Reply Form

**to the Consultation Paper on Draft implementing technical standards on the extension of the use of the alleviated format of insider lists**

Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **03 June 2024.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

• Insert your responses to the questions in the Consultation Paper in this reply form.

• Please do not remove tags of the type < ESMA\_QUESTION\_CPIL\_0>. Your response to each question has to be framed by the two tags corresponding to the question.

• If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.

• When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_ CPIL\_nameofrespondent.

 For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ CPIL\_ABCD.

• Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at *www.esma.europa.eu* under the heading *‘Your input - Consultations’.*

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is of primary interest to issuers, including SMEs, and trading venues, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | EuropeanIssuers |
| Activity | Trade Association |
| Are you representing an association? |[x]
| Country / Region | Belgium |

# Questions

1. Do you agree with the proposed approach? Please explain.

<ESMA\_QUESTION\_CPIL\_1>

Art. 18.9, as amended by the Listing Act, mandates ESMA to review its ITS to extend the alleviated format of the insider list for SME GM issuers to all issuers.

Even though we welcome the alleviations proposed in the Consultation Paper and even though we are aware of the fact that this issue is not in the remit of ESMA, we still believe that a real burden reduction could have been achieved with the Listing Act, through the deletion of the insider list given that the NCAs should have all necessary resources and powers to detect market abuse and identify the persons involved in a transaction in accordance with Article 23 of MAR (for instance by requiring telephone conversations or data traffic records held by investment firms or telecommunications operators). Member States should ensure that their NCAs have the means to fulfil their mission. This responsibility should not be transferred to issuers. If a NCA encounters limitations due to national law, this situation should be addressed at the domestic level. However, we think that the future possible deletion of the insider list from the Market Abuse Regulation would not prevent companies from keeping their own insider lists on a voluntary basis.

We therefore would welcome a reassessment of the issue around the possible deletion of insider lists, particularly in the context of a potential future review of the Level 1 text.

However, we suggest eliminating the following requirements, namely in regard to Template 1 of Annex I:

* **Require professional email address(es)** instead of “professional telephone number(s)”. In most companies, telephones are paired with computers.
* The time at which the insider obtained access and lost access to inside information should be displayed using the **local time of the country where the issuer’s head office is located** or “UTC”.
* **Maintain the requirement to include the “Date of birth”** and delete the “National Identification Number”. The name and date of birth will suffice to identify a person.

We suggest the same amendments regarding template 2 of Annex I with respect to: professional telephone numbers, the time at which the insider was included in and removed from the permanent insider list, the date of birth and the national identification number. In addition, we consider that the “Company name and address” item is useless and could be deleted.

<ESMA\_QUESTION\_CPIL\_1>

1. Do you consider the permanent section of the insider list for all issuers (and SMEs GM issuers in those MS that have opted out of the simplified regime) contained in Annex I useful?

<ESMA\_QUESTION\_ CPIL\_2>

See our answer above.

We would also like to reiterate an issue that has not been tackled in the Listing Act concerning the insider list and external provider; we refer to ESMA’s Final Report on MAR Review dated September 2020 which proposed to amend MAR “to permit the issuer to include only the details of a natural person for each legal person acting on its behalf or on its account having access to inside information and each one of those legal persons should include in their own insiders list the natural persons or one contact of a natural person for legal persons accessing that piece of inside information working for them under a contract of employment or under any other type of arrangement in the same terms (i.e. they can include one contact person per external provider)”. (see ESMA MAR Review Report September 2020, para. 369).

Considering the existing different interpretations in the Member States[[1]](#footnote-2), a clarification along the lines mentioned above could be included in the text of the ITS or in the final report. <ESMA\_QUESTION\_ CPIL\_2>

1. According to Consob Guidelines, if the issuer has a relationship with a legal person (third party working for the issuer), the issuer must insert the contact details of all the natural persons who, according to the issuer’s knowledge, have access to inside information of the issuer (see Consob Guidelines on the management of inside information, October 2017, para. 5.2.6). [↑](#footnote-ref-2)