ÖSTERREICHISCHE FMA·FINANZMARKTAUFSICHT

Europäische Kommission
Europäische Kommission
Generaldirektion Finanzstabilität,
Finanzdienstleistungen und Kapitalmarktunion

SPA 2 – Pavillon Rue de Spa 2 / Spastraat 2
Brüssel
Belgien

Via E-Mail an:
fisma-listing-act@ec.europa.eu

BEREICH Integrierte Aufsicht
GZ FMA-LE0001.230/0001-INT/2022
(bitte immer anführen!)

SACHBEARBEITER/IN Dr. Christoph Seggermann
TELEFON (+43-1) 249 59 -4216
TELEFAX (+43-1) 249 59 -4299
E-MAIL christoph.seggermann@fma.gv.at
E-ZUSTELLUNG: ERsB-ORDNUNGSNR. 9110020375710

WIEN, AM 09.02.2022

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

Sehr geehrte Damen und Herren,

bezugnehmend auf die öffentliche zielgerichtete Konsultation der Europäischen Kommission zur Notierungsrichtlinie

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

erlauben wir uns Ihnen anbei die offizielle Stellungnahme der Österreichischen Finanzmarktaufsichtsbehörde (FMA) zukommen zu lassen.

Die Stellungnahme wurde zur leichteren Auswertung auch in das ECAS-EU-Survey-Tool unter Verwendung des Links auf der Seite <https://ec.europa.eu/info/consultations/finance-2021-listing-act-targeted_en> eingegeben.

Wir ersuchen höflich um Berücksichtigung unserer Anregungen und stehen für Rückfragen sehr gerne zur Verfügung.

Finanzmarktaufsichtsbehörde
Bereich Integrierte Aufsicht

Für den Vorstand

MMag.a Dr.in Julia Lemonia Raptis, LLM LLM Dr. Christoph Seggermann

elektronisch gefertigt

Signaturwert	t6V04Yo48eC2vdRLCjB/E9tehpO8AZDhI2CAUjsNuOeXS9HDnzEJkLQTIt8H1BXGGf42cQvNBrphCZ2cl72F nfqWCE2hWvucz81JMy/1cvtB3ifq1KY2s7lDQgA53WEAVyLRl8dV8qnBCQGtUFpZaYg2x2QUnOQlRp0wgpAl 0FLCCNTWsNjmQl+tq9cmy5np/bhSXi3EEHAmImSlSIgOAj/siR/HyQWKrTqngFS99UGeruFmVnPsX8r4aQUN HJUWYU+hzH2Tg2oorzaGR19B04sKUAgcR8yoMBOy/uyJ/OeHaUh5RC5BaL1/amDpIwzvWk9PYJqSrlYtsJJO hsdxKA==	
	Unterzeichner	Österreichische Finanzmarktaufsichtsbehörde
	Datum/Zeit-UTC	2022-02-09T19:28:32Z
	Aussteller-Zertifikat	CN=a-sign-corporate-light-02,OU=a-sign-corporate-light-02,O=A-Trust Ges. f. Sicherheitssysteme im elektr. Datenverkehr GmbH,C=AT
	Serien-Nr.	532114608
	Methode	urn:pdfsigfilter:bka.gv.at:binaer:v1.1.0
Prüfinformation	Informationen zur Prüfung des elektronischen Siegels bzw. der elektronischen Signatur finden Sie unter: http://www.signaturpruefung.gv.at	
Hinweis	Dieses Dokument wurde amtssigniert. Auch ein Ausdruck dieses Dokuments hat gemäß § 20 E-Government-Gesetz die Beweiskraft einer öffentlichen Urkunde.	

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Horizontal policies
Capital markets union

TARGETED CONSULTATION

LISTING ACT: MAKING PUBLIC CAPITAL MARKETS MORE ATTRACTIVE FOR EU COMPANIES AND FACILITATING ACCESS TO CAPITAL FOR SMES

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 11 February 2022** at the latest to the **online questionnaire** available on the following webpage:
https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act-targeted en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses**.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage: https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act-targeted_en

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at listing-acts@ec.europa.eu.

INTRODUCTION

Background for this consultation

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

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

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

Structure of this consultation and how to respond

In line with the better regulation principles, the Commission is launching this targeted consultation to gather evidence in the form of stakeholders' views on the need to make listing on EU public markets more attractive for companies and on ways of doing so. The Commission is also seeking views regarding specific ways of listing, including via Special Purpose Acquisition Companies (SPACs). A special focus is dedicated to SMEs and issuers listed on SME growth markets.

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

This targeted consultation is available in English only. It is split into two main sections. The first section contains general questions and aims at gathering views on stakeholders' experience with the current listing rules and the possible need to adapt those rules. The second section seeks views

from stakeholders on various technical aspects of the current listing rules, with questions grouped according to the legal act that they pertain to.

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

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

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

The consultation will be open for 12 weeks.

CONSULTATION QUESTIONS

1. GENERAL QUESTIONS ON THE OVERALL FUNCTIONING OF THE REGULATORY FRAMEWORK

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

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						
b) Providing an adequate level of investor protection						
c) Creating markets that attract an adequate base of professional investors for companies listed in the EU						
d) Creating markets that attract an adequate base of retail investors for companies listed in the EU						
e) Providing a clear legal framework						
f) Integrating EU capital markets						

Please explain your reasoning: *[4000 character(s) maximum]*

Please, see our answers to the specific questions.

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

capital markets negatively impact the funding structure and cost of capital of EU companies which currently over rely on credit when compared to other developed economies.

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			
b) Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options			
c) Lack of attractiveness of SMEs' securities			
d) Lack of liquidity of securities			
e) Other (please specify below)			

Please explain your reasoning: *[4000 character(s) maximum]*

Please, see our answers to the specific questions.

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

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.)	
b) Fees charged by the issuer's auditors in connection with the IPO	
c) Fees and commissions charged by the banks for the coordination, book building, underwriting, placing, marketing and the roadshow of the IPO	
d) Fees charged by the relevant stock exchange in connection with the IPO	
e) Fees charged by the competent authority approving the IPO prospectus	
f) Fees charged by the listing and paying agents	
Indirect Costs	
g) The potential underpricing of the shares during the IPO by investment banks	
h) Cost of efforts required to comply with the regulatory requirements associated with the listing process	
Other costs (please specify below)	

Please explain your reasoning: *[4000 character(s) maximum]*

Please, see our answers to the specific questions.

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

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	
b) Ongoing fees due by the issuer to its paying agent	
c) Ongoing legal fees due by the issuer to its legal advisors (if postIPO external legal support is necessary to ensure compliance with listing regulations)	

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

Please explain your reasoning: *[4000 character(s) maximum]*

Please, see our answers to the specific questions.

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

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?

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

Please explain your reasoning: *[4000 character(s) maximum]*

Please, see our answers to the specific questions.

(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?

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

Please explain your reasoning: *[4000 character(s) maximum]*

Please, see our answers to the specific questions.

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

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			
b) Clarify conditions around dual listing			
c) Lower minimum free float requirements			
d) Eliminate minimum free float requirements			
e) Other (please specify below)			

Please explain your reasoning: *[4000 character(s) maximum]*

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

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	
b) Lack of investor confidence in listed SMEs	
c) Lack of tax incentives	
d) Lack of retail participation in public capital markets (especially in SME growth markets)	
e) Other (please specify below)	

Please explain your reasoning: *[4000 character(s) maximum]*

Please, see our answers to the specific questions.

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)

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

The Prospectus Regulation has been subject to targeted amendments:

I. at the end of 2019 under the SME Listing Act
II. in 2020 under the Crowdfunding Regulation
III. and in 2021 under the Capital Markets Recovery Package

However, the prospectus regime remains to be seen by some as burdensome and unfit for attracting companies, in particular SMEs, to public markets. Both the CMU High Level Forum (HLF) and the TESG have highlighted that the process of drawing up a prospectus and getting it approved by

the relevant national competent authority is expensive, complex and time-consuming and that targeted yet ambitious simplification of prospectus rules could reduce significantly compliance costs for companies and lower obstacles to tapping public markets.

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

2.1.1. Costs stemming from the drawing up of a prospectus

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

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 converaertible 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	
EU growth prospectus for equity securities	
EU growth prospectus for non-equity securities	
Simplified prospectus for secondary issuances of equity securities	
Simplified prospectus for secondary issuances of non-equity securities	

EU recovery prospectus (currently available for shares only)	

Please explain your reasoning: *[2000 character(s) maximum]*

The question does not concern competent authorities.

(b) Considering the total costs incurred by an issuer <u>for the drawing up of a prospectus,</u> please indicate what is the relative importance of each of the below costs in respect to the overall costs.

a) IPO prospectus

	Less than or equal to 10% of total costs	Greater than 10% and less than or equal to 20% of total costs	Greater than 20% and less than or equal to 40% of total costs	Greater than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know / no opinion / not relevant
a) Issuer's internal costs						
b) Auditors costs						
c) Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)						
d) Competent authorities' fees						
e) Other costs (please specify)						

b) Right issue prospectus

	Less than or equal to 10% of total costs	Greater than 10% and less than or equal to 20% of total costs	Greater than 20% and less than or equal to 40% of total costs	Greater than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know / no opinion / not relevant
a) Issuer's internal costs						
b) Auditors costs						
c) Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)						
d) Competent authorities' fees						

e) Other costs (please specify)						

c) Bond issue prospectus

	Less than or equal to 10% of total costs	Greater than 10% and less than or equal to 20% of total costs	Greater than 20% and less than or equal to 40% of total costs	Greater than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know / no opinion / not relevant
a) Issuer's internal costs						
b) Auditors costs						
c) Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)						
d) Competent authorities' fees						
e) Other costs (please specify)						

d) Convertible bond issue prospectus

	Less than or equal to 10% of total costs	Greater than 10% and less than or equal to 20% of total costs	Greater than 20% and less than or equal to 40% of total costs	Greater than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know / no opinion / not relevant
a) Issuer's internal costs						
b) Auditors costs						
c) Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)						
d) Competent authorities' fees						
e) Other costs (please specify)						

e) EMTN program prospectus

	Less than or equal to 10% of total costs	Greater than 10% and less than or equal to 20% of total costs	Greater than 20% and less than or equal to 40% of total costs	Greater than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know / no opinion / not relevant
a) Issuer's internal costs						
b) Auditors costs						
c) Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)						
d) Competent authorities' fees						
e) Other costs (please specify)						

Please explain your reasoning: *[5000 character(s) maximum]*

The question does not concern competent authorities.

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 burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome	5 (very burdensome)	Don't know - No opinion - Not applicable
Summary						
Risk factors						
Business overview						
Operating and financial review						
Regulatory environment						
Trend information						
Profit forecasts or estimates						
Administrative, management and supervisory bodies and senior management						

Related party transactions						
Financial information concerning the issuer's assets and liabilities, financial position and profit and losses						
Working capital statement						
Statement of capitalisation and indebtedness						
Others (please specify below which sections as well as the rating)						

Please explain your reasoning: *[4000 character(s) maximum]*

The question does not concern competent authorities.

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						
EU growth prospectus for non-equity securities compared to a Standard prospectus for non-equity securities						

Please explain your reasoning: *[2000 character(s) maximum]*

The question does not concern competent authorities.

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						
EU recovery prospectus compared to a Simplified prospectus for secondary issuances of equity securities						

Please explain your reasoning: *[2000 character(s) maximum]*

The question does not concern competent authorities.

2.1.2. Circumstances when a prospectus is not needed

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

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))	**X**
2 - An offer of securities whose denomination per unit amounts to at least EUR 100 000 (Article 1(4), point (c))	
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))	

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

Please explain your reasoning: *[2000 character(s) maximum]*

Regarding the exemption in Article 1(4), point (b) (offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors) we have seen tendency to circumvent this provision by creating 'new' offers, which differ only slightly (e.g. slightly different interest rate). The exemption could be restricted 'per issuer calculated over a period of 12 months'. This would be similar to exemptions Article 1(4), point (j) and Article 1(5), point (i), first subparagraph.

(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.**

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

Please explain your reasoning: *[2000 character(s) maximum]*

Article 3(2) Prospectus Regulation should be amended to better clarify how the provision should be applied and to harmonise the way Member States calculate whether an offering of securities falls under the EUR 8 million exemption.

To clarify how the provision should be applied, Article 3(2) could be amended to state that issuers can offer up to a total consideration of EUR 8 million of equity securities and up to EUR 8 million of non-equity securities in the Union. This would also allow issuers to raise more capital in the Union and further the goals of CMU.

To harmonise how NCAs determine whether an offer of securities exceeds the threshold in Article 3(2), the Prospectus Regulation should clarify that the total consideration of all offers of securities that have been open in the 12 months preceding the start date of a new offer should be considered when determining whether the new offer falls under the exemption. This clarification should also be made regarding similar provisions in the Prospectus Regulation, such as Article 1(3), where a similar calculation over the past 12 months is required. Furthermore, it should also be clarified that exempt offers undertaken pursuant to separate exemptions should not be considered when calculating total consideration.

In relation to Article 3(2) Prospectus Regulation, it should also be clear that Member States may still set their own thresholds between EUR 1 million and EUR 8 million, and that they should only consider the amount offered in their Member State when determining whether an offer falls under the exemption. For example, if EUR 2 million is the threshold for equity in a Member State, the issuer will need a prospectus for offers of equity exceeding that amount in that Member State. If the issuer offers less than EUR 2 million in that Member State, the issuer will still be able to offer up to EUR 6 million under the exemption elsewhere across the Union. If the issuer chooses to

offer further equity in another Member State in which the threshold is EUR 1 million, the issuer will only be exempt up to that amount in that other Member State and will be left with EUR 5 million for offers elsewhere in the Union, and so on.

Lastly, in this proposal, we refer to the thresholds of EUR 1 million and EUR 8 million as they are currently used in the Prospectus Regulation.

(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.**

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

Please explain your reasoning: *[2000 character(s) maximum]*

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 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	
Article 3(2) 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 5 000 000 (Upper threshold)

Please explain your reasoning: *[2000 character(s) maximum]*

We propose to lower the upper threshold from 8 to 5 million EUR. This way the Prospectus

Regulation would better fit into the crowdfunding regime of Regulation 2020/1503 (Regulation on European crowdfunding service providers). Consequently, we would have harmonised crowdfunding regime for issuances below 5 million EUR and the harmonised prospectus regime for issuances beyond the 5 million EUR.

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

- o Yes
- o No (please make an alternative proposal)
- **X** Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

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

Several industry practitioners have stressed that the increasing length and complexity of the prospectus documentation is one of the most important costs associated to the listing process. According to a survey which analysed the average length of the IPO prospectus for the 10 most recent IPOs in the main EU markets as of March 2019, the median length of an IPO prospectus was 400 pages in Europe, with significant divergence among countries, ranging from 250 pages in the Netherlands to over 800 pages in Italy.

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

General issues

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?

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

(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	
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)	

Please explain your reasoning: *[2000 character(s) maximum]*

(c) If you chose 14(b)(1), how should this more streamlined and efficient type of prospectus look like (or, if you refer to an existing type of prospectus, which one)?

Please explain your reasoning: *[2000 character(s) maximum]*

(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)

Please explain your reasoning: *[4000 character(s) maximum]*

(e) If you chose 14(b)(3), how should this document look like?

Please explain your reasoning: *[2000 character(s) maximum]*

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

- o Yes
- **X** No

o Don't know/ no opinion / not relevant

(b) If you answered "Yes" to question 15(a), how should such a limit be defined? Please distinguish between a standard prospectus for equity and a standard prospectus for non-equity securities and clarify if you would consider any exceptions (e.g. complex type of securities, issuers with complex financial history).

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA recognises this issue, introducing maximum page limits is not the appropriate solution to this problem, especially considering the difficulties determining what the maximum page limit should be due to the various types of transactions that can be included in a standard prospectus.

The length of prospectuses will also not be effectively reduced if the consequence is that more information is incorporated by reference into prospectuses. Indeed, any documents incorporated by reference still form an integral part of a prospectus and should be read by prospective investors.

Prospectus summary

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

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**		

(b) if you answered in the negative to question 16(a), could you please explain how could it be further improved?

Please explain your reasoning: *[2000 character(s) maximum]*

Incorporation by reference

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

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

The current incorporation by reference regime appears to work well.

The standard prospectus for non-equity securities

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

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?

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

Please explain your reasoning: *[2000 character(s) maximum]*

Generally, we have problems to identify the addressee of a mere listing prospectus where no public offer is involved. Such prospectuses are published on the listing day and are valid only for a couple of hours until listing has occurred. Then such prospectuses are not supplemented anymore and therefore of limited use for potential investors. We would appreciate clarification whether such prospectuses are approved only for purposes of the stock exchange (as a precondition for listing) or in order to provide information to potential investors (in this case we see limited use of a non-updated prospectus).

(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?

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

Please explain your reasoning: *[2000 character(s) maximum]*

(c) Would you consider any other amendment to the existing rules?

Please explain your reasoning: *[2000 character(s) maximum]*

No other amendments be considered.

2.1.4. Prospectus for SMEs

SMEs and other categories of beneficiaries (e.g. mid-caps listed on an SME growth market) defined in Article 15(1) of the Prospectus Regulation, can choose to draw up an EU growth prospectus for offers of securities to the public, provided that they have no securities admitted to trading on a regulated market. The EU growth prospectus is more alleviated than a standard prospectus, as it contains less disclosures (e.g. board practices, employees, important events in the development of the issuer's business, operating and financial review) and in some cases more alleviated ones (e.g. principal activities, principal markets, organisational structure, investments, trend information, historical financial information, dividend policy). As this development is

relatively recent, there is limited data available to assess whether the introduction of the EU growth prospectus has affected the average length of prospectuses for SMEs. However, feedback from market participants indicates that there has not been a substantial decrease in the length of documents submitted after July 2019.

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

In Austria we have still little experience with this prospectus format but the issuers' interest in this new format is increasing. Generally, issuers have problems with the strict order of the presentation of information (see Article 32 of the Delegated Regulation (EU) 2019/980).

20. (a) If you responded "No" to question 19, how could the regime for SMEs be amended? Please put an X in the box corresponding to your chosen option.

1. The EU growth prospectus should remain the prospectus for SMEs but should be alleviated and / or a page size limit be introduced (please specify)	
2. A new prospectus for SMEs should be introduced and aligned to the level of disclosures required for admission or listing by MTFs, including SME growth markets	
3. Instead of a prospectus, another form of admission or listing document should be introduced (please specify)	
4. Other (please specify)	

Please explain your reasoning: *[2000 character(s) maximum]*

(b) If you selected option 20(a)(2) or 20(a)(3), which MTFs, including SME growth markets, in the EU do you consider having the most appropriate admission or listing documents?

Please explain your reasoning: *[2000 character(s) maximum]*

2.1.5. The format and language of the prospectus

Electronic Prospectus

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

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

X Yes

o No

o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

Considering that most of the communication is electronic nowadays and also for the sake of sustainability we think that providing printed paper copies is no more up to date. However, providing a printed copy of the prospectus free of charge upon justified request only may be considered in order to approach customer, which are apparent less technically experienced.

Language rules for the prospectus

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

22. 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.	
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.	**X**
Don't know/ no opinion / not relevant	

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

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

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

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

23. 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?

- o Yes

X No

o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

While there is always scope for improvement, we believe the simplified prospectus currently provides a balance between appropriate and calibrated disclosure. We do not believe that the requirement for a simplified prospectus should be lifted. While it may be argued that the availability of ongoing TD (Transparency Directive) and MAR (Market Abuse Regulation) disclosure is sufficient to replace the (simplified) prospectus in the secondary issuance context, there are a few points worth mentioning to support it being maintained. Firstly, information in the prospectus will likely be more up to date at the time of the issuance, secondly it will contain valuable and targeted security-related information. Other benefits are that the prospectus will collect all the information in one place, prospectuses typically contain more detailed information and ex-ante supervision of prospectuses is important from an investor protection perspective. Furthermore, approved prospectuses are necessary for passporting purposes.

24. If you responded "No" to question 23, do you think that the regime for secondary issuances could nevertheless be simplified? Please put an X in the box corresponding to your chosen option.

1. The obligation to draw up a prospectus should, for both the offer to the public and the admission to trading on a regulated market of securities fungible with existing securities which have been previously issued, be replaced with the obligation to publish a statement confirming compliance with continuous disclosure and financial reporting obligations.	
2. The obligation to draw up a prospectus should, for both the offer to the public and the admission to trading on a regulated market of securities fungible with existing securities which have been previously issued, be replaced with the obligation to publish an alternative admission or listing document (content to be defined at EU level). Such document should only be filed with the relevant national competent authority (i.e. neither subject to the scrutiny nor to the approval of the latter).	
3. The obligation to publish a prospectus should remain applicable (unless one of the existing exemptions apply) but only a prospectus significantly simplified and focusing on essential information should be required.	
4. Other (please specify)	
5. Don't know/ no opinion / not relevant	**X**

Please explain your reasoning: *[2000 character(s) maximum]*

If there is a desire to further revise the disclosure requirements for simplified prospectuses, further analysis would be necessary. In particular, any further revisions in this area must be considered from an investor protection perspective. From today's perspective, we do not see potential for specific revisions.

25. If you chose option 24(2), could you please indicate what could be the main

characteristics and content of such admission or listing document and how it would compare to the already existing ones?

Please explain your reasoning: *[4000 character(s) maximum]*

26. If you chose option 24(3), could you please indicate what the main simplifications should be?

Please explain your reasoning: *[4000 character(s) maximum]*

27. Since the application of the Capital Markets Recovery Package, have you seen the uptake in the use of the EU recovery prospectus?

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

Please explain your reasoning: *[2000 character(s) maximum]*

In Austria we have no experience with this prospectus format.

28. Do you think that the EU recovery prospectus should (please put an X in the box corresponding to your chosen option for every point listed on the table):

	Yes	**No**	**Don't know / no opinion / not Relevant**
a. be extended on a permanent basis for secondary issuances of shares			**X**
b. be introduced on a permanent basis for secondary issuances of all types of securities (both equity and non-equity securities)			**X**
c. be used as a simplified prospectus for all cases set out in Article 14(1)			**X**
d. Other (please specify)			

Please explain your reasoning: *[2000 character(s) maximum]*

In practical terms, we have no experience with this prospectus format and thus we cannot assess the opinions mentioned effectively.

29. If you replied in the affirmative to question 28(a), which changes, if any, would be necessary to the EU recovery prospectus?

Please explain your reasoning: *[4000 character(s) maximum]*

30. If you replied in the affirmative to question 28(b), which changes would be necessary to the EU recovery prospectus, also to adapt it to the secondary issuance of non-equity securities?

Please explain your reasoning: *[4000 character(s) maximum]*

31. If you replied in the affirmative to question 28(c), which changes, if any, would be necessary to the EU recovery prospectus to adapt it to all cases under Article 14(1)?

Please explain your reasoning: *[4000 character(s) maximum]*

2.1.7. Liability regime

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

32. 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?

X Yes

o No

o Don't know/ no opinion / not relevant

Please explain your reasoning, notably in terms of costs: *[2000 character(s) maximum]*

33. (a) Do you believe that the current civil liability regime under the Prospectus Regulation is adequately calibrated?

o Yes

X No

o Don't know/ no opinion / not relevant

(b) If you responded negatively to question 33(a), which changes would you propose in the context of this initiative?

Please explain your reasoning:

We would appreciate a harmonised civil liability regime across the EU Member States in order to foster greater convergence.

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

o Yes

X No

o Don't know/ no opinion / not relevant

(b) If you responded negatively to question 34(a), which changes would you propose in the context of this initiative?

Please explain your reasoning:

It would be of great interest to establish a consistent liability provision throughout the EU aiming to limit the liability of NCAs with regard to the already existing – and in our view prevailing – liability of the public offeror. At the moment a consistent provision does not exist in the Prospectus Regulation and therefore the liability of the NCAs in relation to the prospectus approval process is different in every Member State. NCAs should not be liable for damages investors have incurred due to insufficient disclosure in a prospectus.

35. According to your opinion, which administrative pecuniary sanctions (as prescribed in Article 38(2) of the Prospectus Regulation) have a higher impact on an issuer's decision to list? Please put an X in the in the box corresponding to your choice for each type of issuers listed on the table.

	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**

Please explain your reasoning: *[2000 character(s) maximum]*

The penalties for legal persons have mainly a higher impact, because the penalties for legal persons are usually higher.

36. (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**	

Please explain your reasoning: *[2000 character(s) maximum]*

The issue seems to be irrelevant. Individual sanctions for legal persons are usually much lower than the maximum administrative sanction.

(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**	

Please explain your reasoning: *[2000 character(s) maximum]*

The issue seems to be irrelevant. Individual sanctions for legal persons are usually much lower than the maximum administrative sanction.

37. (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?

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

(b) If you responded positively to question 30(a), could you please specify for which requirements?

Please explain your reasoning: *[4000 character(s) maximum]*

2.1.8. Scrutiny and approval of the prospectus

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

38. 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?

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

(b) If you answered "No" to question 38(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)?

Please explain your reasoning: *[4000 character(s) maximum]*

We propose to consider the outcome of the current Peer review.

39. (a) Do you consider the timelines for approval of the prospectus as prescribed in Article 20 of the Prospectus Regulation adequate?

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

(b) If you answered "No" to question 39, please provide concrete suggestions on how to improve the process.

Please explain your reasoning: *[4000 character(s) maximum]*

We recommend to change Article 20(3) of the Prospectus Regulation in order to give NCAs the power (when the issuer is considered new to the approving NCA) to use the one-time extended scrutiny time limit of 20 working days (compared to the usual 10 working days) in the course of the scrutiny process. Currently such time limit of 20 working days is only be applicable for the initial submission of the draft prospectus. We suggests to give NCAs the flexibility to decide for which of the issuer´s draft prospectus submissions they want to consume the one-time extended time-limit. In case the initial submission of the draft is incomplete for various reasons (e.g. missing financial information, incomplete description of the business model etc) it might help to consume the extended time-limit for a later draft, when the NCA considers the prospectus to be more elaborated. This would give NCAs more time for scrutiny for a draft version when it is actually needed and not extend the overall scrutiny period.

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

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

Please explain your reasoning: *[4000 character(s) maximum]*

The question does not concern competent authorities.

(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?

- o Yes
- o No

X Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

The question does not concern competent authorities.

Determination of the "Home Member State"

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

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

41. (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?

o Yes

X No

o Don't know/ no opinion / not relevant

(b) If you answered "Yes" to question 41, which national competent authority should be the relevant authority due to approve the prospectus? Please put an X in the box corresponding to your chosen option(s).

For all issuers established in the Union, whatever the securities to be issued, the national competent authority of the Member State where the issuer has its register office	
For all issuers established in the Union, whatever the securities to be issued, the national competent authority of the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market	
Other (please explain below)	
Don't know/ no opinion / not relevant	

Please explain your reasoning: *[2000 character(s) maximum]*

The current regime is working well and especially regarding equity prospectuses there should be no changes.

2.1.9. The Universal Registration Document (URD)

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

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

42. In your view, what are the main reasons for the lack of use of the URD among issuers across the EU? Please put an X in the box corresponding to your chosen option(s).

(a) The time period necessary to benefit from the status of frequent issuer is too lengthy	
(b) The URD supervisory approval process is too lengthy	
(c) The costs of regularly updating, supplementing and filing the URD are not outweighed by its benefits	
(d) The URD content requirements are too burdensome	
(e) The URD is not suitable for non-equity securities as it is built on the more comprehensive registration document for equity securities	
(f) The URD language requirements are too burdensome	
(g) Other (please explain below)	

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not approved any URDs since the new Prospectus Regulation is applicable.

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

- o Yes
- o No

X Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not approved any URDs since the new Prospectus Regulation is applicable.

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not approved any URDs since the new Prospectus Regulation is applicable.

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not approved any URDs since the new Prospectus Regulation is applicable.

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not approved any URDs since the new Prospectus Regulation is applicable.

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

Please explain your reasoning: *[4000 character(s) maximum]*

The Austrian FMA has no suggestions for improvement due to practical experience because the Austrian FMA has not approved any URDs since the new Prospectus Regulation is applicable.

2.1.10. Other possible areas for improvement

Supplements to the prospectus

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

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

The amendments in the Recovery Package should be made permanent with the following changes: - replace “initial subscription period” by “subscription period” or otherwise explain the difference. - it should be made clear that the obligation for intermediaries to contact investors is limited to investors who are ‘clients’ of the intermediary. The clients, who should be contacted, are those, who purchased or subscribed for the securities via the intermediary during the subscription period. This clarification is needed as the word ‘investors’ is currently misconstrued as imposing an obligation to a wider audience than such clients. - the information obligation of intermediaries should be limited to those cases where the intermediary has acted in an advisory capacity. The obligations would be disproportionate if, for example, it only acted to merely execute orders on behalf of the investor. - As the timeframe within which intermediaries must contact clients is quite short, intermediaries should only have to contact clients within this timeframe where they have agreed to contact via electronic means. Where intermediaries and clients agree to contact other than via electronic means, intermediaries should only have to warn those clients to check the issuer’s website for supplements during the subscription period. However, clients who generally agree to contact other

than via electronic means should be offered an opt-in for electronic contact to receive notifications of supplements specifically.

(b) Would you propose additional improvements?

Please explain your reasoning: *[2000 character(s) maximum]*

Please, see our comments above.

Equivalence regime

Article 29 of the Prospectus Regulation enables third country issuers to offer securities to the public in the EU or seek admission to trading on an EU regulated market made under a prospectus drawn up in accordance with the laws of third country, subject to the approval of the national competent authority of the EU home Member State, and provided that (i) the information requirements imposed by those third country laws are equivalent to the requirements under the Prospectus Regulation and (ii) the competent authority of the home Member State has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.

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

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

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

(b) If you answered positively to question 48(a), how would you propose to amend Article 29 of the Prospectus Regulation?

Please explain your reasoning: *[4000 character(s) maximum]*

Other

50. Would you have any other suggestions on possible improvements to the current

prospectus rules laid down in the Prospectus Regulation?

Please explain your reasoning: *[4000 character(s) maximum]*

1. The scope of Article 32(1)(j) of the Prospectus Regulation should be extended to allow for suspension of prospectus scrutiny when a prohibition or restriction is being considered for investor protection reasons under MiFID/MiFIR. The current limitation of scope in Article 32(1)(j) allows for prospectuses to be approved even in situations where a product is under assessment for investor protection reasons by product intervention staff. Due to potential timing mismatches between prospectus approvals and product assessments, one unintended consequence is that prohibitions or restrictions may be imposed on a product after a prospectus has been approved. In addition to the extension of scope, the Commission should include a requirement for NCAs to notify ESMA of suspensions to a prospectus scrutiny process in their Member State, as issuers may try to seek approval of a prospectus in another Member State where the product is not under assessment. In turn, ESMA shall be required to notify all NCAs. Furthermore, the length of time for which prospectus scrutiny can be suspended should also be specified. In principle, this could be aligned with the timing of the product assessment.

2. Article 14(1)(d) of the Prospectus Regulation contains a list of criteria for persons to meet if they wish to draw up a simplified prospectus under the simplified disclosure regime for secondary issuances. However, the words "offered to the public" in this provision set a condition which raises legal interpretation issues, and which is not necessarily relevant in all situations. The interpretation issue is that it is difficult to determine whether "offered to the public" relates to offers with a prospectus only or also exempt public offers. The most relevant aspect to qualify for the use of a simplified prospectus according to Article 14(1)(d) appears to be continuous admission to trading on an SME Growth market and compliance with associated reporting obligations. As such, there appears to be no need for the "offered to the public" condition.

3. Recital 36 of the Prospectus Regulation states that "[…] Neither the final terms nor a supplement should be used to include a type of securities not already described in the base prospectus." However, it is sometimes difficult for NCAs to determine when a supplement is introducing a type of security not already described in the base prospectus. NCAs must often make a case-by-case assessment, and this can undermine a consistent approach across the Union. The present review of the Prospectus Regulation is an opportunity to better clarify how product supplements should be approached by NCAs. We therefore propose that Article 23 of the Prospectus Regulation is amended to say that supplements should not be used to introduce a type of security which is not already described in the base prospectus, and that ESMA should be provided with a mandate to develop guidelines which better clarify the circumstances in which a supplement is considered to introduce a type of security that is not already described in a base prospectus.

4. There seems to be a not harmonised approach regarding the interpretation of Art 1(4)(j)(ii) PR "…not linked to a derivative instrument". It should be clarified what this term means.

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

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

In view of the periodic review of MAR, the European Commission, in March 2019, has requested ESMA to provide a technical advice on the review of MAR on a number of topics (including the notion of inside information, the conditions for delaying the disclosure of inside information, insider lists, managers' transactions and sanctions). On 3 October 2019, ESMA has publicly consulted the market on its preliminary view of the technical advice. The consultation ended on 29 November 2019 and received 97 responses. In September 2020, ESMA published its technical advice addressing all the topics on which the Commission asked advice on and identified several other provisions which were considered important to review in MAR ('ESMA TA'). According to ESMA, both the feedback to the consultation and NCAs experience indicate that, overall, the regime introduced by MAR works well. Accordingly, only a few targeted changes to the legislative framework have been recommended, sometimes to provide guidance at level 3 (e.g. on inside information and delayed disclosure of inside information). However, according to the CMU HLF and the TESG reports, there are a number of MAR provisions and requirements that may sometimes act as a disincentive for companies to list and remain listed on regulated markets and/or MTFs. The cost of complying with these requirements is deemed high, especially for SMEs. The legal uncertainty arising from certain provisions is indicated as an additional source of costs. Finally, the sanctioning regime is considered not proportionate and a discouraging factor for going and remaining public.

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

2.2.1. Costs and burden stemming from MAR

51. (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)						

If there are other MAR provisions that you find burdensome for listed companies, please specify which ones and indicate to what extent they are burdensome for listed companies: *[4000 character(s) maximum]*

The question does not concern competent authorities.

(b) Please explain your reasoning and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs) ***[4000 character(s) maximum]***

2.2.2. Scope of application of MAR

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

them and hence the protections under MAR are not necessary.

52. 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?

o Yes

X No

o Don't know/ no opinion / not relevant

Please explain your reasoning:

- Inside information can arise even before the first day of trading and the person who has this information has a knowledge advantage (e.g. Board members)
- On the first day of trading, all information must be available
- Trades can even take place before the IPO.

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

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

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

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

53. (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?

X Yes

o No

- o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

In our opinion, ESMA's MAR Guidelines on delay in the disclosure of inside information (ESMA/2016/1478) are sufficient clear.

(b) If you answered "No" to question 53(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.			
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".*			
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.			
e) Other (please specify below)			

Please explain your reasoning: *[2000 character(s) maximum]*

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

54. (a) Do you consider that a system relying on the concept of material events for the disclosure of inside information would provide more clarity?

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

Please explain your reasoning:

No, because a substantial lack of transparency could stem from the concept of material events. This is true, because, as of 2019, it is not even mandatory to publish quarterly reports in the EU and Austria.

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

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

Please explain your reasoning:

Indeed, in our opinion, the concept of material events poses fewer publications, which result in massive transparency gaps for investors.

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

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

55. (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?

- **X** Yes

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

Please explain your reasoning: *[2000 character(s) maximum]*

In our opinion, ESMA's MAR Guidelines on delay in the disclosure of inside information (ESMA/2016/1478) are sufficient clear.

(b) If you answered "No" to question 54(a), what changes would you propose to Article 17(4) MAR?

Please explain your reasoning: *[2000 character(s) maximum]*

2.2.4. Disclosure of inside information for issuers of bonds only

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

56. Please specify whether you agree with the following statements (please put an X in the box corresponding to the chosen option for each requirement listed on the table):

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**	

Please explain and illustrate your reasoning, notably in terms of costs (one-off and ongoing costs).

It is true that share price relevance is more often affirmed than with bonds. Nevertheless, even with bonds, information is of interest to the market on major changes in creditworthiness, risk to interest or repayment, default risks, etc.

2.2.5. Managers' transactions (Article 19 MAR)

Under MAR, the Person Discharging Managerial Responsibilities (PDMR) or associated person

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

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

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

57. (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?

- o Yes
- **X** No
- o Don't know/No opinion/not relevant

Please explain your reasoning:

Currently, notifications of persons closely associated to the PDMR are not added up in order to calculate the threshold. If they had to be added up in the future, the threshold could be raised.

(b) If you answered "Yes" in question 56(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					
Issuers listed on all markets					

Please explain your reasoning: *[2000 character(s) maximum]*

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

X Yes

o No

o Don't know/No opinion/not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

The discretion for NCAs should be maintained, because a certain amount of latitude could appear reasonable, in principle, if the threshold according to Article 19(8) MAR would be lower or would include notifications of persons closely associated to the PDMR.

59. If you answered in the affirmative to question 58, 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					
Issuers listed on all markets					

Please explain your reasoning: *[2000 character(s) maximum]*

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

Year	Number of notifications (threshold of EUR 5 000)	Number of notifications (threshold of EUR 20 000)
2019		
2020		

(b) How would the above figures change in case of an increased threshold under Article 19(8) of MAR? Please insert a X in the box corresponding to your choice of the estimated percentage value:

How many less notifications (in % terms) would you receive in case of an increased threshold under Article 19(8) to	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other (please specify threshold)
0-10%					
11-20%					
21-35%					
36-50%					
more than 50%					

Please explain your reasoning: *[2000 character(s) maximum]*

Our data regarding more than 1500 notifications are not efficiently evaluably according to the asked thriesholds.

61. (a) Please provide the approximate level of costs related to disclosure of managers' transactions in the last 2 years:

Year	Costs (threshold of EUR 5 000)	Costs (threshold of EUR 20 000)
2019		
2020		

Please explain your reasoning: *[2000 character(s) maximum]*

The question does not concern competent authorities.

(b) Please provide the estimated level of cost savings (in % terms) in case of an

increased threshold under Article 19(8). Please insert a X in the box corresponding to your choice of the estimated percentage value:

The estimated cost savings (in % terms) in case of an increased threshold in Article 19 (8) to	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other (please specify threshold)
0-10%					
11-20%					
21-35%					
36-50%					
more than 50%					

Please explain your reasoning: *[2000 character(s) maximum]*

The question does not concern competent authorities.

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

X Issuer

○ National competent authority

○ Either by issuer or National competent authority, depending on national law (status quo)

○ Don't know/No opinion/not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

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

X Yes

○ No

○ Don't know/No opinion/not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

We share ESMA's view how to amend Article 19(12) MAR and the underlying reasoning.

(b) If you answered "no" to question 63(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).			
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.			
c) The requirement of keeping a list of closely associated persons should be repealed.			
d) Other (please specify)			

Please explain your reasoning: *[2000 character(s) maximum]*

2.2.6. Insider lists (Article 18)

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

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

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

64. 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.

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not gained any practical experience in this regard, so far.

65. (a) Please indicate whether you agree with the statements below:

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)			

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

We suggest to refrain from any amendments, because insider lists are an important tool for detecting insider trading.

2.2.7. Market sounding

Conducting market soundings may require disclosure to potential investors of inside information. However, market soundings are a highly valuable tool for the proper functioning of financial markets, and, as such, they should not be regarded as market abuse. The current regime requires the disclosing market participant, before engaging in a market sounding, to i) assesses whether that market sounding involves the disclosure of inside information; ii) inform the person to whom the disclosure is made of the possibility of receiving inside information and of all the consequential requirements; and iii) maintain records of the disclosure.

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

The public consultation carried out by ESMA in 2020 for the MAR review final report confirmed stakeholders' concerns on the complexity of the market sounding regime and their request to reduce the scope of the market sounding regime. Nonetheless, ESMA recommended to keep the

current scope of the market sounding regime unchanged and rather look into ways to simplify the market sounding procedures (ESMA final report paragraphs 6.3.3).

66. (a) Do you consider 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?

X Yes

o No

o Don't know/No opinion/not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

The rules regarding market soundings aim at protecting both the disclosing market participant as well as the receiving market participant. They shall increase the consciousness of all participants of the quality of information disclosed in the process. Furthermore, the requirements that have to be complied with are also a tool to evidence that the disclosure of inside information was lawful ('… shall be deemed to be made in the normal exercise of a person's employment, profession or duties …').

(b) If you answered in the negative to question 66(a), how would you further amend the market sounding regime?

Issuers listed on SME growth markets	
Issuers listed on regulated markets	
Issuers on other markets (MTFs)	

Please explain your reasoning: *[4000 character(s) maximum]*

67. (a) Do you agree with the TESG proposal to extend the exemption from market sounding rules to private equity placements for all issuers?

o Yes

o No

X Don't know/No opinion/not relevant

Please explain and illustrate your reasoning, notably in terms of costs *[4000 character(s) maximum]*

We see no need for an explicit exemption to private equity placements, which are already exempted according to our interpretation.

(b) If you answered in the negative to question 67(a), would you agree to extend the exemption from market sounding rules to private equity placements for issuers on SME growth markets?

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

Please explain and illustrate your reasoning, notably in terms of costs *[2000 character(s) maximum]*

2.2.8. Administrative and criminal sanctions

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

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

68. 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?

- o Yes
- **X** No

- o Don't know/No opinion/not relevant

Please explain and illustrate your reasoning, notably in terms of costs *[2000 character(s) maximum]*

We would vote for a harmonisation of the ranges of penalties concerning the different European Legal Acts in ESMA's remit (in particular MAR, TD, UCITS).

69. 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**	

Please explain your reasoning: *[2000 character(s) maximum]*

We consider the Administrative Practice as published in the form of the Publication of Sanctions on the NCA's Website more relevant for assessing the risks of sanctions due to an inadvertent breach.

70. 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**

Please explain your reasoning: *[2000 character(s) maximum]*

The penalties for legal persons have mainly a higher impact because the penalties for legal persons are usually higher.

71. (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								
No		**X**				**X**		
No opinion	**X**		**X**	**X**	**X**		**X**	**X**

Please explain your reasoning: *[2000 character(s) maximum]*

See answer 69.

(b) If you answered "Yes" to question 71(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		
2% of the total annual turnover according to the last available accounts approved by the management body		

Please explain your reasoning: *[2000 character(s) maximum]*

(c) If you answered "Yes" to question 71(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		

Please explain your reasoning: *[2000 character(s) maximum]*

72. (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?

- o Yes
- o No
- **X** Don't know/No opinion/not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

The issue seems to be irrelevant. Individual sanctions for legal persons are usually much lower than the maximum administrative sanction. Therefore, the total annual turnover is not so relevant when it comes to calculate the penalty level. However, if you want to consider financial ratios when calculating the maximum administrative pecuniary, it is necessary that the ratio is easily available and comparable. Furthermore, it makes it more complicate when there are different calculation systems, so we would not recommend to replace it with a different financial ratio.

(b) If you answered "Yes" to question 72(a), please specify which criterion.

Please explain your reasoning: *[2000 character(s) maximum]*

73. (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								
No								
No opinion	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**

Please explain your reasoning: *[2000 character(s) maximum]*

We have no strong view on that issue, because administrative sanctions for legal persons are much more important.

(b) If you answered "Yes" to question 73(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		

Please explain your reasoning: *[2000 character(s) maximum]*

(c) If you answered "Yes" to question 73(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		

Please explain your reasoning: *[2000 character(s) maximum]*

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

o Yes

X No

o Don't know/No opinion/not relevant

(b) If you answered "Yes" to question 74(a), please specify which criterion.

Please explain your reasoning: *[2000 character(s) maximum]*

When calculating the sanction, we already have to take many facts into consideration (severity of the breach etc).

75. 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	X	X
No opinion		

Please explain your reasoning: *[2000 character(s) maximum]*

The thresholds for maximum administrative pecuniary sanctions are sufficient.

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

It is still compulsory for each member state to implement criminal sanctions. We do not have the possibility to apply criminal sanctions for infringements of Art 16-19 MAR in our country but we would also not consider them as necessary. From our point of view, there is no need for criminal sanctions in the field of classic negligence offences.

2.2.9. Liquidity contracts

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

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

contract.

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

X Yes

o No

o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

As described in the introduction, market operators are not party of the contract. Therefore, they are not in the position to influence the terms and conditions during the negotiations. Besides that, contracts have to comply with the rules and provisions applicable.

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

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

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

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

o Yes

X No

o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

Ensuring a level playing field is a core element of market integrity. Market participants should be in the position to base their investment decisions on equal information irrespective of the issuer or a relation to instruments admitted to trading on a SME growth market.

2.2.11. Other

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

Please explain your reasoning: *[4000 character(s) maximum]*

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

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

However, some stakeholders believe that there is room for targeted adjustments to this directive in order to ease and accommodate listing rules for EU entities. This is particularly true for the SMEs, according to the HLF, the TESG and ESMA's report on the functioning of the regime for SME growth markets that all bring up specific points within MiFID II that could be modified in order to incentivise listing. In some cases the ESMA's and stakeholder's suggestions were aimed at clarifying certain provisions within MiFID II while in others they sought to increase SMEs' visibility and attractiveness towards investors.

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

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

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

80. 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?

X Yes

o No

o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

We see merit in regulating this topic in a legal text and not just in Q&A (see the answer to question 8 in the Q&A <https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38_qas_markets_structures_issues.pdf>.

2.3.2. Dual listing

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

81. (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?

X Yes

o No

o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

We do not see any reason why the issuers themselves are forbidden to request a dual listing themselves. However, a legal clarification would help in ensuring a uniform application of this provision.

(b) If you answered "Yes" to question 81(a), do you believe that Article 33(7) should clarify that, where the issuers themselves request a dual listing, they shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the second SME growth market?

o Yes

o No

X Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

82. 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)?

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

Please explain your reasoning: *[2000 character(s) maximum]*

We see this as problematic insofar as less strict conditions apply to SME growth market listing than listing on another venue and investors on this other venue would not necessarily be aware that the instrument has been (first) listed subject to such less strict conditions.

2.3.4. Equity Research coverage for SMEs

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

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

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

83. 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?

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not gained practical experience regarding the amended research regime so far.

84. (a) Would you see merit in alleviating the MiFID II regime on research even further?

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has gained neither practical experience regarding the amended research regime nor lessons learnt from that, so far.

(b) If you answered "Yes" to question 84(a), please indicate whether you consider that written material other than the one currently falling under the minor non-monetary benefits regime could be added to that list.

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

Please explain your reasoning: *[2000 character(s) maximum]*

(c) If you answered "Yes" to question 84(a), please indicate whether you consider that FICC (fixed income, currencies and commodities) research and research provided by independent research providers should be exempted from the unbundling regime introduced by MiFID II.

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

Please explain your reasoning: *[2000 character(s) maximum]*

(d) If you answered "Yes" to question 84(a), please indicate whether you have any further concrete proposal.

Please explain your reasoning: *[4000 character(s) maximum]*

85. As an investor, what type(s) of research do you find useful for your investment decisions? Please put an X in the box corresponding to your chosen option for each type of research listed on the table.

	Useful	Not useful	Don't know/No opinion/Not relevant
Independent research			
Venue-sponsored research			
Issuer-sponsored research			
Other (please specify)			

Please explain your reasoning: *[2000 character(s) maximum]*

86. How could the following types of research be supported through legislative and non-legislative measures? Please put an X in the box corresponding to your chosen option for each type of research listed on the table.

	Legislative measures	Non-legislative measures	Don't know/No opinion/Not relevant
Independent research			**X**
Venue-sponsored research			**X**
Issuer-sponsored research			**X**

Other (please specify)			

Please explain your reasoning: *[2000 character(s) maximum]*

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

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

2.3.5. Other

89. Would you have any other suggestions on possible improvements to the current rules laid down in MiFID II to facilitate listing while assuring high standards of investor protection?

Please explain your reasoning: *[4000 character(s) maximum]*

2.4 Other possible areas for improvement

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

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

The Transparency Directive (Directive 2004/109/EC) requires issuers of securities traded on EU regulated markets to make their activities transparent, by regularly publishing certain information. The information to be published includes: (i) yearly and half-yearly financial reports; (ii) major changes in the holding of voting rights; (iii) ad hoc inside information which could affect the price of securities. This information must be released in a manner that benefits all investors equally across the EU.

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

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

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

90. (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?

X Yes

o No

o Don't know/ no opinion / not relevant

(b) If you answered "yes" to question 89(a), which changes would you propose?

Please explain your reasoning:

A major issue of simplifying transparency rule would be the implementation of a database like

EDGAR in the US, where regulated information has to be submitted directly to that database in machine readable format. The database should automatically disseminate the notification througout the Union. It should be accessible over the internet. These functions could be implemented in the ESAP. This would make accessibility of information much clearer.

Additional Response:

- Article 4 (2) (c) TD: It should be clarified if the indications of the "functions" mean the legal function (eg. executive director) or the specific position (eg. CEO, CFO). It should be specified if a signature by each person is necessary.

- Article 9 TD: There is no obligation for the investor to make major holdings notifications when the issuer is listed for the first time on the regulated market, which leads to an intransparent situation as long as the investor does not cross another threshold after the listing. The same applies to the obligation to publish the number of total voting rights under Article 15 TD.

- Article 21 (3) TD: If the issuer is listed only in the host Member State, it should be clarified if only the rules of the host Member State apply or if both the rules of the host and home Member States apply. It should be clarified if "disclosure" covers only the dissemination throughout the Union or also the submission to the NCA and the OAM including which NCA and which OAM (host/home/both).

- Article 24 (4) TD: For investigations under Article 9 - 13a TD the authorities should have the explicit power to require information and documents from deposit credit institutions and investment firms, if shares/instruments of an issuer are deposited with them. Otherwise, a NCA must always rely on what the shareholder says.

- Article 28b (1) (c) (i) TD: The pecuniary sanction of up to 10 MEUR seems to be inconsistent in relation to the sanctions of up to 2,5 MEUR stated in Art 30 (2) (j) (ii) MAR.

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

Please explain your reasoning:

The Austrian FMA strongly recommend tackling a massive loophole in major shareholdings: If two investors are acting in concert without an agreement when exercising voting rights, there is no obligation for them to aggregate their holdings in the major holdings notification obligation. As a result, they can jointly creep up on an issuer easily. Due to ECJ judgement C-605/18 countries with separate NCAs for the TD and the Takeover Bids Directive (TBD) cannot close this loophole on a national level because of restrictions according to Article 3 (1a) 4th subpara TD. Moving the major holdings obligation to the Takeover Bids Authority is not an option, because there has to be one central authority for the supervision under Article 24 (1) TD and according to Recital 28 TD and hence for the major holdings notification obligation. This loophole should urgently be closed either by implementing an aggregation obligation for acting in concert directly in Article 10 TD or by providing countries with separate NCAs responsible for the TD and the TBD with the option to have more stringent requirements even though these requirements are not supervised by the Takeover Bids Authority. Please, do not hesitate to get in touch with us in order to elaborate further details on that matter.

- Article 1 (2) TD: It should be clarified whether investors in Collective Investment Undertakings (CIU) are also exempted from Article 9 - 13a TD if they are the legal owner of the shares/instruments of an issuer which are in the CIU. If they are not exempted, in practice it can be very difficult for the investor to check on a daily basis if and how many shares/instruments the CIU holds in an issuer to calculate the threshold. However, exempting them from the obligation could lead to circumvention of the rules. The same applies to Alternative Investment Funds.

- Article 10 (e) TD: Voting rights, which may be exercised within the meaning of points (f) to (h), should also be covered. Otherwise Article 12 (4) TD is useless because management companies hold voting rights usually as a proxy under Article 10 (h). The parent company would not have to notify under Article 10 (e) anyways.

2.4.2 Special Purpose Acquisition Companies (SPACs)

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

Some argue that SPACs may play a useful role, in particular for start-ups and scale-ups when the economic situation is less flourishing and getting access to public markets become more difficult for those companies.

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

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

92. 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
- **X** Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not gained any practical experience regarding SPACs, so far.

93. (a) What would you see as being detrimental to the SPACs development in the EU?

Please explain your reasoning: *[4000 character(s) maximum]*

The Austrian FMA has not gained any practical experience regarding SPACs, so far.

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

Please explain your reasoning: *[4000 character(s) maximum]*

The Austrian FMA has not gained any practical experience regarding SPACs, so far.

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not gained any practical experience regarding SPACs, so far.

95. In 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 better 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		
Don't know/ no opinion / not relevant		

Please explain your reasoning and list additional safeguards, if any, you may find relevant: *[4000 character(s) maximum]*

The Austrian FMA has not gained any practical experience regarding SPACs, so far.

96. 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?

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not gained any practical experience regarding SPACs, so far.

97. 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?

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not gained any practical experience regarding SPACs, so far.

98. 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?

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

Please explain your reasoning: *[2000 character(s) maximum]*

The Austrian FMA has not gained any practical experience regarding SPACs, so far.

99. Do you have any other proposal on how to improve the current listing regime when considering an IPO via a SPAC?

Please explain your reasoning: *[4000 character(s) maximum]*

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

The Listing Directive (Directive 2001/34/EC) concerns securities for which admission to official listing is requested and those admitted, irrespective of the legal nature of their issuer. The Listing Directive aims to coordinate the rules with regard to (i) admitting securities to official stock-exchange listing and (ii) the information to be published on those securities in order to provide equivalent protection for investors at EU level.

The Prospectus Directive and the Transparency Directive further consolidated rules harmonising the conditions for the provision of information regarding requests for the admission of securities to official stock-exchange listing and the information on securities admitted to trading. Therefore, those directives amended the Listing Directive removing overlapping requirements (i.e. deleting Articles 3, 4, 20 to 41, 65 to 104 and 108 of the Listing Directive). Furthermore, MiFID replaced the notion of ‘admission to the official listing' with ‘admission to trading on a regulated market'.

The Listing Directive is a minimum harmonisation directive. It allows EU Member States to put in place additional requirements for admission of securities to official listing, provided that (i) such additional conditions apply to all issuers; and (ii) they have been published before the application for admission of such securities.

100. (a) Do you consider that the Listing Directive, in its current form, achieves its objectives and does not need to be amended?

- o Yes
- **X** No

- o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

No, we see most provisions of the Listing Directive as obsolete.

(b) If you answered "No" to question 100(a), do you believe that the Listing Directive should be (please put an X in the box corresponding to your chosen option):

Repealed	
Amended as a Directive	
Amended and transformed in a Regulation	
Incorporated in another piece of legislation (please specify)	**X**
Don't know/ no opinion / not relevant	

Please explain your reasoning: *[2000 character(s) maximum]*

Ideally, the provisions of the Listing directive should be incorporated into the MiFIDII/R regime for regulated markets including the RTS 17 (Delegated Regulation (EU) 2017/568.

2.4.3.1. Definitions

101. (a) Do you consider that the definitions laid down in Article 1 of the Listing Directive are outdated?

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

(b) If you answered "Yes" to question 95(a), what changes would you propose?

Please explain your reasoning: *[2000 character(s) maximum]*

2.4.3.2. Listing conditions

102. 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?

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

Please explain your reasoning: *[2000 character(s) maximum]*

The flexibility is certainly not helpful in fostering a level playing field within the Union.

Specific conditions for the admission of shares

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

103. (a) Regarding the following requirements for the admission of shares to the official listing, would you consider them still relevant, rating them from 1 to 5, with 1 standing for 'not relevant' and 5 standing for 'very relevant'? Please insert your rating in the box corresponding to each available option in the table.

	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**		
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**		

Please explain your reasoning: *[2000 character(s) maximum]*

We see all three criteria as useful. However, the respective exceptions may lead to a very flexible application and a less stringent application.

(b) Regarding the foreseeable market capitalisation referred to on question 103(a)(1), would you consider a different threshold?

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

Please explain your reasoning: *[2000 character(s) maximum]*

We recommend to amend the threshold after a thorough analysis.

(c) Do you consider that the minimum number of years of publication or filing of annual accounts referred to on question 103(a)(2) is adequate?

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

Please explain your reasoning: *[2000 character(s) maximum]*

The requirement is basically adequate. However the competent authorities may derogate from this condition where such derogation is desirable in the interests of the company or of investors. The derogation in the interest of the company will usually apply, as such interest will arguably by given, if the company itself asks for such derogation. Another condition for the derogation is that the competent authorities are satisfied that investors have the necessary information available to be able to arrive at an informed judgement on the company and the shares for which admission to official listing is sought. Such necessary information should usually be anyway provided in a prospectus Accordingly as currently drafted in many cases a company existing for less than three year may be admitted to the official listing, as such derogation will be desirable in the interest of the company and the necessary information is available to investors. We suggest assessing whether a derogation should only apply if it is in the interest of the company **and** (*instead of* or) of the investors.

The free float is the portion of a company's issued share capital that is in the hands of public investors, as opposed to company officers, directors, or shareholders that hold controlling interests. These are the shares that are deemed to be freely available for trading. The

recommendation of 25% free float set out in Article 48 dates back to 2001. It allows the Member States' discretion in setting the percentage of the shares that would be needed to be floated at the time of listing. According to information received from stakeholders, the percentages in EU-27 vary from 5% to 45%.

104. (a) In your opinion is free float a good measure to ensure liquidity?

X Yes

o No

o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

Basically free float is seen as a good measure to ensure liquidity

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

X Yes

o No

o Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

Such minimum free float requirement could be a barrier to listing, if it is set in a stringent way. In our view, the current minimum free float requirement of the Listing directive does not effectively constitute such a barrier. In addition, the exception (*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)* leaves more than enough leeway.

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

o Yes

o No (please specify in the textbox below whether it should be higher or lower)

X Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

As already mentioned above the exception to the threshold (*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) leaves more than enough leeway and may not be helpful to achieve a level playing field in the Union.

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

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

Please explain your reasoning: *[2000 character(s) maximum]*

While we welcome a certain flexibility in order to accommodate to particular situations and cases, as already mentioned above this national discretion is drafted in rather non-precise terms and leaves a large room for interpretation.

105. 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.

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

Please explain your reasoning: *[2000 character(s) maximum]*

Specific conditions for the admission of debt securities

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

106. (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?

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

(b) If you answered "No" on question 106(a), which changes would you propose?

Please explain your reasoning: *[4000 character(s) maximum]*

2.4.3.3. Competent Authorities

107. 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?

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

Please explain your reasoning: *[4000 character(s) maximum]*

2.4.3.4. Other

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

Please explain your reasoning: *[4000 character(s) maximum]*

2.4.4 *Shares with multiple voting rights*

Loss of control is widely cited by unlisted companies as the most important reason for staying private. Equity-raising very often generates a tension between existing owners, who rarely want to cede control of their business, and new investors who want to have control over their

investment. This tension affects in particular family-owned companies but also the founders of tech, science and other high-growth companies who are often interested in preserving their ability to influence the strategic direction of the company after going public.

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

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

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

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

109. 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?

o Yes

o No

X Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

The issue depends on corporate law, which is outside the supervisory scope.

110. (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	
Slightly positive impact	
Positive impact	

Don't know/no opinion	**X**

Please explain your reasoning: *[2000 character(s) maximum]*

The issue depends on corporate law, which is outside the supervisory scope.

(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?

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

Please explain your reasoning: *[2000 character(s) maximum]*

The issue depends on corporate law, which is outside the supervisory scope.

(c) If you answered "Yes" to question 110(b), please indicate what ratio you consider acceptable to overcome potential drawbacks associated with shares with multiple voting rights. Please put an X in the box corresponding to your chosen option.

2:1	
10:1	
20:1	
Other (please explain)	
Don't know / No opinion	

Please explain your reasoning: *[2000 character(s) maximum]*

111. 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?

- o Yes
- o No

X Don't know/ no opinion / not relevant

Please illustrate your reasoning, namely in terms of advantages and disadvantages *[2000 character(s) maximum]*

The issue depends on corporate law, which is outside the supervisory scope.

112. 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?

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

Please illustrate your reasoning, namely in terms of advantages and disadvantages *[2000 character(s) maximum]*

The issue depends on corporate law, which is outside the supervisory scope.

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

Please explain your reasoning: *[4000 character(s) maximum]*

2.4.5 Corporate Governance standards for companies listed on SME growth markets

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

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

o Yes

o No

X Don't know/ no opinion / not relevant

Please explain your reasoning: *[2000 character(s) maximum]*

The issue depends on corporate law, which is outside the supervisory scope.

115. If you see merit, which of the following option(s) would be most suitable for a possible initiative on corporate governance? Please put an X in the box corresponding to your chosen option(s).

SME growth market operators should require in their own rulebook that issuers comply with corporate governance requirements tailored to local conditions.	
SME growth market operators should recommend in in their own rulebook that issuers comply with corporate governance requirements tailored to local conditions.	
EU legislation should set out corporate governance principles for issuers listed on SME growth markets while allowing Member States and/or market operators' flexibility in how to implement the principles.	
Corporate governance requirements for companies listed on SME growth markets should be fully harmonised at EU level.	
Other	
Don't know / no opinion / not relevant	

Please explain your reasoning, notably on the advantages and disadvantages of the preferred option *[2000 character(s) maximum]*

116. (a) If you see merit, please indicate the corporate governance requirements that would be the most needed and would have the most impact to increase the attractiveness of issuers listed on SME growth markets (please rate each proposal from 1 to 5, 1 standing for "no impact" and 5 for "very significant positive impact"):

	1	**2**	**3**	**4**	**5**	**No opinion**

Requirement to report related party transactions (i.e. issuers would have to publicly announce material transactions with related parties at the time of the conclusion of such transaction and to adopt an internal procedure to assess and manage these transactions in order to protect the interests of the company)						**X**
Additional disclosure duties regarding the acquisition/ disposal of voting rights as required by the Transparency Directive for major shareholdings in companies with shares traded on Regulated Markets						**X**
Obligation to appoint an investor relations manager						**X**
Introduction of minimum requirements for the delisting of shares:						
○ supermajority approval (e.g. 75% or 90% of shareholders attending the meeting) for shareholders resolutions which directly or indirectly lead to the issuer's delisting (including merger or similar transactions)						**X**
○ sell-out rights assigned to minority shareholders if the company is delisted or if one shareholder owns more than 90% or 95% of the share capital.						**X**
Appointment of at least one independent director (independence should be understood according to para. 13.1. of Commission's recommendation 2005/162/EC)						**X**
Other (please specify)						

Please explain your reasoning: *[4000 character(s) maximum]*

Please explain your reasoning *[4000 character(s) maximum]*

The issue depends on corporate law, which is outside the supervisory scope.

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

	1	**2**	**3**	**4**	**5**	**No opinion**
Requirement to report related party transactions (i.e. issuers would have to publicly announce material transactions with related parties at the time of the conclusion of such transaction and to adopt an internal procedure to assess and manage these transactions in order to protect the interests of the company)						**X**
Additional disclosure duties regarding the acquisition/ disposal of voting rights as required by the Transparency Directive for major shareholdings in companies with shares traded on Regulated Markets						**X**

Obligation to appoint an investor relations manager						**X**
Introduction of minimum requirements for the delisting of shares:						
o supermajority approval (e.g. 75% or 90% of shareholders attending the meeting) for shareholders resolutions which directly or indirectly lead to the issuer's delisting (including merger or similar transactions)						**X**
o sell-out rights assigned to minority shareholders if the company is delisted or if one shareholder owns more than 90% or 95% of the share capital.						**X**
Appointment of at least one independent director (independence should be understood according to para. 13.1. of Commission's recommendation 2005/162/EC)						**X**
Other (please specify)						

Please explain your reasoning and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs): *[4000 character(s) maximum]*

The issue depends on corporate law, which is outside the supervisory scope.

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

Please explain your reasoning: *[4000 character(s) maximum]*

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

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

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

(b) If you responded "yes" to question 118(a), please provide details in the textbox below.

Please explain your reasoning: *[4000 character(s) maximum]*

Additional information

Should you wish to provide additional information (for example a position paper) explaining your position or raise specific points not covered by the questionnaire, you can upload your additional document here. Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this targeted consultation.