Deutsches Aktieninstitut

# EU Listing Act

Using the opportunity for European capital markets

Response of Deutsches Aktieninstitut on the consultation of the EU Commission on a Listing Act, 24 February 2022

# The EU Listing Act – using the opportunity for European capital markets[1]

Deutsches Aktieninstitut welcomes the EU Commission's initiative on an "EU Listing Act" as it creates an opportunity to make capital markets funding significantly more attractive for companies and thus to promote growth, jobs and innovation for European economies.

From our perspective, the EU Commission is asking the right questions. After two decades of an ever-increasing intensity of regulation for listed companies, the regulatory framework needs to be rebalanced. Regulation has become a significant hurdle to use public capital markets as it often creates bureaucracy, legal uncertainty and inappropriate risks for listed companies.

If successful the EU Listing Act has the potential to stop und reverse some alarming trends of the past that resulted in a decreasing role of capital markets in financing the economy. This is for example evidenced by the decreasing number of listed companies in the European Union and the shrinking European share of the global IPO market in the past decade. These trends do not only weaken the role of Europe as financial centre but ultimately will weaken the European economy. In particular, capital-intensive innovation is strongly depending on the companies' ability to raise capital in large scale.

Furthermore, the EU Listing Act must be seen against increasing competitive pressure from other countries or regions that have already demonstrated willingness to challenge the existing regulatory framework in order to create an attractive environment for new businesses. The US JOBS Act (2012) as well as the more recent UK Listing Review (2021) also aim at making capital markets more easily accessible and to attract listings from innovative companies. To do so, legislators have implemented a number of adjustments to the regulatory framework.

Against this background, the EU Listing Act is overdue and it is time for action. From our perspective, the Listing Act will however only be successful if it delivers the following two improvements:

- First, the specific needs of start-ups and other small companies must be well recognized. To be precise, their step into the public market must be

[1] This document is a copy of the original response of Deutsches Aktieninstitut to the online questionaire of the EU Commission's consultation. The original response as well as a separate document including the general remarks will be available on the consultation website.

as easy as possible from a compliance and legal perspective. At the same time policy makers must be aware, that after an IPO there will and should be additional rounds of finance. Thus, besides making the regulatory environment of IPOs attractive also the environment for secondary offerings must be improved.

- Second, the Listing Act must not stop with improvements for SMEs, though they are important. Also established listed companies struggle with overly bureaucratic and unclear rules, that ultimately lead to undue risks and create competitive disadvantages for listed companies vis-à-vis their non-listed peers. Most prominently, the provisions of the EU Market Abuse Regulation regarding the definition of inside information and its publication must be reviewed thoroughly and better balanced.

That said, the aim should be to establish an efficient framework both ensuring easy access to capital markets financing and maintaining the necessary safeguards to ensure market integrity as well as an appropriate level of transparency, hence investor protection.

The EU Listing Act has the potential to be a central element in promoting capital market development in the EU with the objective to protect and improve the position of the EU in global competition. The opportunity this consultation offers must now be used by policy makers at the European and member states level. The ultimate aim should be to create an attractive ecosystem that supports firms to be innovative and to create the jobs of the future. However, this is not a task solely for the EU, but also for the members states which must support EU initiatives with own initiatives, in particular in the field of old age provision and taxes.

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

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

(On a scale from 1 to 5 (1 being "achievement is very low" and 5 being "achievement is very high"), please rate each of the following objectives by putting an X in the box corresponding to your chosen options.)

| | 1 | 2 | 3 | 4 | 5 | Don't know/no opinion/ not relevant |
|---|---|---|---|---|---|---|
| a) Ensuring adequate access to finance through EU capital markets | | X | | | | |
| b) Providing an adequate level of investor protection | | | | X | | |
| c) Creating markets that attract an adequate base of professional investors for companies listed in the EU | | X | | | | |
| d) Creating markets that attract an adequate base of retail investors for companies listed in the EU | X | | | | | |
| e) Providing a clear legal framework | | | X | | | |
| f) Integrating EU capital markets | | | | X | | |

So far the focus of the EU regulator is on investor protection and integration issues. The high level of investor protection rules is harmonised more and more by regulations instead of directives, leaving the member states no leeway for

derogations (see e.g. Prospectus Regulation, MAR and MiFIR). Although investor protection increases integrity of capital markets, too strict rules bear the risk that companies refrain from public markets due to compliance costs and legal uncertainties. This holds true for MAR and the Prospectus Directive especially. The decreasing number of listed companies in Europe is a sign for a loss of attractiveness of public markets.

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. 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 urgently needed.

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.

Nevertheless, many issues especially regarding the ecosystem, like tax incentives, measures to strengthen capital market-based pension systems or financial literacy, remain in the competence of national politics. The European Commission should push member states to take appropriately actions in those fields.

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

(Please rate each factor from 1 to 5, 1 standing for “not important” and 5 for “very important.)

| | Regulated Markets | SME growth markets | Other Markets (e.g. other MTFs, OTFs) |
|---|---|---|---|
| a) Excessive compliance costs linked to regulatory requirements | 4 | 4 | 4 |
| b) Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options | 4 | 4 | 4 |
| c) Lack of attractiveness of SMEs’ securities | 1 | 1 | 1 |

| | Regulated Markets | SME growth markets | Other Markets (e.g. other MTFs, OTFs) |
|---|---|---|---|
| d) Lack of liquidity of securities | N.A. | N.A. | N.A. |
| e) Other (please specify below) | | | |

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. 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. These companies have trouble allocating enough resources to regulatory topics, since administrative and operative business expenses need to be balanced well. Along the lines of the US-JOBS (Jumpstart Our Business Startup)-Act, it would be helpful to allow the respective SMEs a transition period with a lighter regulation, e.g. simplification regarding insider lists, adjustments regarding voting rights notifications, an exemption from the compliance with ESG-reporting and the application of the XBRL-taxonomy, proportionate sanctions. Throughout this transition period, legislation could lessen regulatory burdens for eligible companies to allow them to get used to the high capital market requirements. The US JOBS Act should also serve as an example regarding the definition of SMEs, which sets a higher threshold of approximately EUR 1 bn revenue.

In addition, consideration can also be given to providing these companies with more pre- or post-IPO guidance for regulatory issues. This could be organised as «helpdesk» provided by the national supervisory authority. A person or group of persons being part of this helpdesk would act as a contact for the companies on regulatory issues and, in his/her advisory capacity, ensure that implementation of the rules is made smoother. In addition, educational measures could be also part of this guidance.

Investor interest and liquidity: 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, especially companies in the tech sector decide on a listing in the country where their potential investors are. That is the US in particular.

The "remaining" SMEs, in particular those not represented in a main index, struggle with a vicious circle while being listed (if they are listed at all). The low level of investor interest has a negative impact on the liquidity of the share. Low liquidity leads to declining investor interest, which in turn leads to further declining liquidity. A vicious circle, which 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.

More flexible shareholder structures: Especially for high-growth companies, multiple voting rights are a useful instrument. We therefore advocate a European regime for multiple voting rights alongside the already existing national regimes (see our answer to Q 101 to 104).

**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)?**

(Please rate each cost from 1 to 5, 1 standing for "very low" and 5 for "very high".)

| **Direct Costs** | |
|---|---|
| a) Fees charged by the issuer's legal advisers for all tasks linked to the preparation of the IPO (e.g. drafting and negotiation of the prospectus and all relevant documentation, liaising with competent authorities, the relevant stock exchanges, the underwriters, etc.) | 5 |
| b) Fees charged by the issuer's auditors in connection with the IPO | 3 |
| c) Fees and commissions charged by the banks for the coordination, book building, underwriting, placing, marketing and the roadshow of the IPO | 5 |
| d) Fees charged by the relevant stock exchange in connection with the IPO | 2 |
| e) Fees charged by the competent authority approving the IPO prospectus | 2 |
| f) Fees charged by the listing and paying agents | 3 |

| **Indirect Costs** | |
|---|---|
| g) The potential underpricing of the shares during the IPO by investment banks | 3 |
| h) Cost of efforts required to comply with the regulatory requirements associated with the listing process | 4 |
| **Other costs (please specify below)** | |

The preparation of the prospectus is a costly and time-consuming process. This also applies to the EU Growth Prospectus. According to lawyers in charge with this issue, costs for the preparation of an EU Growth Prospectus are not significantly lower than for a «full» prospectus. We also heard that the EU Growth Prospectus is less flexible regarding information not required by the legislation. Therefore, it seems nearly impossible for the issuer to add information asked for by banks or investors. In this case, the issuer has to draft a « full » prospectus and cannot benefit from the alleviations provided by the EU Growth Prospectus.

In addition, the costs of the banks with their different services are high. Depending on whether the company is known to the public, high costs are incurred for marketing the share.

From our perspective, underpricing is not really in issue in practice. Rather, it is often challenging to generate sufficient demand for SME IPOs. Worst case scenario is getting everything ready and incurring cost in a significant amount just to then learn that book building was unsuccessful. One of the reasons may be the limitations of access to research as a result of the unbundling rules under MIFID II.

### 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?

(Please rate each cost from 1 to 5, 1 standing for “very low” and 5 for “very high”.)

| **Direct Costs** | |
|---|---|
| a) Ongoing fees due by the issuer to the listing venue for the continued admission of its securities to trading on the listing venue | 2 |
| b) Ongoing fees due by the issuer to its paying agent | 2 |

| | |
|---|---|
| c) 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) | 4 |
| d) Fees due by the issuer to auditors if post-IPO, extra auditor work is necessary to ensure compliance with listing regulation | 3 |
| e) Corporate governance costs | 3 |
| f) Other (e.g. costs for extra headcount, costs allocated to investors' relationships, development and maintenance of a website) | 4 |
| **Indirect Costs** | |
| g) Increased risk of litigation due to investor base and increased scrutiny and supervision derived from being listed | 4 |
| h) Risk of being sanctioned for non-compliance with regulation | 4 |
| i) Other (please specify) | |

While going public is not easy, real work for companies begins with being public.

Regulation on capital markets is increasing: More and more topics have to be legally checked and evaluated regarding risks for the company. Recently, e.g. ESG reporting requirements, which are very costly to implement, are rapidly expanding. In particular SMEs do not have the necessary resources available to implement these rules internally and, therefore, but need costly external legal advice. Therefore, it is helpful to introduce a transition period exempting the concerning issuers temporary e.g. from ESG reporting and other regulatory requirements (see our answer to Q 2).

Effects of sanctions: Sanctions act justified to ensure that companies comply with the law. However, sanctions that are too high act as a deterrent for companies to enter the capital market as all. 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 as part of the proposed transition period (see our answer to Q 2).

**Question 5 (a): 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 relevant

For example, the determination of the offer price on the day of the IPO could provide more flexibility. According to the EU Prospectus Regulation, deviations from the offer price range, which is part of the bookbuilding process, are only allowed under two conditions: The issuer must have already indicated this possibility in the prospectus or has to prepare a prospectus supplement. At the same time, the issuer must provide investors currently three additional days to reconsider the new offer. In order not to jeopardize the IPO, the price range therefore tends to be set more conservatively. The consequence may be a valuation below the company's actual potential, which in turn is less attractive for the selling shareholders.

Compared to the EU rules, US law provides more flexibility by allowing deviations from the price range of 20 per cent without further conditions. This can significantly facilitate the IPO especially of growth companies. EU legislators should consider the same flexibility in setting the offer price for IPOs in the EU in order to better facilitate listing.

**Question 5 (b): 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 relevant

See answers to detailed questions.

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

(Please put an X in the box corresponding to your chosen option for each measure listed on the table.)

| | Yes | No | Don't Know / No Opinion / Not Relevant |
|---|---|---|---|
| a) Allow issuers to use multiple voting right share structures when going public | X | | |
| b) Clarify conditions around dual listing | | | Don't know |
| c) Lower minimum free float requirements | X | | |
| d) Eliminate minimum free float requirements | | | Don't know |
| e) Other (please specify below) | | | |

As already mentioned in our answer to Q 2 we deem multiple voting rights as an important instrument, especially for growth companies, as they give the founder more leeway in the firm's strategic decision process (for further details see our answer to Q 101 to 104).

An IPO gets easier as there are lower or no minimum free float requirements. Therefore, we propose more flexibility (see our answer to Q 96).

**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?**

(Please rate each below element from 1 to 5, 1 standing for "not important" and 5 for "very important".)

| | |
|---|---|
| a) Lack of visibility and attractiveness of SMEs towards investors leading to a lack of liquidity for SME shares and bonds | 2 |
| b) Lack of investor confidence in listed SMEs | 2 |
| c) Lack of tax incentives | 4 |
| d) Lack of retail participation in public capital markets (especially in SME growth markets) | 5 |
| e) Other (please specify below) | |

SMEs are particularly dependent on capital from domestic retail 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. In addition, capital markets would benefit from large pension funds providing financing sources also for SMEs. Therefore, the European Commission should push member states to do more in favour of attractive tax conditions for share possession and for more shares in the pension system.

# 2 Specific questions on the existing regulatory framework

## 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)

### 2.1.1 Costs stemming from the drawing up of a prospectus

**Question 8 (a): 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** | **Your answer** |
|---|---|
| Standard prospectus for equity securities | |
| Standard prospectus for non-equity securities | |
| Base prospectus for non-equity securities | €100 000, of which €50k for the dealer's counsel and €30k for the issuers counsel and €20k internal costs |
| 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) | |

**Question 8 (b): 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**: N.A.

**b) Right issue prospectus**: N.A.

**c) Bond issue prospectus:** N.A.

**d) Convertible bond issue prospectus**: N.A.

**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 relevant |
|---|---|---|---|---|---|---|
| a) Issuer's internal costs | | X | | | | |
| b) Auditors costs | | | | | | |
| c) Legal fees (including legal fees borne by underwriters for drawing- up the prospectus) | | | | | X | |
| d) Competent authorities' fees | | | | | | |
| e) Other costs (please specify) | | | | | | |

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

(Please rate each of the below sections from 1 to 5, 1 standing for "not burdensome at all" and 5 for "very burdensome")

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

| | 1 (not burden-some at all) | 2 (rather not burden-some) | 3 (neutral) | 4 (rather burden-some) | 5 (very burden-some) | Don't know / No opinion / Not applicable |
|---|---|---|---|---|---|---|
| Statement of capitalisation and indebtedness | | | | X | | |
| Others (please specify below which sections as well as the rating) | | | | | | |

In the following, we will focus on the points where the effort is disproportionate to the benefit for investors.

**Risk factors:**

The presentation of risk factors is important, but the requirements for presentation and categorisation make the prospectus unnecessarily complicated. On the other hand, the required ranking of risk factors imposes an undue burden and, more importantly, liability risk to the issuer and its managers. In addition, many things are unpredictable, for example the Corona pandemic.

**Administrative, executive and supervisory bodies and senior management:**

The information on administrative, executive and supervisory bodies as well as senior management appears unnecessarily detailed and can be difficult and time-consuming to compile. Some information is also are not easily approachable, for example checking of other/external mandates of board members.

**Statement of capitalisation and indebtedness:**

The statement of capitalisation and indebtedness generates effort and redundant. The information on the statement of capitalisation and indebtedness is already included in the balance sheet. However, the current presentation of capitalisation and indebtedness does not harmonise with IFRS accounting. For this reason, there is an additional effort that is also unnecessary. Since the required framework does not correspond to any standard, the presentation is so different that investors cannot even compare the prospectuses at this point. In the worst case, there is even irritation among investors who do not know this background.

The effort is higher when issuers may have to prepare a separate new balance sheet, as the statement on capitalisation and indebtedness may not be older than 90 days. And this is the case even if they submit full quarterly reporting in accordance with IFRS. Such a balance sheet preparation thus also contradicts the valuations of the Transparency Directive.

At this point, it should also be clarified that in the case of material changes, the general disclosure principles of Art. 6 of Regulation 2017/1129 require disclosure.

If the statement on capitalisation and indebtedness is to be retained, then at least no disclosure beyond the historical financial information or, if applicable, interim financial information should be required.

**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% | Between More than 10% and less than or equal to 20% | Between More than 20% and less than or equal to 40% | Between More than 40% and less than or equal to 50% | More than 50% | Don't know / no opinion / not relevant |
|---|---|---|---|---|---|---|
| EU Growth prospectus for equity securities compared to a Standard prospectus for equity securities | | | | | | X |
| EU Growth prospectus for non-equity securities compared to a Standard prospectus for non-equity securities | | | | | | X |

**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)?**

(Please put an X in the box corresponding to your chosen option.)

| | 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 relevant |
|---|---|---|---|---|---|---|
| EU Recovery prospectus compared to a Standard prospectus for equity securities | | | | | | X |
| EU Recovery prospectus compared to a Simplified prospectus for secondary issuances of equity securities | | | | | | X |

### 2.1.2 Circumstances when a prospectus is not needed

**Question 12 (a): 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?**

(Please put an X in the box corresponding to the exemption(s) you would be in favour of adjusting and specify in the textbox what changes you would propose, including (where relevant) your preferred threshold.)

| **Exemptions for offers of securities to the public (Article 1(4) of the Prospectus Regulation)** | |
|---|---|
| 1- 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)) | |

| | |
|---|---|
| 2- An offer of securities whose denomination per unit amounts to at least EUR 100 000 (Article 1(4), point (c)) | X |
| 3- 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 |
| 4- Other exemptions – please specify | X |
| **Exemptions for the admission to trading on a regulated market (Article 1(5) of the Prospectus Regulation)** | |
| 5- 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 |
| 6- 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)) | |
| 7- Other exemptions – please specify | X |
| **Exemptions applicable to both the offer of securities to the public and admission to trading on a regulated market** | |
| 8- 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:<br>(i) are not subordinated, convertible or exchangeable; and<br>(ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument<br>(Article 1(4), point (j) and Article 1(5), first subparagraph, point (i)) | |

| | |
|---|---|
| 9- 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:<br>(i) are not subordinated, convertible or exchangeable; and<br>(ii) do not give a right to subscribe for or acquire other types of securities andare not linked to a derivative instrument<br>(Article 1(4), point (l), and Article 1(5), first subparagraph, point (k)) | |
| 10- Other exemptions – please specify | |

After the IPO, fast-growing companies in particular use capital markets for further financing rounds. For them, the limit of 20 per cent is a costly obstacle for further capital raisings due to the prospectus requirement. As these companies are already listed, their business model is known to the investors, who also benefit from the ongoing disclosures as required for listed issuers under the Transparency Directive and MAR. Therefore, to the benefit of high-growth companies we deem it proportionate to lift the limit of 20 per cent for the subsequent admission of securities fungible with those that are already admitted to trading on a regulated market. This would enable larger equity raisings where new shares offered, for example, to qualified investors only so that a prospectus would currently only be required for the admission of the new shares.

In addition, implementation of employee share purchase plans could be alleviated as these plans are significantly used by high-growth companies. Due to lacking liquidity, these companies pay their employees with stocks of the own company to a large part. Generally, employee stock ownership is an excellent instrument for familiarizing large parts of the population with shares and reducing their skepticism. It therefore contributes to the equity culture in the EU. Implementation of employee share purchase plans should be simpler. Although companies do not have to prepare a prospectus for these plans (Art. 1(4)(i) Prospectus Regulation), they still have to provide an information document. We think that this document should be abandoned as well to make it as easy as possible for companies to provide share purchase plans for their employees.

**Question 12 (b): 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)?**

(If yes, please explain in the textbox below on which thresholds and on which elements more clarity is needed.)

☐ Yes
☒ No
☐ Don't know/no opinion/not relevant

**Question 12 (c): 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? If yes, please specify in the textbox below which additional exemptions you would propose.**

☒ Yes
☐ No
☐ Don't know/no opinion/not relevant

A prospectus has to be prepared as soon as the securities are to be admitted to trading on a regulated market, even if securities of the same class are already admitted to trading on the same market. Exceptions exist only in special circumstances, e.g. if less than 20% of the number of securities already listed.

In the secondary market, however, it makes no difference to the investor whether he acquires securities of the same class that have already been listed for some time or those that have just been admitted. These are also indistinguishable for investors.

In addition to the reporting obligations under the Transparency Directive, Article 17 of MAR (ad hoc disclosure) already adequately protects investors that purchase in securities by frequent issuers. Therefore, the requirement to publish a prospectus for the mere purpose of admission of securities of a class already admitted to the same venue should be abolished in that case.

Finally, we 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.

**Question 13 (a): 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 | Existing Threshold | Preferred Threshold |
|---|---|---|
| Article 1(3) of the Prospectus Regulation<br><br>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. | EUR 1 000 000 | EUR 1 000 000 |
| Article 3(2)<br><br>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. | EUR 8 000 000 (Upper threshold) | EUR 8 000 000 (Upper threshold) |

**Question 13 (b):** N.A.

### 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)

**Question 14 (a): 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

**Question 14 (b): If you answered "No" to question 14(a), please indicate whether you consider that:**

(Please put an X in the box corresponding to your chosen option and provide details)

| | |
|---|---|
| 1- The standard prospectus should be replaced by a more streamlined and efficient type of prospectus (e.g. EU Growth prospectus) | |
| 2- The standard prospectus should be significantly alleviated | X |
| 3- The standard prospectus for the admission to trading on a regulated market should be replaced by another document (e.g. an admission document) | |
| 4- Other (please specify) | |

**Question 14 (c):** N.A.

**Question 14 (d): If you chose 14(b)(2), what are the disclosures that could be removed or alleviated from a standard prospectus?**

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

**Risk factors:**

The presentation of risk factors is important, but the requirements for presentation and categorisation make the prospectus unnecessarily complicated. On the other hand, the required ranking of risk factors imposes an undue burden and, more importantly, liability risk to the issuer and its managers. In addition, many things are unpredictable, for example the Corona pandemic.

Administrative, executive and supervisory bodies and senior management:

The information on administrative, executive and supervisory bodies as well as senior management appears unnecessarily detailed and can be difficult and time-consuming to compile. Some information is also are not easily approachable, for example checking of other/external mandates of board members.

The requirements should contain only the information that is material to investors so must be streamlined and reduced to the information that is material from an investor's perspective. For example: board memberships in the last 5 years do not seem relevant.

**Statement of capitalisation and indebtedness:**

The statement of capitalisation and indebtedness generates effort and redundant. The information on the statement of capitalisation and indebtedness is already included in the balance sheet. However, the current presentation of capitalisation and indebtedness does not harmonise with IFRS accounting. For this reason, there is an additional effort that is also unnecessary. Since the required framework does not correspond to any standard, the presentation is so different that investors cannot even compare the prospectuses at this point. In the worst case, there is even irritation among investors who do not know this background.

The effort is higher when issuers may have to prepare a separate new balance sheet, as the statement on capitalisation and indebtedness may not be older than 90 days. And this is the case even if they submit full quarterly reporting in accordance with IFRS. Such a balance sheet preparation thus also contradicts the valuations of the Transparency Directive.

At this point, it should also be clarified that in the case of material changes, the general disclosure principles of Art. 6 of Regulation 2017/1129 require disclosure.

If the statement on capitalisation and indebtedness is to be retained, then at least no disclosure beyond the historical financial information or, if applicable, interim financial information should be required.

**Names and addresses of the issuer's auditors (Item 2.1 Annex 1 Regulation 2019/980):**

The identity of the auditor may also be inferred from the audit report.

**Important events in the development of the issuer's business (Item 5.3 Annex 1 Regulation 2019(980):**

All material information is already included in the issuer's financial information and in the description of the issuer's business.

**Remuneration and benefits and related party transactions (Section 13 and 17 Annex 1 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 in accordance with item 18.1.

**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.

### Question 14 (e): N.A:

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

☐ Yes
☒ No
☐ Don’t know/no opinion/not relevant

A page limit will not help and would have a negative impact on the readability of the prospectus. Content requirements need to be cut and managers’ personal liability needs to be reduced as this drives the volume.

**Question 16 (a): 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)?**

(Please put an X in the box corresponding to your chosen option for each type of summary listed on the table.)

| **Type of prospectus summary** | Yes | No | Don't know/no opinion/not relevant |
|---|---|---|---|
| 1- Summary of the standard prospectus (Article 7 of the Prospectus Regulation, excluding paragraph 12a) | X | | |
| 2- Summary of the EU Growth prospectus (Article 33 of Commission Delegated Regulation (EU) 2019/980) | | | X |
| 3- Summary of the EU Recovery prospectus (Article 7(12a) of the Prospectus Regulation) | | | X |

**Question 17:** N.A.

**Question 18 (a): 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

Differentiation is very important, but given the target group, especially for wholesale prospectuses, many requirements seem unnecessary in the prospectus as they are already included in the financial reporting. These are completely unnecessary, especially for professional investors.

**Question 18 (b): 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

Facilitating the prospectus for retail investors makes sense, as the excessive requirements make it unnecessarily difficult for issuers to produce a prospectus. Here, the comparison to wholesale prospectus is also irrelevant, as the effort is always measured in terms of added value. For example, it would be helpful if only the English language were required and the other languages were left to the issuer.

However, given the target group, the wholesale prospectus also contains a lot of unnecessary requirements and should also be relieved.

For both types of prospectus, it can be said that there are many requirements that may still make sense for an equity prospectus, but are not essential at all for bonds.

**Question 18 (c): Would you consider any other amendment to the existing rules?**

Liability, but also the just increased personal liability of financial managers, ensures on the one hand a further legalisation of the prospectus, which can have an impact on readability, and on the other hand it discourages issuers from capital markets financing or at least to refrain from using the regulated market segments that require requirements such as the classification of risk factors.

### 2.1.4 Prospectus for SMEs

**Question 19:** N.A.

### 2.1.5 The format and language of the prospectus

**Question 20: Do you agree that the obligation for issuers to provide a copy of the prospectus on either a durable medium or printed upon request 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

The electronic format is timely, anything else will only lead to unnecessary costs and administrative burden.

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

(Please put an X in the box corresponding to your chosen option.)

| | |
|---|---|
| It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance. | X |
| 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

**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

In order to increase attractiveness of regulated market the transfer of shares from a SME Growth Market should be possible without a further prospectus. As the issuer is listed already for 18 months and provided information according to the common transparency requirements, the investor has a clear picture of the respective business model. Therefore, we do not see that lifting of the obligation to prepare an additional prospectus impairs investors' protection.

### 2.1.7 Liability regime

**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

Maximum pecuniary sanction expressed in % of the total turnover of the legal person is disproportionate and should be repealed. When a company doesn't get the approval on the prospectus and cannot issue securities or sees the transaction suspended/forbidden, the first sanction is that it cannot raise capital/funds. No need to impose such a disproportionate sanction.

The concept of setting limits for sanctions based on a percentage of annual turnover is generally questionable, as turnover is not an appropriate measure of a company's performance and thus of its ability to bear a 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.

Liability, but also the just increased personal liability of financial managers, results on the one hand in the prospectus language becoming more legalistic and, hence, less readable, and on the other hand it ensures a migration from the capital markets or at least from the regulated market segments that require requirements such as the classification of risk factors.

**Question 26 (a): 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 26 (b): If you responded negatively to question 26(a), which changes would youpropose in the context of this initiative?**

Civil liability varies from one Member State to another and follows different concepts. The differences concern issues such as who is responsible for a prospectus, whether experts can be held liable for their statements, what degree of fault is required and so on.

A harmonisation of civil liability is very difficult because it has to be embedded in the national civil law concepts. Therefore, it would have to be examined with caution whether certain standards could be established.

**Question 27:** N.A.

**Question 28:** N.A.

**Question 29 (a): 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?**

(Please put an X in the in the box corresponding to your choice for each type of issuers listed on the table. If you respond in the affirmative, please specify in the textbox below to what level sanctions should be decreased.)

| | Yes | No | Don't know / no opinion / not relevant |
|---|---|---|---|
| Issuers listed on SME growth markets | X | | |
| Issuers listed on other markets | X | | |

**Question 29 (b): 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?**

(Please put an X in the in the box corresponding to your choice for each type of issuers listed on the table. If you respond in the affirmative, please specify in the textbox below to what level sanctions should be decreased.)

| | Yes | No | Don't know / no opinion / not relevant |
|---|---|---|---|
| Issuers listed on SME growth markets | X | | |
| Issuers listed on other markets | X | | |

**Question 30 (a): 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 (b): If you responded positively to question 30(a), could you please specify for which requirements.**

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

### 2.1.8 Scrutiny and approval of the prospectus

**Question 31 (a): 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 (b): If you answered "No" to question 31(a), which material differences do you see across EU Member States (e.g. extra requirements and extra guidance being provided by certain national competent authorities)?**

We support supervisory convergence and believe that the priority for ESMA is to strengthen harmonisation between national competent authorities, for example through peer reviews. However, we do not support strengthening ESMA's powers in relation to prospectuses.

**Question 32 (a): 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 (b): If you answered "No" to question 32, please provide concrete suggestions on how to improve the process.**

Please refer to our answer to question 31.

**Question 33 (a):** N.A.

**Question 33 (b): 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

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

**Question 34 (a): 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 relevant

The choice of the NCA competent for the approval of non-equity issues has led to concentration, especially in Luxembourg. The competence and efficiency that the CSSF has developed in the review of bond prospectuses has proven to be very important for issuers.

In the case of equity issues, on the other hand, there is the distinction that here the specific features of national company law underlying the securities may have to be taken into account.

**Question 34 (b):** N.A.

#### 2.1.9 The Universal Registration Document (URD)

**Questions 35 to 40:** N.A.

#### 2.1.10 Other possible areas for improvement

**Questions 41 to 43:** N.A.

## 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)

#### 2.2.1 Costs and burden stemming from MAR

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

(Please rate each of them from 1 to 5, 1 standing for "not burdensome at all" and 5 for "very burdensome".)

| | 1 | 2 | 3 | 4 | 5 | Don't know / no opinion / not relevant |
|---|---|---|---|---|---|---|
| **Definition of "inside information"** | | | | | | |
| • For all companies | | | | | X | |
| • For issuers listed on SME growth markets | | | | | X | |
| **Disclosure of inside information** | | | | | | |
| • For all companies | | | | | X | |
| • For issuers listed on SME growth markets | | | | | X | |
| **Conditions to delay disclosure of inside information** | | | | | | |
| • For all companies | | | | | X | |
| • For issuers listed on SME growth markets | | | | | X | |
| **Drawing up and maintaining insiders lists** | | | | | | |
| • For all companies | | | | | X | |
| • For issuers listed on SME growth markets | | | | | X | |
| **Market sounding** | | | | | | |
| • For all companies | | | | X | | |
| • For issuers listed on SME growth markets | | | | X | | |
| **Disclosure of managers' transactions** | | | | | | |
| • For all companies | | | X | | | |
| • For issuers listed on SME growth markets | | | | X | | |
| **Enforcement** | | | | | | |
| • For all companies | | | | | X | |

| | | | | | | |
|---|---|---|---|---|---|---|
| • For issuers listed on SME growth markets | | | | | X | |
| **Other (please specify in the textbox below)** | | | | | | X |

The **safe harbour for share buy backs** should be widened in scope to all justifications for share buy backs that are provided by the respective corporate law as well as to buy backs of debt instruments. Rather, the safe harbour should apply to:

- all buybacks of shares permitted under corporate law (see Art. 21 et seq. Directive 2012/30/EU);
- buybacks of debt instruments.

The current distinction between the different purposes of share buy-back programmes is not justified. The market impact of a buy-backs is generally unrelated to the underlying (economic) purpose. A clarification of that effect would be useful and promote regulatory convergence. Furthermore, buying back outstanding debt securities that trade significantly below nominal value has proven to be a useful tool to reduce an issuer's debt burden and to adapt an issuer's debt exposure to more favourable market conditions when interest levels decline. Therefore, there is an economic need to execute these bond repurchases and it does not seem to be justified from a market integrity perspective not to have a safe harbour for debt buybacks as well. Therefore, we propose to extend the scope of the safe harbour rules for buy-back programmes also to the buy-back of debt instruments.

### Question 44 (b): Please explain your reasoning and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs)

See also responses to the more specific questions.

Regarding the definition of inside information and its disclosure it is important to understand that the current text is prone to overly broad interpretations. This leads not only to legal uncertainties and consequently high costs for legal advice. It also does not sufficiently protect issuers interests in orderly decision making processes, orderly regular capital market communication and efficient M&A processes. Ultimately the deficiencies of the MAR in this respect set listed companies in a competitive disadvantage vis-à-vis their non-listed or not MAR-regulated competitors.

Regarding insider lists it is very burdensome to collect all the data requested and keep it up-to-date. The information content of insider lists should be reduced to the data that is necessary to identify the respective persons. Information such as

private e-mail addresses, telephone and mobile numbers is not necessary for this purpose. In the case of an actual suspicion NCAs may easily ask the person obliged to draw up an insider list for more specific data.

Regarding managers' transaction it would be helpful abolish the duty to publish transactions with no signal value (e.g. gifts, inheritances, but also elements of remuneration with no discretion which are anyhow disclosed in the remuneration report under SRD II). Furthermore, the list of closely associated persons (Art. 19 (5) MAR) should be abandoned or at least made less burdensome.

### 2.2.2 Scope of application of MAR

**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 relevant

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

**Question 46 (a): 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 relevant

Issuers struggle with the broad definition of inside information, its vagueness and the constant risk of premature disclosure. The difficulties mainly result from the concepts chosen at Level 1. Consequently, they cannot and should not be corrected by supervisory authorities' guidance – though generally welcome – alone.

Against this background, issuers basically support any measure that addresses the key problems of the current regime regarding inside information and its disclosure.

First of all, issuers face significant uncertainties regarding the term “inside information”. The vagueness of the term makes it often close to impossible to determine with reasonable certainty if and at which point of time a piece of information will constitute an inside information. Issuers have made the experience that the current definition is prone to an extremely wide interpretation so that reasonable judgement becomes more or less impossible or is even biased in a direction that is inappropriate.

In addition to this, issuers have made the experience that their interests (such as orderly decision making processes and governance structures, M&A activities, orderly regular capital market capital communication, ability and flexibility to raise capital) are not sufficiently protected because issuers are confronted with a too broad notion of inside information and face the constant risk of premature disclosure once information is identified as inside information.

Both problems are particularly virulent in protracted processes which are common in a number of circumstances.

For details see next question 46.1.

**Question 46 (b): If you answered “No” to question 46(a), please indicate if you would support the following changes or clarifications to the current definition of “inside information” under MAR, by putting X in the box corresponding to your chosen option(s)**

| | I support | I don’t support | Don’t know/no opinion/ not relevant |
|---|---|---|---|
| a) 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. | X | | |
| b) 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”. | X | | |

| | I support | I don't support | Don't know/no opinion/ not relevant |
|---|---|---|---|
| c) 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. | X | | |
| d) Other (please specify below) | | | |

All of the potential measures mentioned in Q 46(b) might address this fundamental problem of the current MAR as described in question 46 above:

- We understand amendment a) to reflect that it would be adequate for the publication obligation to be triggered at a later point than under the existing regulation while the starting point for the prohibition of insider trading would generally remain unaltered. In our view this should work together with potential amendment c) that would clarify that in protracted processes only the end stage would be relevant for publication purposes. This would for example increase legal and procedural certainty in M&A processes, where the final signing of the agreement would be an appropriate end stage. while at the same time still addressing the undisputed purpose of MAR to protect market integrity.

- Potential amendment b) would reduce the judgement problems when anticipating price effects of a certain piece of information. Reasonable investors should be understood as rational investors that assess information generally with a view on the long-term fundamental value of a financial instrument. Currently, it is not entirely clear if this can be assumed from a purely legal perspective.

- Potential amendment c) would clarify that in protracted processes the end stage is relevant for publication purposes. However, in our view the reference to a "leakage" does not seem appropriate since such a "leakage" (rumour, Art. 17 (7) s.2 MAR) should only be relevant in the case of a delayed publication of inside information, i.e. when the final stage of the multi-stage process is reached.

**Question 47 (a): 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 relevant

We understand the concept of material events as a certain set of material and finalised events would be defined that need to be disclosed as inside information.

Generally, we welcome that the EU Commission is open to concepts deviating from the existing concepts of the MAR. We encourage the Commission to proceed with the analysis of this alternative solution. From our perspective, the concept of material events is worth considering. This could ensure that information is only published when a final stage is reached and it could provide clarity for publication purposes.

However, the concrete effects of the concept and conceptual change cannot be analysed without a specific legislative proposal which also allows for analysing the interplay with other provisions. For example, whether the concept of material events constitutes an improvement in practice will depend how material events are defined. If only events are included that mark the final stages of protracted processes and are really material (see above) the system could deliver a substantial improvement. In that context, the list of examples of material events in the introduction to Question 47 appears to us a as a good starting point in terms of materiality.

**Question 47 (b): In your opinion, would such a system pose any challenge to the integrity of the market?**

☐ Yes
☒ No
☐ Don't know/no opinion/not relevant

From the perspective of issuers the integrity of capital markets is key for being able to raise capital and for being accepted by investors. According, transparency requirements of MAR are generally supported and issuers undertake huge efforts to comply with these requirements. The concept of material event aims at addressing the information needs of investors. Furthermore, the prohibition of insider trading and market manipulation would prevail.

Against this background, we are not concerned that the concept of material disclosure would result in less integrity.

**Question 48 (a): 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 relevant

As mentioned above (see Q 46) issuers struggle with the broad definition of inside information, its vagueness and the constant risk of premature disclosure. The difficulties result from the concepts chosen at Level 1. They cannot and should not be corrected by supervisory authorities' guidance – though generally welcome – alone.

The requirements for legitimate interests of the issuer as one of the prerequisites for a delay appear to be quite strict and difficult to assess. ESMA's interpretation seem to be based on Recital 50 MAR. For example, in the context of ongoing negotiations, it may be quite difficult to assess whether "the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure". In connection with the negotiation of financing transactions a delay seems to be justified only if "the financial viability of the issuer is in grave and imminent danger" and "where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer". Further, according to Recital 50 MAR to delay the publication of decisions taken or contracts made by the management body that require the approval If another (supervisory) body of the issuer seems to be possible only if "public disclosure of the information before such approval […] would jeopardise the correct assessment of the information by the public". This restrictive position obviously does not consider the legitimate and important interest of an issuer that its corporate bodies can take their decision diligently on the basis of an appropriate assessment of the facts and without being influenced by the fact that a decision or transaction has already been announced so that an objection could have a negative impact on the issuer and/or its share price, even if it is justified.

**Question 48 (b): If you answered "No" to question 48(a), what changes would you propose to Article 17(4) MAR?**

First of all, MAR should better reflect the problems of protracted processes.

For issuers with a two-tier board system it often remains unclear whether they can delay the disclosure of inside information because a decision of the management board is not yet approved or discussed by the supervisory board. MAR and the ESMA guidelines on legitimate interests set tighter restrictions than appropriate. This could be best addressed by amending the level 1 text with regard to the

definition of inside information (see Q 46b) If such a change is not feasible the challenges for the two-tier-board system could be resolved by an amendment to recital (50) clarifying that outstanding approvals are a legitimate interest for delay.

In general periodic and comprehensive information should have priority over immediate disclosure of single pieces of information relating to that periodic information. This could also be achieved through different amendments. Preferably the issuer should publish periodic financial information when it is final, i.e. usually at the announced publication date. Alternatively, within the existing system of the twofold notion a delay of publication should always be possible when the announced publication date is close.

The provision on rumours in Art. 17(7) MAR should be reviewed. In order to better protect the legitimate interest of the issuer against unfair practices and misinformation it needs to be clarified when a rumour is precise enough to require immediate disclosure. This should be the case when it contains the most significant details of the delayed inside information and – at the same time – does not contain wrong or misleading information. In addition to that, an issuer should not be forced disclosure immediately as long as the rumour does not stem from his sphere. Furthermore, no comment policy should always be possible in cases where the publication of inside information would jeopardise the financial viability of the issuer.

### 2.2.4 Disclosure of inside information for issuers of bonds only

**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 relevant |
|---|---|---|---|
| a) have the same disclosure requirements as equity issuers | | X | |
| b) disclose only information that is likely to impair their ability to repay their debt | | X | |

Most importantly, it must be clear (and maybe needs to be clarified) that inside information must always be judged with regard to the instrument in question. Having said this, the legal logic can be applied to equity and bonds. As a consequence, it would on the one hand definitely be wrong that a piece of information that is relevant for the listed shares of the issuer would automatically be regarded also as relevant for debt securities of the same issuer. We therefore

basically support a narrow scope of inside information regarding debt instruments. In general, inside information relating to debt securities should be information that impairs the ability of the issuer to repay its debt. However, in rare circumstances and depending on the instrument in question exemptions from this general rule may be appropriate.

### 2.2.5 Managers' transactions (Article 19 MAR)

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

☒ Yes
☐ No
☐ Don't know/no opinion/not relevant

The number of transactions notified to the NCAs has significantly increased under MAR compared to the previous regime. Raising the threshold would therefore prevent an overflow of information and avoid the notification of minor transactions.

**Question 50 (b): If you answered "Yes" to question 50(a), 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 (please indicate threshold) |
|---|---|---|---|---|---|
| Issuers listed on SME growth markets | | | X | | |
| Issuers listed on all markets | | | X | | |

**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

**Question 51 (1): If you answered in the affirmative to question 51, what should be the maximum amount that national competent authorities can increase the threshold to?**

| | EUR 25 000 | EUR 35 000 | EUR 40 000 | EUR 50 000 | Other (please indicate threshold) |
|---|---|---|---|---|---|
| Issuers listed on SME growth markets | | | | X | |
| Issuers listed on all markets | | | | X | |

Providing for flexibility would not necessarily mean that NCAs will use that flexibility. However, a higher maximum value allows a broader room for discretion to account for local circumstances.

**Question 52:** N.A.

**Question 53:** N.A.

**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 relevant

It would generally make sense that rather technical information (such as Managers' Transactions according to MAR and Major Holding Notifications according to the EU Transparency Directive) are made public by the competent authority. For issuers, this would make the process more streamlined as the authority has to be informed in any case.

**Question 55 (a): 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

**Question 55 (b): If you answered "no" to question 55(a), please indicate if you would support the following changes or clarifications to the managers' transactions regime:**

| | I support | I don't support | No opinion |
|---|---|---|---|
| a) The thresholds should be applied in a non-cumulative way (i.e. each transaction is to be assessed against the threshold). | | X | |
| b) 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. | X | | |
| c) The requirement of keeping a list of closely associated persons should be repealed. | X | | |
| d) Other (please specify) | X | | |

Ad b) and d) Though we agree with ESMA's amendments, these amendments in our understanding relate only to trading in the closed period. The managers' transactions regime, however, has a number of additional deficits.

First of all, the EU Commission should abolish the duty to inform about donations and inheritances, as they do not have any significance for the estimation of the manager on how the share price will develop. Similarly, automatic allocations under management incentive programs and transactions by a portfolio manager acting independently from the PDMR should be out of scope because in all these cases it is not the PDMR that takes an investment decision so that these transactions necessarily cannot have any "signalling" effect. Disclosing them as "managers' transactions" may even mislead the market.

Second, issuers have made the experience that notifications required under MAR are overloaded with details so that unnecessary bureaucracy is created and investors tend to be confused by the practice of notifications. There are at least two aspects that need to be tackled where ordinary trading practices leads to overwhelming notification requirements that have no added value for the market:

(1) The execution of a sale or purchase of shares is typically done “at best price” by a bank for the PDMR and, for this reason, is split across various trading venues (depending on the best execution policy of banks holding the accounts for the PDMR). This kind of splitting makes necessary a number of separate notifications, although being just one order by the PDMR to the bank (one for each venue).

(2) Also, if a transaction is executed at one single day on one single trading venue, but is split into a number of sub-transactions (which is also standard practice of banks to ensure market-sensitive trading), the PDMR has to notify a long list of single trades which also makes the notification burdensome and confuses the market. From our point of view the MAR review should also take into consideration these two problems. A way forward could be, e.g., to allow the PDMR to aggregate transactions within a certain time span or executed under one joint order, so that the market gets to know in one notification the aggregate volume of transactions and e.g. the average price.

Ad c) It is a constant compliance issue that issuers have to draw up a list of all persons discharging managerial responsibilities and persons closely associated to them (Art. 19 (5) MAR). Especially the list of closely associated persons is quite burdensome as e.g. the supervisory board of a DAX company can consist of 20 persons, partly being domiciled abroad. It is not only very difficult to fulfil this duty. Compiling the list also runs counter the political objective to protect the privacy of individuals. From our perspective this objective should prevail, which is even more true as we do not have the impression that the NCAs are interested in the lists compiled. Hence, this general duty should be abolished.

### 2.2.6 Insider lists (Article 18)

**Question 56:** N.A.

**Question 57 (a): 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.)

| **The insider list regime should…** | Yes | No | Don't know -No opinion |
|---|---|---|---|
| be simplified for all issuers to ensure that only the most essential information for identification purposes is included. | X | | |
| be simplified further for issuers listed on SME growth markets | | | X |
| be repealed for issuers listed on SME growth markets | | | X |
| Other (please specify) | | | X |

**Question 57 (b): Please explain your reasoning and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs**

We do not see the right balance between the effort to manage insider lists by the issuers and their usefulness for NCAs. Especially to gather the amount of the specific data to be included into insider lists according to Commission Implementing Regulation (EU) 2016/347 is not only very burdensome for issuers. It also appears disproportionate and an unjustified intrusion into the privacy of the individuals entered into the insider list to require by default the entry of personal data home addresses, private phone numbers and private email addresses. This information is simply not necessary to identify the relevant individuals. In the case of an actual suspicion NCAs may easily ask the person obliged to draw up an insider list for more specific data.

Therefore, we 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.

### 2.2.7 Market sounding

**Question 58 (a): 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

ESMA's proposals do not sufficiently address the concerns raised by market participants. In particular, where ESMA proposes that "to clarify the obligatory nature of the requirements currently contained in Article 11 of MAR" it takes a position that is not only not in line with the majority of responses in the MAR Review consultation. ESMA's position is also contrary to the concept on which the Level 1 legislator had based Art. 11 MAR. Recital 35 MAR states "There should be no presumption that market participants that do not comply with this Regulation when conducting a market sounding have unlawfully disclosed inside information but they should not be able to take advantage of the exemption given to those who have complied with such provisions." This clearly speaks against an obligatory nature of the market sounding provisions.

**Question 58 (b): If you answered no to question 58(a), how would you further amend the market sounding regime.**

| | |
|---|---|
| Issuers listed on SME growth markets | X |
| Issuers listed on regulated markets | X |
| Issuers on other markets (MTFs) | X |

We propose the following changes and clarifications to the market sounding regime that should apply to all categories of issuers

- Clarify the optionality (i.e. not obligatory nature) of the market sounding regime as it is provided for in Recital 35 MAR
- Align Art. 11 (1) and (2), i.e. expressly allow market sounding also for "(d) a third party acting on behalf or on the account of a person"

- Permit a pre-defined cleansing, e.g. if the transaction sounded is not executed within a certain period of time notified to the market sounding recipient in advance of the sounding.

- Written minutes (Art. 6(3) Delegated Regulation 2016/960) should no longer be required

- There should not be different standard sets of information (Art. 3 Delegated Regulation 2016/960) . Rather, we believe it is sufficient to state that the information to be disclosed may constitute inside information and what the legal requirements are in that respect.

- The record keeping requirement for market sounding recipients based on the ESMA Guidelines should be discontinued. It discourages investors from participating in market sounding due to the required compliance measures.

**Question 59 (a): 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

To exempt communication relating to bond placements to qualified investors appears as a useful – although rather as a clarification. It is useful to limit the administrative burden to execute customary transactions and provides legal certainty to market participants.

We support the proposal to expand the scope of the exemption to private placements of equity securities. We believe that – particularly from a MAR perspective - it is not justified to have stricter requirements for equity transactions.

This would also be a good opportunity to iron out an inconsistency in the amendments to MAR introduced by Regulation 2019/2115.According to Article 11 (1a) MAR an issuer or any person acting on its behalf or on its account has to ensure that the recipients of the information are aware of, and acknowledge in writing, the legal and regulatory duties entailed and that they are aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information. Recital 6 Regulation 2019/2115, states mentions that for this purpose an "an adequate non-disclosure agreement" has to be in place." However Art. 11 (1a) MAR does not require such an agreement – which in our view is also not necessary. When Article 11 (1a) is amended it seems desirable to clarify that – while a non-disclosure agreement could be concluded – it is not required to

document he required acknowledgements. Rather, it should be sufficient to advise the investor approached in a private placement of the fact that the information disclosed may be inside information and what the related legal and regulatory duties and sanctions are.

We furthermore do not see a reason why private placements of debt or equity securities of issuers on SME growth markets should be treated differently.

### 2.2.8 Administrative and criminal 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

We believe that pecuniary sanctions laid out in Art. 30 of MAR are a lot too high and are out of balance – especially when it comes to formal "mistakes" such as infringement of the duty to disclose managers' transactions or mistakes regarding drawing up the insider lists. We believe this is out of proportion regarding the factual offence. The costs for the companies result of course in the sanction itself but also in the needed legal advice. As pointed out above there a lot of legal uncertainties to consider in this area.

Infringements of Art.17, 18 and 19 of MAR should not be criminal offences leading to criminal sanctions. If these infringements have the background or idea of committing insider dealings or market manipulation they are sanctioned criminally anyway.

Turnover based pecuniary sanctions are also not appropriate. In particular in huge international issuers this leads to absurdly high amounts of sanctions which do not reflect the "unlawfulness" of the sanctioned behaviour but goes way beyond.

Furthermore, if the infringement happened in one branch of a company – to refer to the global group turnover means to sanctions all group companies.

**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?**

Please put an X in the box corresponding to your chosen option for each type of issuers listed in the table.

| | Yes, it has a significant impact | Yes, it has a medium impact | Yes, but it has a low impact | No, it is rather irrelevant |
|---|---|---|---|---|
| Issuers listed on SME growth markets | | X | | |
| Issuers listed on other markets | | X | | |

The possible amount of pecuniary sanction is with certainty deterrent to choose financing over the capital market. Given the fact that the complex compliance duties no issuer can exclude making mistakes even if he acts with best efforts. As mistakes are sanctioned disproportionately, this disincentives listing decisions.

**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 | X | |
| Issuers listed on other markets | | X |

This is very difficult to decide. Managers who decide on a potential listings are natural persons. They might fear sanctions for themselves especially for mistakes or infringements on formalities due to inexperience. Managers of bigger issuers are often more experienced and can refer to the expertise of their internal legal and investor relations departments with relevant expertise. Nevertheless, also managers and board members of bigger companies are natural persons who have to make the final decision.

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

(Please put an X in the box corresponding to your chosen option(s).)

| **Answers** | Issuers listed on SME growth markets | | | | Issuers listed on other markets | | | |
|---|---|---|---|---|---|---|---|---|
| | Art. 16 | Art. 17 | Art. 18 | Art. 19 | Art. 16 | Art. 17 | Art. 18 | Art. 19 |
| Yes | X | X | X | X | X | X | X | X |
| No | | | | | | | | |
| No opinion | | | | | | | | |

**Question 63 (b): If you answered "Yes" to question 63(a), please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 of MAR.**

| **Current level of sanctions** | Art. 16 | Art. 17 |
|---|---|---|
| 2 500 000 EUR or the corresponding value in the national currency on 2 July 2014 | 500.000 Euro | 1.000.000 Euro |
| 2% of the total annual turnover according to the last available accounts approved by the management body | None pecuniary sanction relying on the total annual turnover | None pecuniary sanction relying on the total annual turnover |

**Question 63 (c): If you answered "Yes" to question 63(a), please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 of MAR.**

| **Current level of sanctions** | Art. 18 | Art. 19 |
|---|---|---|
| 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014 | 250.000 Euro | 250.000 Euro |

**Question 64 (a): 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

Note this comment relates to the general question 63 und question 64

First of all, we are of the opinion that offenses against provision of the must be sanctioned adequately in order to ensure trust in capital market behaviour of listed companies and investors are protected. However, with MAR an immense increase of pecuniary sanctions was implemented for offences against the mentioned articles. We have always criticized the level of pecuniary sanction as disproportionate. In the same vain, the drastic increase of sanctions has been implemented without differentiating between pivotal provisions of the MAR (such as insider dealings) and rather technical compliance duties. Furthermore and in contrast to the official reasoning offenses against issuers duties has neither been frequent nor have there been a link to the financial crises.

Turnover based pecuniary sanctions are not appropriate and are even more burdensome for global group companies as this leads to absurd high amounts of sanctions which do not reflect the "unlawfulness" of the sanctioned behaviour of the acting person. Furthermore, the infringement happened in one branch of a company – to refer to the global group turnover means to sanctions all group companies.

The turnover related sanctions, thus, should be deleted. A level of sanction up to maximum fixed amount is sufficient. National authorities can take into account the size and economic situation into account when

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

| **Answers** | Issuers listed on SME growth markets | | | | Issuers listed on other markets | | | |
|---|---|---|---|---|---|---|---|---|
| | Art. 16 | Art. 17 | Art. 18 | Art. 19 | Art. 16 | Art. 17 | Art. 18 | Art. 19 |
| Yes | X | X | X | X | X | X | X | X |
| No | | | | | | | | |
| No opinion | | | | | | | | |

**Question 65 (b): If you answered "Yes" to question 65(a), please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 MAR.**

| **Current level of sanctions** | Art. 16 | Art. 17 |
|---|---|---|
| 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014 | 250.000 Euro | 500.000 Euro |

**Question 65 (c): If you answered "Yes" to question 65(a), please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 MAR.**

| **Current level of sanctions** | Art. 18 | Art. 19 |
|---|---|---|
| 500 000 EUR or the corresponding value in the national currency on 2 July 2014 | 100.000 Euro | 100.000 Euro |

**Question 66 (a): 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

Also for natural persons the sanctions are out of proportion and are too high. For the reasoning see above.

Infringements of Art. 18 (Insider Lists) and Art. 19 (Managers' Transactions) do not have a level of "wrongfulness" that would justify higher sanctions.

**Question 66 (b):** N.A.

**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?**

| **Answers** | Issuers listed on SME growth markets | Issuers listed on other markets |
|---|---|---|
| Yes | | |
| No | | |
| No opinion | X | X |

**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) first subparagraph, letter (b) of MAR should be removed?**

| **Answers** | Infringements of: | | | | |
|---|---|---|---|---|---|
| | Art. 16 | Art. 17 | Art. 18 | Art. 19 | Art. 30(1) first subpar. letter (b) |
| Yes | X | X | X | X | |
| No | | | | | |
| No opinion | | | | | X |

Art. 16, 17, 18 and 19 are more or less administrative duties; an infringement of these has no criminal potential.

### 2.2.9 Liquidity contracts

**Question 69:** N.A.

### 2.2.10 Disclosure obligation related to the presentation ofrecommendations under MAR

**Question 70:** N.A.

### 2.2.11 Would you have any other suggestions on possible improvements to the current rules laid down in the Market Abuse Regulation?

**Question 71: Would you have any other suggestions on possible improvements to the current rules laid down in the Market Abuse Regulation?**

See our response to Q 45.

## 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)

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

**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

### 2.3.2 Dual listing

**Question 73 (a): 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

The question is not entirely clear. We would agree that the dual listing of financial instruments listed on SME growth market should also be possible for other trading venues. As a listing on a regulated market means additional compliance duties for the respective issuer, it appears to necessary that this happens only with the explicit consent of the issuer

**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

MiFID II requires that instruments admitted to trading on SME Growth Markets may be traded on another SME growth market only if the issuer has been informed and has not objected. It seems that national interpretations do not always converge. Hence, clarification may be sought to ensure that the issuer of financial

instruments admitted to trading on SME GMs maintains some control on new admissions to trading.

### 2.3.3 Equity Research coverage for SMEs

**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

Lacking coverage by analyst is one of the key problems for smaller issuers. While larger blue chip companies are covered by 20 or more analysts, SMEs have 2 or 3 analysts covering them regularly. The capital market recovery package addresses this issue by making it easier to provide research. Nevertheless, it is difficult for brokers to rebuild capacities once it has been reduced. So far the damage done by the unbundling rules to brokers has not been repaired, there are not enough new players in the SME sector yet. However, it is too early to assess the impact finally.

**Questions 76 to 79:** N.A.

**Question 80:** N.A.

### 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?**

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 remedied 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)

**Question 82 (a): 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 (b): If you answered "yes" to question 82(a), which changes would you propose?**

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 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 no obligation to audit the respective ESEF-Files.

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 right 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 know. Second, notification should not be made public by the issuer but by the investor or the relevant competent authority.

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

See answer to Q 82

### 2.4.2 Special Purpose Acquisition Companies (SPACs)

**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

**Question 85:** N.A.

**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

**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 (please consider an investment open to professional only or to professional and retail investors)?**

(Please put an X in the box corresponding to your chosen option(s).)

| | Reinforce Safeguards | Harmonise the disclosure regime |
|---|---|---|
| Yes, even if an investment is open to professional investors only | | |
| Yes, for an investment open to both professional and retail investors | | |
| No | X | X |
| Don't know/ no opinion / not relevant | | |

**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

**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

**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

**Question 91:** N.A.

### 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)

**Question 92 (a): 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

**Question 92 (b):** N.A.

#### 2.4.3.1 Definitions

**Question 93 (a): 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

**Question 95 (a): How relevant do you still consider the following requirements?**

| | 1 (not relevant at all) | 2 (rather not relevant) | 3 (neutral) | 4 (rather relevant | 5 (very relevant) | Don't know/No opinion/Not relevant |
|---|---|---|---|---|---|---|
| 1- **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)). | | | X | | | |

| | 1 (not relevant at all) | 2 (rather not relevant) | 3 (neutral) | 4 (rather relevant | 5 (very relevant) | Don't know/No opinion/Not relevant |
|---|---|---|---|---|---|---|
| 2- **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). | | X | | | | |
| 3. **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)). | | X | | | | |

**Question 95 (b): Regarding the foreseeable market capitalisation would you consider a different threshold?**

☐ Yes
☐ No
☒ Don't know/no opinion/not relevant

**Question 95 (c): 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

**Question 96 (a): In your opinion is free float a good measure to ensure liquidity?**

☐ Yes
☐ No
☒ Don't know/no opinion/not relevant

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 liquidity ultimately results from the interest of investors to trade a security. Thus, the requirement of 25% free float alone do not ensure liquidity. On the one hand the resulting percentage depends on the number of shares to be admitted and on the other hand liquidity is supported by other parameters such as the publicity as well as the index and the investor composition.

**Question 96 (b): In your opinion, could a minimum free float requirement be a barrier to listing?**

☒ Yes
☐ No
☐ Don't know/no opinion/not relevant

**Question 96 (c): In your opinion, is the recommended threshold set at 25% appropriate?**

☐ Yes
☒ No (please specify in the textbox below whether it should be higher or lower)
☐ Don't know/no opinion/not relevant

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

☐ Higher
☒ Lower
☐ Don’t know/no opinion/not relevant

We would advocate for 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. SMEs often have strong anchor investors from pre IPO times which do not want to give up control at this state. This results in smaller free floats. Therefore, forcing companies to create more shares or water down existing investors can make companies refrain from listings. 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. We think that the minimum free float should be reduced to 10 percent or determined as an absolute number of shares. In addition, shares relevant for the calculation of the minimum free float should not be geographically limited to the EU/EEA. It should include all shares traded worldwide.

**Question 96 (d): 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

**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?**

(Please specify which ones.)

☐ Yes
☐ No
☒ Don’t know/no opinion/not relevant

**Question 98 (a): 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

#### 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

#### 2.4.3.4 Other

**Question 100:** N.A.

### 2.4.4 Shares with multiple voting rights

**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

According to figures provided by different resources (e.g. the Oxera-Report or the Technical Expert Stakeholder Group on SMEs) multiple voting rights are a rising phenomenon especially within fast-growing tech companies. Therefore, interest in these structures increases over the past years in countries with an already existing multi voting rights regime (e.g. US or Sweden). This is confirmed by a recent study in which we conducted interviews in order to explore the reasons for foreign listings of German companies. Some interview partners answered that the availability of multi voting rights was the main reason for an US-listing and the implementation of a management holding in the Netherlands, where multi voting

rights are allowed. Other interviewees highlighted, that multi voting rights would lower the IPO-barrier for high-growth companies in particular.

**Question 102 (a): In your opinion, what impact do shares with multiple voting rights have on the attractiveness of a company for investors?**

(Please put an X in the box corresponding to your chosen option.)

| | |
|---|---|
| Negative impact | |
| Slightly negative impact | |
| Neutral | X |
| Slightly positive impact | |
| Positive impact | |
| Don't know/no opinion | |

Basically, as the issuer has to provide transparency, it is up to the « ordinary » investor to assess the lower voting rights. There are different scenarios possible: The investor trusts the strategic expertise of the founder and its capability to create value for every shareholder. Hence, he would pay the « normal » share price. If the investor is not convinced by these capabilities, he will buy the share only for a discount or refrain from investing in the company at all. In turn, it is up to the issuer to anticipate these possible reactions of investors. On this basis the issuer should draw a decision whether to implement multiple voting rights or whether multiple voting rights will increase the costs of capital disproportionally.

**Question 102 (b): When multiple voting right share structures 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 see our answer to Q 102a.

**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

**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

Especially for high growth companies, multiple voting rights are a useful instrument. Due to the numerous capital increases that are necessary after the IPO to finance growth, the founder's share is diluted too much and too quickly. This poses the risk, that the founder loses control and can no longer decide on the strategic direction of the company. In the US and in Nordic countries, multiple voting rights are therefore well-established, especially in tech companies.

Recently, multiple voting rights are not forbidden in the EU. Therefore, many member states have different multiple voting rights in place, e.g. as dual class shares or loyalty shares. The EU-legislator should provide a legal framework regarding multiple voting rights, leaving it up to the issuer to opt in this framework on a voluntary basis. As company law is so far a matter of national competence for good reasons, it is important that the EU-framework should be put in place alongside and should not interfere with already existing national frameworks.

**Question 105:** N.A.

### 2.4.5 Corporate Governance standards for companies listed on SME growth markets

**Questions 106 to 108:** N.A.

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

**Question 109:** N.A.

## Contact

Dr. Gerrit Fey
Head of Capital Markets Department
Phone +49 69 92915-41
fey@dai.de

Dr. Norbert Kuhn
Deputy Head of Capital Markets Department
Head of Corporate Finance
Phone +49 69 92915-20
kuhn@dai.de

Sven Erwin Hemeling
Head of Primary Market Law
Phone +49 69 92915-27
hemeling@dai.de

Maximilian Lück
Head of EU Liaison Office
Phone +32 2 7894101
lueck@dai.de

Svenja Balonier
Executive Advisor and Policy Advisor
Capital Markets Policy
Phone +49 69 92915-35
balonier@dai.de

Frankfurt Office:
Deutsches Aktieninstitut e.V.
Senckenberganlage 28
60325 Frankfurt am Main

EU Liaison Office:
Deutsches Aktieninstitut e.V.
Rue Marie de Bourgogne 58
1000 Brussels

Berlin Office:
Deutsches Aktieninstitut e.V.
Alte Potsdamer Straße 5, Haus Huth
10785 Berlin

Transparency register 38064081304-25
www.dai.de

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