○	◉	○	○
c) Free float:A sufficient number of shares shall be deemed to have been distributed either when the shares in respect of which application for admission has been made are in the hands of the public to the extent of a least 25 % of the subscribed capital represented by the class of shares concerned or when, in view of the large number of shares of the same class and the extent of their distribution to the public, the market will operate properly with a lower percentage. (Article 48(5)).	○	○	○	◉	○	○

Please explain the reasoning of your answer to question 95.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 95.2 Regarding the foreseeable market capitalisation referred to on question 95.1 a), would you consider a different threshold?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 95.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 95.3 Do you consider that the minimum number of years of publication or filing of annual accounts is adequate?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 95.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We propose that 2 years should be sufficient as this better keeps the balance of informing investors and costs and efforts for issuers.

The free float is the portion of a company's issued share capital that is in the hands of public investors, as opposed to company officers, directors, or shareholders that hold controlling interests. These are the shares that are deemed to be freely available for trading. The recommendation of 25% free float set out in Article 48 dates back to 2001. It allows the Member States' discretion in setting the percentage of the shares that would be needed to be floated at the time of listing. According to information received from stakeholders, the percentages in the EU-27 vary from 5% to 45%.

Question 96.1 In your opinion is free float a good measure to ensure liquidity?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree that a certain degree of liquidity should be in the interests of both investors and issuers. But free float is at best a very broad proxy for liquidity as liqudity ultimately results from the interesest of investors to trade a security.

Question 96.2 In your opinion, could a minimum free float requirement be a barrier to listing?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 96.3 In your opinion, is the recommended threshold set at 25% appropriate?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not applicable

Please specify whether the recommended threshold should be higher or lower than 25%:

- ○ Higher
- ◉ Lower
- ○ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 96.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

IPO is easier if there are lower or no minimum free float requirements. We would advocate more flexibility with regard to the free float requirement in order to let investors and issuers decide on the adequate level of free float in the listing process. Nevertheless, since a certain amount of free float increases the liquidity of the share, every issuer would have to have an interest in enabling a certain amount of free float.

Question 96.4 In your opinion, is it necessary to maintain the national discretion to depart from the recommended threshold for free float?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.4:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 97. Are there other provisions relating to the admission of shares, set out in Title III, Chapter II of the Listing Directive, that you would propose to change?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Specific conditions for the admission of debt securities

Chapter III of Title III of the Listing Directive sets out specific conditions for the admission to the official listing of debt securities issued by an undertaking. In particular, the Listing Directive sets out rules on the free transferability of the debt securities (Article 54), the minimum amount of the loan (Article 58), convertible or exchangeable debentures and debentures with warrants (Article 59). As for shares, the Listing Directive leaves wide discretion to Member States or competent authorities to deviate from those rules in light of specific local market conditions. Finally, Articles 60 to 63 set out rules relating to sovereign debt securities.

Question 98. Do you consider the provisions relating to the admission to official listing of debt securities issued by an undertaking, set out in Title III, Chapter III and IV of the Listing Directive (e.g. amount of the loan, rules on convertible or exchangeable debentures, rules on sovereign debt), adequate?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 98:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4 3.3. Competent authorities

Question 99. Would you propose any changes relating to the provisions on competent authorities and cooperation between Member States, laid down in Title VI of the Listing Directive?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 99:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Although provisions on cooperation are very short, they seem satisfactory and could be a benchmark for other regulations, where such chapters an inadequately long and complicated

2.4.3.4. Other

Question 100. Would you have any other suggestions on possible improvements to the current rules laid down in the Listing Directive?

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It should be considered, whether the Listing Directive (or any other act regulating this area) should include provisions on changing the supplier of the listing service. As Listing Directive stipulates rules on dual listing, it could also define conditions for translisting, i.e. moving listing from one market to the other. From the issuer's perspective this process of changing the listing venue should be as easy as possible in both regulatory terms and technological terms. However, at least in certain members states issuers have made the experience that moving the listing is complicated so that competition might be hampered and the objective of the single market might not be met.

2.4.4 Shares with multiple voting rights

Loss of control is widely cited by unlisted companies as the most important reason for staying private. Equity-raising very often generates a tension between existing owners, who rarely want to cede control of their business, and new investors who want to have control over their investment. This tension affects in particular family-owned companies but also the founders of tech, science and other high-growth companies who are often interested in preserving their ability to influence the strategic direction of the company after going public.

In order to encourage companies to list without owners having to relinquish control of their companies, multiple voting right shares have been used in a number of EU countries and have been highlighted as an efficient control-enhancing mechanism.

It is however worth noting that currently only some Member States allow for multiple voting rights. Amongst Member States that do allow multiple voting right share structures there are divergences as to the maximum allowed voting rights ratio.

Whilst multiple voting rights allow founders to keep control over their business, they may also make it easier for owners to extract private benefits to the detriment of investors, for instance by engaging in related-party transactions. The trade-off associated with multiple voting rights has led some countries to allow these types of shares provided that they include a sunset clause i.e. after a certain period, the shares with additional voting rights become regular shares. This safeguard aims at making sure that founders do not have indefinite control over their companies.

Both the HLF as well as the TESG stated that multiple voting right shares are a key ingredient for improving the attractiveness and competitiveness of European public market ecosystems and that allowing them across the whole EU would/could facilitate the transition of companies from private to public markets.

Question 101. Do you believe that, where allowed, the use of shares with multiple voting rights has effectively encouraged more firms to seek a listing on public markets?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 101 and substantiate with evidence where possible:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The desirability for using MVRS differs across firms and industries. In the years 2000, companies going public with MVRS were mostly mid-cap and family-owned. Since then, innovative and tech firms, especially in the US, have exceeded the number of non tech firms using MVRS.
Arguably, in the absence of MVRS, these firms would never have gone public. By allowing them to go public with MVRS, founders, especially in innovative and tech firms, will not face the risk of losing control. MVRS therefore are appealing for the attraction of IPOs and the development of local capital markets. Additional benefits might then be created: founders will be in a better position to raise more funds and expand their business. Investors will have the opportunity to invest in innovative companies that may outperform the market.

Question 102.1 In your opinion, what impact do shares with multiple voting rights have on the attractiveness of a company for investors?

- ○ Negative impact
- ○ Slightly negative impact
- ○ Neutral
- ○ Slightly positive impact
- ◉ Positive impact
- ○ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 102.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 102.2 When shares with multiple voting rights are allowed, do you believe limits to the voting rights attached to a single share improve the attractiveness of the company to investors?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 102.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 102.3 Please indicate what ratio you consider acceptable to overcome potential drawbacks associated with shares with multiple voting rights:

- 2:1
- 10:1
- 20:1
- Other
- Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 102.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Limiting MVRS to a ratio might strike a fair balance between giving founders a longer-term perspective and protecting minority rights. International comparisons show that a 20:1 ratio is not completely unusual.

Question 103. Do you believe that the inclusion of sunset clauses (i.e. clauses that eliminate higher voting rights after a designated period of time) have proved useful in striking a proper balance between founders’ and investors’ interests?

- Yes
- No
- Don’t know / no opinion / not relevant

Please illustrate the reasoning of your answer to question 103, namely in terms of advantages and disadvantages:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

At present, EU does not forbid companies - but do not encourage - to adopt dual class shares structures and explicitly acknowledges their existence, if allowed by national legislation (i.e., takeover directive).

There is indeed a case for enabling the use of MVRS at EU level to facilitate, among others, companies' mobility (currently, companies are prevented from going public in Member States markets where MVRS are prohibited) as well as the development of an effective Capital Market Union.
It should also be noted that Member states allow the separation of ownership and control through other legal devices than MVRS, including preferred shares, stock pyramids and cross-ownership structures and this separation takes place in a more transparent way. These means are deeply routed in the members states legal traditions and law and must be kept in any case.
Against this backdrop, any EU action should be limited to an enabling one, confining itself to acknowledging EU-wide the MVRS principle (both dual class shares and loyalty shares) and leaving Member-states free to implement it according to their specific local circumstances. Also it could be considered to create an option for companies not for the members states to opt in that regime.
Consequently, the provision for sunset clauses - which could constitute a reasonable middle-ground for regulating MVRS – should be left to Member States and be optional for each company.

Question 104. Would you see merit in stipulating in EU law that issuers across the EU may be able to list on any EU trading venues following the multiple voting rights structure?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please illustrate the reasoning of your answer to question 104, namely in terms of advantages and disadvantages:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our response to the preceding question.

Question 105. Do you have any other suggestion on how to make listing more attractive from the standpoint of companies' founders?

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Issuers have to cover a lot of costs related to listing (see answer to Q4 for details). Together with the high level of transparency this may cause difficulties to compete with non-listed entities which in turn makes listings less attractive.

Thus besides lowering the regulatory burden, one could think about compensating listed companies for their transparency and given them some preferred treatment. Based on pilot research conducted in Poland by SEG this could, for instance, be:

- Less reporting to multiple authorities – once given data are published by issuer, authorities could be obliged to gather these data themselves from publicly available reports

- Less documentation required in public procurement – listed companies are more reliable entities, their financial situation is publicly known, data on their operations are publicly available, so they should not be required to present their "credentials"
- Additional scoring points in public procurement

2.4.5 Corporate Governance standards for companies listed on SME growth markets

Good corporate governance and transparency are deemed essential for the success of any company and in particular to those seeking access to capital markets. When issuers are governed according to principles of good corporate governance, they will find it easier to tap capital markets and attract investors. As issuers listed on SME growth markets do not need to comply with the Shareholder Rights Directive (2007/36/EC, as amended) or Transparency Directive (2004/109/EC, as amended), some market participants see merit in setting minimum corporate governance requirements applicable to these issuers in order to reassure investors. Institutional investors in particular may fear reputational risk when investing in companies listed on SME growth markets and find them not sufficiently attractive.

Question 106. Would you see merit in introducing minimum corporate governance requirements for companies listed on SME growth market with the aim of making them more attractive for investors?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 106:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Any choice on governance requirements should be left to the initiative of the single SME GM, depending on the local market conditions, and could be addressed in different ways, i.e. by adopting a very light and principle based guidelines on corporate governance, to help companies in setting up an appropriate organization, recommending governance arrangements or requesting governance requirements in their listing rules.
Against this background, we are not favour of any potential EU initiative in this field.

Please explain the reasoning of your answers to question 106, notably on the advantages and disadvantages of the preferred option:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 107.1 Please indicate the corporate governance requirements that would be the most needed and would have the most impact to increase the attractiveness of issuers listed on SME growth markets:

	1 (no impact)	2 (almost no impact)	3 (some positive impact)	4 (significant positive impact)	5 (very significant positive impact)	Don't know - No opinion - Not applicable
Requirement to report related party transactions (i.e. issuers would have to publicly announce material transactions with related parties at the time of the conclusion of such transaction and to adopt an internal procedure to assess and manage these transactions in order to protect the interests of the company)	○	○	○	○	○	○
Additional disclosure duties regarding the acquisition/ disposal of voting rights as required by the Transparency Directive for major shareholdings in companies with shares traded on Regulated Markets	○	○	○	○	○	○
Obligation to appoint an investor relations manager	○	○	○	○	○	○
Introduction of minimum requirements for the delisting of shares: Supermajority approval (e.g. 75% or 90% of shareholders attending the meeting) for shareholders resolutions which directly or indirectly lead to the issuer's delisting (including merger or similar transactions)	○	○	○	○	○	○
Introduction of minimum requirements for the delisting of shares: Sell-out rights assigned to minority shareholders if the company is delisted or if one shareholder owns more than 90% or 95% of the share capital.	○	○	○	○	○	○

Appointment of at least one independent director (independence should be understood according to para. 13.1. of Commission's recommendation 2005/162/EC)						
Other						

Please explain the reasoning of your answer to question 107.1:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 107.2 In your opinion, what would be the impact on the costs of listing and staying listed if the following corporate governance requirements were introduced for issuers listed on SME growth markets:

	1 (no impact)	2 (almost no impact)	3 (some positive impact)	4 (significant positive impact)	5 (very significant positive impact)	Don't know - No opinion - Not applicable
Requirement to report related party transactions (i.e. issuers would have to publicly announce material transactions with related parties at the time of the conclusion of such transaction and to adopt an internal procedure to assess and manage these transactions in order to protect the interests of the company)	○	○	◉	○	○	○
Additional disclosure duties regarding the acquisition/ disposal of voting rights as required by the Transparency Directive for major shareholdings in companies with shares traded on Regulated Markets	○	◉	○	○	○	○
Obligation to appoint an investor relations manager	○	○	○	○	◉	○
Introduction of minimum requirements for the delisting of shares: supermajority approval (e.g. 75% or 90% of shareholders attending the meeting) for shareholders resolutions which directly or indirectly lead to the issuer's delisting (including merger or similar transactions)	○	◉	○	○	○	○
Introduction of minimum requirements for the delisting of shares: sell-out rights assigned to minority shareholders if the company is delisted or if one shareholder owns more than 90% or 95% of the share capital.	○	◉	○	○	○	○

Appointment of at least one independent director (independence should be understood according to para. 13.1. of Commission's recommendation 2005/162/EC)	○	○	○	◉	○	○
Other	○	○	○	○	○	○

Please explain the reasoning of your answer to question 107.2, and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 108. Do you have any other suggestion on how to make issuers listed on SME growth markets more attractive to investors?

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Investors should be given opportunity of proper gain on their investments. In case of SMEs costs related to listing (costs of fees paid to national depository and to NCA, costs of running investor relations, costs of performing disclosure requirements, additional costs of compliance, additional costs of Management Board, additional costs of Supervisory Board, additional costs of AGM, additional costs of accounting team, operating in more difficult business environment, paying higher effective tax rate, see also answer to Q4) are relatively higher than in case of big companies and are ultimately covered by investors – the higher the costs of issuers are, the smaller is the profit of investors. Moreover, growth markets would be more attractive for investors, if they were attractive for attractive issuers. So listed companies (in particular SMEs) should be attracted to the market by incentives, which could minimise the disadvantages related to extremely high level of transparency.

As noted in the Oxera Report it is necessary to «deploy the SME growth market concept in the regulatory framework applicable to the investor base. For example, the UCITS regime places restrictions on the types of securities and eligible markets in which UCITS funds can invest. To enhance the depth of liquidity in SME growth markets, the Commission could make UCITS funds eligible for investment in all SME growth markets (rather than making determinations based on specific markets). It is worth considering the merits of creating a different class of fund, with lower liquidity expectations. While it is standard practice for regulators to allow mutual funds, pension schemes and insurance companies to invest in financial instruments listed on regulated markets, restrictions often apply for non-listed shares—a category that is open to the interpretation of national regulators, and some may include within this category financial instruments traded on non-regulated markets, such as MTFs. It is also worth exploring with the fund industry if targeted changes to the regulatory framework for ELTIFs might support more investment in small stocks».

The actual regime provides that any MTF operated in the EU will be considered as a regulated market within the scope of the UCITS framework as long as the MTF meets the requirements set out in article 50(1)(b) of the UCITS Directive (operates regularly and is recognised and open to the public). Instruments in which a UCITS invests that are traded on such a MTF on behalf of a UCITS must comply with the Directive 2007/16 /EC relating to UCITS as regards the clarification of certain definitions (the “Eligible Assets Directive”), in particular with its article 2(1). If a UCITS proposes to invest in such an instrument, it should actively seek and review information regarding the liquidity and negotiability of that instrument in order to be satisfied that the presumptions of liquidity and negotiability in the last sub-paragraph of Article 2(1) are well-founded.

To increase investments by UCITS in SMEs and foster the liquidity of SMEs UCITS Directive 2009/65/EC and Directive 2007/16/EC shall be amended in order to apply the same regime provided for UCITS

investment in regulated market to SME growth markets. In particular, the above-mentioned Directives shall be modified to provide that if a UCITS proposes to invest in such instruments issued by a SME and admitted to trading on a SME growth market it should not actively seek and review information regarding the liquidity and negotiability of that instrument in order to be satisfied that that the presumptions of liquidity and negotiability in the last sub-paragraph of Article 2(1) are well-founded.
Recognising SME GM as being specifically eligible for investment by all UCITS funds (rather than making determinations for specific markets) could help enhance the depth of liquidity on SME growth markets and de-risk investment into such shares by individual funds.

2.4.6. Gold-plating by NCAs and/or Member States

Question 109. Are you aware of any cases of gold-plating by NCAs or Member States in relation to EU rules applicable both to companies going through a listing process and to companies already listed on EU public markets? Please note that for the purposes of this consultation gold-plating should be understood as encompassing all measures imposed by NCAs and /or Member States that go beyond what is required at EU level (i.e. it does no relate to existing national discretions and options in EU legislation).

- ○ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous**.

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed
1fc0ee7d-b94c-4249-8e1d-64e1f5202527/2022.02.24 _EuropeanIssuers_Observations_on_EC_Listing_Act_Consultation_.pdf

Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act-targeted_e

Consultation document (https://ec.europa.eu/info/files/2021-listing-act-targeted-consultation-document_en)

More on the public consultation running in parallel (https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act_en)

More on SME listing on public markets (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/sme-listing-public-markets_en)

Specific privacy statement (https://ec.europa.eu/info/files/2021-listing-act-targeted-specific-privacy-statement_en)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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