



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

Financial Markets  
Securities markets

**Request to ESMA  
for technical advice on the implementation of the amendments to  
Prospectus Regulation, Market Abuse Regulation and Markets in Financial Instruments Directive II  
in the context of the Listing Act**

## **1. Context**

### **1.1. State of play of the Listing Act**

In December 2022 the Commission adopted a legislative proposal to simplify the listing requirements, including post-listing, in order to promote better access to public capital markets for EU companies, in particular SMEs (so called “Listing Act”), by reducing the administrative burden on companies that seek a listing or want to remain listed on a trading venue. The package comprised a Regulation amending the Prospectus Regulation<sup>1</sup> (PR), the Market Abuse Regulation<sup>2</sup> (MAR) and the Markets in Financial Instruments Regulation<sup>3</sup> (MiFIR) and a Directive amending the Markets in Financial Instruments Directive<sup>4</sup> (MiFID II) and repealing the Listing Directive<sup>5</sup>. Furthermore, it introduced a new Directive on multiple-vote share structures.

The European Parliament and Council reached a provisional agreement on the Listing Act on 1 February 2024. The compromise was approved by the Council in COREPER on 14 February 2024 and voted by the European Parliament in first reading in plenary session on 24 April 2024 respectively. The adopted legislative texts are still subject to linguistic review and, due to the end of the mandate of the European Parliament, will have to be voted again by the new European Parliament after that review has taken place (a so-called ‘corrigendum procedure’). It is expected that such vote occurs in early autumn this year and that publication of the Listing Act in the Official Journal occurs by the end of 2024 or the beginning of 2025. Considering that those legal texts will enter into force 20 days after the publication and that some provisions have a deferred entry into application from 15 to 18 months after such date, the Commission Services expect that the bulk of the provisions of **the Listing Act should enter into application in July 2026**.

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<sup>1</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council.

<sup>2</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council.

<sup>3</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council.

<sup>4</sup> Directive 2014/65/EU of the European Parliament and of the Council.

<sup>5</sup> Directive 2001/34/EC of the European Parliament and of the Council.

A number of provisions laid down in the above-mentioned Amending Regulation and Amending Directive need to be further specified in level 2 measures. In addition to several technical standards to be drafted by ESMA, the Commission is empowered to adopt a number of delegated acts in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU). To ensure a smooth application of the legislative provisions, the application of such delegated acts needs to be aligned with the date of the application of the provisions they are intended to supplement. In order to be applicable in July 2026, those delegated acts should be published on the Official Journal in early June 2026. Taking into account the scrutiny period by the co-legislators (three months extendable by three more months), those **delegated acts should be adopted by the Commission by the end of 2025**.

## 2. Scope of the request

With this mandate, in accordance with Article 16a(4) of ESMA Regulation<sup>6</sup>, the Commission seeks ESMA's technical advice on certain delegated acts to supplement specific provisions of the PR, MAR and MiFID II. The Call for Advice covers various topics which are grouped and further detailed below. The technical advice shall include legal drafting for the relevant recitals, articles and, where relevant, annexes for each of the delegated acts mentioned in sections 3, 4 and 5 of this mandate.

Unless specified separately in this mandate, **ESMA is invited to submit its technical advice by 30 April 2025**. This deadline takes into consideration the subsequent timeline for the adoption of the delegated acts by the European Commission, which, among others, implies the consultation of the Expert Group of the European Securities Committee (EGESC) and the publication of the draft delegated acts on the Have-your-say portal for four weeks, for stakeholders' feedback. However, considering that the date of publication of the Listing Act on the Official Journal is still uncertain, the Commission Services will be in contact with ESMA, should there be any change to the timeline for the technical advice as set out above.

### 2.1. Overarching principles

In developing its technical advice, ESMA should take account of all of the following principles:

- **Internal market:** the need to ensure the proper functioning of the internal market, in particular with regards to financial markets, and to ensure a high level of investor protection.
- **Proportionality:** the technical advice should not go beyond what is necessary to achieve the objectives of the amending Regulation and of the amending Directive. A competitive regulatory framework is not about deregulation, but about better regulation, taking into account the need to be mindful of rationalisation and avoid undue regulatory burden on companies. In recent years, the Commission committed to reducing the reporting burden by 25% as indicated in its Communication on Long-term Competitiveness<sup>7</sup>. When developing draft technical standards, technical advice for delegated acts and guidelines, the Authority should contribute

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<sup>6</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

<sup>7</sup> COM(2023) 168 final: [https://commission.europa.eu/system/files/2023-03/Communication\\_Long-term-competitiveness.pdf](https://commission.europa.eu/system/files/2023-03/Communication_Long-term-competitiveness.pdf).

to this objective by seeking, within the limits of the mandate under Level 1 legal acts, to decrease administrative burden for reporting entities. It should be simple and avoid creating divergent practices by national competent authorities.

- **Comprehensibility:** ESMA should provide comprehensive advice on all subject matters covered by the mandate in an easily understandable language.
- **Coherence:** the advice should be coherent with the wider regulatory framework of the Union.
- **Consultation:** ESMA is invited to consult market participants (e.g., sell-side, buy side, intermediaries, exchanges), in an open and transparent manner and provide a feed-back statement justifying its choices vis-à-vis the main arguments raised. ESMA's advice should consider the different opinions expressed by market participants.
- **Evidence:** ESMA should justify its advice by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each. The results of this assessment should be submitted with the advice to the Commission.

ESMA should provide sufficient factual data backing the analyses. It is important that the presentation of the technical advice makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the possible delegated acts.

### **3. Prospectus Regulation**

#### ***3.1. Content and format of the full prospectus***

The reform of the PR amends the rules on the full prospectus for an offer of securities to the public or an admission to trading on a regulated market, to make the prospectus cheaper and less burdensome for issuers and more suitable for investors to take an informed investment decision.

The amendments set out in Article 6 and 13, as well as in Annexes I to III of PR are twofold: (i) they aim to streamline the full prospectus by aligning its content to the lighter EU Growth prospectus; (ii) they aim to make prospectuses more comparable for investors across the EU by introducing a standardised format and sequence (together with a page limit of 300 pages for share

prospectuses). The above-mentioned points are further clarified in recitals 17<sup>8</sup>, 24<sup>9</sup>, and 25<sup>10</sup> of the amending Regulation.

Furthermore, in order to prevent greenwashing and provide investors with the necessary material environmental, social and governance (ESG) information, where relevant, the amendments to Article 13 require the Commission to consider, in the development of a delegated act:

- whether the issuer of equity securities is required to provide sustainability reporting, together with the related assurance opinion in accordance with the Accounting Directive<sup>11</sup> – as amended by the Corporate Sustainability Reporting Directive<sup>12</sup> (CSRD) – and the Transparency Directive<sup>13</sup>; and
- whether non-equity securities offered to the public or admitted to trading on a regulated market are advertised as taking into account ESG factors or pursuing ESG objectives.

The above-mentioned point is further clarified in recital 26<sup>14</sup> of the Amending Regulation.

**In light of the above, the Commission invites ESMA to provide technical advice, by proposing the necessary amendments to Commission Delegated Regulation (EU) 2019/980, in order to determine the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents.**

ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Articles 6, 13(1) and Annexes I, II and III, all relevant recitals of the

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<sup>8</sup> Recital (17) highlights that the standardised format and the standardised sequence of the information to be disclosed in a prospectus should be set out irrespective of whether a prospectus, or a base prospectus, is drawn up as a single document or is composed of separate documents (with a carve-out for the information included in a universal registration document, which is exempted from that requirement). Such standardised sequence of the prospectus is set out in the revised Annexes I, II and III to PR, which are the basis for the Commission to amend any delegated acts.

<sup>9</sup> Recital (24) explains that, to facilitate IPOs of private companies on EU public markets and, in general, to reduce unnecessary costs and burdens for companies that offer securities to the public or seek admission to trading on a regulated market, the prospectus for both equity and non-equity securities should be significantly streamlined, while maintaining high level of investor protection.

<sup>10</sup> Recital (25) clarifies that while being too prescriptive for SMEs, the level of disclosure in the EU Growth Prospectus would be fit for purpose for companies seeking admission to trading on a regulated market. In that regard, the revised Annexes I, II and III to PR were aligned to the level of disclosure of the EU Growth prospectus, by taking as reference the related Annexes laid down in Commission Delegated Regulation (EU) 2019/980.

<sup>11</sup> Directive 2013/34/EU of the European Parliament and of the Council.

<sup>12</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council.

<sup>13</sup> Directive 2004/109/EC of the European Parliament and of the Council.

<sup>14</sup> Recital (26) highlights the growing importance of sustainability considerations in investment decisions and the necessity, to prevent greenwashing, to establish the ESG-related information to be provided, where relevant, in the prospectus for equity or non-equity securities. The recital also stresses the importance to avoid overlaps with the requirement laid down in other EU sustainable finance-related legislation. In that regard, companies that offer to the public or seek the admission to trading of equity securities on a regulated market should incorporate by reference in the prospectus, for the periods covered by the historical financial information, the management and consolidated management reports, which include the sustainability reporting, as required by the Accounting Directive. Moreover, the Commission should be empowered to set out schedules specifying the ESG-related information to be included in prospectuses for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives.

Amending Regulation and all relevant provisions and Annexes of Commission Delegated Regulation (EU) 2019/980. In particular, ESMA should:

- streamline the content of the prospectus taking as reference the level of disclosures of the current EU Growth prospectus (i.e., the level of disclosure of the prospectus should be equivalent to, or at least not higher than, the level of disclosure of the EU Growth prospectus). ESMA should take into account the different scope, considering that the full prospectus can also be used for an admission to trading on a regulated market;
- ensure that the disclosures set out in a prospectus for shares allow issuers to comply with the page size limit of 300 pages in accordance with Articles 6(4) and 6(5) PR as amended by the Amending Regulation;
- align the content of the prospectus for retail non-equity securities to a level of disclosures that is equivalent to the lighter schedules of the prospectus for wholesale non-equity securities, except for the summary and the section on the offer that only apply to retail non-equity securities;
- define the standardised format and standardised sequence of the prospectus, in line with the provisions and recitals of the amending Regulation, ensuring the right balance between harmonisation and flexibility (especially for prospectuses drawn up as separate documents, including base prospectuses);
- set out a building block of additional information to be included in the prospectus for non-equity securities offered to the public or admitted to trading on a regulated market that are advertised as taking into account ESG factors or pursuing ESG objectives. ESMA should in particular:
  - ensure the right balance between the need to prevent greenwashing and avoid creating a burdensome schedule (i.e., disclosures should be light touch and proportionate to the sustainability-related claim made);
  - avoid overlaps or inconsistencies with the requirements laid down in other EU sustainable finance-related legislation, such as the EU Green Bond Regulation<sup>15</sup>, the Taxonomy Regulation<sup>16</sup>, the Sustainable Finance Disclosure Regulation<sup>17</sup> and the Corporate Sustainability Reporting Directive. Furthermore, the technical advice should not deviate from the overarching burden reduction objective of the Listing Act and avoid merely replicating disclosure requirements set out in sustainable finance-related legislation that go beyond what is strictly necessary for a prospectus to allow taking an informed investment decision;
  - ensure the consistency and usability of the required information for other market players themselves subject to sustainable finance-related requirements, notably

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<sup>15</sup> Regulation (EU) 2023/2631 of the European Parliament and of the Council.

<sup>16</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council.

<sup>17</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council.

- distributors (i.e., consistency with the sustainability preferences parameters under MiFID II);
- ensure that the new schedule does not implicitly make standards, templates or disclosures that are voluntary under other sustainable finance-related legislation (e.g., disclosures under the EU Green Bond Regulation) mandatory in the prospectus and take into account standards or principles developed by the industry and widely used;
  - ensure that green bonds issued in accordance with the EU Green Bond Regulation can be offered to the public or admitted to trading on a regulated market also via a base prospectus, by making the appropriate amendments to Commission Delegated Regulation (EU) 2019/980;
  - cater for all types of non-equity securities subject to the PR and making ESG-related claims, without focussing only on green or ESG-related bonds.
- Assess whether any annexes of Commission Delegated Regulation (EU) 2019/980 need to be deleted or reviewed, and whether new annexes need to be added, taking into account all types of issuers and securities.

### ***3.2. Content of the universal registration document***

The reform of the PR amends the rules on the universal registration document (URD), by granting an issuer who has had a URD approved for one financial year – instead of two consecutive financial years as under the current PR regime – the status of frequent issuer and be able to file all subsequent universal registration documents, and any amendments thereto, without prior approval. As explained in recital 23, such alleviation does not affect investor protection, as a URD and any amendments thereto cannot be used as the constituent part of a prospectus without being approved by the relevant NCA. Furthermore, an NCA is allowed to review a URD which has been filed with it on an ex-post basis whenever considered necessary and, where appropriate, request amendments.

As the URD is a document which can serve multiple purposes, including to disclose the financial information required under the Transparency Directive, a prospectus including a URD is exempted from the requirements of the standardised format and sequence, the page size limit of 300 pages for shares as well as the template and the layout including the font size and style requirements.

In light of the above, and in accordance with Article 13(2) of the PR, **the Commission invites ESMA to provide its technical advice in order to determine the content of the URD, by proposing the necessary amendments to Commission Delegated Regulation (EU) 2019/980, taking into account that:**

- the URD is a multipurpose document, which can be used for an offer or admission to trading of either equity or non-equity securities;
- the URD can only be used, in accordance with Article 9(1) of the PR, by an issuer whose securities are admitted to trading on a regulated market or an MTF. Therefore, a URD is used in the context of secondary issuances, and it should be considered whether it could benefit from alleviations compared to the registration document for equity securities of the full prospectus; however, possible alleviations to the URD should be balanced, taking into account

the multipurpose nature of the URD and the scope of the document as clarified in recital 39 of the PR, whereby the URD should act as a source of reference on the issuer, supplying investors and analysts with the minimum information needed to make an informed judgement on the company's business, financial position, earnings and prospects, governance and shareholding.

### ***3.3. EU Follow-on prospectus and EU Growth issuance prospectus***

The reform of the PR introduces two new short-form prospectuses:

- the EU Follow-on prospectus, for secondary issuances by companies listed on a regulated market or an SME growth market, takes as model the expired regime of the EU Recovery prospectus, is subject to a standardised format and sequence and a 50 page-size limit for shares.
- The EU Growth issuance prospectus, for SMEs, companies listed or to be listed on SME growth markets and for small unlisted public offers of securities up to € 50 million, takes as model admission documents of SME growth markets and the EU Recovery prospectus, is subject to a standardised format and sequence and a 75 page-size limit for shares.

The standardised format and content of those new prospectus were originally included in the annexes of the Commission proposal. While in the interinstitutional negotiations, the co-legislators retained the main features of the Commission proposal, they required the Commission to further specify in delegated acts (rather than directly in annexes of the Prospectus Regulation as in the Commission proposal) the content and the standardised format and sequence of the EU Follow-on prospectus and of the EU Growth issuance prospectus.

While not asking for a technical advice on these standards, reflecting established practice from previous prospectus reforms, FISMA, before launching the consultation on the Better Regulation portal for stakeholders' feedback, intends to share the draft delegated acts with ESMA to gather an ex-post advice.

### ***3.4. Scrutiny and approval of the prospectus***

The reform of the prospectus regime aims to promote supervisory convergence through the harmonisation of the rules for the scrutiny and approval of the prospectus by competent authorities across the Union. Article 20(11) of the PR empowers the Commission to adopt delegated acts to supplement the PR by specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and on the procedures for the approval of the prospectus. ESMA is invited to provide **its technical advice on the criteria for the scrutiny and the procedures for the approval of the prospectus, by proposing the necessary amendments to Commission Delegated Regulation (EU) 2019/980, taking into account all of the following:**

- the circumstances under which a competent authority is allowed to use additional criteria for the scrutiny of the prospectus, where deemed necessary for investor protection;
- the circumstances under which an NCA is allowed, where deemed necessary for investor protection, to require information in addition to that which is required for drawing up a prospectus, an EU Follow-on prospectus or an EU Growth issuance prospectus, including the

type of any additional information disclosed under the additional criteria referred to in the previous point;

- the maximum overall timeframe within which the scrutiny of the prospectus is to be finalised and a decision reached by the competent authority on whether that prospectus is approved, or the approval is refused and the review process terminated, and the conditions for possible derogations from that timeframe (considering possible additional scrutiny criteria, the timeline for NCAs to respond to issuers and the average number of iterations between issuers and NCAs on the same application for approval of a prospectus).

The above-mentioned points are further clarified in recitals 44<sup>18</sup>, 45<sup>19</sup>, 46<sup>20</sup> and 47<sup>21</sup> of the Amending Regulation.

ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Article 20 of PR and all relevant recitals of the Amending Regulation and all relevant provisions and Annexes of Commission Delegated Regulation (EU) 2019/980. Furthermore, ESMA should consider the outcome of ESMA's peer review of the scrutiny and approval procedures of prospectuses by competent authorities (ESMA42-111-7170<sup>22</sup>), to be updated where relevant, and take into account all of the following:

- national specificities of the scrutiny process and the time taken by each NCA for notifying the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision regarding the approval or rejection of the prospectus. This should also include the cases where the rejection is due because the prospectus does not meet the standards of completeness, consistency and comprehensibility and changes or supplementary information, and the deadlines that NCAs give to the issuer, the offeror or the person asking for admission to trading on a regulated market to provide additional information or documents in such cases;
- for each NCAs, the average number of iterations between the issuer, offeror or person asking for admission to trading and the NCAs within the same application of approval, taking into account the type of securities, the type of issuances (e.g., IPO or secondary issuances) and of prospectus (e.g., full prospectus or alleviated prospectus types);

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<sup>18</sup> Recital (44) states that allowing competent authorities to apply additional criteria for the scrutiny and approval of prospectuses where necessary for investor protection has material differences in the way competent authorities apply those additional scrutiny criteria.

<sup>19</sup> Recital (45) clarifies that in order to foster convergence and harmonisation of prospectus supervisory activity by competent authorities, it is appropriate to specify the circumstances under which a competent authority may use additional criteria and the type of additional information that competent authorities may require to be disclosed in addition to the information that is required for drawing up a prospectus.

<sup>20</sup> Recital (46) states that competent authorities have to respect a clear deadline for their scrutiny in order to ensure that issuers are timely informed of the result of the scrutiny of their prospectus. Competent authorities should also notify to the issuer the reason for a failure to take a decision on the prospectus within the set time limits.

<sup>21</sup> Recital (47) requires a set maximum timeframe for finalising the scrutiny procedure and for the competent authority's decision on the prospectus. As the duration of the scrutiny procedure is also depending on factors outside the control of the competent authority, the timeframe should be the maximum duration of the procedure overall, covering activities from both the person applying for approval of a prospectus and the competent authority. The specification of the conditions for possible derogations for the set timeframe is also necessary.

<sup>22</sup> [esma42-111-7170\\_final\\_report\\_-\\_prospectus\\_peer\\_review.pdf \(europa.eu\)](https://esma.europa.eu/media/1000/1/1/esma42-111-7170_final_report_-_prospectus_peer_review.pdf)

- circumstances and timelines under which NCAs refuse the approval of a prospectus and terminate the review. In cases where an NCA has not made a decision on the prospectus within the specified timelines, ESMA should also provide the number of cases and the reasons for the failure to take a decision;
- additional scrutiny criteria that NCAs apply for investor protection reasons and the type of additional information that they may require.

### ***3.5. Cooperation arrangements with 3<sup>rd</sup> country***

The Amending Regulation empowers the Commission (Article 30(4) PR) to adopt delegated acts to determine the minimum content of the cooperation arrangements between NCAs (or ESMA upon the request of at least one NCA) and supervisory authorities of third countries concerning all of the following:

- the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under the PR;
- the template document to be used for such cooperation arrangements.

**The Commission invites ESMA to provide its technical advice on the minimum content of the above-mentioned cooperation arrangements.** ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Articles 28, 29 and 30 of PR and all relevant recitals of the Amending Regulation.

### ***3.6. Commission reports to the European Parliament and to the Council on civil liability of the prospectus***

Pursuant to the amended Article 48(2a) of the PR, the Commission is required to submit a report by 31 December 2025<sup>23</sup> analysing the issue of civil liability for the information given in a prospectus, assessing whether further harmonisation of the prospectus civil liability in the Union could be warranted and, if relevant, proposing amendments to the liability provisions set out in Article 11 of PR.

In light of the above, **the Commission invites ESMA to provide technical advice on the civil liability of the prospectus, which should include an assessment and recommendations on whether further harmonisation should be considered.** ESMA should take into account all relevant provisions of the PR, in particular Articles 11 and 48(2a), all relevant recitals of the Amending Regulation, the report on civil liability of the prospectus that ESMA published in 2013 (ESMA/2013/619<sup>24</sup>). Finally, ESMA should compare the civil liability provisions set out in Article 11 of the PR with the civil liability set out in the Markets in Crypto Assets Regulation<sup>25</sup> and the

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<sup>23</sup> Recital 60 of the Amending Regulation clarifies that the requirement for the Commission to perform such assessment within the above-mentioned timeline is linked to the need of ensuring that the CMU gathers momentum and reflects market realities as soon as possible after they occur.

<sup>24</sup> [https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-619\\_report\\_liability\\_regimes\\_under\\_the\\_prospectus\\_directive\\_published\\_on\\_website.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-619_report_liability_regimes_under_the_prospectus_directive_published_on_website.pdf)

<sup>25</sup> Regulation (EU) 2023/1114 of the European Parliament and of the Council.

need for possible alignment with or departure from those provisions and provisions for prospectus civil liability.

## 4. Market Abuse Regulation

### 4.1. Disclosure of inside information

The Listing Act amends the disclosure obligation laid down in Article 17(1) MAR in the context of “protracted processes” with a view to reducing regulatory burden for issuers and increasing legal certainty while ensuring an appropriate level of investor protection and market integrity.

The Listing Act sets out that:

- the obligation for an issuer to inform the public as soon as possible of inside information which directly concerns that issuer shall not apply to inside information related to intermediate steps in a protracted process as referred to in Article 7(2) and (3) of MAR where those steps are connected with bringing about or resulting in particular circumstances or in a particular event;
- in a protracted process only the final circumstances or final event shall be required to be disclosed, as soon as possible after they have occurred.

Recital (67) specifies the rationale behind such amendment. It highlights that the requirement to disclose inside information aims, primarily, to enable investors to take well-informed decisions and that when information is disclosed at a very early stage and is of a preliminary nature, it might mislead investors, rather than contribute to efficient price formation and address information asymmetry.

As the exact identification of the moment when an event becomes final is not always straightforward, and in order to enable the issuer to identify the moment when disclosure of information is required, the Listing Act empowers the Commission to adopt delegated acts to set out and review, where necessary:

- a non-exhaustive list of final events in protracted processes; and
- for each event, the moment when it is deemed to have occurred and shall be disclosed pursuant to Article 17(1) MAR.

**With the present mandate, ESMA is invited to provide technical advice on the establishment of a non-exhaustive list of final events in protracted processes as well as on the identification of the moment when each of those final events is deemed to have occurred.**

- ESMA should compile a list of protracted processes which are deemed to give rise to inside information. While the list is non-exhaustive, ESMA should strive to ensure that it is as comprehensive as possible, capturing different types of protracted processes, such as those related to the issuer’s corporate governance, capital structure, financial results and business strategy. For each identified protracted process, ESMA should indicate the final circumstances or final event and the moment when they are deemed to have occurred. In

doing so, ESMA should take into consideration the examples already included in recital (67) with a view to applying the same approach also to other protracted processes. In the case of a merger, disclosure should be made as soon as possible after the management has taken the decision to sign off on the merger agreement, once the core elements of the merger have been agreed upon. In general, for contractual agreements the final event should be deemed to have occurred when the core conditions of that agreement have been agreed upon.

- ESMA should give due consideration to the functioning of the new disclosure regime. Under the current MAR regime, ongoing negotiations may allow an issuer to delay disclosure of inside information where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure, as in this case disclosure may prejudice the legitimate interest of the issuer (see recital 50 of MAR). Under the future MAR regime, as clarified in recital (67) of the Listing Act, disclosure should not cover “*announcements of mere intentions, ongoing negotiations or, depending on the circumstances, the progress of negotiations (such as a meeting between company representatives)*”. This should be read in conjunction with the new Article 17(1) according to which the requirement to disclose does not apply to inside information relating to intermediate steps in a protracted process where those steps are connected with bringing about or resulting in particular circumstances or in a particular event. In consequence, under the future MAR regime, issuers should no longer need to resort to delay of disclosure in order to avoid that public disclosure affects the outcome or normal pattern of the negotiations (once the final event has occurred, an issuer may resort to delay of disclosure provided that all conditions under Article 17(4) are met).
- The list should also give consideration to price sensitive interventions by regulators that at the same time pursue public interest objectives. For example, the Commission’s attention has been drawn to the specific considerations that need to be taken into account when dealing with the recovery and resolution of a failing bank under the Bank Recovery and Resolution Directive<sup>26</sup> (BRRD) / Single Resolution Mechanism Regulation<sup>27</sup> (SRMR) and the need to protect financial stability in those circumstances. Acknowledging that the recovery and resolution process is sequential and follows interim steps, ESMA is expressly encouraged to consult the EBA on how to best reflect this protracted process and determine timely triggers for disclosure, while meeting the objectives of MAR and BRRD or similar third-country crisis management frameworks.
- When compiling the list of final events in protracted processes, ESMA is invited to take into account, where relevant, similar lists that have already been developed by EU national competent authorities or in major jurisdictions outside the Union.

#### ***4.2. Conditions to delay disclosure of inside information***

While reducing the scope of the disclosure obligation in the context of protracted processes, the Listing Act acknowledges that there may still be instances where an issuer may have a legitimate

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<sup>26</sup> Directive 2014/59/EU of the European Parliament and of the Council.

<sup>27</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council.

interest to delay disclosure of inside information once the final event has occurred, provided that certain conditions are met.

With a view to reducing regulatory burden for issuers and enhancing legal clarity, the Listing Act amends Article 17(4)(1)(b) to replace the condition according to which disclosure of inside information may be delayed provided that the public is not likely to be misled with a new condition according to which the inside information that the issuer intends to delay “*is not in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers*”.

This means that, under the amended regime:

- the assessment should be limited to public announcements or other types of communication by the issuer; and
- for the purpose of assessing whether disclosure can be delayed, the issuer should compare the inside information that the issuer intends to delay with the content of the latest previous public announcement or other type of communication by the issuer concerning the same matter. In case the two are in contrast, disclosure cannot be delayed.

Article 17(12) of MAR, as amended by the Listing Act, empowers the Commission to adopt a delegated act to set out and review, where necessary, a non-exhaustive list of situations in which the inside information that the issuer or the emission allowance market participant intends to delay is in contrast with the latest public announcement or other type of communication by the issuer or the emission allowance market participant on the same matter to which the inside information refers to.

**ESMA is invited to provide technical advice on the development of such list. ESMA should in particular provide a list of examples where it is deemed that there is a contrast between the inside information that the issuer intends to delay and the latest public announcement or other types of communication by the issuer on the same matter to which the inside information refers.**

- ESMA should give due consideration to the fact that, for the purpose of assessing whether disclosure can be delayed, the amended provision limits the scope of the assessment:
  - to the *latest* public announcement/communication by the issuer and
  - only to announcements/communications that concern *the same matter* to which the inside information refers.

These two references aim to ensure that the assessment performed by the issuer takes into account previous announcements/communications by the issuer that are still capable of influencing expectations in relation to the price of financial instruments.

- ESMA should strive to identify a comprehensive list of “*other types of communication by the issuer*” that are relevant for the purpose of assessing whether disclosure can be delayed. In doing so, ESMA should take into account only communications by the issuer that may generate/influence market expectations.

- When developing the list of examples, ESMA should also take into account that the amended provision only refers to situations where there is a *contrast* between the inside information that the issuer intends to delay and the latest public announcement or other types of communication by the issuer on the same matter to which the inside information refers. This means that the existence of a mere difference between the two does not necessarily lead to the conclusion that disclosure cannot be delayed.
- Finally, and on a more general note, ESMA should give consideration to the exceptional nature of delays under the amended MAR disclosure regime.

#### ***4.3. Mechanism to exchange order data***

Article 25(a) MAR establishes a new mechanism to exchange order data for the purpose of detecting and enforcing cases of cross-border market abuse. The initial set-up requires an identification of trading venues that fall in the scope of application of the mechanism. Those trading venues will have to share order data on financial instruments upon request of a participating NCA. For that purpose, the concept of a trading venue with a “significant cross-border dimension” is introduced. In its initial design stage, the mechanism is confined to share instruments, however, its scope may be extended to bonds and derivatives in the future.

To operationalise the mechanism, the Commission, pursuant to Article 25(a)5 MAR, has been tasked to designate participating trading venues, subject to two parameters and based on two narrowly framed thresholds. To capture the most relevant venues, only trading venues with annual turnover from shares trading activity of EUR 100bn or above fall in the scope of the mechanism. Furthermore, only venues that host 50% of trading in shares registered by another competent authority form part of the mechanism.

**To facilitate the identification of trading venues with a significant cross-border dimension, the Commission seeks information from ESMA concerning all trading venues with a cross-border activity above 50% and requests for each of those identified trading venues its turnover over the past four years.** The criterion of cross-border activity is defined as the ratio between the turnover in shares for which the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 differs from the competent authority of the trading venue and the total turnover in all shares traded. The ratio shall be determined based on latest available information that is representative and comparable across trading venues. Concerning the criterion of annual turnover, the turnover shall refer to shares trading activity aggregated at the level of the trading venue and shall consider the last four calendar years, namely 2021, 2022, 2023 and 2024. ESMA should flag any challenges or data limitations it may have encountered while drawing up the overview.

## **5. MiFID II**

### ***5.1. MTF or segment of an MTF to be registered as an SME Growth Market***

The SME growth market category was introduced by MiFID II to increase the visibility and profile of markets specialised in SMEs and to foster the development of common regulatory standards in the Union of markets specialised in SMEs.

To foster the development of such specialised markets and to limit the organisational burden on operators of multilateral trading facilities (MTFs), the Listing Act amends Article 33(1) of MiFID II specifying that the operator of an MTF may apply to its home competent authority to have the MTF, or a segment of that MTF, be registered as an SME growth market, subject to certain conditions. It also describes the conditions in relation to a segment of the MTF, under Article 33(3a). The Listing Act empowers the Commission to adopt delegated acts to supplement MiFID II by further specifying the requirements under Articles 33.3 and 33.3a of MiFID II.

**The Commission invites ESMA to provide technical advice for the development of the delegated act to ensure that any such requirements necessary for an MTF or a segment thereof to be registered as an SME growth market minimise the administrative burdens for the issuers on those markets while taking into account the need to maintain high levels of investor protection and confidence in those markets.**

In its technical advice, ESMA is also requested to ensure that the above-mentioned requirements take into account that any refusal of registration or any de-registration of an MTF or a segment of an MTF on a SME growth market does not simply occur due to temporary failure of compliance with conditions laid down in paragraph 3, point (a), of Article 33.

### ***5.2. Issuer non-objection for trading on another trading venue***

The Listing Act introduces under Article 33(7) of MiFID II a possibility for financial instruments already admitted to trading on one SME Growth market to be traded on another trading venue, where the issuer has been informed and has not objected. It also specifies that where the other trading venue is another SME growth market, the issuer shall not be subject to any obligation relating to corporate governance, or initial, on-going or ad hoc disclosure with regard to that other SME growth market. Where the other trading venue is not an SME growth market, the issuer shall be informed of any additional obligation to which the issuer will be subject that relates to corporate governance, or initial, on-going or ad hoc disclosure, with regard to the other trading venue.

According to Article 90 of MiFID II, by 4 years from the date of entry into force of the amending Directive, the Commission is due to review and assess the impact of the provision on non-objection in Article 33(7) on competition among trading venues, in particular SME growth markets, and its impact on access to capital for SMEs. **In order to allow the Commission to assess those impacts, ESMA is invited to provide the Commission, by the end of 2028, with the quantitative and qualitative elements and advice necessary for this assessment.**

### ***5.3. Payment for research and execution service***

Article 24.9a of MiFID II specifies that the provision of research by third parties to investment firms providing portfolio management or investment or other ancillary services to clients shall fulfil the obligations for a firm to act honestly, fairly and professionally and shall be in the best interest of the client. The Listing Act amends the text of MiFID II by introducing the option for investment firms to pay either jointly or separately for execution services and for research (retracting the previous obligation to pay for those services separately – so called “unbundling regime”). The Listing Act, consequently, introduces new conditions for firms to comply with in order to be regarded as fulfilling the above-mentioned fiduciary duties, notably they have to:

- 1) inform their clients about their choice to pay either jointly or separately for execution services and research;
- 2) make available to their clients their policy on payment for execution services and research, including the type of information those clients can be provided depending on the firm's choice of payment method and when a joint payment method is selected by the firm, how such firm prevents or manages conflict of interest;
- 3) enter into an agreement with the third-party provider of research and execution services establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services;
- 4) assess on annual basis the quality, usability and value of the research used, as well as the ability of the research used to contribute to better investment decisions; and
- 5) where they choose to pay separately for execution services and third-party research, receive the research from the third party in return for either direct payments out of the firm's own resources or payments from a separate research payment account controlled by the firm.

Where known to them, investment firms must also keep a record of the total costs attributable to third-party research provided to them and upon request, such information shall be made available on an annual basis to the clients of the firms.

Considering that those new conditions have an impact on Article 13 of Delegated Directive (EU) 2017/593, which only describes conditions associated to the unbundling regime, such delegated act will have to be amended in order to supplement the application of the new optional regime. **The Commission invites ESMA to provide technical advice on the amendments of such delegated directive taking into account the new payment regime for research and execution services, ensuring harmonisation in their application and fostering research on companies/issuers.**

#### ***5.4. Market capitalisation and free float***

Whereas the Listing Act repeals the Listing Directive, the requirements on free float and on the foreseeable market capitalisation are transferred from Directive 2001/34/EC to MiFID II and will continue to apply. Both requirements are to be enforced by competent authorities and are considered important for seeking admission to trading of shares on regulated markets in the Union by market participants. Article 51a(7) MiFID II empowers the Commission to adopt delegated acts to modify the thresholds for the minimum amount of the foreseeable market capitalisation and/or the free float when the Commission has indications that these thresholds impede liquidity on public markets taking into account financial developments. Considering that the new MiFID II rules are expected to enter into force in early 2025, the Commission services believe that the thresholds should be reviewed in 2028 at the earliest, as sufficient analysable data will not be available until 2027.

Therefore, **the Commission invites ESMA to provide a technical advice on the market capitalisation and free float thresholds** once it has sufficient data on whether the applicable threshold(s) impede liquidity on public markets in the Union and should be adjusted. **The**

**Commission considers that a reasonable timeline for the delivery of such technical advice is by the end 2028.**

## **6. Final considerations**

It is recalled that the analysis provided by ESMA will not prejudice the Commission's final decision concerning the content of delegated acts. Moreover, in accordance with the established practices of the Commission Expert Group on Securities Markets, the Commission will continue, where appropriate, to consult the experts appointed by the Member States in the preparation of the proposal.