Targeted consultation on the listing act – BNP Paribas

BNP Paribas welcomes the initiative of the European Commission to take action in order to develop further the Capital Markets Union (CMU) and to first consult widely in order to adapt its current legislation. The consultation of the European Commission on the Listing Act: "making public capital markets more attractive for EU companies and facilitating access to capital for SMEs" is therefore both timely and necessary. We have therefore decided to answer in detail in our own name while also having contributed to the answer of professional bodies such as AFME and AMAFI.

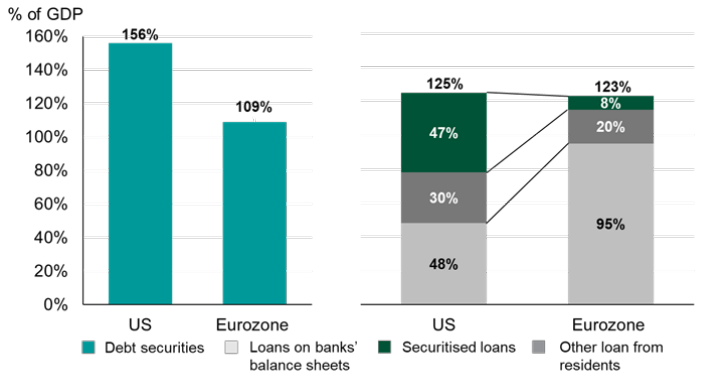
The answer of BNP Paribas reflects the recommendations and analysis of various segments of our investment banking franchise: ECM, DCM, brokerage, advisory, structured products[1]. Some answers also reflect the analysis of our asset management team. In our answer, we have endeavoured to reflect the interests of our corporate clients including SMEs which we advise and finance throughout the EU.

Even though BNP Paribas promotes CMU and the SMEs capacity to go public or issue debt when it makes sense for their development, it is worth remembering that there is a limit below which it is uneconomic and ill-advised to push SMEs towards the public market. The public market imposes a high level of rules and requirements that can often be too costly for smaller companies but are justified to maintain trust and integrity in the market. The EU market now offers alternatives and a diversity of choices for SMEs, such as private equity and growth funds, which are sometimes better adapted to the profile of those companies.

Key messages

1. We would like to acknowledge the significant progress that has already been made in terms of providing a more harmonised capital markets platform through the implementation of a number of legal acts, such as the Prospectus Regulation (PR), the Market Abuse Regulation (MAR), the Market in Financial Instruments Directive (MiFID II) and Regulation (MiFIR), the Transparency Directive and the Listing Directive. Market participants have become used to them and stability of these rules is critical. We therefore advocate in our answers modest changes to improve the current regulation but no major revolution in the way European capital markets are regulated.

2. However, despite the long-standing stated goal of developing a Capital Market Union, EU Capital Markets remain underdeveloped (see graph). Such imbalance needs to be addressed urgently, as the European Commission estimates the additional investment needs in the relation to the green and digital transition at nearly €650bn per year until 2030. As banks finance 80% of the EU economy, this would require an amount of prudential capital which is well beyond EU banks' capacity to grow their capital base over the period (and anyway above supervisors' appetite for banks' balance sheet growth). Even if banks can get abundant funding from ECB and have access to deep and efficient funding instruments such as covered bonds, it does not solve the capital issue, all the more given the impact of CRR3 to be absorbed over the same horizon.



Sources: ECB, Federal Reserve, BNP Paribas calculations (data as of Q3 2021)

[1] Structured products are investment products distributed to retail investors. Such products offer the possibility of investing in a wide variety of asset classes (indices, shares, bonds, interest rates). Structured products are actively distributed in France in the form of stock Exchange Traded Securities, listed and easily accessible to investors, as well as distributed in the form of unit-linked insurance contracts. BNP Paribas Global Markets issues about 400 000 structured securities for the European Retail market every year.

3. In this context, the consultation on how to facilitate listing on equity markets is very welcome. However, the terms of the first part of the consultation are very much focused on costs of prospectus preparation and of being listed which, in our opinion, does not represent the main obstacle to CMU. We consider that the EU markets are generally built on an adequate balance between the burdens and benefits of a listing whilst providing adequate levels of investor protection. Prospectus and disclosure costs ensure a high level of rigor and disclosure which are necessary for the trust of market players. In addition, it is not by lowering our standards in terms of investor protection and disclosure that we will achieve the objective of developing capital markets. The UK and particularly the US remain the most developed and liquid markets in the world, even though they tend to be the most onerous in terms of costs[2] compared to the EU. To have international and domestic investors investing more broadly in the EU markets, we need to have standards at par with those that investors are widely used to. For a company deciding to be listed, the balance must be positive between the benefits of raising finance from public markets and the costs and requirements. In this sense, it is important to focus on improving the benefits of being listed in terms of accessing a wide investor base, enabling quick equity and debt raisings and maintain investor interest and liquidity throughout the life of a listed company. The aim should be to get similar benefits, market efficiency and depth as those observed in other competitive markets, such as the US and the UK.

4. We still encounter a substantial diversity of local interpretation of regulation and of market practice, mainly due to the differing views of local regulators and market participants from jurisdiction to jurisdiction. EU regulation has to be as harmonised as possible and a consistency of approach is necessary. Everything that contributes to establishing European standards is positive for the attractiveness of the EU markets, whether equity or debt. In that regard, we would advocate amending and transforming the Listing Act Directive and make it a Regulation with the objective of having the same level-playing field for all companies in the EU. This strong political statement would demonstrate that the EU is advancing on CMU and is willing to promote the integration of its capital markets. In this sense, the new EU Listing Act should give ESMA an explicit mandate of (i) ensuring harmonisation and remove existing diverging interpretations for the ultimate good of efficient capital markets in the EU and (ii) promoting competiveness of EU markets vis a vis other financial centres (as the FCA in the UK). In the longer term, discussion could start as to whether ESMA should take direct responsibility for approving IPO prospectuses with the objective of giving one central point equivalent to the US SEC. Especially for Tech and new business models, the process of approval at one single point of approval could generate efficiencies and attract more cross border financing.

5. The evolution of EU regulation has to be considered in a broad context, taking stock of the requirement to be competitive with the US market and the UK market, post Brexit. International investors expect a well-established series of market practices and are used to the high standards they witness in other markets. EU regulation must therefore be consistent with regulatory practices applied in the US and the UK in order to offer an attractive and competitive European market. In particular, post Brexit, the UK is undergoing significant changes in its regulation of company listing in order to promote the City as a major financial centre (notably for dual classes of shares). The US markets are also very attractive for Tech and Biotech companies. International investors have choices in terms of cross border investment and will compare markets on the basis of investor protection standards.

6. The EU Tech industry is increasingly mature. Europe now has 321 unicorns, up from 223 in 2020. Providing a credible exit strategy on the public markets for these companies is a key element for the EU financial and technological sovereignty. In this regard, the EU market should be at par with the most developed markets in terms of financial tools and vehicles.
    - To remain a competitive market amongst the increasing number of prospective issuers desiring dual class of shares, such structures should be permitted and/or reviewed to determine the best EU approach. Those structures can be useful and are particularly important in certain situations, particularly for high-growth, innovative, founder-led companies looking to list. It has recently been authorised in the UK by the FCA and almost 30% of IPOs in 2017-2019 had dual-class structures.

[2] Please refer to the answer to question 3 : « Fees and commissions charged by investments banks in the EU are half those incurred/paid in the US (fees and commissions charged by banks represent 3.4% of total IPO cost for Euronext vs. 6.3% for Nasdaq based on Euronext and Dealogic data from 2015 to 2021. »

- We also want to retain a favourable environment for SPACs in the EU in a context of strong competition of US SPACs. SPAC is an innovative vehicle that allows private equity and public markets to work together. When benefitting from a high quality structure allowing for a proper alignment of interests, SPAC is a way to list a company of a certain size on the stock exchange that complements the traditional IPO process and establishes a potentially fruitful link with private equity. In the EU, we have been successful in having SPACs being listed in Paris, Amsterdam and Frankfurt and this should be encouraged with the existing disclosure requirements. Not having this tool available anymore, or in the same conditions as today, in the EU might contribute to a flow of EU companies to be tempted to be acquired by US SPACs and being therefore listed in the US (in spite of it not being their natural place of listing).

7. The objective of achieving an effective CMU cannot be reached without an initiative aiming at harmonising more deeply national corporate law, corporate taxation and bankruptcy regimes. Though there have been a lot of progress in these fields through the creation of the *Societas Europaea*, the recent restructuring regulation and efforts through the adoption of certain directives dealing with aspects of company law, we note that there are still substantial differences which may cause international investors to see the EU as a fragmented market. Harmonising or establishing a unique/common set of rules is a difficult path as it goes often against national legal culture but it may be a necessary journey to compete with unified markets such as the US or the UK, and it has proved to work in certain areas such as the prospectuses.

8. We consider that one of the major deterrents of going public is the imbalance in terms of disclosure between public and private companies. This imbalance should be reduced for the benefit of all investors and for the good of the public interest and this topic could be part of the debate as it has started to be in the US. We should create a level-playing field in terms of disclosure and requirements given the rise of private equity markets notably in terms of ESG and compensation.
   - There will be extra work around ESG in terms of what investors expect as ESG reporting. CSRD, the new disclosure for ESG, applies to all companies with more than 250 employees and listed SMEs. Issuers will have to provide more ESG disclosure. We welcome the development of a European ESG disclosure framework through CSRD and EFRAG, but warn against adding too much complexity for both public and large private companies. We also want to avoid ESG excesses constraints on SMEs and welcome the threshold of 250 employees.
   - Disclosure rules on compensation and benefits for executives and directors should be applicable for private companies to create a level playing field.

9. The most important striking objective for developing CMU is to develop a domestic investor base whether in bonds or equities to ensure high level of liquidity, a key component of mature and deep capital markets.
   - We have experienced a decrease in the capacity of EU institutional investors to invest in equity due to a number of trends: (i) the development of passive investment funds, (ii) the absence of pension funds in certain European countries and (iii) Solvency II because of its regulatory regime on equities for insurers. All of this has shrunk the proportion of EU insurance companies and other EU asset managers in the capital of EU listed companies and their participation in IPOs and ECM primary transactions.
   - Savings are quite abundant in Europe and investing those savings in equity or corporate debt could be an opportunity for retail investors. BNP Paribas is in favour of developing existing tools such as life insurance and employee shareholding funds to promote respectively debt and/or equity investment either directly or through funds. Our retail network is also keen to develop direct ownership in shares on the back of renewed interest in equities from a younger investor base.
   - The development of crossover funds could be another solution to strengthen the investor base. However, in the EU, there is still a clear distinction in the regulatory rules between investment funds in public and private markets. As a result, it does not enable asset managers to structure crossover funds that could invest in both private and public equity. We would advocate for a change in regulation to allow crossover funds. This would enable cross-fertilization between the buy side expertise developed on the private market and the public market, especially for Tech companies with new business models.
   - In order to create an environment ensuring that SMEs have access to capital markets, cornerstone and anchor investors are also a key element to develop and there is certainly a key

role to be played at the EU level by the EIB and other agencies such as KFW, CDC/ BPI France, CDP in Italy etc… to coordinate their policies and voluntarism on this topic.
- The Commission should encourage Member States to give specific tax benefits to specialised funds investing in SMEs, as has been done in the UK with the AIM.

10. EU legislation introduced new methods of financing equity research with MiFID II. This unbundling has had a clear downward impact on the amount of equity research published and the number of financial analysts employed by firms.
    - We however consider that there is unfortunately no way to reverse unbundling of equity research. BNP Paribas encourages all types of research, whether independent or not as it is an important component of the decision-making process for investors. At this stage, we are in favour of sponsored (issuer-paid) research as it gives better access to investors, ensuring more liquidity and provided they are framed with the necessary precautions. It is also important that new sources of revenues of research, including academic research, find public funding through the EU. We must encourage in the EU, post Brexit, the weight of academic research around financial markets that is deep and thorough in the UK universities. In addition, more and more research providers are developing analysis on ESG matters, corresponding to very strong demand from investors.
    - Conversely, on the basis of our experience in equity research, BNP Paribas believes that the unbundling rules of MIFID II to FICC research provided by sell-side analysts should be removed, as it is a fundamentally different product to equity research for which the regulations were really initially targeted.

11. BNP Paribas believes that the deeper development of the European market in HY securities is being constrained by MAR and to a lesser extent MIFID legislation in Europe. MAR makes it very difficult for arrangers of debt securities to get high quality feedback from investors in advance of launching a full offer of securities because many (potential) investors are unable or unwilling to be wall-crossed during the early marketing phase of a (potential) transaction, in the process known as 'pre-sounding'.

12. To develop the CMU, we should consider all the technological innovation such as digitalisation, artificial intelligence and machine learning. Covid has accelerated electronic format practices. The dematerialisation of prospectus, makes it possible to reinforce investor protection by offering them more fluid and more rapidly accessible information. On the other hand, the increasing size of the prospectus is probably also due to digitalization. EU law is progressively introducing machine-readability formats for both financial and non-financial reporting and as the ESAP project will ensure the accessibility of in-scope information in a digitalised format. Technology can provide cost-efficient solutions to improve the provision of equity research and to disseminate information. By automating some stages of the information production process, the cost of producing research may decrease. This cost efficiency can help facilitate the provision of equity research for SMEs. Asset managers should benefit from the lower cost of research production and can use the analytical insights to support their investment decision-making, making it less costly (from a due-diligence perspective) for them to invest in SMEs. Unified use of plain English such as what the SEC has adopted with its EDGAR data base is an example of what can be achieved in terms of a central data base.

13. ESG is a topic that is absent from this consultation despite it being a very important topic of disclosure for investors and of regulations in the EU. This is an increasing concern for SMEs which may not have the size and sophistication enabling them to publish this information without incurring extra costs. This is still a developing area in the EU and standards of disclosure between what will affect asset managers and issuers should not be on a diverging path.

14. Another point that is absent from the September 2021 CMU Action Plan and which is very important for the financing of SMEs is the topic of securitisation. Securitisation must be developed as an important instrument to develop the European markets and the CMU, notably by allowing banks to free up capital that they could reinvest in SME lending. Securitisation in Europe has been used for healthy risk transfer from banks to educated investors, and should be given an important role in the post-Covid recovery toolkit. However, we believe that it is still under developed and under used due to excessively strict regulations in the EU. There is consensus among experts about what is needed to unlock the market:
    - Recalibrate capital charges applied to senior tranches, in line with their risk profile,
    - Improve the Significant Risk Transfer Assessment process to make it swift and flexible,

- Upgrade eligibility of senior STS tranches in the LCR ratio,
- Simplify disclosure requirements for private transactions.

Making progress is key to avoid a situation where prevailing regulation and supervision continue to supress the necessary transformation of the European economy. This technical subject requires pooling the expertise across the various authorities involved and a coordinated effort to rebuild the securitization ecosystem that can deliver results. We urge the Commission to accelerate the revision of the Securitisation Regulation, as well as the revision of prudential requirements for banks and insurance, in the context of the current revisions of CRR3 and Solvency II.

Paris, February 2022

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Date: 25/02/2022 10:17:04

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

margot

* Surname

lesage

* Email (this won't be published)

margot.lesage@bnpparibas.com

* Organisation name

255 character(s) maximum

BNP Paribas

* Organisation size

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

Transparency register number

255 character(s) maximum

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

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* Country of origin

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

- Afghanistan
- Djibouti
- Libya
- Saint Martin

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

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

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

* Field of activity or sector (if applicable)

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

- ☐ Corporate, issuer
- ☐ Other
- ☐ Not applicable

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

* **Contribution publication privacy settings**

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

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

☑ 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.

The EU legislation has made enormous progress in terms of providing a competitive Equity Capital Markets (ECM) platform. There has been a lot of progress and standardisation in the EU legislation relating to company listings. The prospectus and transparency directives have both been a great step forward. We need to have a well-established series of common market practices with which issuers and investors are comfortable in order to have a liquid market place hence the necessity to remove the divergences that still exist.

Generally, we have an adequate level of investor protection in the EU. The unification of the prospectus and transparency rules have provided a clear legal framework. This framework is at par with the best standards of the US and UK markets which are considered protective enough.

However, in the EU, we still have a large diversity of interpretation of EU rules and market practices from jurisdiction to jurisdiction. There is still work to do in terms of harmonisation of market practices / cultural habits with the objective of providing deeper and unified access to capital markets for EU companies.

One key area to improve is the depth of the domestic public equity investor base notably for IPOs. In the EU, regulation imposes a clear distinction between funds investing in public and private equity. The regulation does not enable asset managers to structure crossover funds, which would be useful to enable cross-fertilisation of buy-side expertise developed on the private market and the public market (more especially in Tech). Large institutional investors help drive the price formation process in IPOs, conduct good due diligence, and help deliver market discipline. Thus, a good way to attract greater active investment into these markets is to encourage a large base of institutional investors to invest in IPOs. We should remove barriers to local pension funds / insurers investment in equity markets.

MiFID 2 has created a difficulty in terms of classification of retail investors and the way banks can sell shares to them. However, it is now well accepted and retail investors could be further encouraged to invest in equities. Moreover, intermediaries such as Primary Bid allow access to IPOs and public company fundraising to retail investors. As a platform, it seems to work reasonably well. There is an exemption to publish a prospectus when the demand in aggregate for any given transactions below 8 million euros. This threshold could be raised and also harmonised across the EU. We might want to explore how to make it easier to have that kind of incremental retail distribution as part of a public company fundraise.

Retail investors have, in the last two years, increased their appetite for equity and for IPOs. Technology enables new tools for investing in shares. It would be good to encourage this trend given the low level of equity in savings in the EU (see slide 11 & 12 in appendices).

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 specify to what other factor(s) you refer in 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.

Answer 1/2

We are convinced that the relative lack of attractiveness of public market is not due to excessive compliance costs. The inherent cost of any given transaction is not a major deterrent for issuers. To instil confidence in public markets, a strong regulatory framework is important. The listing regulatory system imposes requirements on issuers to protect investors in those securities. This protection fosters market confidence, to the benefit of both investors and issuers and enables the level of trust which is necessary for deep and liquid markets. The benefits generated by the public status largely offset the costs. Furthermore, costs of a listing in the EU are notoriously cheaper than in the US or the UK. Fees of investment banks for an IPO in the EU are half what they are in the US. Issuers that choose to list in the US or in London elect those markets for their attractiveness regardless of the costs. Lowering our standards with a drop in disclosure levels would not help EU markets and the CMU. The key point is to increase the benefits and make them at par with the most attractive markets, all the more so when many companies have a choice of listing venues.

Listing rules have become largely harmonised in EU legislation over time but differences across markets remain. There is still choice and flexibility in listing requirements. Issuers can pick the regime that best fits their needs, and exchanges can optimise their listing rules to attract new potential issuers and investor demand. Many exchanges have introduced listing segments with less onerous eligibility requirements in order to broaden the catchment of potential issuers willing to list on the public markets.

We need to ensure that we have more harmonisation across all jurisdictions. Everything that contributes to establishing European standards and common interpretation of the rules are positive for the attractiveness of the EU market. It also enables smaller countries to have access to a deeper pool of money, as the standards would be the same as in the most mature markets.
Fiscal and legal harmonisation should also be considered across the EU and we should tend toward a unified EU corporate law, insolvency law and corporate taxation to allow a real level playing field.

We cannot reason in an isolated manner as money flows come from international and sophisticated investors able to choose the markets where they want to invest. EU regulation must be consistent with the regulatory practices applied in the US and the UK in order to offer an attractive and competitive European market. In particular, post Brexit, many changes are taking place in the City that we must take into account in the EU regulation. For this reason, we are in favour of admitting the listing of companies with dual class of shares in all European jurisdictions. With the objective of aligning corporate laws in all European countries and to enable the most advanced capital market practices, we could use the Societas Europaea (European Company) as a reference in the Listing directive and giving it a clear boost.

In order to be more attractive for issuers, the EU market has to develop a more mature and deeper investor base notably for IPOs. In particular, cornerstone and anchor investors are necessary to reduce execution risk. Lack of liquidity is mainly due to lack of investors and of active equity investing. We should make the retail distribution channels more efficient, and encourage pension and insurance holdings by individuals to remove some restrictions on pension and insurers investing in equity markets.

We are pushing for more flexibility on regulation for crossover funds allowing cross-fertilisation between the public and private equity investors and to build investment expertise, particularly in Tech and in new

business models. This would also prevent private equity investors to be obliged to sell quickly after an IPO.

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.

Answer 2/2

We are also in favour of having a clear mandate to an EU institution being given to develop public market through harmonised practices across the EU. ESMA should therefore be given this explicit mandate in the Listing Act. Over time, it could become the single centre of competence for prospectus approval and transparency rules like the SEC in the US. This is the logic of things.

It is also important to debate as to how we should create a level-playing field in terms of disclosure, ESG requirements between private and public companies given the rise of private equity markets. This imbalance should be reduced for the benefit of all investors and for the good of the public interest. The EU regulator may want to review the merits of applying some improved governance arrangements (e.g. audit standards, disclosure on compensation and national registries) for some large unlisted firms, to enhance the market discipline on the governance of those firms.
In January 2022, the SEC has begun work on a plan to require more private companies to routinely disclose information about finances and operations. It is also considering tightening the qualifications that investors must meet to access private markets, and increasing the amount of information that some non-public companies must file with the agency.

The lack of attractiveness of SME securities is mainly due to: the lack of liquidity, the lack of research and competition of private equity and M&A.

We should also consider all the technological innovation such as artificial intelligence and machine learning that will change the access to information. Technology can provide cost-efficient solutions to improve the provision of equity research. By automating some stages of the information production process, the cost of producing research may decrease. This cost efficiency can help facilitate the provision of equity research for SMEs. Asset managers should benefit from the lower cost of research production and can use the analytical insights to support their investment decision-making, making it less costly (from a due-diligence perspective) for them to invest in SMEs.

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.

Please refer to the answer above.

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.

Please refer to the answer above.

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	○	○	○	◉	○	○

Please specify to what other costs you refer in your answer to question 3 a):

2000 character(s) maximum

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

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 specify to what other costs you refer in your answer to question 3 b):

2000 character(s) maximum

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

Please explain the reasoning of your answer to question 3:

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

During an IPO we almost never have discussions with issuers regarding the legal and auditors costs. If we cut those costs, it would result in deterioration of quality of the work in terms of diligences, disclosure and legal documentation. As a result, we consider that reducing costs will not attract more investors and issuers to the EU market.

Fees and commissions charged by investments banks in the EU are half those incurred/paid in the US (fees and commissions charged by banks represent 3.4% of total IPO cost for Euronext vs. 6.3% for Nasdaq based on Euronext and Dealogic data from 2015 to 2021). It also important to make a distinction between the costs, which are “sunk” costs incurred even if the IPO does not take place, and fees based on success fees. The Oxera report states that “the perception among market participants is that professional fees in London tended to be higher than in Frankfurt and Paris, but not as high as in New York”.
Bank fees could be reduced on an after tax if there was widespread acceptance in the EU by tax authorities that tax fees can be deductible when there is a capital increase.

Fees of stock exchanges and of level competent authorities approving the IPO prospectus listing and paying agent fees are globally in line with other markets and are not a major deterrent to listing.

The first question in 3.b needs to be answered specifically as it can be misleading: (i) there is no under-pricing; there is an “IPO discount” that is necessary to induce investors to invest in a new stock – substantial academic literature demonstrate it must be 10 to 15%, (ii) the IPO discount is inherent to an IPO as there is asymmetry of information, (iii) investment banks advise issuers on the optimisation of pricing which is also driven by investor expectations. Furthermore, the IPO discount is not a cost borne by issuers and is not accounted in the P&L. On the primary tranche of an IPO, it is an opportunity cost in terms of dilution for the shareholders and on the secondary tranche, it is also an opportunity cost but for the shareholders. At the most, it is a value leakage but not a cost. Investment banks provide very considered thoughtful advice with regards to optimising the price of the transaction based on where the market is. The balance of an optimal pricing is achieved by a rigorous research / pre-marketing and bookbuilding process and there is no proof of “underpricing” (see slide 14 in appendices).

Other direct and indirect costs of an IPO process are:
- Management time;
- Organisation and appointment of the board of directors;
- Necessity to have an IRR (investors relations representative);
- Necessity to establish the accounts under IFRS and is some cases, proforma;
- All the costs related to ESG disclosures: ESG is going to be a domain of increase in reporting obligations and internal organisation requirements for issuers. We have to make sure there is common understanding of how this will work. ESG is an opportunity for the EU but it has to be tackled and harmonised between companies and investors across all jurisdictions.

The costs and the barriers to entry are highly dependent on the “IPO readiness” of the issuer which often depends on its stage of development and on its prior shareholding structure.

The execution risk is also a key element. This is why we should absolutely preserve the way research is used in the IPO process to educate investors. On that regard, the EU markets are more sophisticated than the US market in terms of investor education and premarketing ahead of bookbuilding. We can further reduce execution risk by having anchor investors and cornerstone investors in order to have an early engagement (see slide 15 in appendices).

We believe that SPACs are a valid alternative to traditional IPOs which can facilitate more listings on the public market. It reduces the cost of the IPO process for the issuer (example, flying-taxi firm Lilium).

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

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

a) Direct costs:

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

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

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

2000 character(s) maximum

b) Indirect costs:

	1	2	3	4	5	Don't know - No opinion -

	(very low)	(rather low)	(neutral)	(rather high)	(very high)	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.

We consider the relative importance of the costs mentioned as very low or rather low. Those inherent costs are not a deterrent for issuers as discussed above.

We also remind that the costs of a board and governance are cheaper in the EU compared the US or the UK (in the US Sarbanes Oxley generates around $7m annual costs). Corporate governance standards are very high in the UK and it is seen as a competitive advantage. From an investor point of view, there is a real value in terms of the quality of corporate governance. We are strongly opposed to lowering the quality in terms of governance in the EU. The benefits of a good governance always outweigh by far its costs.

The most important fact for company deciding to be listed is that the benefits of raising finance from public markets outweigh the costs and requirements. We should not reduce the costs as they guarantee a quality of the work in terms of diligences, disclosure and legal documentation. However, we should implement in the EU the same benefits observed in other competitive markets such as the US and the UK or even Switzerland. We consider that the most important benefits of being listed are in terms of transparency, rigor of management/management discipline, focus on objectives, branding and capacity to use shares for acquisition and to grow independently.

The legal environment for companies going public varies considerably around the world. Securities class action lawsuits are one of the main legal concerns for firms seeking to list. Class action lawsuits can be both costly and damaging to an issuer’s reputation. There are ongoing legal risks associated with being listed, but the risk can be particularly acute during the IPO process as disclosures are made for the first time. The majority of securities litigation happens in the USA.

On the topic of ongoing costs, ESG requirements will represent an extra burden which will be difficult to tackle for SMEs.

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.

There is generally an appropriate balance between investor protection and the burden of cost for issuers in the EU market. If the EU has a broader political objective to have more retail investors and more EU investors playing the equity game we should not lower our standards. Prospectus and disclosure standards guarantee a high level of quality necessary for market players' trust.

In order to help companies having a better understanding of the IPO process, we would promote, at the EU level, to provide free educational support and law advice. As an example, there is the Tech Share program in France, created by Euronext which is a pre-IPO educational training programme that helps entrepreneurs to familiarise themselves with capital markets.

In addition, to make the EU public market more attractive, we should aim at reducing the imbalance of disclosure between private and public companies. If we impose to have a certain level of disclosure for public companies, we should think about applying the same standards to private companies on financial and non-financial factors such as ESG and remuneration policies, especially above a certain size.

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.

One of the major incentives of being listing is the ability to raise equity in a quick and efficient manner to finance growth internally or externally.

To come back on the idea of a balance between benefits and costs, the burden of compliance is acceptable for issuers if, as a counterpart of being listed, they know they can raise capital and debt much more easily if they are listed companies. It is absolutely essential that the ability to raise capital easily and quickly is available in all countries across EU and remove barriers that still exists for follow-on offerings.

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 specify to what other measure(s) you refer in your answer to question 6:

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

Other:
- The retail offer should be an option and not an obligation as it has a strong impact on the timetable of the IPO and the minimum days of the offer (eg France).
- We recommend tax deductibility on capital increase fees.
- We should apply the same standards to private companies on financial and non-financial factors such as ESG and remuneration policies.

Please explain the reasoning of your answer to question 6:

4000 character(s) maximum

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

We encourage flexibility in the use of dual-classes of shares where national rules or practices prevent this. The use of dual-class shares when going public should be allowed for all countries around the EU in the context of harmonisation and competition with other markets. We remind that in its listing review (December 2021), the FCA confirmed that under specific conditions, dual class shares will be eligible for the premium listing segment in the UK. The Oxera study reports that “another country where there has been increased use of multiple voting rights is the USA, with a rise in listed companies using dual-class share structures. Over 2008–13, there was a steep increase, from 2.8% of listed companies in 1985 to 16.5% of IPOs and 34.1% of IPO funds raised.33 The use of dual-class shares has been more common in the technology, communications and information services sectors (see Figure 3.2 below), and less common in traditional industries, such as machinery, retail and agriculture.This may be because technology companies tend to be newer companies run by entrepreneurs who wish to retain control and investors are more willing to buy shares for fear of missing the opportunity to invest in ‘the next Google’.”
Please refer to question 101 to 105.

Issuers should have entire freedom to request a dual listing if they want to and if it makes sense for them.

We should determine the free float requirements in the rules of the listing place and not in a regulation per se. It is up to the listing venue to fix its own rules. For having liquidity, we need minimum free float anyway so it is not the domain of regulation. The Listing Act could present a directive on free float requirements by removing the 25% minimum but should let local authorities the ability to adapt it to each local market. It is also a question of competition across markets.

Everything that demonstrates to potential candidates to IPO that investors are ready to invest in IPOs venues and the markets that promote pre IPO exchange forums between public investors and issuers in the private sector, will increase EU companies’ propensity to access public markets.

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 specify to what other factor(s) you refer in your answer to question 7:

2000 character(s) maximum

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

Answer 1/2

SME stocks can be more volatile and represent generally a more risky part of portfolios while providing diversification and potential for performance. It is not covered well enough by investment research. We should encourage research whether it is independent or not. There a two ways we could have more widespread research: sponsored research and make sure there are enough incentives for brokers to produce sponsored research.

In addition, we do not have enough specialised investment funds towards SMEs. If there were some incentives to direct AM funds towards SMEs, asset managers would have more scale to invest in this segment. We would like to direct savings of European retail investors through specialised investment funds that would benefit from tax incentives. Investing in SMEs needs a lot of expertise but it is very attractive in terms of diversification of portfolios.

We are in line with the recommendations from the Paris Europlace report published in June 2021, in particular:
- Promote even further, through life insurance and employee savings, investment in equity funds, by developing specific funds dedicated to the tech industry and European green companies,
- Support the dynamics enhancing employee shareholding, by promoting a wide diffusion of the benefits and parameters of the PACTE law among SMEs and ETIs,
-Taxation: further promote the development of retirement plans with individuals and foster investment in PERs,
- Promote the development of IPO funds by French AM and the creation of screening for primary transactions, in an attempt to allow French AM to participate more actively in primary bookbuilding.

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.

Answer 2/2

Competition from private equity has increased over the last years. The Oxera report mentions that “in recent years, there has been a significant increase in mutual funds participating in private markets and private equity has become more readily available for mid-sized corporations, with an increase in private equity investment. For example, the ratio of public equity to non-public equity held by euro area investment funds fell from almost 20:1 in 2015 to 6:1 in 2019. Infrastructure financing by direct equity investment in projects in Europe also grew by 58% in 2018, to $34bn. Furthermore, there has been an emergence of private debt markets, dominated by funds rather than banks. Many large institutional investors increasingly see greater benefits from direct equity ownership and financing of private companies due to greater control and lower demand for liquidity than is typical for public companies. Meanwhile, the cost of borrowing for firms in the euro area has declined to very low levels, making debt-based finance more attractive.”

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	€400k to €600k direct cost
Standard prospectus for non-equity securities	€10k to €50k
Base prospectus for non-equity securities	€300k to €500k
EU growth prospectus for equity securities	N/A
EU growth prospectus for non-equity securities	N/A
Simplified prospectus for secondary issuances of equity securities	N/A
Simplified prospectus for secondary issuances of non-equity securities	N/A
EU recovery prospectus (currently available for shares only)	N/A

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.

The costs of preparing a prospectus will vary greatly depending on individual circumstances: (i) whether the issuer has previously published a prospectus, (ii) the size and complexity of the issuer's business (including the sector and jurisdictions in which it operates), (iii) the need for an expert report, (iv) the extent to which it is possible to incorporate by reference (including information published at the same time or after the publication of the prospectus), and (v) whether the issuer has a complex financial history or not.

We do not think that these costs a major deterrent to be listed. The work of the Commission should not be focusing only on that aspect. Those costs correspond to the necessary value of disclosure and trust for the market. The costs and time required to prepare prospectuses ought to be proportional to the purpose of and benefits derived from prospectuses. Costs should be put in perspective with its benefits as discussed above.

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	◉	○	○	○	○	○

Please specify to which costs you are referring to in your answer to question 8.2 c):

2000 character(s) maximum

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

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

		More than 10% and less than	More than 20% and less than	More than 40% and less than		Don't know -

	Less than or equal to 10% of total costs	or equal to 20% of total costs	or equal to 40% of total costs	or equal to 50% of total costs	More than 50% of total costs	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 specify to which costs you are referring to in your answer to question 8.2 e):

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 8.2:

5000 character(s) maximum

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

We have answered in the column ‘don’t know / no opinion / not relevant’ for IPO, right issues and convertible bonds given the wide variety of situations.

The costs of preparing an IPO are material for the issuer, particularly SMEs, but the aim of reducing those should not erode investor protection. It also depends on the degree of preparation of the issuer prior to the IPO.

On top of the above-mentioned element, we should consider market consultants which are very useful to provide market data as well as other advisors’ costs such as the IPO advisor and sometimes, the IPO readiness consultants. Expert reports are often necessary (oil & gas, intellectual property, proforma).

IPO prospectus (see slide 16 in appendices):

- IPO advisors €1m to €3m
- Auditors and comfort letters: around €600k
- Legal: including the cost of 10b5, for the advice, drafting of the documentation, issuer's counsel from EUR600k to EUR 800k and underwriters' counsel from €350k to €450k.
- Competent authority costs: €5/5k for the AMF
- Market consultants: €15/100k

Rights issue prospectus:

- Costs are lower than for an IPO, notably when the issuer is using the URD principle such as in France. At the time of issuance, only information specific to the offer is published, which shortens the time period required for review of the prospectus with market authorities. We are a strong advocate of making wide spread use of the French system throughout the EU as it is very cost effective and very convenient as detailed below.
- No advisor costs
- Less legal fees (underwriters' counsel circa €150k)

Convertible bonds:

- We have not been using prospectus in convertible bond issuance for 10 years. Convertible bonds are sold to qualified investors only in most of the transaction and listed on alternative markets with no need of prospectus. It is very easy, convenient and not costly. It is one of the markets that is only available to listed companies. This system has been working very well and satisfies investors in terms of disclosure.

EMTN

The costs of setting up an EMTN programme through the drafting of a Base Prospectus and the underlying agreements vary depending on the more or less complex structure of the issuer(s) and the programme itself. Still, for a vanilla and investment grade issuer, the costs of the legal counsels to the arranger who hold the pen on the documentation would be around €70 to 90k for an all-in cost (including the external counsel of the issuer) of €120k to 150k. The costs of a programme are generally amortised over time through the money saved thanks to the simplified documentation via Final Terms.

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 specify to what other section(s) you refer in your answer to question 9, and explain your rating:

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 9:

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

All the sections defined by the prospectus directive have proven to be very relevant. They are in line with what is asked in other jurisdictions especially in the US (which generally sets the standards). This structure of sections is now widely used on a worldwide basis.

By nature, drafting those sections is cumbersome because of the high expectation that they must be carefully written in order to build confidence in the market. It is one of the key element of having a clear disclosure document. The risk factors section is especially important as it is the main liability shield.

However, the market would benefit from greater clarity about what is expected in terms of the due diligence and disclosure on two sections: “profit forecast or estimates” and “working capital statement”. We have experienced a wide diversity of interpretations by local regulators in the EU on those two sections. We would benefit from harmonisation, notably on the working capital statement section.

In addition:
- The preparation of proforma account for 3 years notably for spin-off tend to be complicated;
- ESG aspects should be taken into consideration in the future without adding complexity.

Plain English rules applicable in the US should be considered in the EU (prefer refer to question 43). The use of jargon and acronyms should be avoided.

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.

For the reasons explained above (that is to say the importance of quality and appropriate disclosure), we do not think that the costs saved by drawing up a simplified prospectus such as the EU Growth Prospectus are relevant in most cases. In our experience, EU Growth Prospectuses have been rarely used as investors expect an appropriate level of disclosure and underwriter wish to use standards prospectuses for equity securities.

The reasoning would be the same for debt securities, bearing in mind that disclosure is already simplified for a wholesale non-equity prospectus.

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.

The EU Recovery prospectus has been an innovative concept. However, in our view, it has structural deficiencies. For instance, the limitation of size to 30 pages for the prospectus and 2 sides for the summary impose artificial constraints in explaining complexities associated with such capital raises, in particular with respect to large issuers with a complex group or business structure.

The situations in which the EU Recovery prospectus can be used are generally complex as they involve often a restructuring, a recapitalisation and sometimes a significant change in the structure of ownership. A simplified prospectus such as the Recovery prospectus does not meet the expectations of investors and shareholders in terms of disclosure, hence also raising the question of the liability for the issuer and the investment banks that underwrite the offer.

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

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.

We believe that the exemption '1' may be more attractive for issuers and financial intermediaries involved to use in the placement of the securities if the threshold of 150 natural or legal persons would be increased to 300. As a matter of comparison, in Switzerland, the Federal Act on Financial Services (FinSA) provides for an exemption to publish a prospectus if an offer to the public is "addressed at fewer than 500 investors".

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

2000 character(s) maximum

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

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

2000 character(s) maximum

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

We are in favour of a fast-track approval process for frequent issuers who maintain an annual URD, which is a form of shelf registration process comparable to what is done in the US. Regular issuers of securities have the option of drawing up a URD which outlines issuer-level disclosure such as legal, business, financial, accounting and shareholding information as well as providing a description of the issuer for that financial year. The approved URD is speeding up the process of preparing a prospectus and facilitates access to capital markets in a cost-effective way. It is widely accepted in France and the experience is positive.

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

Please select as many answers as you like

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

We would be open to consider an 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. Indeed, we consider it inappropriate to deprive the market of a prospectus in cases of capital increases with a significant dilutive effect, which usually occur in circumstances when 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.

Unless there is a material event or transformative transaction that changes the profile of the company, we question the need for a prospectus for securities giving access to the share capital of the issuer crossing the 20% threshold, as long as the issuer is a listed company that satisfies the periodic and permanent on-going disclosure obligations.

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))
- [x] iii. Other exemptions

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

2000 character(s) maximum

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

Other regimes, such as Australia, permit large share capital raises without the production of a prospectus in reliance on existing ongoing disclosures and the publication of a cleansing document at the time of the capital raise. Please refer to the comment of AFME on the Australian “rapid system”.

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.

We agree with the comment made by the AMF on this question: “The AMF is in favour 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."

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.

We agree with the comment made by the AMF on this question: “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 scrutinised, 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 Prospectus regulation 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.

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)**	[20 000 000]

Please explain the reasoning of your answer to question 13.1:

2000 character(s) maximum

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

We would welcome an increase of the €8m threshold below which no prospectus is required for an offer of securities to the public and a harmonised basis throughout the EU.

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

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

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

2000 character(s) maximum

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

Please explain the reasoning of your answer to question 13.2:

2000 character(s) maximum

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

We believe that it is imperative to have a consistent regime across all member states to ensure certainty and provide a level playing field. The new Listing Act should set a uniformed limit across the EU. This amount could be increased to a higher level, potentially with a maximum of €20m.

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

Question 15. How should such a limit be defined?
Please distinguish between a standard prospectus for equity and a standard prospectus for non-equity securities and clarify if you would consider any exceptions (e.g. complex type of securities, issuers with complex financial history).
Please explain your reasoning:

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

We are not opposed in principle to limit the pages of the standard prospectus. We consider that there are always way to simplify how we draft the prospectus. It would be a very good discipline for everyone to have such limitation. The turnaround time for reviewing drafts and discussing the content of a prospectus would be much less to the extent it does not compromise the quality of the disclosure. The Oxera report states that prospectus length varies by member state — for example, the median prospectus length was around 800 pages in Italy compared with around 400 pages in Germany.

Since we moved to electronic transmission of prospectuses, we have noticed an increase in the prospectus length.

It could be in the mandate of ESMA and of local regulators to monitor that the prospectus is digestible and easy to read (clarity, vocabulary, non-repetition). Clarity of disclosure would benefit from being reasonable on the number of pages of a prospectus.

There is debate on the topic in the industry but we believe that there is a real need for more clarity and less pages in IPO prospectuses. We will not oppose a decision on this regard.

The limit should be set at 150/200 pages for IPO prospectuses and bonds. Font size should also be defined.

A comparison could be done with regulations on notices for medicines. For instance, all medicinal products placed on the EU market are required by EU law to be accompanied by labelling and package leaflet which provide a set of comprehensible information enabling the use of the medicinal product safely and appropriately.

For structured securities, maximum page number for prospectuses is not relevant and therefore such limit should not be applicable.

Prospectus summary

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

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

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

Incorporation by reference

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

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

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

Please explain the reasoning of your answer to question 17:

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

We think there could be more flexibility given to issuers as regards the list of documents to be incorporated by reference possibly to permit future annual reports, semi-annual reports or interim financial information to be incorporated by reference.

Incorporation by reference is already widely used in most European countries. The list of information that can be incorporated by reference could be expanded.

It should however be noted that there is a desire by underwriters to clearly control what is within their area of responsibility with regards to liability on a prospectus. This topic must therefore be considered in relationship with the point on liability on prospectuses and disclosure.

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.

For wholesale non-equity securities, market participants and issuers have taken advantage of a simplified /lighter disclosure regime. Credit markets are mainly driven by wholesale investors. DCM generally do not address the retail markets which justifies the current level of disclosure on the activities of an issuer. This is particularly true in jurisdictions across the EU where the URD is not commonly used.

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.

It could benefit the structured products market segment to have lighter prospectus or retaining a certain flexibility on that regard. However, we do not believe such measure would change the fact that debt products are typically not distributed widely in the retail market in the EU except in certain jurisdictions (Belgium).

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.

N/A

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.

We believe that the EU Growth Prospectus reduces the disclosures that are expected from the investors. If market participants want to retain the confidence of investors, we should aim at improving the quality of the disclosure but not alleviating it. Expectations from investors and liability aspects for investment banks proved this type of simplified prospectus does not fit the purpose. The EU Growth prospectus is probably too light to provide the necessary level of information for investors.

Question 19.1 How could the regime for SMEs be amended?

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

iii. Instead of a prospectus, another form of admission or listing document should be introduced

iv. Other

If you selected option 19.1 (ii), which MTFs, including SME Growth markets, in the EU do you consider having the most appropriate admission or listing documents? Please explain your reasoning:

2000 character(s) maximum

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

Typically the rules of Euronext Growth set adequate standards.

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

2000 character(s) maximum

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

Existing standard prospectuses for MTF now generally strike a proper balance between investor protection and disclosure.

We could therefore consider for SMEs a different type of disclosure document, simplified compared with a full-blown equity prospectus. Such simplified prospectus would be subject to the specific rules of such SME Growth Markets.

To foster access of SMEs to European Growth markets by alleviating the associated regulatory burden with respect to Prospectus, we propose to remove the obligation to draw up an EU Prospectus in case of offers of securities to the public, by companies whose securities are already admitted to trading on SME Growth Market. Please refer to question 22.

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.

Since the pandemic, the actual physical production costs of prospectuses have decreased as the transmission is now widely done electronically. Covid has accelerated electronic format practices. The obligation to print the prospectus should be eliminated to encourage the drawing of the prospectus in electronic format. There is hardly any request for printed documents and, hence, no need to keep an obligation to provide a prospectus in printed form. Such requirement appears outdated and only results in unnecessary cost and administrative burdens.

This fact is even more salient as EU law is progressively introducing machine-readability formats for both financial and non-financial reporting and as the ESAP project will ensure the accessibility of in-scope information in a digitalised format.

In addition, it is in line with ESG initiatives as it reduces paper. It is also helpful in terms of time management of the execution of the transaction.

However, we have noticed that electronic format also tends to be inflationary in terms of the length of prospectuses. Please refer to question 15 above.

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.

We recommend AMF practice in accordance with Regulation (EU) 2017/1129 to be the norm in term of secondary market operations.

When there is no URD in place, the obligation to publish a prospectus should not be lifted. Some elements of the prospectus could be lightened. Summary could be left outside the regulation and at the hand of the issuer.

The key point is to alleviate the process for a secondary market transaction for issuers which are already listed and to create in the EU a clear status of “frequent issuer” as it exists in the US.

It would be helpful for structured products if the Prospectus Regulation would grant an exemption to publish a prospectus for public offers of non-equity securities that are fungible to existing non-equity securities issued pursuant to a valid base prospectus with no maximum percentage of the total amount of outstanding existing securities. This type of exemption would particularly fit the issuance scheme of exchange traded securities, certificates and warrants, issued pursuant to base prospectuses compliant to the Prospectus Regulation as supplemented, if applicable, where a few economic features change at the time of the issuance of the fungible securities (size of the issuance, number of securities issued, issue price). It is to be noted that exchange traded securities, whether listed on a regulated market or on a MTF, and offered to the public benefit from a PRIIPs KID which is refreshed on a daily basis and available on the issuer’s website and from the MiFid product governance. This new exemption would ease the issuance process for frequent issuers of market standardised products while other appropriate means of information are at the disposal of potential investors prior to the purchase of the securities.

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

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

Please explain the reasoning of your answer to question 23:

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

We have not experienced a wide use of the EU Recovery prospectus so far expect in two occasions in France. The EU Recovery prospectus is too limited in terms of number of pages; as a result, the disclosure is too minimal. Recovery prospectuses are typically meant for issuers in financial distress seeking to raise new funds, in particular equity. We should therefore have a detailed view of the recovery plan into the prospectus as well as diligence on several aspects of the business model that cannot be covered within 30 pages.

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.

Please refer to question 11 & 23.

An assessment needs to be made to understand why the EU Recovery prospectus has not been useful.

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.

We believe that the current regime is proportionate and does not need to be amended at this stage. Civil liability is deeply rooted into national laws and hence harmonisation across the EU is a project very much tied to the creation of a European Civil code.

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.

We agree with the proposal of the AMF to put on the agenda of the EU Commission a harmonised regime on liability across the EU as it exists in the US.

We believe that the current liability regime attached to the summary could be adapted and alleviated somewhat as the regulation forces issuers to stick to a mandatory format (number of pages). The current prospectus legislative framework provides that: "no civil liability attaches to any person solely on the basis of the summary contained in a prospectus unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities". The latter part of the sentence is particularly tricky when considering a more limited and condensed summary. So if the liability linked to the summary could be alleviated and proportionate to the somewhat reduced format of the summary by removing the last limb of the sentence.

In the case of a legal person, the maximum administrative pecuniary sanctions is at least of EUR 5 000 000 or 3 % of the total annual turnover of that legal person. AFEP member companies consider that these sanctions are inappropriate. The most effective sanctions under the prospectus regime are either the suspension or the prohibition of the offer and/or admission, measures that can have significant and dramatic consequences for a company. Imposing a pecuniary sanction based on a percentage of the turnover of the company would be disproportionate.

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

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.

We do not think this topic is actually relevant when an issuer decides to go public and to list its securities

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 amount of administrative pecuniary sanction should be proportionate, but should not be decreased to a meaningless level. Otherwise this would seriously erode the confidence of investors.

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.

See above question 28.

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

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

Question 30.1 Please specify for which requirements:

4000 character(s) maximum

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

When you look at article 38.1, you see different requirements, all of them are not of an equal import and may not be required to be sanctioned with a criminal offense. While we recognise that infringements with an intent to harm the integrity of the market or caused by a negligence that is way below the standard of care we have to uphold, certain technical infringements should not be sanctioned through a criminal process. An administrative sanction could be way more efficient.

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.

In the EU, we still have a large diversity and divergence of interpretations and market practices. We consider that there is still a lot of work to do in terms of harmonisation of market practices with the objective of providing unified access to capital markets across the EU.

Main material differences in interpretation are on the following topics:
- Guidance and forecasts;
- Working capital table;
- Related party transactions.

Having overtime one single authority for approving prospectuses should be the ultimate objective of the CMU. Such authority should naturally be ESMA.
In the interim, there should be an explicit mandate given to ESMA that it is in its role to ensure harmonisation and to remove existing diverging interpretations, this for the ultimate goal of efficient capital markets in the EU and competition.

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.

We welcome the proposal to reduce the minimum period between the date of publication of the prospectus and the end of the offer from six working days to three working days. The six working days represents a difficulty and a heavy 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. Three working days. A duration of three working days seems adequate to address the difficulty identified by issuers while preserving the protection of investors, who can process information and orders, both now widely digitised, over a sufficient time.

This will help incentivising issuers to open the offer to retail investors as a reduced timeline will help them finish the book-building process swiftly and finalise the offer at the earliest.

Indeed, we have seen issuers not including retail offer just because of the six working days minimum period as they wanted to have flexibility to end the book-building quicker.

Potential investors including retail are now able to react quickly and to be contacted swiftly through all sorts of electronic messaging. The six working days period used to be well adapted when most of the communication was done by post and by telephone but there are now a lot electronic ways to contact clients quickly.

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.

Some structured products are very volatile and we cannot guarantee a pricing during a minimum period of days. There are very few retail distribution of debt and securitisation instruments and we do not wish to have more rigidity on those practices, which have to enable very quick to market offers given the market volatility of those products.

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

Question 34.1 Which national competent authority should be the relevant authority due to approve the prospectus?

For all issuers established in the Union, whatever the securities to be issued, the national competent authority of the Member State where the issuer has its register office

For all issuers established in the Union, whatever the securities to be issued, the national competent authority of the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the

choice of the issuer, the offeror or the person asking for admission to trading on a regulated market

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

Please specify what you mean by 'other' in your answer to question 34.1:

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 34:

2000 character(s) maximum

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

A European centre of excellence at ESMA is going to bring multiple benefits across the whole range of issues. Please refer to question 31.b. This would also avoid a game of "local regulator" picking to select the regulator that may be less equipped or too lax.

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
- [x]

The costs of regularly updating, supplementing and filing the URD are not outweighed by its benefits

- [x] The URD content requirements are too burdensome
- [x] 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.

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 opportunity to rely on the existing URD regime of the Prospectus Regulation is widely applied in France and considered to be efficient and adequate. This allows listed entities to comply with various obligations under French laws, including pursuant to the prospectus regime, through the publication of a single document. This document satisfies the requirements for the preparation of both annual reports and the URD, which facilitates the offering of securities throughout the year. At the time of issuance, only information specific to the offer is published, which shortens the time period required for review of the prospectus with market authorities.
We consider that the French experience is showing that it is adapted and that it gives flexibility. Aligning it across the EU would bring material benefits for the IPO market process and subsequent markets offerings.

In other EU Member States, the annual report is separate from any registration document required in connection with a securities offering. Therefore, additional work and expense is required to produce a URD in such jurisdictions (in addition to work required for the production of the annual report). As companies do not typically issue equity shares requiring the publication of a prospectus on a regular basis, companies do not usually see the merit in annually preparing a URD for shares.

We consider that over time, EU regulation should make it compulsory to have a URD. The objective would be to create a more unified market like in the US and it would give more flexibility to the issuers to raise equity more easily. The initial publication of the URD is a big step forward. However, updating the information every year is not more cumbersome than updating an annual report.

Furthermore, if we consider machine reading and artificial intelligence, there will be ability to make cross references in a standard fashion across sectors and companies throughout the EU. Information will need to be more and more harmonised so that machines can read natural language. In addition, for investors, it

would be so much better to have unified URDs in order to have always all the information in the same setting across companies in the EU.

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 URD should include sufficient information to allow listed entities to carry out primary and secondary offerings, on the equity and debt markets. Its content should therefore be determined by reference to the highest standards of information.

Based on our experience of the introduction of the URD in France, we think that the standards are just at the right level and we do not see lowering the standards. This would not help a wide acceptance benefits of the URD across all EU jurisdictions.

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.

Waiving the approval requirement after the first filing would make the URD more attractive. It would be below the way it works in France (two years) already which we consider as a good practice.

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 scrutinised 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.

Issuers in France are accustomed to 2 years. The key is to spread the use of the URD across the EU. Therefor if one year makes it acceptable in all countries, we are in favour of such change.

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.

We agree on that regard with the comment made by the AMF on this question:

"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 URD 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.

The quality of disclosures in registration documents, in particular when they are only filed with the competent market authorities, may be less satisfactory. To the extent that a listed entity is offering securities in the market, it is important that applicable regulations are fully complied with and that an accurate and complete information is provided to the market."

However, with regards to the passporting of prospectuses, where the relevant NCA has already reviewed and approved a prospectus (or any of the elements constituting the prospectus), such prospectus (or its component) should not be subject to any additional review by the "passported" NCA.

In the event where a universal registration document (and any amendments thereto) has been approved by a competent authority and passported (notified) to the home member state authority for the prospectus approval in another jurisdiction, then said universal registration document and any amendments thereto shall be exempted from the scrutiny and approval process of the home member state authority in that other jurisdiction. This is particularly relevant for non-equity securities, i.e. debt and structured products. We believe that this principle is hardwired in the 2nd paragraph of Article 21. 3 of the Prospectus Regulation: "The competent authority of the home Member State for the prospectus approval shall not undertake any scrutiny nor approval relating to the notified registration document, or universal registration document and

any amendments thereto, and shall approve only the securities note and the summary, and only after receipt of the notification.”.

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.

It is important to have the ability to publish a registration document only in English and in the local language (without any obligation for the latter) on the condition that plain English is the rule and that it is within the mandate of the authority reviewing it to make sure it is written in accessible level of language. This is all the more important as English is not the mother language in the EU.

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.

We agree on that regard with the comment made by the AMF on this question:

“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.”

The ability to have a registration document approved or filed on annual basis facilitates the completion of

subsequent transactions, whether in the equity or the debt market.
A registration document is also a way to group all the disclosure obligations applicable to one issuer, under local regulations or under the EU regulations.
Finally, it allows listed entities to provide updated information to the market, in particular to retail investors, on a regular basis and favours an exchange with all investors on a regular basis. The registration document regime needs to be promoted and further explained to listed entities to ensure its full dissemination and comprehension within all jurisdiction of the EU on the basis of the very positive and wide accepted system that exists in the French market.

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.

Despite the laudable investor protection objective of this provision, the resulting obligations still represent a significant challenge for both producers and distributors of financial instruments.

This places an obligation on intermediaries to reach investors that the majority of them is unable to meet. Depending on the volume of issues, the chain of intermediaries may include a greater or lesser number of intermediaries. In this context, it has been proven extremely difficult to reach individually all final investors in a timely manner to provide them with the relevant information to exercise their rights. To offer a more adequate investors protection, we believe that the obligations in this respect should be the same as those for the acceptable means of publication of the prospectus or other types of regulated information, i.e. "the prospectus shall be made available to the public by the issuer (...) at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved". The prospectus being «deemed available to the public when published in electronic form on any of the following websites (...)" (PR3, art. 21).

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.

As the current wording places distributors at potential risk of legal and compliance defaults that could lead them to limit their participation in public offerings of securities, we believe that it would be appropriate to delete this obligation for intermediaries to contact investors on the day or by the end of the first working day of the publication of the supplement.

We believe that the obligations in this respect should be the same as those for the publication of the prospectus.
Publication and dissemination of the supplement by the appropriate means of communication should be sufficient.

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.

This option should be offered to competent authority but should not lead to have third party countries taking an undue advantage and by-pass EUR issuers.

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.

US and French shelf registration systems, which are widely used for equity issuances, are well accepted. European regulators may wish to consider mimicking the latter system in the EU. If successfully amended to promote wider usage, this would significantly reduce the lead time required to launch certain transactions (in particular, secondary offers) and the associated costs.

Prospectuses should be written in plain English and it should be the mandate of the national regulators to make sure that this is the case and that there is no jargon nor acronyms. The disclosure document should be easy for a regular person to understand. In 1998, the SEC published a guide, a Plain English Handbook: “How to Create Clear SEC Disclosure Documents”, showing securities lawyers and companies ways to reduce legalese. Also in 1998, the SEC adopted a rule requiring the use of plain English in certain sections of prospectuses. We should consider having a similar handbook in the EU especially as English is not the mother language in EU-27.

Work should also be done to encourage graphs and visual diagrams to provide better access to synthetic information.

We should be extremely careful about ESG reporting rules and disclosure. We note that there will be an increased level of complexity regarding ESG reporting and disclosure that will need to be taken into account and may necessitate scrutiny to make sure concepts are well-understood and measures done in a uniform way.

Machine reading and artificial intelligence are developing fast. Those tools will allow to have standards across sectors, to allow better comparison of companies and extract data in a consistent manner. We are just at the start of the use of technology and machine reading for the formatting of information and design it. In the future, this may lead to less costly research and better access to data bases. The EU should encourage investing in these tools by having a data lake for all information contained in published URDs and prospectuses, by enabling APIs on the websites of regulators for data providers.

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.

The legal framework relating to stabilisation operations under MAR and the applicable technical regulation are quite heavy and there should a discussion around ways to simplify them while preserving an effective information to the market and its integrity:
- Market participants could expect more clarity on the entities responsible for the stabilisation operations and their disclosure. Issuers should be more clearly designated or involved in all cases as they stabilisation operations directly affect the price of their shares. Issuers should ensure the effective dissemination of the information by collecting it from the stabilising agent;
- The current legal framework includes a reporting to the relevant NCA and a separate disclosure to the market through certain approved aggregator of public information. The timing of such reporting and disclosure diverges slightly in the regulation. They should be harmonised and simplified to avoid redundancy.
- More clarity on the volumes that can be traded: the stabilising agent should not be limited to the extent it is able to justify each of the stabilisation trades.
- The timing itself of the disclosure should be carefully thought. There is currently an intentional delay between the actual stabilisation operations and their disclosure (T+[5] disclosure). The objective of full transparency on the stabilisation operations through an immediate disclosure of the transactions may defeat the very purpose of stabilisation operations ie to avoid swings in the share price at IPO that would harm the confidence of investors. This is particularly true if there is a high pressure on the share price commanding an intense stabilisation activity whereas hedge funds would take advantage of such information to intensify the selling pressure.

We agree with the comment made by AFEP on share buy-back programmes:
Under Article 5(3) of MAR, in order for its buyback programme to benefit from the exemption from application of certain provisions of MAR, the issuer must report each transaction relating to the buy-back programme not only to the National Competent Authorities (NCA) of the trading venues on which the shares are admitted to trading but also to those of each trading venue where they are traded.This requirement is burdensome for issuer and in its final report on the review of MAR dated 23 September 2020 (ESMA70-156-2391), ESMA put forward different options to simplify the reporting of share buy-backs. Afep member companies consider that it is necessary to modify the reporting mechanism under Article 5(3) of MAR and support option 2 put

forward by ESMA (“Reporting to the NCAs of the jurisdictions where the issuer requested admission to trading or, where relevant, approved trading”). Option 2, in practice, would result for most Afep members in reporting to only one NCA and would be consistent with the criteria for determining the Home Member State (and the Home NCA) under the Transparency Directive and the Prospectus Regulation.
Stabilisation operations are traditionally effected through the use of an over-allotment option (“green shoe” clause). This option could fall technically within the scope of the SFTR framework and trigger additional reporting obligations which we consider not relevant for stabilisation operations. The MAR framework contains sufficient reporting and disclosure obligations to the market such that another reporting under SFTR should not be deemed necessary and would be useless. In addition, the somewhat short period of time during which stabilisation operations can be performed and their very purpose makes a reporting under SFTR irrelevant.

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.

Any attempt to amend the current legislative framework would need to consider the practice and the timing for the request to avoid setting undue constraints while preserving market integrity. There may have been abuses in the past. It should be noted that the moment of submission of the request for admission may vary and be effected well in advance of the first day of trading. Setting a trigger to early may have the unwanted effect of creating additional constraints for a too long period.

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.

Guidance from ESMA would be sufficient. Market participants have learned to work with such definition. While we recognise that such definition is quite broad in particular as interpreted by the ECJ, changing now the existing framework would appear counter-productive and jeopardise the continuous improvement of the practices.

We therefore agree with AMF's comment:

"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.

As stated above, we believe we should be extremely careful in considering such a material change to the current legal framework under which issuers and market participants are operating. They are now organised internally through compliance processes, committees and have hired professionals to comply with the MAR provisions applicable to inside information. Changing the current legislative framework would add legal uncertainty. Stability is essential on that regard.

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.

The concept of material event may not comprise events or situations that would be legitimately seen by investors as information having a potential impact on the price of the shares. Expected benefits from such a change are not entirely obvious.

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 are inclined to favour a flexible way to provide guidance to the market participants.

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.

Credit markets and credit investors focus on the credit-worthiness of issuers, therefore not all events have an interest for them or impact the price of the bonds. Still they may trigger certain disclosure/reporting

obligations issuers have to monitor (hence creating an unduly burden).
Not possible to quantify.

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.

EUR 5K is a very low threshold that is not meaningful. It leads to multiple reporting that do not give clarity to the information necessary to support market integrity and expected by investors. It can be increased.

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

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

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

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

Please explain the reasoning of your answer to question 51:

2000 character(s) maximum

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

We would suggest to harmonise as much as possible and therefore having a uniform threshold throughout the EU.

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

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

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

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

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

Please explain the reasoning of your answer to question 52.2:

2000 character(s) maximum

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

We are not replying on an issuer point of view.

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.

N/A

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.

N/A

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

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

NCAs seem the relevant repository for such a reporting and disclosure obligations given their nature.

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.

Our answer is "not relevant".
We would however note that the proposed amendments are heading in the right direction i.e. to consider legitimate or non-conflicting situations.

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	○	○	○

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.

It is difficult for us to assess precisely and quantify but we can estimate them and figure out that the costs are around 50% to 100% the annual cost of employing an internal compliance/lawyer specialised in that field.

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 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.

We support ESMA's recommendation in its MAR Review Report to allow issuers and persons acting on their behalf (notably financial intermediaries) to include in their own insider list only one natural person per external provider through which they access to inside information.

Furthermore, we believe that the insider list regime should be alleviated regarding the content of the lists and some mandatory fields on personal data of the included persons. The information required in those fields could rather be transmitted to the supervisors upon request if needed.

In addition, the insider list regime should be completely repealed for issuers listed on SME growth markets.

2.2.7. Market sounding

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

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

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

iii. and maintain records of the disclosure

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

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

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

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

How would you further amend the market sounding regime?

Issuers listed on SME growth markets:

4000 character(s) maximum

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

The market sounding regime is known to be complex and poses strict constraints on market participants for the sake of market integrity. Notwithstanding those difficulties, we reckon that the current functioning of the market sounding regime constitutes a necessary complexity that is required for the proper safeguarding of market integrity.

While recognising the importance of market integrity, we are not sure we want to fully align with the remarks of AMF. Market soundings are a heavy process, with sometimes no more added value than NDAs, sound internal compliance policies and common sense. There are certain situations in particular in the context of IPOs where market sounding regime is not well adapted. In addition see developments regarding HY transactions for which this is very important.

We would further amend the market sounding regime as follow:

- Simplify cleansing requirements in particular after the deal is public (there should be no requirement to notify each investor);
- Simplify the formal framework of the market sounding exercise in particular by removing the requirement to take note, simplify the audit trail as long as there is an adherence to the confidentiality obligation and the undertaking to comply with securities laws and not use MNPI.

Issuers listed on regulated markets:

4000 character(s) maximum

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

Issuers on other markets (MTFs):

4000 character(s) maximum

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

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.

Given the context of pure institutional placement and the existence of compliance procedures at the level of the investors, the exemption could be extended or, at least, the current regime should be simplified to the signing of a form of NDA.

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.

There may be circumstances where a technical or unintended breach of a disclosure obligation under MAR happens, for example in the context of stabilisation operations. The current punitive regime would be too stringent in that case.

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.

We believe this is not a driving factor when an issuer considers to go public or not.

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.

Sanctioning natural persons will be a deterrent for companies generally, executives will be concerned by such potential threat.

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	◉	○	○

For issuers listed on SME growth markets: please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 of MAR:

	Art. 16	Art. 17
Current maximum sanction: 2 500 000 EUR or the corresponding value in the national currency on 2 July 2014		
Current maximum sanction: 2% of the total annual turnover according to the last available accounts approved by the management body		

For issuers listed on SME growth markets: please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 of MAR:

	Art. 18	Art. 19
Current maximum sanction: 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014		

For issuers listed on other markets: please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 of MAR:

	Art. 16	Art. 17
Current maximum sanction: 2 500 000 EUR or the corresponding value in the national currency on 2 July 2014		
Current maximum sanction: 2% of the total annual turnover according to the last available accounts approved by the management body		

For issuers listed on other markets: please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 of MAR:

	Art. 18	Art. 19
Current maximum sanction: 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014		

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

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

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

Issuers listed on SME growth markets

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

Issuers listed on other markets

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

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

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

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

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

Please explain the reasoning of your answer to question 67:

2000 character(s) maximum

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

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

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

Art. 18	○	○	○
Art. 19	○	○	○
Art. 30(1) first subpar. letter (b)	○	○	○

Please explain the reasoning of your answer to question 68:

2000 character(s) maximum

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

2.2.9. Liquidity contracts

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

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

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

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

Please explain the reasoning of your answer to question 69:

2000 character(s) maximum

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

The regime of liquidity contracts in the French market functions well and plays a key role in providing liquidity to investors and a commitment of corporate access for issuers, especially for SMEs. It is an essential part of the ecosystem and must be preserved as it is. The regime should not be amended at the risk of making it more difficult to offer liquidity contracts. On the contrary, this is a recipe that works and could potentially be expanded in other countries as an effective tool for helping listed SMEs to be provided support for their listing, for the liquidity of their stock and to be visible for investors.
A change to alleviate the burden of compliance requirements that may not be seen as essential should be welcome. With this perspective, removing such obligation seems to be a move in the right direction.

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.

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 capitalisations. 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.

The current scope of application of the relevant MAR provisions is too wide. There is no rationale for including sales memos or wholesale information flows sent systematically by sales to some clients. That kind of information is most of the times purely factual. More generally, the scope should be limited to information effectively distributed on a large scale. The current regime is heavy and costly, without added value for clients (especially wholesale) who do not consult the disclosed information relating to this obligation.

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.

MAR makes it very difficult for arrangers of debt securities to get high quality feedback from investors in advance of launching a full offer of securities because many (potential) investors are unable or unwilling to be wall-crossed during the early marketing phase of a (potential) transaction, in the process known as 'pre-sounding'. This practice in the HY market is very important because it allows underwriters to test risk appetite with investors in a limited and controlled manner. Pre-sounding enables underwriters and issuers to adjust the terms and structure of a transaction if it proves to be unappetising to the potential investors in these securities. Such practice is much less common in the Investment Grade market, as most securities are sellable with an IG rating (without financial covenants) and it is normally only a process of 'price discovery' rather than an in-depth discussion around capital structure. In the HY market, by contrast, differences of opinions in the appropriate financing structure for a credit including leverage and/or senior / junior tranching, commercial terms, financial covenants and of course pricing are open to a wide range of possibilities that can in practice make all the difference in the viability of a transaction and reduce therefore the execution risk. Most importantly, these same constraints do not exist in the US HY market, which is why many transactions for lower-rated, smaller companies or risky credits gravitate towards a market that offers them the opportunity of 'test driving' commercial terms with select investors without launching a full offer to the market, that may or may not appeal to end investors. This includes European companies that would, in theory, be much more natural issuers of Euro rather than US$ denominated securities. We believe that MAR, which makes it extremely complex and cumbersome for an investor to be wall-crossed (and eventually sanitised), disadvantages (particularly smaller) investors without large teams or resources and who really cannot afford to have one of their valuable analysts put 'off-side' by a pre-sounding process. They consequently just refuse to be wall-crossed. This is an important point of competitiveness between the EU HY market and the US HY market.

Similarly, the market sounding regime should be reconsidered or at least simplified for EuroPPs and generally vanilla bond issues as it may prove not relevant or too cumbersome hence not favoring an efficient functioning of the market.

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.

This would give clarity to the system and provide with less discretionary decisions.

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.

Issuers should have the entire freedom to request a dual listing if they want to have a dual listing and if it makes sense for them. In those cases, we should aim at eliminating/minimising duplication of governance /disclosure obligations.

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.

If an issuer has a dual listing, it should not be subject to a redundant set of obligations (reporting or compliance obligations). The initial listing should prevail on the other with a notion of "primary listing" and "secondary listing".

To note that, the situation of a SME requesting a listing on a second SME growth market is not common in our markets and in our experience.

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.

It is up to an issuer and to its advisors to decide whether a secondary listing or a secondary trading venue is going to be helpful for them. If it is done and makes sense, it should complies with the market place in question.

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.

We consider that this alleviation has had no impact on the availability of research for small and midcap companies as there is no way back in terms of unbundling. Unbundling is now operationally implemented for asset managers and brokers and cannot be reverted.
We believe that for SMEs in particular, sponsored research as a product has been very helpful and needs to be further encouraged.

From a buy-side point of view, our asset management side does not think that MIFID2 rules on research have had too many detrimental effects, particularly on SMEs, on the availability and quality of research on EU companies for large institutional investors. Although some concentration took place in the Research industry globally, large asset managers did not notice too much of a drastic decline in the research offering nor a deterioration of its quality. The offer as a whole remains adequate. The decline in the number of research analysts has been around 7% since MiFID 2 according to recent academic research and probably at the expense of lower quality analysts.

To note that there is not supported academic evidence that more research generates more liquidity and more investor appetite. The fact is that research coverage goes with a commitment of corporate access and investor confidences. In that sense venues can play an active role by promoting multi-broker conferences such as it has been done with STAR in Italy.

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.

On the client side, with MiFID 2, end-clients have benefited from an increased transparency and protection with the unbundling of research. The important point is to find within the context of MiFID 2 an economically and viable way of financing research with strict rules flagging they are issuer-paid. Sponsored research has had a phenomenal take-up and proves to be very useful for SMEs.

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.
It should clearly mention the link between the issuer and the analyst. This research material should be governed by a code of conduct 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 76.1 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.

We believe that issuer-sponsored research falls within the definition of an acceptable minor non-monetary benefit as defined by Article 12 of the Delegated Directive (EU) 2017-593.

Qualifying issuer-sponsored research as a minor non-monetary benefit, is a way to make issuer-sponsored

research a useful tool for the SMEs market.

We also want to make sure to protect the “PDIE” (pre deal investor education) research within the context of IPOs. This research should continue to be made available to investors as free research. This is essential to preserve the pre marketing and pre deal education process for IPOs as this part of the IPO process minimises the execution risk.

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.

BNP Paribas believes that it was not necessary to apply the unbundling rules of MIFID II to FICC research provided by our sell side analysts, which we believe is a fundamentally different product to equity research (for which the regulations were really targeted).

In our opinion, fixed income investors were never paying for this service before but rather saw it as a (free) service consistent with the ‘full’ coverage they would expect from the biggest and most active banks in the fixed income markets.

What all the rules, as they stand today, have done is to add to the cost, complexity and administration of dealing with our investor clients making it harder and more expensive for them to deal with us (the bid-offer of transactions has not reduced because research is not paid for). This additional cost, at a time when investment managers are facing a squeeze in fees and budgets, means that they have access to less research than before MIFID II rules on unbundling of research to make informed decisions & trade in the market as well as to avoid expensive mistakes.

With regards to smaller companies (SMEs) with bond issues in the market, the current regulations do not provide an incentive for us to cover them, when in fact they are the sort of credits that investors might appreciate our insight most.

We believe that the EU should be encouraging the availability of credit research resources for investment managers and the best way to do this is dis-apply the unbundling requirements under MIFID II for this function.

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.

Other areas of debate are:
- Whether there should be rules governing the degree of editorial influence that the issuers can have over the research;
- The length of the contract of sponsored research, what should be the minimum contract on sponsored research and whether it should be two years minimum to present issuers to switch research providers when research does not suit them. This is the same principle as with auditors.
- Sponsored research is often a tool associated with corporate access services (including liquidity contracts in France). These services should be expanded and favoured including by multi broker conferences and investor conferences sponsored by market venues.
- SFAF in France is pushing for the cost of sponsored research to be paid in advance for two years;
- The impact of investment recommendations on social media (influencers and bloggers) in financial markets is a topic that will need to be carefully monitored by market regulators given their influence on retail investors.

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.

We believe that independent research and issuer-sponsored research are useful and the privileged way to go. The question is how we finance sponsored research. There could be a mechanism of subsidy of sponsored research through a levy on larges caps venue fees.

Venue sponsored research is tricky and may introduce a conflict of interest between listing venue and listing company.

EU universities and business schools produce a lot of intellectual content and have excellent finance teachers. However, there is not enough academic materials around the topic of equity research, market liquidity, IPO mechanics, SPACs etc. It might help the market to have more research on the equity market fundamentals (valuation methods) through public funding by the EU or ESMA and a general encouragement of more links between market participants, listing venues etc. and the academic side of research with links with professors and students.

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.

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.

These matters are very delicate and they need to be discussed with all parties (issuers, brokers, etc…) and cannot be ruled by legislative measures.

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.

It could be done easily through a code of best conduct. We have not yet enough evidence that confidence is robust enough towards sponsored research.
New transparency rules may probably be added regarding the relationship between the issuer and the research analyst to prevent conflict of interest, this is the objective of the Charter of best Practices project written by the AFG (French Asset Management Association), the SFAF (French Society of Financial Analysts) and AF2i (French Association of Institutional Investors).

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

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

We should accumulate the evidence that research makes a difference and establish what it costs. We should have a rigorous piece of analysis which looks at companies where there is research and try to draw sustainable conclusions on the impact it has on liquidity and market volume.

Alleviating MIFID II for SMEs is key and this will be best done through issuer sponsored research.

The creation of a European Single Access Point (ESAP) would increase the visibility and create more funding and business opportunities for small and medium enterprises (SMEs). It is important that sufficient resources and expertise are deployed to ensure successful implementation of the ESAP in line with the current proposal of the Commission.

ELTIF review EC proposal should also help significantly SMEs notably with the 2 following new features:
- ELTIF eligible assets' market capitalisation threshold would no longer be measured on an on-going basis but "at the time of initial investment time only";
-In addition the threshold is proposed to be doubled from 500 M€ to 1bn€ market capitalisation.
Thus the revised Eltif regulation would bring significant additional funding to SMEs.

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.

Regulations should be stable and not move too often. We have now been used to MiFID II and we believe that it is protective for our bank liabilities by having this questionnaire signed by our clients when they buy complex financial products.

This questionnaire will be amender further later this year to include ESG topics.

As far as retail tranches in IPO, our networks are now used to work within the provision of information and not through advice in the context of MiFID 2. The IPO is marketed through the provision of information and not through advice in the context of MiFID 2. This has not prevented us to place a large retail tranche in the case of the privatisation of FDJ and more recently in the IPO of OVH. There is a marked interest of a younger shareholder base for investing in IPOs. We see this trend as very positive and wish to be a strong participant in this trend while respecting MiFID 2. Electronic ways of communication enable fast and efficient tracking of communication with retail investors and this is better done than with a physical exchange. We believe however that attention should prevail as to an appropriate balance be to clarity and exhaustibility of documents hence our recommendation on maximum length of prospectus and mandate being given to regulators to ensure clarity and reasonable level of documentation.

We agree with the comment made by the AMAFI on the rules on product governance:

The rules on product governance are unsuited to financing products and to the investment service provider's activity as an advisor to the issuer. We welcomed the alleviation of the product governance requirements for corporate bonds with no other embedded derivative than a make-whole clause and for bonds for eligible counterparties (Quick-fix dispositions) but we consider that all ordinary shares and plain vanilla bonds issuance are similarly important for the financing of companies and should be exempted as well based on the following arguments:

a. these products are not produced to serve additional (retail) investors' needs and objectives;
b. the role of the investment firm in an IPO is to assist the issuer in structuring its transaction.
c. the added value of product governance requirements for vanilla products is, in principle, very low or non-existent in the primary market.

This argument is all the more compelling today with the upcoming implementation of ESG provisions in product governance. Investment firms will soon have to analyse the "greenness" of a product according to the expectations of the final investors in this matter (target market) even though these provisions are inadequate with the investment service provider's role in an IPO.

2.4 Other possible areas for improvement

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

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

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

i. yearly and half-yearly financial reports

ii. major changes in the holding of voting rights

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

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

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

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

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

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

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

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

2000 character(s) maximum

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

On the ongoing transparency requirements, we would consider having a harmonised, single transparency regime applicable across the European Union would actually benefit all market participants and enhance the quality of the information disclosed on the market. To achieve this, it seems to us a European Regulation, instead of a Directive, we would the right legal tool.

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.

In respect of the ongoing transparency regime:
- On the issuers in scope: in certain jurisdictions, the ongoing transparency regime applies where the issuer is listed on the exchange of a given country, while in other jurisdictions the criteria is the place of incorporation of the issuer. Consequently, where an issuer is incorporated in a jurisdiction A while listed in a jurisdiction B, 2 transparency regimes may apply (and conflict) depending on the triggering criteria. This leads sometimes to multiple disclosures in various jurisdictions which may not be consistent between each other's because of the non-harmonisation. We would see a real benefit of having a single trigger criteria defined in a Regulation.
- Assuming the criteria retained by the regulation is the place of the exchange, this still raises the question as to which places of listing must be considered. The question here is to determine whether the disclosures must to be made to the regulatory authorities of the main exchange only or to authorities of all exchanges where securities are traded. If the exchange criteria where to be retained, we would suggest having disclosures to be made to authorities of the main place of listing only – with objective criteria (such as trading volumes) used to determine what the main exchange is.
- We would also see a real benefit of having a harmonised regime regarding the assimilation of derivatives to securities (for both major shareholding disclosures and mandatory tender offer thresholds). If the current consultation comes to this topic, we would be happy to provide further views on this.
- Same on the stock loans or repo transactions for which we note different treatments across the EU.

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.

We believe that SPACs represents a very valid alternative to standards IPOs which can facilitate more listing on the public market. We have noticed a SPAC wave in Europe (including the UK) with more than 30 SPACs being listing in 2021. This new vehicle is here to stay.

Even if there is a limited set of circumstances under which SPACs are useful, we should encourage the ability of SPACs to list in the EU and EU based businesses that are acquired by SPACs to ultimately be listed in the EU and not in the US or the UK. Unless the EU offers a compelling SPAC regime with the scale to have a liquid funding pool, there is a risk that many of EU's more promising emerging companies, particular in the technology and healthcare sectors, could end up being bought by SPACs listed in other jurisdictions, in particular in the US.

EU is solidifying its place as a global Tech power and SPACs can play a useful role for financing there companies. Europe now has 321 unicorns, (223 in 2020). It is therefore important that the EU facilitates both the traditional IPOs and the SPAC market to ensure that developing European unicorn companies have viable routes to be listed in the EU.

We should also encourage US SPAC to list and dual list in the EU if they buy an EU business.

SPACs are well adapted as a way to list in certain cases. Certain types of companies that have developed particular technology require specialist vision, experience and expertise. Some of these SPACs are led by people who are visionaries in specific lines of business. They are able therefore to appreciate the potential of a company and make a significant difference at the operational level as well which is a benefit to investors and the market as a whole. They can also perform extensive and thorough due diligence in a better way than in a standard IPO process thus enabling some very specific new business models to be combined with a SPAC and be better financed compared with an IPO.

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.

The goal should be to have a comparable playing field as in the US or the UK. If we are less attractive in the EU, sponsors that wish to raise SPACs and companies that are fit for being targets for a business combination with a SPAC will go to the US. The following feature makes the SPAC market work in the US: investors need to be able to vote in favour of the transformation of the SPAC while keeping the ability to redeem their shares. The moment at which the initial merger goes to a shareholders' vote, the investor can vote in favour of the merger or against it. Financial investors can vote in favour of the merger but still get their initial ability to get their equity back. This financial incentive is very important in order to encourage participation by hedge funds.

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.

The complete disclosure of the shareholder vote on the qualifying initial business combination is very important.
A requirement for a shareholder vote on a business combination is important (by opposition to a Board decision).

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.

We consider that SPACs and IPOs are great places for retail investors to be investing their savings. However, SPAC is a very sophisticated instrument. We should consider creating a rubric relating to adequate disclosure of specific risks that pertain to SPAC at the initial offering. SPACs also offer a very different aftermarket behaviour than IPOs and investors should be made aware of this.

We cannot restrict trading on the secondary market of SPACs.

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	**Yes**, for an investment		Don't know -

	open to professional investors only	open to both professional and retail investors	**No**	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.

Whether the investment in SPAC is to be opened to both professional and retail investors or to institutional investors only, we should harmonise the disclosure regime across the EU.

If it tends to be opened to both professional and retail investors, we should also reinforce the safeguards.

AMF has published guidelines on SPACs that wish to list on the French market which we consider generally adequate for investor protection.

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.

There should be mandatory disclosure requirements in the prospectus on a consistent set of scenarios, including the exercise of public warrants, of founder warrants and the conversion of founder shares.

We consider that it is already done under most market practices in the EU and we, as underwriters, would request such disclosure.

A harmonised set of disclosures across the EU would allow investors to compare SPACs in different listing venues on a like-for-like basis. We should maintain the same playing field across the EU for SPACs.

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.

It is already market practice to ask that the funds to be put into an escrow account. 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 the French jurisdiction.
To the extent that it is not being deposited in a properly independent escrow account, a clear risk factor language needs to be included in the disclosure of the prospectus.

We believe that it is an important investor protection that SPACs should adequately ring-fence, via an independent third party, proceeds raised from public shareholders. One thing to bear in mind on that matter is that the escrow account is opened in the name of the issuer and often monitored by the escrow agent which is the custodian agent of the SPAC.

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 on the topic of sustainability-related profile.

There should be disclosure not only at the initial IPO of a SPAC but more importantly at the time of business combination because there is often an equity raise at the time of the business combination. The SPAC usually cannot transform itself without having new investors coming on board. New investors need to have

the same level of information and disclosure than in any other capital offer / raising / IPO. According to this broad principle, we do not think there should be a specific category of sustainable SPAC but they will have to obey to the same level of disclosure about sustainability as in any other equity transaction.

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.

Market seems to be working correctly in the EU. We would recommend complete harmonisation across the EU as regards SPAC rules.

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.

The Listing Directive has not been transposed in all legal environments. The rules are applied differently from one regulator to another on some occasion (on financial forecasts in prospectuses for instance).

We need everything to be done to unify market practices and the new amended Listing Directive could drive this harmonisation.

Publishing an amended Listing Act would also be a strong signal of political willingness to go ahead with the CMU, to push more companies to be listed for the good of the EU economy. Every general communication by the Commission / governments of the EU that the financing of the EU economy needs a dynamic stock exchange together with active domestic equity investment helps to encourage more savings into the equity asset class.

Inside the Listing Act, ESMA role could be expanded and strengthened with a general mission to promote CMU and remove discrepancies of market practices and local regulators' gold plating. Such specific mandate would enable ESMA to track those differences and make sure that they are reduced over time.

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.

We should have a Listing Act which gets automatically applicable into national law in every country in the EU in order to go fast and to have a stronger political impact in favour of 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

Question 93.1 What changes would you propose?
Please explain the reasoning of your answer to question 93:

2000 character(s) maximum

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

This legal text should be adapted to the whole Prospectus Regulation and Mifid II package.
The concept of official list seems outdated and would need to be redefined, if needed, in light of the Prospectus Regulation and the Mifid package. The reference to the admission to trading on a regulated market should be included.

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.

The ultimate objective should be more harmonisation and there may be a tendency of some regulators to go beyond the Directives and regulations due to certain specificities of local markets. This may create active arbitrage in terms of parties trying to get documents reviewed by different regulators according to their interpretations. This is to be avoided.

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.

Disclosure pre-IPO: a new company or a spin-off of an existing listed company that seeks to be listed may not in all cases have published or filed its annual accounts in accordance with national law for the three financial years preceding the application for official listing. You need to have pro-forma or carve out accounts which is a cumbersome process. In some specific cases such as it has been the case for the 'JOBS' act in the US, you may approve only 2 years of audited accounts.

Free float: there are good reasons, for the flotation itself and a successful after market, to maintain an adequate level of free float and sufficient liquidity. However, 25% is a competitive disadvantage relative to the US. It should be a principle rather than a rule. We should decrease this threshold to a minimum 10% in the EU regulation.

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.

N/A

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.

There are and there will be new companies and spun-off companies that will not be able to publish or fill in annual accounts for three years. We should concentrate on the disclosure on the prospectus in case two years only are available.

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.

The relative amount of free float as well as the absolute amount are good measures of liquidity. But this must be appreciated also in combination with factors such as the variety and number of investors, the diversity of the investor base.

To note that active retail investors who often trade online are positive for the liquidity of a stock after the IPO and in the long run.

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.

Refer to question 95.1.

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

- ( ) Yes

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

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

- ( ) Higher
- (●) Lower
- ( ) Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 96.3:

2000 character(s) maximum

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

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.

We would recommend 10% and it should be at the level of the EU regulator ESMA to change this level and give waivers below this level.

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

Question 97.1 Please specify which other provisions relating to the admission of shares you would propose to change, explaining your reasoning:

2000 character(s) maximum

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

Most of the provisions seem outdated and should be consistent with the Prospectus Regulation package.

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 specify which changes you would propose to the provisions relating to the admission to official listing of debt securities issued by an undertaking:

2000 character(s) maximum

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

Harmonise with Prospectus Regulation.

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.

Outdated and should be dealt with in the relevant rulebook of the market operator.

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.

Over time there should be a transfer of authority to ESMA as the single EU regulator and this could be stated in the Listing Directive.

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.

N/A

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.

We believe that, in order for the EU to remain a competitive market, for the increasing number of prospective issuers desiring multiple voting rights, such structures should be permitted and/or reviewed to determine the best EU approach.

From the issuers' point of view (June 2021 Paris Europlace report in particular), authorising 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 of which the founders could benefit from multiple voting rights to retain their control.

Multiple voting rights structures can be useful and are particularly important in certain situations, particularly for high-growth, innovative, founder-led companies looking to list. Two key risks for a founder bringing his /her company to market is his/her vision being derailed by being removed as a director/CEO and an opportunistic takeover bid at a conventional bid premium to the market price. The founders are often emblematic with a strategic vision for their company and we believe there are cases in which they should not be too diluted with the IPO. The objective is to make the EU public markets a more attractive fundraising route for founder-led high-growth companies, including those in the growth sectors such as technology and life sciences.

We note that the New York Stock Exchange and NASDAQ permit broad listed and unlisted DCS arrangements, offering a range of DCS structures from enhanced voting shares (e.g. Facebook) to classes

with no voting rights (e.g. Snap).

In its listing review (December 2021), the FCA confirmed that under specific conditions, dual class shares will be eligible for the premium listing segment with a maximum weighted voting ratio of 20-to-1.

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.

Institutional investors are very attentive to governance issues and attached in general to the principle of one share / one vote. For investors, multiple voting rights have a negative impact on the ESG rating of the company impacted on its governance aspect. It may result in a lower weight of the security in the portfolio.

Any changes should strike an appropriate balance between preserving key governance protections whilst allowing a continuity of control in the hands of founders to be maintained for a transitional period after IPO, to allow founder led companies to come to market, whilst still protecting and preserving that founder vision from short-term market pressures.

The key is to make sure to adequate level of disclosure of these mechanisms and to list them clearly in the Risk factors.

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.

There is a common accepted view that there will be strong resistance by investors, above a threshold of 20:1. We believe there is enough consultation with investors and knowledge by advisors / underwriters of

investor base to set such a ratio at reasonable levels without having to put it in a legislative measure.

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

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

Please explain the reasoning of your answer to question 102.3:

2000 character(s) maximum

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

We should be at par with the US and the UK in order to remain competitive. However we firmly believe we should let the market participants decide on a case by case what is the right level for any given situation. There is no need to determine such cap in EU legislation.

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 inclusion of sunset clauses can be found helpful in addressing some of the investor concerns related to multiple share class structure frameworks. However, they may not work in practice under certain national company laws in the EU (notably in France).

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.

We are favourable to such measures and a harmonisation of practices across the EU. It would harmonise practices of regulators and market venues across the EU. We believe having this statement in the Listing Act would demonstrate that dual classes of shares are also possible for listed companies in the EU. It is a matter of competitiveness.

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.

Generally, we should improve EU markets in order to attract more professional investors in active equity investments. To that extent, we should develop crossover and Tech specialised funds.

In the EU, regulation imposes a clear distinction between funds investing in public equity and those investing in private equity. The regulation does not enable asset managers to easily structure crossover funds, which would be useful to enable cross-fertilisation between the buy-side expertise developed on the private market and the public market (more especially in Tech). This could be done under the umbrella of life insurance or long term savings plans such as employee ownership plans.

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.

Today corporate governance (i.e. organisation of the board of directors and AGM) is not an EU harmonised 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.

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

2000 character(s) maximum

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

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

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

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

Please explain the reasoning of your answer to question 107.1:

4000 character(s) maximum

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

Governance is a key topic thus the presence of independent directors being a key factor. This investor relationship manager is also an important factor as it demonstrates the commitment of the issuer to dedicate enough resources to investor relations is the long-term.

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.

Having full time investor relations manager means costs of being listed include his/her annual salary. The cost of independent directors and a seriously composed board depends from country to country. Directors' fees range from €20k to €60k per year.

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.

We recommend analysing the following potential measures: (i) implement tax benefits for retail investors and funds that are investing in SMEs, (ii) tax deductibility of bank fees for capital increases and (iii) boosting the number of SMEs benefiting from the SME Growth Market's framework by increasing the market capitalisation threshold defining an SME in MiFID II, from €200m currently to €1bn. An increased threshold would allow more mid-sized entities to be considered as SMEs, thus enlarging the population of companies benefitting from customised alleviations awarded to SME Growth Markets in EU law and encouraging the development of small listed issuers, as well as liquidity on such trading venues.

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

Please provide details and explain the reasoning of your answer to question 109:

2000 character(s) maximum

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

A proposal we would make is to give ESMA a clear mandate to identify and record the areas in which there are discrepancies between the interpretations of market authorities across the EU and to propose solutions to remedy those. In cases of gold plating, ESMA could then resolve them with the ultimate objective of harmonising practices across the EU.
France:
-Rules governing private placements,
-The “PSI attestation” in France for IPOs,
-The mandatory retail offer in France (as per AMF rules) which many market players recommend to waive.
Belgium:
-The Belgian prospectus Law of 2013 implementing PD2 required to notify the investors individually or via a notice published in the press in case a supplement is published to a prospectus and if the content of that supplement is not neutral or positive for the investors.
Italy and Spain:
- Consob requires to insert, at a beginning of each risk, an assessment on the degree of probability and on the impacts if the risk materialises;
-Working capital statement: extensive due diligence by Consob during the approval process requiring huge activity by issuers.
-Securities note: Consob requires to insert comparable resulting from the research reports irrespectively of the fact that such list is developed independently by research analysts and the issuer may have a different view.
-Option rights: a KID is required by custodians in order to allow retail clients to exercise their option rights and Consob did not provide any official view in order to limit this practice.
Germany:
- Voting right notifications are required at lower thresholds that required elsewhere in in Europe.
-Prospectus approval procedure is very formalistic and takes longer than in other jurisdictions.
-The prospectus approval authority often requires three separate audit attestations for the three years of historical financials.
- The fines for violations of post listing requirements are higher than in other jurisdictions.

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

87cf0259-f077-46f4-b2de-b440e0e42d09/2022_02_11_Letter_to_Mr._Berrigan.pdf
ece52c03-1028-4e1f-81c4-8e0e8d04b591/2022_02_25_Listing_Act_-BNP_Paribas_-_Key_messages.pdf
580bacea-8270-4599-99de-e47dfe5bd11a/2022_02_25_Listing_Act_-_BNP_Paribas_-_Appendices.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

fisma-listing-act@ec.europa.eu