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

Fields marked with * are mandatory.

Introduction

Background for this consultation

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

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

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

Structure of this consultation and how to respond

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

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

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

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

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

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

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

The consultation will be open for 12 weeks.

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

More information on

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

About you

* Language of my contribution

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

* I am giving my contribution as

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

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

* First name

ianja

* Surname

ramananarivo

* Email (this won't be published)

i.ramananarivo@amf-france.org

* Scope

- ( ) International
- ( ) Local
- (•) National
- ( ) Regional

* Level of governance

- ( ) Parliament
- (•) Authority
- ( ) Agency

* Organisation name

255 character(s) maximum

Autorité des Marchés Financiers (AMF)

* Organisation size

- ( ) Micro (1 to 9 employees)
- ( ) Small (10 to 49 employees)
- ( ) Medium (50 to 249 employees)

- (●) Large (250 or more)

Transparency register number

255 character(s) maximum

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

* Country of origin

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

- ( ) Afghanistan
- ( ) Åland Islands
- ( ) Albania
- ( ) Algeria
- ( ) American Samoa
- ( ) Andorra
- ( ) Angola
- ( ) Anguilla
- ( ) Antarctica
- ( ) Antigua and Barbuda
- ( ) Argentina
- ( ) Armenia
- ( ) Aruba
- ( ) Australia
- ( ) Austria
- ( ) Azerbaijan
- ( ) Bahamas
- ( ) Bahrain
- ( ) Bangladesh
- ( ) Djibouti
- ( ) Dominica
- ( ) Dominican Republic
- ( ) Ecuador
- ( ) Egypt
- ( ) El Salvador
- ( ) Equatorial Guinea
- ( ) Eritrea
- ( ) Estonia
- ( ) Eswatini
- ( ) Ethiopia
- ( ) Falkland Islands
- ( ) Faroe Islands
- ( ) Fiji
- ( ) Finland
- (●) France
- ( ) French Guiana
- ( ) French Polynesia
- ( ) French Southern and Antarctic Lands
- ( ) Libya
- ( ) Liechtenstein
- ( ) Lithuania
- ( ) Luxembourg
- ( ) Macau
- ( ) Madagascar
- ( ) Malawi
- ( ) Malaysia
- ( ) Maldives
- ( ) Mali
- ( ) Malta
- ( ) Marshall Islands
- ( ) Martinique
- ( ) Mauritania
- ( ) Mauritius
- ( ) Mayotte
- ( ) Mexico
- ( ) Micronesia
- ( ) Moldova
- ( ) Saint Martin
- ( ) Saint Pierre and Miquelon
- ( ) Saint Vincent and the Grenadines
- ( ) Samoa
- ( ) San Marino
- ( ) São Tomé and Príncipe
- ( ) Saudi Arabia
- ( ) Senegal
- ( ) Serbia
- ( ) Seychelles
- ( ) Sierra Leone
- ( ) Singapore
- ( ) Sint Maarten
- ( ) Slovakia
- ( ) Slovenia
- ( ) Solomon Islands
- ( ) Somalia
- ( ) South Africa
- ( ) South Georgia and the South Sandwich Islands

- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands

- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable)

- [ ] Operator of a trading venue (regulated market, MTF including SME growth markets, OTF)
- [ ] Operator of market infrastructure other than trading venue (clearing house, central security depositary, etc.)

- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, pension funds)
- [ ] Broker/market-maker/liquidity provider
- [ ] Financial research provider
- [ ] Investment bank
- [ ] Accounting and auditing
- [ ] Insurance
- [ ] Credit rating agency
- [ ] Corporate, issuer
- [x] Other
- [ ] Not applicable

* Please specify your activity field(s) or sector(s)

financial market authority

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

* **Contribution publication privacy settings**

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

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

☑ I agree with the personal data protection provisions

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

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

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

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

Please explain the reasoning of your answer to question 1:

4000 character(s) maximum

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

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

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

a) Regulated markets:

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

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

4000 character(s) maximum

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

b) SME growth markets:

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

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

4000 character(s) maximum

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

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

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

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

4000 character(s) maximum

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

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

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

a) Direct costs:

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

Fees charged by the issuer's auditors in connection with the IPO	○	○	○	○	○	○
Fees and commissions charged by the banks for the coordination, book building, underwriting, placing, marketing and the roadshow	○	○	○	○	○	○
Fees charged by the relevant stock exchange in connection with the IPO	○	○	○	○	○	○
Fees charged by the competent authority approving the IPO prospectus	○	○	○	○	○	○
Fees charged by the listing and paying agents	○	○	○	○	○	○
Other direct costs	○	○	○	○	○	○

b) Indirect costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
The potential underpricing of the shares during the IPO by investment banks	○	○	○	○	○	○
Cost of efforts required to comply with the regulatory requirements associated with the listing process	○	○	○	○	○	○
Other indirect costs	○	○	○	○	○	○

Please explain the reasoning of your answer to question 3:

4000 character(s) maximum

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

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

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

a) Direct costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
Ongoing fees due by the issuer to the listing venue for the continued admission of its securities to trading on the listing venue	○	○	○	○	○	○
Ongoing fees due by the issuer to its paying agent	○	○	○	○	○	○
Ongoing legal fees due by the issuer to its legal advisors (if post-IPO external legal support is necessary to ensure compliance with listing regulations)	○	○	○	○	○	○

Fees due by the issuer to auditors if post-IPO, extra auditor work is necessary to ensure compliance with listing regulation						
Corporate governance costs						
Other direct costs (e.g. costs for extra headcount, costs allocated to investors' relationships, development and maintenance of a website)						

b) Indirect costs:

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

Other indirect costs						

Please explain the reasoning of your answer to question 4:

4000 character(s) maximum

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

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

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

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

Please explain the reasoning of your answer to question 5.1:

4000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 5.2:

4000 character(s) maximum

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

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

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

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

Please explain the reasoning of your answer to question 6:

4000 character(s) maximum

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

The lack of available company research and insufficient liquidity discourage investors from investing in some listed securities. Many securities issued by SMEs in the EU are characterised by lower liquidity and higher illiquidity premium, which may be the direct result of how these companies are perceived by investors, in particular institutional investors,

who do not find them sufficiently attractive. Furthermore, institutional investors may fear reputational risk when investing in companies listed on multilateral trading facilities, including SME growth markets, given the lack of minimum corporate governance requirements for issuers on those venues.

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

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

Please explain the reasoning of your answer to question 7:

2000 character(s) maximum

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

2. Specific questions on the existing regulatory framework

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

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

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

The Prospectus Regulation has been subject to targeted amendments

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

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

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

2.1.1. Costs stemming from the drawing up of a prospectus

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

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

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

Please explain the reasoning of your answer to question 8.1:

2000 character(s) maximum

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

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

a) IPO prospectus

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

b) Right issue prospectus

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

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

c) Bond issue prospectus

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

d) Convertible bond issue prospectus

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

e) EMTN program prospectus

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

Competent authorities' fees	◉	○	○	○	○	○
Other costs	○	○	○	○	○	○

Please explain the reasoning of your answer to question 8.2:

5000 character(s) maximum

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

AMF fees represent a very limited share of the total costs incurred by issuers for the drawing up of a prospectus (and can even amount to no fee). No fee is indeed charged by the AMF for the review and approval of Equity prospectuses nor for right issue prospectuses and a fixed fee of 5.000€ is charged for non-Equity prospectuses (fixed fee due at the filing) (article L. 621-5-3 monetary code).
Although not having a precise view on the different other production costs of a prospectus, the AMF is aware of the fact that preparing and approving a prospectus can represent a heavy cost for issuers. The AMF would nevertheless like to recall that operations exempted from prospectuses, as well as alternative financing routes (private placement, bank loans, high yield etc.) would also require marketing and due diligence costs, arrangement, commission and legal fees.
If the production of a prospectus represents a cost for issuers, both in terms of time and resources, the AMF considers that this document should not be disqualified on that account, and that its cost should be put in perspective with its benefits. It is a sound and useful instrument for the market that establishes equality of information between investors and the issuer seeking to finance itself through the market. It is also a powerful tool to hold the issuer accountable vis-à-vis the market as it crystallizes certain commitments of the issuer with regard to its financial objectives, its business strategies or the use of the offer proceeds. Besides, the EU prospectus carries with it a passport enabling EU companies to admit their securities on exchanges of different Member States and to carry out offers on a cross-border basis. No prospectus means no pan-European offers and listings. The public benefit of a prospectus in terms of market confidence, efficiency and access to the Single market far outweighs its costs.

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

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

Please explain the reasoning of your answer to question 9:

4000 character(s) maximum

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

Listed entities are already due to provide the market with some of the information incorporated in a prospectus: namely, the financial information, the operating and financial review, the trends or related party transactions are already provided to the market on an on-going basis, for example in application of Transparency Directive or in accordance with the operator rules for SME Growth Market. Therefore, including these already existing information in a Prospectus should not be burdensome at all.

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

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

Please explain the reasoning of your answer to question 10:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 11:

2000 character(s) maximum

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

2.1.2. Circumstances when a prospectus is not needed

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

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

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

Please select as many answers as you like

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

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

Please select as many answers as you like

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

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

2000 character(s) maximum

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

The AMF considers that the current regime should only be amended when evidence exists that it could simplify or improve the regulation. A considerable amount of time and resources has indeed been collectively devoted to implement the numerous new features introduced by the recent reform as well as subsequent amendments, leading way to a general aspiration for regulatory stability in the field of PR. Cases where competing financial centres are considering implementing fundamentally more offensive rules should also be considered insofar as they do not undermine the fundamental principles of European regulation and investors' protection principle.

The AMF considers that Art.1(4) PR ensure the proportionality of the regime while guaranteeing investor protection. The AMF has not received indication from its market that modifications would be welcomed nor has it identified specific inconsistencies in these rules needing amendments; questioning those exemptions at this stage could create unnecessary instability. No modification should also be envisaged at this stage for non-Equity issuances following the same rationale.

With regard to Art1(5) (a) and (b) PR, the AMF would be open to consider a moderate increase of the current 20% dilution threshold (to 30% for example), provided that it applies both to shares and to securities giving access to shares (Art. 1(5)(a) and (b)). Indeed, the AMF considers it inappropriate to deprive the market of a prospectus in cases of capital increases (immediate or deferred via securities giving access to shares) with a significant dilutive effect, which usually occur in circumstances where an issuer goes through a transformative transaction that fundamentally modifies its profile, governance and strategy.

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

2000 character(s) maximum

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

see previous response for point i)

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

Please select as many answers as you like

- [ ] i. Non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities: 1. are not subordinated, convertible or exchangeable; and 2. do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument (Article 1(4), point (j) and Article 1(5), first subparagraph, point (i)).
- [ ] ii. From 18 March 2021 to 31 December 2022, non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities: 1. are not subordinated, convertible or exchangeable; and 2.do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument (Article 1(4), point (l), and Article 1(5), first subparagraph, point (k))
- [ ] iii. Other exemptions

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

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

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

2000 character(s) maximum

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

The AMF is in favor of introducing more clarity in the regulation on the application of the various thresholds and in particular, the threshold provided for by Article 3(2) of the PR. These clarifications should in particular address the following questions: how to treat offers of different financial instruments, how to calculate the period, should exempted offers be accounted for etc.
The AMF would more specifically support the following clarifications to art. 3(2)PR:

- the threshold in Article 3(2) PR should differentiate between equity securities and non-equity securities, as stated by the former ESMA PD Q&A n. 26;
- within those two groups of securities, all the offerings which are or were open over a period of 12 months should be aggregated (i.e. what was the amount of the offer that was open within the last 12 month period and is that amount over the national threshold when adding the new offering)
- when calculating the threshold, what should be considered is the total nominal amount offered, not the actual amount placed;
- the period of 12 months should be considered as the 12 months before the beginning of the relevant offering or the beginning of the admission to trading on a regulated market;
- offers and admissions to trading exempted from the production of a prospectus in application of Article 1(4) and (5) PR, as well as offers and admissions made in the 12 month period before the beginning of the relevant offering but for which a prospectus has been approved, should be excluded from the calculation;
- offers and admissions to trading by companies belonging to the same group should be considered separately.

The AMF would also be supportive of inserting more clarity in the Prospectus regulation when the term “public offer” is used ; in particular on whether it means a public offer requiring a prospectus or any public offer including those that are exempted from the drafting of a prospectus.

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

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

Question 12.3.1 Please specify in the textbox below which additional exemptions you would propose, explaining your reasoning:

2000 character(s) maximum

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

The AMF proposes to remove the obligation to draw up an EU prospectus in case of offers of securities to the public by companies whose securities are traded on SME Growth markets (including at the IPO stage) and to transfer to market operators the responsibility to design an appropriate information regime for offers to the public.
We observe companies listed on SME GM typically only carry out offers of securities locally and almost never passport their offers outside their home Member State: thus, we see no benefit in imposing them the harmonised EU prospectus.
The responsibility to define the content of the information document and how the latter should be scrutinized, by each operator of SME Growth market will be introduced by amending Art 33(3) MiFID2, and art 78 of the delegated regulation 2017/565.
The content of such offering information document should provide investors with an adequate level of information to support an informed assessment of the financial position and perspectives of the issuer, and of the rights attached to the securities offered.
Strengthened requirements on some topics as working capital statement or governance would need to be added to the existing listing document which could be used as a baseline. The scrutiny approach should also be appropriately calibrated to warrant good quality of the information, without extra burden for issuers. The market rules of the market operator are approved by the NCAs.
Such an amendment to PR would help reduce the perceived regulatory burden on SME Growth Markets, thereby addressing the criticism that there is currently insufficient differentiation in regulatory intensity between growth and regulated markets. It would also allow NCAs to focus their resources and efforts on both financial and non-financial information provided by companies admitted to trading on regulated markets. Other non-EU jurisdictions are contemplating a similar reform.

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

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

Please explain the reasoning of your answer to question 13.1:

2000 character(s) maximum

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

The AMF considers that the current thresholds allow Member States to define best-suited regime for their markets while preventing too much fragmentation between national markets and therefore, that they should not be revisited in the context of this review.

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

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

Please explain the reasoning of your answer to question 13.2:

2000 character(s) maximum

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

The AMF is in favor of maintaining the approach adopted during the previous negotiations on the prospectus regulation and to leave to Member States the ability to define the threshold that best corresponds to the characteristics of their markets and the size of their issuers. The negotiations that took place in the context of the previous revision of the prospectus regime clearly demonstrated that full harmonization of this threshold in the Union is not within reach, and that a margin of national flexibility in the 1M€ to 8M€ range is warranted for the sake of subsidiarity.

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

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

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

General issues

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

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

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

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

Please explain the reasoning of your answer to question 15:

4000 character(s) maximum

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

A prospectus has a variety of users / readers, each seeking different types of information. No category of investors should be favored over the other, when calibrating a prospectus' content. The prospectus is not prepared for the exclusive use of retail investors but serves a plurality of users, including buy-side financial analysts, asset managers or institutional investors.
The AMF does not support introducing a maximum number of pages as any attempt to promote a one-size-fits-all approach (regarding formats, lengths, etc.) would make the prospectus regime less efficient and lead to suboptimal results as regards the quality of the information provided to investors. Prospectus are drafted by a variety of companies (from SMEs to large financial undertakings, operating in different business sectors), for securities with different levels of complexity, and under diverse circumstances, as the company's financial situation or capital structure may be more or less significantly modified by the issuance. Such diversity of issuers and issuances entails a diversity of content and length of prospectuses, and should be kept in mind when reviewing of the prospectus regulation.

Prospectus summary

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

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

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

Please explain how the summary of the standard prospectus could be further improved and explain your reasoning:

2000 character(s) maximum

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

The AMF is of the view that improving the format, usability and style of the prospectus summary could be an appropriate way to make prospectuses more user-friendly.

In particular, the AMF supports the introduction of additional provisions in art. 7(3) PR to ensure the easy reading and understanding of the information presented in the prospectus summary. The reintroduction of a more structured plan for the summary of standard prospectuses and a stricter limitation in the number of pages could be envisaged in this regards. Moreover, the AMF would like to suggest the possibility to encourage issuers to present more information in the form of graphs or tables in order to meet the “plain language” requirement enshrined in Art. 7(3)(b)PR. This type of format could also prove useful in reducing the number of pages of the summary while allowing the presentation of information that are more helpful to retail investors than narrative sections.

The AMF has only limited experience with simplified information formats and has therefore only limited perspective with the adequacy of the summary for these types of prospectuses.

Incorporation by reference

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

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

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

Please explain the reasoning of your answer to question 17:

2000 character(s) maximum

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

Incorporation by reference allows for operational flexibility, cost savings and speedy execution, especially to the extent that the debt issuer already has a URD. The previous revision of the incorporation by reference regime contributed to the smooth functioning of this mechanism. This is particularly noticeable in France with non-Equity prospectuses, which generally incorporate by reference information about the issuer presented in URDs. Finally, the fact that ESMA has so far not proposed to include additional types of documents in the list of documents that can be incorporated by reference (Art. 19(4) PR) is an indication that the list set out in Art. 19(1) suits the needs of issuers.

The standard prospectus for non-equity securities

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

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

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

Please explain the reasoning of your answer to question 18.1:

2000 character(s) maximum

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

The differentiated rules introduced for wholesale prospectuses have certainly contributed to the success of wholesale non-equity offerings. Nevertheless, the impacts of favourable macroeconomic components should not be overlooked when assessing the success of these transactions (favourable interest rate environment and monetary policies).

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

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

Please explain the reasoning of your answer to question 18.2:

2000 character(s) maximum

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

The AMF is open to the possibility of considering extending alleviations introduced for wholesale non-Equity prospectuses to retail non-Equity prospectuses given the fact that the existing differences between the annexes of the Wholesale non-Equity (Delegated Regulation 2019/980 Annex 15) and the Retail non-Equity (Delegated Regulation 2019/980 Annex 14) prospectuses are not significant in nature.

Should such alignment be explored, sufficient safeguards should be added to ensure that the information presented in retail non-equity securities prospectuses is written in a language and a style adequate to the level of understanding of retail investors; in particular, the information should be written in language that is clear, non-technical, concise and comprehensible for this category of investors.

Finally, such alleviations should not go as far as suppressing the requirement to produce a summary for retail non-equity securities offers, as this part of the prospectus constitutes a useful source of information for retail investors.

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

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

Please explain the reasoning of your answer to question 18.3:

2000 character(s) maximum

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

Please see responses to question 12.3.1

2.1.4. Prospectus for SMEs

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

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

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

Please explain the reasoning of your answer to question 19:

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

As the EU growth prospectus entered into application in July 2019, we lack sufficient hindsight to pass a judgement on this format. In France, only a limited number of issuers have chosen this format (9 prospectuses approved in 2020, 13 at the end of October 2021). This may be due to the fact that, in France, a very large majority of listed companies (including SMEs) favour the use of the shelf-registration scheme using the URD.

2.1.5. The format and language of the prospectus

Electronic Prospectus

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

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

- Yes
-

No

Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 20:

2000 character(s) maximum

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

The obligation to provide a copy of the prospectus on either a durable medium or on printed paper upon request appears no longer consistent with the widespread digitalisation of financial information. This situation is even more salient as EU law is progressively introducing machine-readability formats for both financial and non-financial reportings and as the ESAP project will ensure the accessibility of in-scope information in a digitalized format.

Language rules for the prospectus

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

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

- It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance
- It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, except for the prospectus summary
- It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, for any cross-border offer or admission to trading on a regulated market, including when a security is offered/admitted to trading in the home Member State
- It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, for any cross-border offer or admission to trading on a regulated market, including when a security is offered/admitted to trading in the home Member State, except for the prospectus summary
- There is no need to change the current language rules laid down in Article 27 of the Prospectus Regulation
- Don’t know/ no opinion / not relevant

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

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

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

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

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

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

Please explain the reasoning of your answer to question 22:

2000 character(s) maximum

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

As regards regulated markets, the AMF is opposed to the proposal to lift the requirement for all prospectuses for secondary issuances made on regulated markets; indeed, such prospectuses deliver key information to investors on the basis of which they can inform their investment decisions. Investors cannot only rely on annual or semi-annual financial reports that can have been released for a certain time before the operation is

envisaged nor only on MAR communications of the issuer that remain fragmented and which should require investors to navigate through to inform their decisions. In addition to that, the securities note constitutes the only medium that presents information relative to the viability of the issuer and relative to the operation (working capital statement, updated table of capital and indebtedness, key characteristics of the offer, rights attached to the securities, etc.). Finally, it is also important to remind that in the absence of an EU harmonised prospectus, offers of securities to the public could no longer take place on a cross-border basis (due to the loss of the passport associated with the prospectus), leaving place to national regulation to apply and imposing a severe rollback to the Single market.

The AMF agrees however that the prospectus obligation could be lifted for offers of securities by companies listed on SME Growth markets, and that for such offers, amend Mifid II in order to require an information document for such offers in the market rules of the market operators (please refer to Q.12.3.1).

Question 22.1 Do you think that the regime for secondary issuances could nevertheless be simplified?

- i. 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
- ii. 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)
- iii. 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
- **iv. Other**
- v. Don’t know/ no opinion / not relevant

Please specify what you mean by 'other' in your answer to question 22.1 and explain your reasoning:

2000 character(s) maximum

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

Option 1 would be a severe blow to investor protection in the EU, as well as an unjustified rollback of the Single Market, since, in the absence of an EU harmonised prospectus, offers of securities to the public could no longer take place on a cross-border basis (due to the loss of the passport associated with the prospectus). The proposed statement would deprive investors of key information to assess the secondary

offer (working capital statement, updated table of capital and indebtedness, key characteristics of the offer…). To take their investment decision, investors need more than just confirmation from the issuer that MAR and TD obligations have been complied with.

Option 2 is just as harmful to investor protection. The principle whereby offer documents (whether they are called 'prospectuses' or not) on regulated markets should be subject to NCA's scrutiny and approval is essential to the soundness and credibility of EU capital markets. Excluding secondary issuance prospectuses from the scope of scrutiny and approval would seriously undermine trust in the EU, as prospectuses might contain information that are not consistent, complete and comprehensible. Should such prospectus not be approved by NCAs any longer, it would likely result in extreme confusion when determining the issuer's liability.

The AMF believes that the public offering prospectus, as defined in the Prospectus Regulation, is a sound and effective tool for restoring and guaranteeing proper market disclosure and equal access to information for investors and that it should be upheld.

It is also important to bear in mind that the 2017 reform of the prospectus regime is still recent and that it is too early to analyse the extent to which the simplifications and alleviations introduced by this reform as regards secondary issuances have been fully understood and used by issuers.

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

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

Please explain the reasoning of your answer to question 23:

2000 character(s) maximum

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

Although many recapitalisations have taken place in France in 2021, the EU recovery prospectus has not demonstrated palpable success so far. Only 4 prospectuses were prepared under this format and received AMF approval in 2021.

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

	Yes	No	Don't know - No opinion - Not applicable
i. Be extended on a permanent basis for secondary issuances of shares	○	○	◉
ii. Be introduced on a permanent basis for secondary issuances of all types of securities (both equity and non-equity securities)	○	◉	○

iii. Be used as a simplified prospectus for all cases set out in Article 14(1)	○	◉	○
iv. Other	○	○	◉

Please explain the reasoning of your answer to question 24:

2000 character(s) maximum

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

Granting issuers with choice, when it comes to prospectus formats and facilities (e.g. incorporation by reference), counts among the Prospectus regulation's strengths that the AMF supports; it should be upheld. The various prospectus formats currently proposed by the regulation serve as a toolkit that issuers can choose from depending on the circumstances of their offering or their own characteristics. Therefore, the AMF would not support option c.

The extension of the recovery prospectus on a longer timeframe or on a permanent basis might be envisaged, provided an assessment is made of the reasons why it has been scarcely used so far, with a view to identifying which of its current parameters undermine its attractiveness. Besides, such extension would only be acceptable to the extent that the investor protection safeguards agreed upon during the Recovery package negotiations are maintained ; more precisely, the 150% dilution limit should not be raised if this format is to be kept on a permanent basis.

In any case, the simplified information formats of Prospectus Regultion must maintain a balance between the reduction of administrative costs for issuers and the protection of investors who need access to useful and consistent information to take their investment decisions.

2.1.7. Liability regime

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

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

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

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

2000 character(s) maximum

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

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

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

If you responded negatively to question 26, which changes would you propose in the context of this initiative? Please explain your reasoning

4000 character(s) maximum

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

There is currently no harmonized EU civil liability regime for prospectuses set out in the PR (save for some very minor aspects, such as the liability of the summary and the definition of the persons to whom the responsibility for the information contained in the prospectus attaches to). A question should be raised as to the possibility to create a true EU harmonized regime in the prospectus regulation. The Commission might refer to the 2013 report of ESMA which provides a comparison of liability regimes across Member States.

The tendency of issuers and their counsels to use the prospectus as a ‘liability shield’ has been a well-known feature of the regime since its inception. Besides, there is a general perception that issuers are often deterred from communicating valuable information in prospectuses, such as profit forecasts and forward-looking estimates, given the potential liability associated with such disclosures.

Against this backdrop, it might be useful to revisit the liability regime attached to the prospectus and harmonise it across Member States, a task that was not undertaken under the previous reform. The AMF notes that the amendment to the ‘information test’ of Article 6 (whereby, in substance, a prospectus should only contain the necessary information which is material to an investor for making an informed decision) has done little to change the practice of drafting prospectuses with the overarching objective of protecting the issuers from any potential legal liability.

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

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

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

4000 character(s) maximum

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

The liability regime governing the missions of the supervisory authorities also has a role to play in achieving an effective prospectus regime. The AMF is indeed aware of the fact that, in certain Member States, persons in charge of the review of the prospectus engage their personal responsibility. ESMA 2013 report on the Comparison of liability regimes in Member States in relation to the Prospectus Directive also reported on this state of play, in particular in its Annex III - Comparison of liability regimes in Member States in relation to the Prospectus Directive. In such situations, it may be difficult for these persons to impose on issuers the characteristics of concision and specificity expected from the prospectus regulation.

In order to guarantee the effectiveness of the prospectus regime in ensuring the presentation of targeted, coherent and concise information, the Prospectus regulation should prohibit Member states from placing any personal responsibility upon the reviewers of prospectuses.

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

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

Please explain the reasoning of your answer to question 28:

2000 character(s) maximum

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

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

	Yes	No	Don't know - No opinion -

			Not applicable
Issuers listed on SME growth markets	○	○	◉
Issuers listed on other markets	○	○	◉

Please explain the reasoning of your answer to question 29.1:

2000 character(s) maximum

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

The amounts of sanctions set out in Article 38(2) of the Prospectus Regulation do not constitute maximum amounts but minimum ceilings for administrative pecuniary sanctions. Member States have full discretion to choose a ceiling above the minimum set out in the Regulation. As a result, decreasing the minimum ceilings will have limited effects in practice.
According to ESMA's annual report on prospectuses, there are almost no sanction under the prospectus regime

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

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

Please explain the reasoning of your answer to question 29.2:

2000 character(s) maximum

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

The amounts of sanctions set out in Article 38(2) of the Prospectus Regulation do not constitute maximum amounts but minimum ceilings for administrative pecuniary sanctions. Member States have full discretion to choose a ceiling above the minimum set out in the Regulation. As a result, decreasing the minimum ceilings will have limited effects in practice
According to ESMA's annual report on prospectuses, there are almost no sanction under the prospectus regime.

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

- ○ Yes
- ○

No

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

2.1.8. Scrutiny and approval of the prospectus

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

Question 31. Do you consider that there is alignment in the way national competent authorities assess the completeness, comprehensibility and consistency of the draft prospectuses that are submitted to them for approval?

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

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

2000 character(s) maximum

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

As mentioned in response to Q. 27, differences observed in the liability regime governing the missions of the supervisory authorities impact the way NCAs assess the completeness, comprehensibility and consistency of draft prospectuses. Besides, a peer review by ESMA is currently under way, which should also inform this question

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

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

Please explain the reasoning of your answer to question 32:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 33.1:

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

The 6 working days enshrined in article 21(1) PR for IPOs represents a difficulty and constraint for issuers, which are exposed to execution risks during this period. Indeed, in a volatile market or when market conditions are deteriorated, issuers are more inclined to change their mind, disrupting the book-building process and the success of the transaction.

Against this backdrop, the AMF supports having a minimum period offer instead of having a minimum period between the publication of the prospectus and the end of a first offer. It is proposed that this period be a minimum of 3 working days. This duration seems adequate to address the difficulty identified by issuers while preserving the protection of investors, who can process informations and orders, both now widely digitized, over a sufficient time.

When determining “working days”, the AMF supports amending article 2 so that Saturdays is counted as working days for the member states which consider Saturdays as such under their national law.

We would support also that the drafting of article 21 be changed to ensure that IPO through private placement are not within the scope of this article as private placement is a public exempt offer

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

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

Please explain the reasoning of your answer to question 33.2:

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

In the current market context, the AMF considers that such a change would be counterproductive and would undermine the competitiveness and attractiveness of EU capital markets. The AMF does not support such proposal.

Determination of the "Home Member State"

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

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

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

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

Please explain the reasoning of your answer to question 34:

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

There is a strong rationale to tie in the Home Member State (HMS) with the place of incorporation of an issuer, especially for equity prospectuses.

The AMF strongly opposes any move to extend the freedom to choose the HMS for prospectus approval beyond the specific case of high-denomination non-equity securities. Any such extension to the equity space would disalign the HMS determination between the Prospectus Regulation and the Transparency Directive, thus removing existing synergies between prospectus approval and the supervision of financial reports, which are conducive to speedy approvals. In the absence of centralized supervision at ESMA level, the free choice of HMS for prospectus approval would pave the ground to forum shopping and weaken the CMU, as it is fundamentally not a sane policy to let regulated entities choose which NCA will supervise them.

2.1.9. The Universal Registration Document (URD)

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

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

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

Please select as many answers as you like

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

Please specify to what other reason(s) you refer in your answer to question 35:

2000 character(s) maximum

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

The number of tripartite prospectuses approved in the EU containing a URD (56 in 2020, based on ESMA's EEA prospectus activity report) does not convey a true picture of the actual use of the URD in the EEA. As the URD is a shelf-registration scheme, not all companies preparing a URD will actually use it in a given year as a constituent part of a prospectus. In France, 323 URDs were filed in 2020 by listed issuers, but only 41 of them were "taken off the shelf" to assemble a prospectus. The 56 prospectuses reported by ESMA in 2020 as containing a URD are therefore only the tip of the iceberg, and it would be a wrong to jump to the conclusion that there is a "lack of use" of the URD.

(see also response in following textbox)

Please explain the reasoning of your answer to question 35:

4000 character(s) maximum

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

The concept of shelf-registration system introduced by Art. 9 and 10(3) PR is a novelty in the EU prospectus regime and it is reasonable to expect that its take-up will be progressive, as illustrated by ESMA's figures (6 NCAs approved prospectuses having a URD as a constituent part in 2020, vs. only 3 in 2019). In France, where the URD (and previously the 'document de référence' before July 2019) has been a staple feature of the French corporate reporting framework for decades, it took several years before the practice of drawing up a URD every year became widespread amongst listed issuers. Being a recurring reporting obligation which an issuer chooses to adhere to every year, the system requires some initial efforts and discipline, before its benefits can be reaped by the issuer (e.g. in the form of shorter approval time).
We therefore believe that it is too soon to draw conclusions and that a thorough redesign of the shelf-registration scheme of Article 9 is unwarranted at this stage. Since the PR started to apply in July 2019, 2020 was the first year when European issuers could start using a URD.
One of the strengths of the URD is that it bundles together the TD annual financial report and the PR registration document into a single medium, to which a securities note and a summary may be added subsequently to form a prospectus.

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

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

Please explain the reasoning of your answer to question 36:

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

The question raised essentially boils down to determining whether the content of the URD could be based on Annex III of Delegation Regulation (EU) 2019/980 (meant for secondary issuances of equity securities) instead of the current Annex II.

Pursuant to Art. 9(12) PR, the URD may be used as a 'disclosure vehicle' to publish the annual or half-yearly financial reports required under TD. This "two-in-one" feature is one of several facilities offered to frequent issuers who voluntarily choose to draw up a URD every year. It ensures that the URD offers investors a consolidated version of all regulated information available pertaining to an issuer for a financial reporting exercise, whether in the context of a transaction requiring a prospectus or not (URD not used in a prospectus).

This "two-in-one" feature mechanically implies that the URD should operate under a disclosure standard that is sufficiently comprehensive to match the typical contents of a TD financial report, i.e. the audited financial statements, the management report (which includes the non-financial report and the corporate governance statement), and the relevant statements as well as the remuneration report in accordance with SRD2.

When comparing the respective contents of Annexes II and III, it appears that the operating and financial review (Section 7), capital resources (Section 8), Remuneration & Benefits (Section 13), Board Practices (Section 14), Employees (Section 15) of Annex II are missing from Annex III. Making Annex II the basis for

the URD content would therefore deprive the URD of the ability to 'host' the content of the TD financial, which would remove the benefit of the "two-in-one" facility of Art. 9(14) PR, and significantly undermine the attractiveness of the European shelf-registration system.

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

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

Please explain the reasoning of your answer to question 37:

2000 character(s) maximum

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

The rationale behind the 2nd paragraph of Article 9(2) was based on the consideration that the switch to the filing of the URD without ex-ante approval should happen once the frequent issuer is 'well-known' to the competent authority (see Recital 40). This was considered to be the case after an issuer has filed and received approval for its NCA for two consecutive years. After two URDs have been scrutinized ex ante by the NCA, the issuer should have gained a reasonable understanding of the NCA's expectations regarding the disclosure made in a URD, and the NCA should feel comfortable enough to let the issuer release its third URD without pre-approval. Replacing ex ante scrutiny and approval with ex-post review requires there to be sufficient mutual trust between the frequent issuer and its NCA. We are therefore not fully convinced that it is good policy to reduce from 2 to 1 the number of successively approved URDs before all subsequent URDs may be filed without approval.

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

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

Please explain the reasoning of your answer to question 38:

4000 character(s) maximum

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

The principle whereby the entirety of a prospectus should be subject to NCA's scrutiny and approval is essential to the soundness and credibility of the system. All constituent parts of a prospectus (including information incorporated by reference therein, the universal registration document and any amendments and supplements to the prospectus) should be subject to scrutiny by the competent authority and covered by the NCA's approval.

Excluding even a fraction of the prospectus from the scope of this approval would seriously undermine the principle of consistency of the information contained in the prospectus, and weaken the review by the regulator, let alone the credibility of the prospectus. Should a constituent part of a prospectus not be approved by the NCA, the market would not know which is the definitive version for that part. It would likely result in confusion when determining the issuer's liability.

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

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

Please explain the reasoning of your answer to question 39:

2000 character(s) maximum

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

The possibility to draw up the URD only in English for passporting purposes could be explored.
However, one should bear in mind that according to Art. 9(13), the language of the URD must fulfil the language requirements of Art. 20 TD in order to enable the use of the URD as a 'disclosure vehicle' to publish the annual or half-yearly financial reports required under TD, pursuant to Art. 9(12) PR.
The Commission should ensure that any change to the language rules of the URD does not lead to the de facto removal of some of the facilities and alleviations already attached to the use of the URD and the status of frequent issuers.

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

Please explain your reasoning:

4000 character(s) maximum

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

The shelf-registration system introduced by Art. 9 and 10(3) PR, which revolves around the use of the URD, is a carefully-balanced mix of high-standard disclosure (equity disclosure standard, commitment to draw up a URD every year) and attached facilities and flexibilities (the "two-in-one" bundle up of PR and TD disclosures, the filing system with the NCA, ex-post controls by the NCA instead of ex-ante scrutiny, the fast-track approval when used as a constituent part of a prospectus).
It will take some time for this optional tool introduced by PR in July 2019 to turn into an established market practice. It could not be expected that all EU issuers would – unanimously and instantly – embrace the system. We see this as a tool that may appeal, at first, to the most sophisticated issuers, and which, as it is gradually adopted by the largest issuers, could become a disclosure model for other smaller issuers as time goes by, in a kind of ripple effect. In any case, no issuer is forced to embrace shelf-registration system.
It is premature to judge the success of the scheme after only two years of application. We believe that the URD regime deserves to be promoted and explained, and that rushing to 'simplify' it with so little hindsight is not a good policy.

2.1.10. Other possible areas for improvement

Supplements to the prospectus

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

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

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

Please explain the reasoning of your answer to question 41:

2000 character(s) maximum

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

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

2000 character(s) maximum

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

Equivalence regime

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

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

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

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

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

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

Question 42.1 How would you propose to amend Article 29 of the Prospectus Regulation? Please explain your reasoning:

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

We see a clear need to revisit and enhance the functioning of the equivalence regime for prospectuses drawn up according to the national rules of a third country. As currently drafted, the regime (which has never been used so far) is not well calibrated and would not operate properly if it were to be activated in the future. Overall, we believe that modernising the third-country regime of the Prospectus Regulation would be a welcome move and could serve to enhance the competitiveness of EU capital markets by opening the EU to offers of securities and listings from third-country companies, provided appropriate safeguards are in place.

The current regime, if activated, would potentially lead to a double approval of third-country prospectuses (by the third-country supervisor and by the EU NCA of the Home Member State chosen by the third-country issuer). It would be preferable to provide instead that, where the prospectus rules of a third country are declared equivalent by the Commission, a third-country prospectus which is already approved by the third-country supervisor should only be filed with ESMA (and not submitted to an NCA for yet another approval). It would then be sufficient for ESMA to send a certificate of filing to the competent authority of each host Member State where such "equivalent" third country prospectus is notified under the passport.

The current basis of assessment of equivalence in Art. 29 PR is too narrow as it limits itself to the information contained in the prospectus. Before taking an equivalence decision, the Commission should assess whether the third-country regime leads to outcomes that are equivalent to Articles 6, 7, 11, 12, 13 and Chapter IV of the Prospectus Regulation (i.e. including the liability and validity aspects of the prospectus, how it is controlled in the third-country jurisdiction, whether significant new factors, material mistakes or inaccuracy trigger the obligation to draw up a supplement). The existence of equivalent rules regarding the prevention of market abuse and the periodic and ongoing reporting by issuers should also form part of the assessment.

Lastly, certain rules of PR should directly apply to a third-country prospectus, where the prospectus rules of a third country are declared equivalent by the Commission. These include the rules on advertisements (Art. 22), which can only be enforced properly by host NCAs, the language regime (Art. 27), and the passport notification rules (Art. 24 & 25).

We note that the amendments contained in the legislative proposal of the ESAs Review in September 2017 (see point 8 of Article of the draft Regulation amending Regulation (EU) 2017/1129, p. 237, COM(2017) 536 final) offered a sound basis for a reform of Article 29 PR

Other

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

Please explain your reasoning:

4000 character(s) maximum

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

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

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

In view of the periodic review of MAR, the European Commission, in March 2019, requested ESMA to provide a technical advice on the review of MAR on a number of topics (including the notion of inside information, the conditions for delaying the disclosure of inside information, insider lists, managers' transactions and sanctions). On 3 October 2019, ESMA publicly consulted the market on its preliminary view of the technical advice. The consultation ended on 29 November 2019 and received 97 responses. In September 2020, ESMA published its technical advice addressing all the topics on which the Commission asked advice on and identified several other provisions which were considered important to review in MAR ('ESMA TA'). According to ESMA, both the feedback to the consultation and NCAs experience indicate that, overall, the regime introduced by MAR works well. Accordingly, only a few targeted changes to the legislative framework have been recommended, sometimes to provide guidance at level 3 (e.g. on inside information and delayed disclosure of inside information). However, according to the CMU HLF and the TESG reports, there are a number of MAR provisions and requirements that may sometimes act as a disincentive for companies to list and remain listed on regulated markets and/or MTFs. The cost of complying with these requirements is deemed high, especially for SMEs. The legal uncertainty arising from certain provisions is indicated as an additional source of costs.

Finally, the sanctioning regime is considered not proportionate and a discouraging factor for going and remaining public.

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

2.2.1. Costs and burden stemming from MAR

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

Definition of “inside information”:

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

Disclosure of inside information:

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

Conditions to delay disclosure of inside information:

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

Drawing up and maintaining insiders lists:

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

Market sounding:

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

Disclosure of managers' transactions:

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

Enforcement:

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

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

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

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

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

2.2.2. Scope of application of MAR (Article 2)

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

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

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

Please explain the reasoning of your answer to question 45:

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

Financial instruments not yet admitted to trading on a MTF or regulated market can still be subject to transactions, in particular on the “grey market” where some investors or dealers buy and sell the securities, once the offering is launched but before the official admission to trading on the exchange occurs. Such transactions are often made in the form of “promises”, without effective delivery until the securities are traded. However, investors or dealers benefiting from inside information during this phase could use it to their advantage, thus potentially impairing the integrity of the market.

In the past, in France, there have been case of insider dealings that could not be sanctioned (by “Commission des Sanctions” of the AMF) because legislation at the time did not cover market abuse behaviours (in particular insider dealings) between the date of the request for admission on a market and the actual admission to trading of the financial instruments. National legislation has since been modified in order to take into account market abuse behaviours starting from the date of request for admission. Past litigation cases in France have thus proved that it is important to be able to apply market abuse sanctions starting from the date of request for admission in order to allow authorities to protect market integrity (and to hold the issuers liable for their communications in the period immediately before the listing of the instruments).

It is therefore important to have the ability to capture behaviours, both from a market abuse standpoint and from issuer accountability standpoint before the actual admission begins.

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

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

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

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

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

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

Please explain the reasoning of your answer to question 46:

2000 character(s) maximum

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

The definition of “inside information” has been at the core of the EU market abuse framework for nearly two decades. It has been battle-tested and market practices and case laws are now well-established across all Member States; market participants benefit from legal stability and predictability with respect to this notion.

Any change to such a fundamental concept (e.g. providing for different definitions for the purposes of disclosure obligations and of prohibition of insider dealing, or for debt-only issuers; modifying or deleting some of the conditions under which insider information is to be disclosed, etc.) would be a source of legal complexity and uncertainty for market participants, and would potentially create unforeseen loopholes or regulatory misalignments that could take years to detect and correct. It would also imply significant unnecessary compliance costs for issuers and investors alike. Instead, any specific concerns on the application of this definition should be addressed by way of ESMA guidance.

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

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

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

Please explain the reasoning of your answer to question 47.1:

2000 character(s) maximum

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

Implementing a system relying on the concept of material events for the disclosure of inside information boils down to changing the definition of inside information for the purpose of disclosure obligation, differing from the one applicable for the prohibition of insider dealing. The AMF is opposed to such proposal.
Disclosure obligation and prohibition of insider dealing are closely related. This is clear from recital 49 of MAR: “the public disclosure of inside information by an issuer is essential to avoid insider dealing and ensure that investors are not misled.” The purpose of MAR as depicted by recital 24 is “to protect integrity of financial market and to enhance investor confidence which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from misuse of inside information”.
Therefore, any inside information shall be disseminated to the market as soon as possible, in order to i) prevent misuse of such inside information by those insiders, and ii) put all market participants on equal footing, as they get the same information at the same time (enabling market price to integrate immediately such information). Adopting different definitions for disclosure (such as relying on the concept of material events) and for insider dealing is likely to distort the regime and hamper market integrity and investor protection. Likewise, focusing only on a predefined and arbitrary list of material events for disclosure

obligations narrows the scope of information made publicly available to the market. This undermines the efficiency of financial market: not all necessary information is disclosed to investors to make rationale investment decisions in a timely manner, risk of unlawful behaviour of insiders based on events that are not included in the catalogue of material events, and therefore not disclose(though they may significantly influence the price of a financial instrument depending on specific circumstance of the issuer).

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

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

Please explain the reasoning of your answer to question 47.2:

2000 character(s) maximum

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

Please refer to the answers under questions 46 and 47.

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

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

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

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

Please explain the reasoning of your answer to question 48:

2000 character(s) maximum

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

We consider the conditions on delay in the disclosure of inside information from the perspective that such requirements are at the core of MAR, guaranteeing a delicate balance between legitimate interests of issuers and protection of investors. It is therefore paramount to maintain them not to undermine investor protection, safeguarded via the requirement that the delay would not be likely to mislead the public. Proposals of the TESG to delete the conditions that such delay is not likely to mislead the public, or to amend the conditions in the case of protracted processes that occur in stages would pose serious problems in terms of market integrity.

Firstly, not requiring that issuers should not mislead the public when delaying the disclosure of information could be read as, on the contrary, allowing issuers to delay disclosure even though that might mislead the public. An example from ESMA's guidance is an inside information materially different from a previous public announcement of the issuer. Following the TESG's rationale, such disclosure could be delayed even if it would mislead the public, thereby denying the principal of equal footing in recital 24 of MAR.

Secondly, the proposal on protracted process would increase the probability and number of opportunities of insider dealings, and same rationale as the one in question 47 material events also applies here.
For these reasons, the AMF sees these proposals as undesirable and incompatible with the objective of preserving the proper functioning of the financial markets.
However, additional harmonisation at EU level on application of the provisions on delay of disclosure of inside information would be beneficial. We would welcome any additional clarification by ESMA through a revision of its guidelines. We do not believe that a modification of the MAR is warranted, as it would destabilise the existing framework and relevant case law, which would be harmful for both market participants and authorities.

2.2.4. Disclosure of inside information for issuers of bonds only

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

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

Issuers that only issue plain vanilla bonds should:

	Yes	No	Don't know - No opinion - Not applicable
have the same disclosure requirements as equity issuers	◉	○	○
disclose only information that is likely to impair their ability to repay their debt	○	◉	○

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

4000 character(s) maximum

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

Introducing a separate notion of “inside information” or a different regime for the disclosure of inside information, for debt-only issuers is seen as undesirable and a source of unnecessary increase in legal complexity and potential interpretation issues, let alone implementation costs for issuers that such any regulatory change entails. Instead the AMF recommends level 3 guidelines by ESMA targeting the application of the MAR framework for debt-only issuers in order to address their specific concerns.

Although the manner in which the regulation applies to these different types of issuers can require some clarification, this could be introduced via level 3 guidelines, without modifying the level 1 texts. Such guidelines could provide guidance by way of examples of situations that can generate inside information in the case of debt-only issuers, as well as examples of what constitutes inside information for those issuers.

Furthermore, the sole incapacity of an issuer to repay its debt is only one variation of what can constitute inside information, and is far from encompassing the full spectrum of the types of inside information that can concern a debt issuer. Moreover, inside information could be negative as well as positive: an improved financial situation of an issuer may also have a significant impact on the price of the debt security of this issuer. Other circumstances may also have a significant impact on the price of debt securities, for example in the context of green/social bonds, when the payments under the debt are related to ESG performance of an issuer or the issuer has specific commitments and does not live up to them. In these cases, disclosing inside information related only to the issuer’s credit worthiness would limit investors’ access to the necessary information they need to make rationale investment decisions, and increase risk of unlawful behaviour from insiders.

Consequently, and in line with our response to the European Commission’s 2018 consultation , we are of the belief that the current level 1 text is adequate and does not require amendments: debt-only issuers do not require a separate MAR regime. Introducing alleviations in the current framework could be detrimental to market integrity and degrade the legibility of the framework.

2.2.5. Managers’ transactions

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

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

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

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

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

Please explain the reasoning of your answer to question 50:

2000 character(s) maximum

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

France has opted for the national option provided for in MAR to set the minimum amount at EUR 20.000.

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

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

Please explain the reasoning of your answer to question 51:

2000 character(s) maximum

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

The current flexibility allowing discretion for NCA to increase the threshold should be maintained to enable taking into account the particular situation and specificities of each jurisdiction and national market. The information to ESMA of the decision to adopt higher national threshold and its justification should also remain.

Question 51.1 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**	Don't know No opinion

						Not applicab
Issuers listed on SME growth markets	○	○	○	○	○	○
Issuers listed on other markets	○	○	○	○	○	○

Please explain the reasoning of your answer to question 51.1:

2000 character(s) maximum

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

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

	Threshold of EUR 5 000	Threshold of EUR 20 000
2019		5019
2020		5881

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

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

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

Please explain the reasoning of your answer to question 52.2:

2000 character(s) maximum

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

Based on the number of transactions reported in 2020, the number of reported transactions on a yearly basis would decrease from 5.881 (20.000 EUR threshold) to 2.753 (50.000 EUR threshold).

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

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

Please explain the reasoning of your answer to question 53.1:

2000 character(s) maximum

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

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

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

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

Please explain the reasoning of your answer to question 53.2:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 54:

2000 character(s) maximum

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

The AMF publishes managers' transaction on a dedicated section of its website. The AMF believes it is very helpful to have one website centralising and making public all managers' transactions. This information is then easily accessible to all market participants. However, the AMF acknowledges that it could be particularly difficult for certain NCAs to be made solely responsible for making public these transactions as it would lead, among other things, to costs linked to the IT development of a dedicated tool.

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

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

Please explain the reasoning of your answer to question 55:

2000 character(s) maximum

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

Additional alleviations can be considered, and in particular repealing the list of closely associated persons, as per the table below.

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

	I support	I do not support	Don't know - No opinion - Not applicable

The thresholds should be applied in a non-cumulative way (i.e. each transaction is to be assessed against the threshold)	○	◉	○
Clear guidance should be provided on what types of managers' transactions need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction, beyond the targeted amendments already proposed by ESMA	◉	○	○
The requirement of keeping a list of closely associated persons should be repealed	◉	○	○
Other	○	○	○

Please explain the reasoning of your answer to question 55.1:

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

The AMF does not support the option a) for the obvious reason that it would allow declarants to make multiple transactions below the threshold in order to bypass the obligation to declare that would otherwise apply if the same transactions were grouped.

Clear guidance should be provided on what type of manager's transaction need to be disclosed. The main transactions that are disclosed in France are related to performance shares and it is not clear when they need to be disclosed when granted: when the performance is reached and/or when they are available.

However, the AMF would not be opposed to repealing the requirement for keeping a list of closely associated persons in order to reduce the administrative burden for issuers, even though such lists have the virtue of ensuring that related parties are aware about the disclosure requirements that apply to them.

2.2.6. Insider lists (Article 18)

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

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

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

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

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

2000 character(s) maximum

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

The SME Listing Act introduced alleviations for issuers listed on SME growth markets, and in particular regarding insiders lists, providing that only persons having regular access to inside information need to be included in those lists. However, Member States can bypass those provisions and demand that issuers apply the full requirements on insiders list, and in particular the requirement to keep an event-based insiders list. Some Member States, including France, chose to exercise this option to preserve market integrity.

Although alleviating the administrative burden for smaller issues is an objective that the AMF welcomes, the current proposal lacks, inter alia, two important factors. Firstly, it omitted to clearly state that issuers must list third parties acting on their behalf and that those third parties must keep their own insiders list (such specification existed in the initial proposal of the text). Secondly, the notion of persons having regular access to inside information lacks the practical precision that would allow market participants, including NCAs, to identify those persons, and differentiate them from persons having permanent access to inside information, noting that if only a list of permanent insiders is required, it would not provide authorities with useful information for investigation, as such information (permanent insiders, ie. CEO, board members, etc.) is already publicly available.

Thus, in order to ensure the effectiveness of administrative alleviations on insider lists, their applicability in practice as well as their usefulness for investigations, further work should be made to improve the current provisions in order to address the points mentioned above. Provided these points are clarified and amended, and subject to further analysis of national circumstances, the AMF would consider reverting on the national option mentioned above in order to allow issuers listed on SME Growth markets to benefit from those alleviations.

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

The insider list regime should…:

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

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

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

2000 character(s) maximum

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

Issuers whose financial instruments are admitted to trading on an SME growth market have been allowed, since 1st January 2021, 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. As mentioned in the answer to question 56 above, a modification should be made whereby the list held by such issuers should include the persons acting on their behalf or account (e.g. advisors and consultants), and that the latter should draw up, update, and provide to the NCA upon request, their own insider lists. The absence of such explicit requirements, in addition to the vagueness of the term “regular access”, may have contributed to the decision of several Member States to opt out from the alleviated SME regime introduced by Regulation 2019/2115, thus minimizing the effect of the alleviation initially planned.

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

2000 character(s) maximum

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

Insider lists are a powerful tool to preserve market integrity and protect investors.

First of all, they are systematically used in the context of investigations as they enhance NCAs’ ability namely to identify the persons who have access to inside information.

In addition, the insider list requirement has “educational virtues” as it facilitates the management of inside information (raising awareness regarding the traceability of the flow of information as well as regarding the importance its confidentiality) by the issuer. It also ensures that the persons featured on the list understand the meaning and consequences of having access to inside information. Therefore, introducing an outright exemption to the insider list requirement should be avoided regardless of the type of issuer.

Any reduction of the content of insider lists should be carefully weighed against its potential adverse consequence for NCA’s ability to tackle market abuse.

2.2.7. Market sounding

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

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

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

iii. and maintain records of the disclosure

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

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

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

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

Please explain the reasoning of your answer to question 58:

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

The market sounding regime is known to be complex and pose strict constraints on market participants for the sake of market integrity. Notwithstanding those difficulties, the current functioning of the market sounding regime constitutes a necessary complexity that is required for the proper safeguarding of market integrity. By giving NCAs the necessary tools and access to information, in particular via recordings, market abuse situations that would otherwise go undetected can be identified and sanctioned, and thus market integrity can be preserved.

Furthermore, it is important to note that the provisions of the market sounding regime constitute constraints that are applicable to investment service providers and to investors. Consequently, the introduction of alleviations to this regime would not help reduce the administrative burden of issuers as they are not concerned.

We consequently suggest not to act on the recent recommendations of the TESG regarding the market sounding regime.

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

- ( ) Yes
- (●) No

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

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

4000 character(s) maximum

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

Recent alleviations have been introduced in the market sounding regime with respect to private placements of bonds by the MAR SME regulation. However, equity and non-equity issuances have very different implications and market abuse risk profiles in the context of market sounding, where equity issuances imply an increased degree of information sensitivity as well as increased risk of insider dealings. Importantly, retail investors can have access to privately placed shares via the secondary markets, which further illustrates the sensitivity of equity issuances even if they are made via a private placement. The reasoning that was applicable for alleviating the regime in the presence of private placements of bonds cannot be extended to the issuance of equity, as the characteristics of the exposures to equity and non-equity instruments are inherently different in nature for both professional and non-professional investors and for any type of issuer, including private placements.

Consequently, the AMF considers that the market sounding regime with respect to equity instruments should be kept in its current form and with its current requirements, without introducing alleviations for private placements.

Question 59.1 Would you agree to extend the exemption from market sounding rules to private equity placements for issuers on SME growth markets?

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

Please explain and illustrate your reasoning of your answer to question 59.1, notably in terms of costs:

2000 character(s) maximum

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

Please refer to the answer under question 59.

2.2.8. Administrative and criminal sanctions

Both the CMU HLF as well as the TESG share the view that in some cases sanctions for market abuse violations are disproportionate and that the risk of an inadvertent breach of MAR (notably in the case of missing deadlines for disclosure of information) and associated administrative sanctions are seen as an important factor that dissuades companies from listing. They both proposed to amend the current framework in order to establish a more proportionate

punitive regime. Moreover, the TESG proposed to remove the possibility of applying criminal sanctions in the case of noncompliance with the requirements set out in Articles 17, 18 and 19, as administrative sanctions (including accessory sanctions and the confiscation of the profit made from the unlawful conduct) are sufficiently suitable for sanctioning MAR violations under those provisions.

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

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

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

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

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

The sanctions regime under MAR allows competent authorities to adapt sanctions to each individual situation in order to preserve their dissuasive nature, but also to ensure their relevance with respect to inter alia the type and the size of the entity concerned, as well as the particular circumstances of each case. Article 31 of MAR (and nationally Article L621-15 of CMF) provides for specific criteria to quantify the administrative sanctions.

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

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

on other markets					

Please explain the reasoning of your answer to question 61:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 62:

2000 character(s) maximum

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

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

Issuers listed on SME growth markets

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

Art. 16	○	○	◉
Art. 17	○	○	◉
Art. 18	○	○	◉
Art. 19	○	○	◉

Issuers listed on other markets

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

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

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

Question 64.1 Please explain the reasoning of your answer to question 64:

2000 character(s) maximum

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

In practice, the information on “annual turnover based on the last available accounts” of the legal person involved might not be available (not public) in some cases.

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

Issuers listed on SME growth markets

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

Issuers listed on other markets

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

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

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

Question 66.1 Please explain the reasoning of your answer to question 66:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 67:

2000 character(s) maximum

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

Noting that Member States are under no obligation to apply the maximum administrative pecuniary sanctions provided in the Regulation, we do not think that a modification of the provisions relating to the maximum amount would have any significant impact considering that Member States have the possibility to establish higher sanctions than the maximum amount specified (Art. 30(3) of Regulation no. 596/2014).

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

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

Please explain the reasoning of your answer to question 68:

2000 character(s) maximum

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

There is currently no criminal sanction applicable in France with regards non-compliance with Art 16 to 19 of MAR.

2.2.9. Liquidity contracts

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

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

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

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

Please explain the reasoning of your answer to question 69:

2000 character(s) maximum

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

Current provisions could be improved by removing the requirement for market operators to "agree" to the terms and conditions of liquidity contracts on SME growth markets, such requirement being difficult to justify and apply in practice, noting that it is not the role of the market operator to review and approve such agreements. Instead, it could be proposed that a copy of the liquidity contracts be merely notified to NCAs, mirroring existing requirements established by NCAs according to Article 13(2) of MAR.

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

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

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

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

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

Please explain the reasoning of your answer to question 70:

2000 character(s) maximum

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

We are of the opinion that the identified problem of lower liquidity levels and lack of research on instruments listed on SME growth markets cannot be solved or improved by alleviating the investment recommendation regime for those instruments. In addition, it can be observed that the investment recommendation regime is applicable to entities other than the issuer (such as natural persons and investment banks), and that any alleviations thereto would not decrease the latter's administrative burden. Furthermore, actions consisting in lowering regulatory requirements for investment recommendations have not been proven to cause an increase of quality research on smaller issuers. In order to address the issue of lack of research for SME issuers, the Recovery Package has introduced an amendment to MIFID II in order to revert, for SMEs only, on the unbundling rules that were deemed to have caused a sharp decrease of research activity on smaller capitalizations. We thus believe that the proposed solution regarding investment recommendations would not improve the situation for the identified problem; it could instead attract lower quality actors in this sphere, which could have the undesirable effect of degrading the confidence in public markets. Consequently, we propose not to lower the existing requirements for investment recommendations.

2.2.11. Other

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

4000 character(s) maximum

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

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

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

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

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

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

Please explain the reasoning of your answer to question 72:

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

The AMF supports including in the Level 1 the principle set out in the ESMA Q&A whereby "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".

As ESMA rightly indicated in its Final Report on SME Growth Market (para 36), "this clarification has proven

useful for market participants based on feedback ESMA received and has incentivised some MTFs to seek for registration as SME GMs just for a market segment and not for the entire MTF. Nevertheless, in order to increase the legal certainty, ESMA considers it useful to include this clarification directly in the Level 1 text."

2.3.2. Dual listing

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

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

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

Please explain the reasoning of your answer to question 73:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 73.1:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 74:

2000 character(s) maximum

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

We do not have any objection to allowing instruments admitted to trading on an SME Growth Market to be traded on another venue.

2.3.3. Equity Research coverage for SMEs

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

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

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

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

- Yes
-

No

Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 75:

2000 character(s) maximum

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

The unbundling rules introduced by MiFID 2 had a negative impact on the research coverage, especially for SMEs, as documented in the Eli-Namer – Giami report (‘Reviving research in the wake of MiFID 2: Observations, issues and recommendations’) commissioned by the AMF and published in January 2020, which describes the post-MiFID 2 developments in the research market in France.

The report showed that in the French market, the reform has undermined the research ecosystem, both for research producers, whose capacity has diminished, and for users, for whom research is now an explicit cost item. Firms have adapted, via major rationalisation plans, in a broadly deflationary context. The listed SME segment has been especially affected by these changes, notably due to the lack of interest for SMEs by market participants and the disappearance of the cross-subsidies that previously existed between large and small caps.

The report also demonstrated that MiFID II has led to the development of a supply of research services at extremely low prices, which seem detrimental to a healthy competitive environment and hint at the existence of dumping practices.

In response to this report, the AMF adopted an action plan in January 2020 to promote investment research, with six areas where policy actions should be carried out. The alleviation enacted by the MiFID 2 Recovery package fulfilled one of these actions as it will help SMEs to be better covered by financial analysts and allow investment firms to recoup the costs of SME research with other income sources. The MiFID 2 Recovery Package measures create a positive signal on research in the context of the strained economic situation that has resulted from the Covid-19 pandemic. We consider that authorising joint payments for execution services and research is adequately circumscribed in the amended text and does not affect investors’ protection.

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

Yes

No

Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 76:

2000 character(s) maximum

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

As stated in its action plan on research published in January 2020, the AMF considers that the production of research by investment analysts not associated with an investment service provider should not be subject to the regime defined in MiFID 2 delegated directive on research-related inducements nor in the resulting guidance, when their offering does not present a conflict of interests with other activities.

The AMF also believes that the exemption threshold included in the recovery package is too low and should be increased at 10 bn euros (keeping in mind that market participants will still be subject to rules on conflicts of interests).

Regarding fixed income research, fixed income trading was never commission-based in the first place and therefore, in the AMF's view, the current system is not adapted and should be at least suspended and reviewed to explore to which extent there is a clear need to put in place a specific framework or if reliance on the current conflict of interest rules would be enough.

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

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

Please explain the reasoning of your answer to question 76.1:

2000 character(s) maximum

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

Issuer-paid research should be explicitly recognised as pertaining to the minor non-monetary benefits regime under the condition that such research material is "made available at the same time to any investment firms wishing to receive it or to the general public", as currently provided in Article 12 of Commission Delegated Directive (EU) 2017/593 of 7 April 2016 and provided it clearly mentions the link between the issuer and the analyst. This research material should be governed by a code of conduct (see answer to question 78) that outlines good practices, in particular with respect to ethics, independence and transparency, based on existing regulatory obligations.

Under these strict conditions, MiFID 2 Delegated Regulation (2017/565) should be clarified to allow issuer-sponsored research to be qualified as investment research rather than "marketing communication" (articles 36 and 37 more specifically).

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

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

Please explain the reasoning of your answer to question 76.2:

2000 character(s) maximum

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

See answer to question 76

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

4000 character(s) maximum

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

Please see answers to previous questions.

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

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

Please specify to what other type(s) of research you refer in your answer to question 77:

2000 character(s) maximum

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

Please explain the reasoning of your answer to question 77:

2000 character(s) maximum

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

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

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

Please specify to what other type(s) of research you refer in your answer to question 78:

2000 character(s) maximum

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

Under other, please see our answer on FICC research in question 76.

Please explain the reasoning of your answer to question 78:

2000 character(s) maximum

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

For independent research, see answer to question 76.

For venue-sponsored research, the AMF supports ESMA's recommendation in its SME GMs Final report (ESMA70-156-4103) and sees merit in assessing the possibility of developing a pan-European Program or programs at the level of trading venues that could participate to the funding of research. As part of this

assessment, one should consider similar systems already adopted by some market operators and, in this respect, explore whether such systems have led to a positive outcome for issuers.

For issuer-sponsored research, please see answer to question 76.1. Issuer-sponsored research should be explicitly recognised as pertaining to the minor non-monetary benefits regime under the condition that such research is “made available at the same time to any investment firms wishing to receive it or to the general public”, as currently provided in Article 12 of Commission Delegated Directive (EU) 2017/593 of 7 April 2016. It should also clearly mention the links between the issuer and the analyst. This research material should be governed by a code of conduct that sets out good practices based on existing regulatory obligations, in particular with respect to ethics, independence and transparency. To ensure convergence among European member states, the EC should address a mandate to ESMA to define the core principles to be included in such code of conduct. Under these strict conditions, MiFID 2 Delegated Regulation (2017/565) should be clarified to allow issuer-sponsored research to be qualified as investment research rather than "marketing communication" (articles 36 and 37 more specifically).

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

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

Please explain the reasoning of your answer to question 79:

2000 character(s) maximum

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

The link between the issuer and the analyst should be made clear. Under the conditions that this link is clear and the research is governed by a code of conduct, it should be considered as research and not as marketing material. See answer to question 78.

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

4000 character(s) maximum

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

As stated in question 78, the AMF supports ESMA’s recommendation in its SME GMs Final report (ESMA70-156-4103) and sees merit in assessing the possibility of developing a pan-European Program or programs at the level of trading venues that could participate to the funding of research. As part of this assessment, one should consider similar systems already adopted by some market operators and, in this respect, explore whether such systems have led to a positive outcome for issuers.

2.3.4. Other

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

4000 character(s) maximum

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

The AMF believes that the market capitalisation threshold used to define an SME under Article 4(1)(13) MiFID 2 should be increased from 200M€ to 1bn€. This would facilitate the registration of MTFs as SME Growth Markets (as such registration is conditional on the venue displaying at least 50% of SMEs among its total number of issuers, pursuant to Art. 33(3)(a) MiFID 2). This would in turn boost the number of SMEs which could benefit from the alleviations granted to issuers on SME growth markets.

A larger number of companies could then benefit from customized alleviations awarded to SME Growth Markets in EU law for example the use of the EU Growth Prospectus and the alleviated rules governing insider lists under MAR. This would encourage liquidity on such trading venues.

According to ESMA's 2021 report on the functioning of SME growth markets, 74% of all companies listed in the EU qualify as SMEs under the current MiFID 2 definition. Raising the threshold to 500 M€ or 1bn€ would bring this proportion to 81% or 86% respectively.

2.4 Other possible areas for improvement

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

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

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

i. yearly and half-yearly financial reports

ii. major changes in the holding of voting rights

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

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

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

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

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

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

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

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

4000 character(s) maximum

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

2.4.2 Special Purpose Acquisition Companies (SPACs)

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

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

Although SPAC IPOs present weaknesses and risks that investors, in particular retail ones, should be aware of. Although, if SPACs' offers in the EU are mainly addressed to professional investors, SPACs' shares may be available for purchase by retail investors on the secondary markets. In that respect, in July 2021, ESMA published the statement

"SPACs: prospectus disclosure and investor protection considerations" (ESMA32-384-5209) to promote coordinated action by EU regulators on the scrutiny of prospectus disclosures relating to SPACs and provide guidance to manufacturers and distributors of SPAC shares and warrants about MiFID II product governance provisions.

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

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

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

Please explain the reasoning of your answer to question 84:

2000 character(s) maximum

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

SPACs are an innovative vehicle that allows private equity and the public markets to work together. When benefitting from a high quality structure allowing for a proper alignment of interests, SPACs are a way to introduce companies of a certain size on the stock exchange that complements the traditional IPO process and establishes a potentially fruitful link with private equity. As such, SPAC vehicles constitute an opportunity to facilitate new listings on the public markets and complement traditional IPOs.

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

Please explain your reasoning:

4000 character(s) maximum

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

In order to answer this question it is important to highlight the conditions for SPAC success:

(i) Considering the SPAC's risk profile (risks that are specific to its purpose and capital structure), such vehicles should be only dedicated to professional investors.

(ii) SPACs should be listed on regulated markets: as a corollary, a SPAC IPO would always be subject to the Prospectus Regulation and the issuer would thereafter be subject to the Transparency Directive and the Market Abuse framework.

Consequently, we believe that it would be detrimental for SPAC development if these vehicles were not solely dedicated to professional investors (until the de-SPACing) and if they were not subject to the UE legal framework applicable to the regulated markets.

Moreover, we believe that the SPAC development in the EU could be hindered by the introduction of additional and premature regulatory constraints that could create unnecessary burden and impede the ongoing evolution and innovation regarding SPAC structures.

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

4000 character(s) maximum

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

- Favour professional segments on regulated markets, where retail access to these products requires the acceptance of adequate disclaimers.
- Consider whether SPACs should be open to investors on the primary market only via private placements directed towards qualified investors.
- Consider the introduction of a minimum threshold with respect to the amount that must be raised by a SPAC in order to prevent small structures from entering the SPAC market which would pose an increased risk in terms of investor protection.
- Consider how conflicts of interest should be managed.
- Consider whether additional safeguards should be put in place to prevent backdoor listings via SPACs, in particular with respect to certain activities (ie. level of information needed at the time of the acquisition, ban to specific activity sectors like gaming or crypto).

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

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

Please explain the reasoning of your answer to question 86:

2000 character(s) maximum

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

In France, SPACs (before de-SPACing) are listed on the Professional Segment of Euronext Paris, where retail access is restricted and for which specific MIFID distributions rules apply. In order for retails to trade shares listed on the Professional Segment, they need to, inter alia, specifically request to do so and accept certain disclaimers.

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

	Yes, even if an investment is open to professional investors only	**Yes**, for an investment open to both professional and retail investors	**No**	Don't know - No opinion - Not applicable

Reinforce safeguards	○	◉	○	○
Harmonise the disclosure regime	○	○	◉	○

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

4000 character(s) maximum

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

With respect to safeguards where an investment is open to both professional and retail investors, please refer to our answer under question 85(b) above.

With respect to the disclosure regime, there already exists a European harmonized regime which has proven to be sufficient and adequate for the listing of SPACs on regulated markets. In particular, the following frameworks apply: Prospectus Regulation, Transparency Directive and Market Abuse Regulation. Based on these frameworks, and in particular pursuant to the Prospectus Regulation, new SPACs entering the regulated market via a private placement (as the case may be) need to establish a listing prospectus, which allows for sufficient and adequate disclosures. Additional legislation is thus not required. Nonetheless, as indicated by ESMA in its public statement of 15 July 2021 , some disclosure requirements are likely to have a particular significance when determining whether a prospectus related to SPACs includes all the necessary information to allow investors to make informed decisions, as required by the Prospectus Regulation. Among such disclosure items, ESMA highlights inter alia the following: risk factors, strategy and objectives, conflicts of interest, shareholder rights and information on the proceeds of the offer

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

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

Please explain the reasoning of your answer to question 88:

2000 character(s) maximum

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

The Prospectus Regulation already requires full transparency about the dilutive effects of the relevant financial instruments. Based on this information, qualified investors should be able to make their own opinion on the acceptability of the level of dilution induced by founder shares and founder warrants.
Consequently, we do not think that additional legislative measures are required.

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

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

Please explain the reasoning of your answer to question 89:

2000 character(s) maximum

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

In France, SPACs will typically place the funds raised during the IPO in escrow until the completion of the acquisition, via an escrow agreement. For that purpose, several types of secure and flexible escrow arrangements are available in our jurisdiction.

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

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

Please explain the reasoning of your answer to question 90:

2000 character(s) maximum

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

In order to avoid that the use of sustainability-related labels by SPACs lead to greenwashing or other misleading behaviour, it is key that each NCA ensures a thorough scrutiny process during the prospectus approval phase, and that there is no confusing or misleading information or promises presented by the issuer.

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

4000 character(s) maximum

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

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

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

i. admitting securities to official stock-exchange listing

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

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

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

i. such additional conditions apply to all issuers

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

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

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

Please explain the reasoning of your answer to question 92:

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

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

- ◉ Repealed
- ○

Amended as a Directive

- Amended and transformed in a Regulation
- Incorporated in another piece of legislation
- Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 92.1:

2000 character(s) maximum

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

In France, the implementation of MiFID entirely replaced the concept of ‘official list’ with that of ‘regulated market’ from 2007. As the concept of ‘official list’ is no longer in use in French law, we see no objective need to maintain the Listing Directive altogether. In addition, one could question whether a minimum harmonisation directive with numerous national options still makes sense at a time when the EU attempts to deepen the CMU.

2.4.3.1. Definitions

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

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

2.4 3.2. Listing conditions

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

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

Please explain the reasoning of your answer to question 94:

2000 character(s) maximum

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

Specific conditions for the admission of shares

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

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

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

Please explain the reasoning of your answer to question 95.1:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 95.2:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 95.3:

2000 character(s) maximum

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

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

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

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

Please explain the reasoning of your answer to question 96.1:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 96.2:

2000 character(s) maximum

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

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

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

Please explain the reasoning of your answer to question 96.3:

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

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

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

Please explain the reasoning of your answer to question 96.4:

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

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

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

Specific conditions for the admission of debt securities

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

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

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

Please explain the reasoning of your answer to question 98:

2000 character(s) maximum

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

2.4 3.3. Competent authorities

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

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

Please explain the reasoning of your answer to question 99:

4000 character(s) maximum

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

2.4.3.4. Other

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

4000 character(s) maximum

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

2.4.4 Shares with multiple voting rights

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

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

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

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

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

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

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

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

2000 character(s) maximum

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

In France, two legally framed mechanisms allow companies to derogate from the “one share one vote” principle: (i) double voting rights attached to all fully paid-up registered shares held in a registered form in the name of the same holder for at least two years (ii) since the 2019 PACTE Law, multiple voting rights for non-

listed companies only.

With this legal context in mind, the AMF remains attentive to the various feedbacks it receives from the French market on this issue and to the views expressed by the parties involved :

- From the issuers' point of view (June 2021 Paris Europlace report in particular) , authorizing multiple voting rights shares in listed companies may increase the attractiveness of public markets insofar as it is likely to favour the listing of certain companies whose founders could benefit from multiple voting rights.
- From investors' perspective, associations of French institutional investors have expressed their concern about the disappearance of this principle, considering that the practice of double and/or multiple voting rights may allow a minority shareholding to gain control of a company, and may therefore lead to abuse arising from the dichotomy between shareholder power and economic risk .

In the light of this debate, the AMF has no strong opinion at this stage, but remains sensitive to and interested in this subject, measuring its advantages and disadvantages for every party involved in public markets.

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

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

Please explain the reasoning of your answer to question 102.1:

2000 character(s) maximum

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

To some extent, the interest of investors may appear to be linked to that of the trading markets, which are seeking a certain attractiveness and could thus be encouraged to abandon the one-vote-one-vote principle. Nevertheless, as presented in our response question 101 above, there might be concerned, as expressed by some investors , on the disappearance of the "one share one vote" principle.

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

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

Please explain the reasoning of your answer to question 102.2:

2000 character(s) maximum

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

Please refer to our response to question 101 above.

When multiple voting shares are allowed, it seems that setting limits to the voting rights attached to a single share would inevitably enable investors to better anticipate the relationship between capital and voting rights. Such a limitation would thus improve the attractiveness of companies to investors, or at least reduce investor aversion to companies with multiple voting shares.

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

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

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

2000 character(s) maximum

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

The AMF has no experience with the application of clauses that eliminate higher voting rights after a designated period of time under French law, which do not exist under French law. Therefore, the AMF has no preconceived opinion on such mechanism.

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

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

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

2000 character(s) maximum

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

Stipulating in EU law that issuers across the EU may be able to list on any EU trading venues while keeping their multiple voting rights structure could have the effect of accentuating a trend for "forum shopping" related to the country of incorporation of companies.

Moreover, introducing any stipulation allowing or prohibiting such passporting mechanism for multiple voting rights structure would interfere with the ability of EU trading venues to define their own listing requirements.

In any case, in the absence of harmonization of Member States' local laws relating to multiple voting rights structures, introducing a provision on the passporting of such structures could create destabilization in public markets.

Therefore, it does not seem appropriate to form an opinion on this matter until there is a minimum of harmonization at European level.

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

4000 character(s) maximum

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

2.4.5 Corporate Governance standards for companies listed on SME growth markets

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

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

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

Please explain the reasoning of your answer to question 106:

2000 character(s) maximum

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

The scope of what "corporate governance" encompasses would need first to be defined, as well as the contours of what would represent minimum obligations in terms of corporate governance. The introductory paragraph to this question indeed refers more specifically to a certain number of transparency obligations as well as facilitation mechanism of the exercise of their rights by shareholders.

Today corporate governance (i.e. organisation of the board of director and AGM) is not an EU harmonized field and most of corporate governance measures are defined at national level (company law and soft law). In the future, corporate governance could be defined by the CSRD in terms of disclosures and due diligence regulation which would be applicable to listed companies on a regulated market and to the bigger companies.

Protecting the attractiveness of EU Growth Markets is key to achieve the European Commission's objective of making public capital markets more attractive for EU companies and facilitating access to capital for SMEs; however, overly burdensome rules could prove counterproductive in promoting listing on these markets. It is also essential not to introduce more demanding rules in the SME growth markets than in the Regulated Markets at the risk of unsettling the overall balance between these markets.

As a consequence, responsibility to select the most appropriate mechanisms to apply should remain with market operators, be tailored to local conditions and be applicable to issuers whatever their nationality be. The analysis could be informed both by the existing regulatory framework existing on Regulated markets or at local levels as well as more precise analysis of investors' expectations and the potential impact of the implementation of certain rules on companies that are already listed or that aspire to be listed.

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

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

As presented in Q. 106, SME Growth market operators should be given the responsibility to decide whether to include corporate governance requirements in their rulebooks. Such organisation would allow not to overly increase the regulatory environment of SME Growth markets, while allowing market operators to introduce differentiating characteristics to their markets, if and when necessary. Responsibility to select the most appropriate mechanisms to apply should be left to market operators; and these should be tailored to local conditions.

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

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

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

Please specify to what other requirement(s) you refer in your answer to question 107.1:

2000 character(s) maximum

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

Markets operators should be entitled to define the most appropriate corporate governance rules for their market, should they decide to implement some (see Q106) and such rules should be tailored to local conditions. Such analysis could be informed both by the existing regulatory framework existing on Regulated markets as well as more precise analysis of investors' expectations and the potential impact of the implementation of certain rules on companies that are already listed or that aspire to be listed.

Please explain the reasoning of your answer to question 107.1:

4000 character(s) maximum

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

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

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

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

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

4000 character(s) maximum

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

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

4000 character(s) maximum

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

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

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

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

Additional information

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

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

3d6f17a5-d106-4073-a321-b16a85d0d578/papier-de-position-amf-consultation-publique-de-la-commission-europeenne-sur-le-listing-act_1.pdf

Useful links

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

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

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

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

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

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

Contact

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