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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC

(Text with EEA relevance)

{SEC(2022) 760 final} - {SWD(2022) 762 final} - {SWD(2022) 763 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Political context

This proposal is part of the Listing Act package, a set of measures to make public markets more attractive to EU companies and facilitate access to capital for small and medium-sized companies (SMEs). It is in line with the main aim of the Capital Markets Union (CMU) to improve access to market-based sources of financing for EU companies at each stage of their development, including for smaller companies. Listed companies, including those recently listed, often outpace privately owned companies in terms of annual revenue growth and job creation.[1] By listing on public markets, companies can diversify their investor base, reduce their dependency on bank financing, gain easier and cheaper access to additional equity capital and debt finance (through secondary offers), raise their public profile and increase brand recognition.

Since the publication of the first CMU action plan in 2015, progress has been made to make it easier and cheaper for companies, in particular SMEs, to access public markets. In January 2018, the Directive 2014/65/EU of the European Parliament and of the Council (MiFID II)[2] introduced a new category of multilateral trading facilities (MTFs), the SME growth markets[3], to incentivise SMEs access to capital markets. In 2019, new EU rules were put forward under Regulation (EU) 2019/2115 of the European Parliament and of the Council[4] (SME Listing Act) reduce the regulatory burden for companies listing on SME growth markets, while preserving a high level of investor protection and market integrity. Nevertheless, despite this progress, stakeholders argue that further regulatory action is needed to streamline the listing process and make it more flexible for issuers.

The new CMU action plan adopted in September 2020 announced that 'in order to promote and diversify small and innovative companies' access to funding, the Commission will seek to simplify the listing rules for public markets'. Following up on this and building on the 2019 SME Listing Act, the Commission set up a Technical Expert Stakeholder Group (TESG) on

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1 Empowering EU capital markets for SMEs - Making listing cool again Final report of the Technical Expert Stakeholder Group (TESG) on SMEs, May 2021. Oxera Consulting LPP, Primary and secondary equity markets in EU, Final report, November 2020, Oxera-study-Primary-and-Secondary-Markets-in-the-EU-Final-Report-EN-1.pdf.

2 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173 12.6.2014, p. 349).

3 For an MTF to qualify as an SME growth market, at least 50% of the issuers whose financial instruments are traded on the MTF need to be SMEs, defined under MiFID II as companies with an average market capitalisation of less than EUR 200 million. In order to ensure the appropriate level of investor protection, the listing rules on SME growth markets must also satisfy certain quality standards, including the need to draw up an appropriate admission document (when a prospectus is not required) and to comply with periodic financial reporting. The SME growth market framework was developed to further acknowledge the special needs of SMEs accessing the public equity and bond markets for the first time.

4 Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1).

SMEs that confirmed stakeholders' views that further legislative action is needed to support listing of companies, especially of SMEs. In its final report[5] of May 2021, the TESG made 12 recommendations to amend the listing framework both on regulated markets, and SME growth markets.

On 15 September 2021, President Von der Leyen announced in her letter of intent[6] addressed to the Parliament and the Presidency of the Council a legislative proposal to facilitate SMEs' access to capital, which has been included in the 2022 Commission work programme.[7]

A company's decision to list is complex and is influenced by a multitude of factors, many of which are outside the reach of regulators and therefore cannot be addressed directly by legislation. For instance, the factors that affect the cost of listing services, and more broadly geopolitical instability, Brexit, COVID-19, and inflation, have all had (and may continue to have) an impact on the decision to list, when to list, and whether to remain listed in the EU. Regulatory requirements and the associated costs and burden, however, are also a major factor in a company's decision to list and remain listed. The Listing Act package presents a targeted set of measures aiming to: (i) reduce the regulatory burden where it is considered to be excessive (i.e. where regulation could contribute to investor protection/market integrity in a more cost efficient manner for stakeholders); (ii) and increase the flexibility given under company law to companies founders or controlling shareholders to choose how to distribute voting rights after the admission to trading of shares.

The regulatory framework applying to the listing process is multifaceted. Companies must comply with regulatory requirements before, during and after the initial public offering (IPO). The proposed Directive is accompanied by two other legislative proposals, all forming part of the Listing Act package: (i) a proposal for a Regulation amending the Prospectus Regulation and Market Abuse Regulation, which aims to streamline and clarify listing requirements applying on primary and secondary markets, while maintaining an appropriate level of investor protection and market integrity; and (ii) a proposal for a Directive on multiple-vote share structures, which aims to address the regulatory barriers that emerge at the pre-IPO phase and, in particular, the unequal opportunities of companies across the EU to choose the appropriate governance structures when listing.

Reason for the proposal

Listed companies, especially SMEs, need to make themselves known to possible investors: the current low level of investment research on such issuers, driven by many underpinning factors, leads to their low visibility and scarce investors' interest, further limiting the liquidity for the already listed companies.

Under MiFID II and Commission Delegated Directive (EU) 2017/593[8] where the investment research is provided by third parties to investment firms in connexion with

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5 Final report of the Technical Expert Stakeholder Group (TESG) on SMEs - Empowering EU capital markets - Making listing cool again (europa.eu)

6 See p. 4: state_of_the_union_2021_letter_of_intent_en.pdf (europa.eu).

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Commission work programme 2022 Making Europe stronger together COM (2021) 645 final cwp2022_en.pdf (europa.eu).

execution/brokerage services, it is not regarded as an inducement if it is received in return for: (i) a direct payment by the investment firm out of its own resources; or (ii) a payment from a separate research payment account controlled by the firm and subject to several conditions (known as "unbundling rules"). After a few years of application, the success of the unbundling rules is contestable.

The unbundling rules seem to have met some of the objectives, including to better manage the conflicts of interest, to limit the over production of research on very liquid shares and to improve transparency of the costs associated to the provision of research. However, these rules have not contributed to growth of independent investment research providers. On the contrary, further to the introduction of the unbundling rules, independent research became unsustainable due to low prices charged by some larger research providers.

Evidence further suggests that the unbundling rules might have impaired the overall availability of research, especially for small and medium capitalisation companies, and led to a shrinking market research infrastructure, which is detrimental to a competitive and diversified analysts' market. EU brokers, that had in the past provided SME research as part of their "bundled" investment services, scaled back SME capacities following their decision not to pass the costs of research to their clients. The listed small and medium capitalisation companies segment was particularly affected because bundled payments allowed payments for research on large companies to be used for research on small and midcap companies. Overall, several surveys show that the SME coverage has significantly shrunk or even disappeared altogether in the years after the unbundling rules took effect. The consequence was further concentration in the "unbundled" research market and a reduction in the diversity and breadth of the research on offer.

While the unbundling rules were designed to break the nexus between brokerage commissions and investment research as well as to create a "price" for investment research, unbundling has not actually allowed to independently price research and has also not opened up this market to independent (non-brokerage) providers. Most importantly, the unbundling rules have not prevented the negative trend in small and medium capitalisation companies research coverage and have not led to the emergence of independent, SME focused research providers.

In 2021, the unbundling rules were first amended, as part of a more general effort under the CMRP[9] to help the recovery from the COVID-19 crisis which forced companies to rely more heavily on debt, weakening their funding structures. In circumstances, where companies needed urgent re-capitalisation, the need for more visibility of EU companies, in particular small and medium capitalisation companies, was considered fundamental and the implicit cost of not having the research coverage even higher. In that context, the CMRP, applicable since 28 February 2022, sought to improve the small and medium capitalisation companies'

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8 Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500).

9 Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis

research coverage[10] by providing an exemption from the unbundling rules for investment research covering issuers whose market capitalisation does not exceed EUR 1 billion for the period of 36 months preceding the provision of the research, hence allowing in such cases for a joint payment for trade execution and research. Nevertheless, while this measure was widely welcomed, it did not sufficiently address the problem. As many investment firms and brokers offer services to companies of a varying size (and capitalisation), including those exceeding the capitalisation of EUR 1 billion set out in the CMRP, these investment firms and brokers decided against introducing two parallel systems for research invoicing, maintaining the unbundled approach for all clients. Therefore, the amendment in the CMRP did not fully reach its objective to support the production of the small and medium capitalisation companies research and a further legislative review in this context would be necessary.

In addition to amendments to the research unbundling regime, the proposal introduces a limited number of amendments to the legislative framework governing the SME growth market, a category of MTFs, created under MiFID II to raise SMEs visibility and profile as well as to aid the development of common regulatory standards in the EU for markets specialised in SMEs.[11]

Finally, the proposal also seeks to repeal the Listing Directive. The Listing Directive, a minimum harmonisation directive adopted in 2001, provided the basis for listing on EU markets before the adoption of the Prospectus Directive[12] and the Transparency Directive[13], that have subsequently replaced most of the provisions harmonising the conditions for the provision of information regarding requests for the admission of securities to listing and the information on securities admitted to trading. MiFID introduced the notion 'admission of financial instruments to trading on a regulated market'. ESMA's Securities Markets Standing Committee analysis on the implementation of the Listing Directive found that many Member States are not applying any longer the concepts used in the Listing Directive in national law.[14] Moreover, those Member States that still apply such concepts under national law have a rather broad discretion to deviate from the rules set out in the Listing Directive to take into account

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10 Recital 8 of the CMRP (Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis) states that: "In the immediate aftermath of the COVID-19 pandemic, issuers, and in particular small and middle-capitalisation companies, need to be supported by strong capital markets. Research on small and middle-capitalisation issuers is essential to help issuers to connect with investors. That research increases the visibility of issuers and thus ensures a sufficient level of investment and liquidity. Investment firms should be allowed to pay jointly for the provision of research and for the provision of execution services provided certain conditions are met".

11 In April 2021, ESMA published its Final Report on the functioning of the regime for SME growth markets, which concluded that this new regime has been relatively successful with, at the time of the publication of the report, seventeen MTFs registered as SME growth markets. Report available at: final_report_on_sme_gms_-_mifid_ii.pdf (europa.eu).

12 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

13 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 (OJ L 390, 31.12.2004, p. 38).

14 Only 7 NCAs noticed that the Listing Directive is still in force or partially in force in their jurisdiction. A more detailed analysis can be found in Annex 7 of the Impact Assessment accompanying this proposal.

specific local market conditions. Currently the two concepts 'admission to official listing' and 'admission to trading on a regulated market' are often used interchangeably in some Member States. The dual regime of admission to trading, on the one hand, and admission to official listing, on the other hand, could lead to legal uncertainty at EU level, in particular, due to the fact that the requirements on transparency and market abuse, that seek to protect investors and ensure market integrity, are not currently applied to instruments admitted to official listing, while those requirements apply to instruments admitted to trading on a regulated market.

Objectives of the proposal

The overall objective of this proposal is to introduce targeted adjustments to the EU rulebook in order to enhance visibility of listed companies, especially SMEs, and streamline the listing process with a view to enhancing legal clarity.

The proposed targeted amendments to MiFID II seek to facilitate the development and provision of investment research on companies, especially for the small and medium capitalisation ones, and to further incentivise the attractiveness of the SME growth market regime, to ultimately ease small and medium capitalisation companies' access to capital markets. This proposal increases the market capitalisation threshold for small and medium capitalisation companies, below which the re-bundling of trading execution fees and research fees would be possible. By increasing the current threshold of EUR 1 billion up to EUR 10 billion, the aim is to capture a broader scope of small and medium capitalisation companies, and in particular more medium size companies, that would benefit from a re-bundling regime, allowing in particular that payments for research on large companies may be used also for research on small companies". The exemption to the unbundling regime will remove barriers to the entry to more research on small and medium capitalisation companies and globally is expected to revitalise the market for investment research. The more small and medium capitalisation companies research is made available to potential investors, the more chance those companies may have to find fundings. More investment research on those companies will bring them greater visibility and more prospect of attracting potential investors. Considering the high number of small and medium capitalisation companies in EU, it is crucial for the EU economy that those companies get access to diversified sources of fundings, including via the capital markets.

Furthermore, this proposal aims to provide a framework for developing a particular type of research that is paid by the issuer ('issuer-sponsored research'). A public consultation, exchanges with stakeholders, and different analyses,[15] showed that this type of research has developed, in particular, following the introduction of MiFID II, to compensate for the lack of the research coverage on small and medium capitalisation companies. Considering the conflicts of interest inherent in such research, it seems necessary to regulate its production to guarantee fair and accurate information for its consumers. To promote more transparent and independent research, this proposal mandates that such research is produced following a code of conduct developed or endorsed by a market operator or a competent authority in the EU.

In order to make investment research labelled as issuer-sponsored research more easily accessible to the public and to promote the visibility of small and medium capitalisation companies with potential investors, the proposal mentions that Member States shall ensure

[15] Report entitled "*Reviving research in the wake of Directive 2014/65/EU: Observations, issues and recommendations available at: 20200124-rapport-mission-recherche-projet-va-pm.pdf (amf-france.org)*

that issuers may submit their issuer-sponsored research to the collection body as defined under [Article 2(2) of the proposal for a regulation on a European Single Access Point[16]].

Once established, the European Single Access Point (ESAP), proposed by the Commission on 25 November 2021[17] and currently under interinstitutional negotiations with the EU co-legislators will provide a single point of access to public financial information on EU companies, including SMEs, and EU investment products. ESAP is designed to give EU companies, especially SMEs, greater visibility to investors and could be used to collect and disseminate issuer-sponsored research. Going forward, ESAP may be used to publish the issuers' notifications related to issuer-sponsored research and the contents of such research.

Moreover, the targeted amendments to MiFID II seek to clarify that an operator of a multilateral trading facility (MTF) can apply for a segment of the MTF to be registered as an SME growth market provided that certain requirements are complied with in respect of that segment.

Furthermore, this proposal seeks to increase the harmonisation and coherence of the listing rules in the EU, in order to make the regulatory framework fit for purpose. This proposal in particular harmonises and consolidates the listing rules by repealing the Listing Directive and transferring its relevant provisions into MiFID II, in order to reduce legal uncertainty and risk of regulatory arbitrage in the EU.

Those provisions concern: (i) the minimum free float requirement, which determines 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 interest; and (ii) the foreseeable market capitalisation of the shares for which admission to listing is sought or, if this cannot be assessed, the company's capital and reserves, including profit or loss, from the last financial year. The proposal also decreases the minimum free float requirement from 25% to 10% to allow for more flexibility for issuers who want to keep a large share in the company. In addition, the new minimum free float threshold of 10% will not be limited to the public in the EU/EEA. That geographical restriction of the free float requirement to the EU/EEA will not be maintained as MiFID II does not provide for such restriction for financial instruments admitted to trading.

- **Consistency with existing policy provisions in the policy area**

The amendments to MiFID II and the repeal of the Listing Directive are in line with the overarching objectives of MiFID II to increase transparency and reinforce investor protection. Furthermore, this proposal builds and further expands on the amendments brought by the CMRP to the investment research regime.

Targeted amendments to MiFID II are fully in line with the objectives of the existing SME growth markets regime under MiFID II 'to facilitate access to capital for smaller and medium-sized enterprises' and with the need to focus attention 'on how future regulation should further foster and promote the use of that market so as to make it attractive for investors, and provide

[16] Proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability. 2021/0378 (COD).

[17] Proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability. 2021/0378 (COD)

a lessening of administrative burdens and further incentives for small and medium capitalisation companies to access capital markets through SME Growth Markets'[18].

- **Consistency with other Union policies**

The proposal is fully in line with the CMU core aim to make financing more accessible to EU companies and in particular to SMEs. It is consistent with a number of legislative and non-legislative actions taken by the Commission in the framework of the 2015 CMU Action Plan,[19] 2017 Mid-term Review of the CMU Action Plan[20] and 2020 CMU Action Plan.

In order to support jobs and growth in the EU, facilitating access to finance for companies, especially SMEs, has been a key goal of the CMU from the outset. Since the publication of the CMU Action Plan in 2015, some targeted actions were taken to develop adequate sources of funding for SMEs through all their stages of development. In its Mid-term Review of the CMU Action Plan published in June 2017, the Commission chose to raise its level of ambition and strengthened its focus on the SMEs' access to public markets. In May 2018, the Commission published a proposal for the SME Listing Act[21] aiming to reduce the administrative burden and the high compliance costs faced by SME growth market issuers while ensuring a high level of market integrity and investor protection; foster the liquidity of publicly listed SME shares to make these markets more attractive for investors, issuers and intermediaries; and facilitate the registration of MTFs as SME growth markets. The SME Listing Act was adopted in November 2019.

Furthermore, following the COVID-19 crisis, the Commission published the CMRP, which comprised of targeted amendments to capital markets and bank regulation, with the overarching aim to make it easier for capital markets to support EU businesses to recover from the COVID-19 crisis. The suggested changes to the capital market rules aimed in particular to alleviate regulatory burden and complexity for investment firms and issuers.

This proposal follows up on the 2020 CMU Action Plan and its objective to make financing more accessible to EU companies (Action 2 "supporting access to public markets"). The proposal focuses on alleviating the regulatory requirements that can deter a company from deciding to list or to remain listed. Other factors that may deter issuers from listing, such as a narrow investor base and a more favourable tax treatment of debt over equity, are addressed by other ongoing and upcoming CMU initiatives that complement the amendments put forward in this proposal and should be analysed in conjunction with this initiative. These initiatives relate, for example, to (i) the creation of an EU Single Access Point (ESAP) that will tackle the lack of accessible and comparable data for investors, making companies more visible to investors, (ii) the centralisation of EU trading information in a consolidated tape for a more efficient public market trading landscape and price discovery, (ii) the introduction of a

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18 MiFID II, recital 132

19 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on Building a Capital Markets Union COM(2015) 468 final

20 Communication from the Commission on the mid-term review of the capital markets union action plan ({SWD(2017) 224 final} and {SWD(2017) 225 final} – 8 June 2017) https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017_en.pdf

21 Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets COM(2018) 331 final

debt-equity bias reduction allowance (DEBRA)[22] to make equity financing more attractive (and less costly) for companies.

Furthermore, a series of the Commission initiatives will further strengthen the investor base for listed equity. The EU SME IPO Fund will play the role of an anchor investor to attract more private investment in SMEs' public equity by partnering with institutional investors and investing in funds focused on SME issuers. The CRR and Solvency II reviews will increase the investor base for issuers by facilitating investments from banks and insurance companies in public (long-term) equity.

This proposal is also in line with the New European Innovation Agenda[23] published in 2022.

The proposal also takes into account the evidence behind the opinion of the Fit For Future Platform on facilitating SMEs' access to capital and in particular on simplification of the procedures for the admission to trading of securities of SMEs and other listing obligations.

Finally, this proposal will help especially EU SMEs benefit from a clearer and easier legislative regime to access capital markets. This is also in line with the objective of the SME relief package announced by the Commission President Ursula von der Leyen in the State of the European Union speech on September 19, 2022.[24]

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Articles 50, 53(1) and 114 of the Treaty on the Functioning of the European Union (TFEU).[25]

Article 50(1) TFEU and in particular Article 50(2)(g) TFEU provide for the EU competence to act in order to attain freedom of establishment as regards a particular activity, in particular "by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or forms within the meaning of the second paragraph of Article 54 TFEU with a view to making such safeguards equivalent throughout the Union". Article 50 TFEU mandates the Parliament and the Council to act by means of directives.

Article 114 TFEU provides for the adoption of measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. The Union legislature may have recourse to Article 114 TFEU in particular where disparities between national rules obstruct the fundamental freedoms or create distortions of competition and so have a direct effect on the functioning of the internal market.

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22 Proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (COM/2022/216 final).

23 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A New European Innovation Agenda (COM/2022/332 final).

24 European Commission - Statement, A "Relief Package" to give our SMEs a lifeline in troubled waters I Blog of Commissioner Thierry Breton; Brussels, 19 September 2022.

25 OJ C 326, 26.10.2012, p. 47–390 (GA)

The legal basis for amendments to MiFID II is Article 53(1) TFEU. Article 53 TFEU grants the co-legislators the power to issue directives aimed at making it easier for persons to take up and pursue commercial activities across the EU.

- **Subsidiarity (for non-exclusive competence)**

Under Article 4 TFEU, EU action for completing the internal market must be appraised in the light of the subsidiarity principle set out in Article 5(3) of the Treaty on European Union (TEU). It must be assessed whether the objectives of the proposal: (i) could not be achieved by the Member States alone; and (ii) could be better achieved at EU level given their scale and effect. It also has to be considered whether the objectives would be better achieved by action at EU level (the so-called 'test of European added-value').

The proposed measure aims at ensuring a better research coverage in the EU, particularly for small and medium capitalisation companies. As the measure touches upon rules on inducement that are governed by MiFID II, the revised rules would also apply at EU level.

On the code of conduct for the issuer-sponsored research, considering that such research may be distributed cross-border, the proposed EU measure would ensure that the same or similar level of requirements would apply to all issuer-sponsored research. This would improve, in a harmonised way, the quality of issuer-sponsored research across the EU and. Consequently, improve access to funding opportunities through EU public markets.

Regarding the listing requirements set out in the Listing Directive, the different approaches taken by Member States and their different interpretations of the rules make it difficult to reduce regulatory fragmentation in the EU. As MiFID II now covers the rules for admission of financial instruments to trading and seeks maximum harmonisation across national rules, the introduction of the remaining relevant provisions of the Listing Directive into MiFID II seems to be the most appropriate way to reduce the divergent application of listing rules in the EU.

- **Proportionality**

On the proportionality principle, the proposal does not go beyond what is strictly necessary to achieve its objectives. It is compatible with the proportionality principle, taking into account the right balance between market participants' interests at stake and the cost-efficiency of the measure.

On investment research, the proposed regulatory amendment will reduce the burden for investment firms and in turn ensure that more small and medium capitalisation companies' get research coverage and benefit from better visibility in the market.

On Listing Directive overall the proposal to repeal it and include the relevant provisions in MiFID II shows the evolution of the legislative environment.

- **Choice of the instrument**

This proposal amends a directive of the European Parliament and of the Council adopted on the basis of Article 53(1) TFEU. A proposal for a directive is therefore required to amend the aforementioned Directive.

The Listing Directive is based on Article 50 and Article 114 TFEU. The Listing Directive will be repealed and relevant provisions on listing will be introduced in MiFID II. This will enable

Member States to amend the legislation currently in force to the extent needed to ensure compliance with the relevant MiFID II provisions.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

This initiative focuses on reducing the regulatory burden that issuers incur during the listing process and afterwards when they are listed. Therefore, it only covers those aspects in the EU legislation that stakeholders consider to hinder companies' access to and ability to remain on public markets.

To inform this initiative, the Commission services collected a significant amount of data directly from trading venues and issuers (including SME associations). TESG (in force between October 2020 and May 2021) provided some evidence in addition to the input received from market participants. The Commission also contracted a study on Primary and Secondary Equity Markets in the EU from Oxera in November 2020, which contains a very detailed overview of EU capital markets. Other sources used included extensive academic literature and research.

More information on the problems identified in the proposal is provided in the impact assessment on the Listing Act annexed to this proposal. Annex 7 provides an overview of how the Listing Directive has been implemented by the Member States and sets out potential future courses of action. Annex 9 analyses rules on investment research and the changes to the EU regulatory environment to date. It also sets out possible ways forward.

• Stakeholder consultations

On 19 November 2021, the Commission launched a 14-week public and targeted consultation seeking views from stakeholders on how to increase the overall attractiveness of listings on public markets in the Union, including any potential shortcomings in the regulatory framework that dissuade companies from raising funds via capital markets. The consultation put forward specific questions concerning Regulation (EU) 2017/1129, Regulation (EU) No 596/2014, and including the Directive 2001/34/EC and Directive 2014/65/EU and areas of improvement from a general standpoint.

Overall, 108 responses were received, sent by stakeholders from 22 Member States, the US, the UK and Switzerland.

The majority of respondents (60%) saw merit in including in Level 1 the conditions under which an operator of an MTF may register a segment of the MTF as an SME growth market. They highlighted that this would enhance legal clarity. They added that such an amendment could also incentivise more MTFs to register SME GM segments.

A small majority of respondents (51%) viewed the new research regime introduced by the CMRP as positive to support SMEs' access to capital markets. Most of those respondents pointed out that the impact of the CMRP is however very limited. Some pointed out that research coverage for SMEs is considered uneconomic for asset managers and research providers and that this appears as a long-term trend. Nevertheless, business associations, in particular, and NCAs pointed out it is still too early to tell what the overall impact of the new regime is. The overwhelming majority of respondents (72.9%) would see merit in alleviating the MiFID II regime on research even further. While some suggested to lift the exemption threshold in order to fully cover the small and mid-cap segment, several business associations

considered that going back to fully bundled execution and company research pricing is the only solution to boost research for SMEs (which dropped to an almost non-existent level). Some also considered that the MiFID II research regime was wrongly designed for companies of any size. They claimed that MiFID II regime has indirectly become an incentive to allocate a larger part of research services value in the hands of a few big players (i.e. leading to consolidation in the industry).

A majority recommended to fully exempt from the unbundling rule research on fixed income, as the reform has not produced any impact on the spreads, nor led to more research by independent providers. However, a few respondents were also strongly opposed to the full re-bundling, arguing that this would create an unacceptable non-level playing field between research provided by investment firms and other research producers - research has to be independent regardless of the fact that the entity issuing it may run other activities or may belong to a group. Many respondents suggested to encourage research sponsored by issuers and argued that this is the sole way to develop research on SMEs (both equity and fixed-income products). They, however, suggested safeguards to increase its acceptability by investors, such as by making it subject to a code of conduct rules and clearly labelling it as issuer-sponsored research (and not as a marketing communication). A large majority of respondents (58.5%) considered that the Listing Directive, in its current form, needs to be amended. Respondents were divided on whether the Listing Directive should be incorporated in another piece of legislation, amended as a directive or amended and transformed into a regulation, or repealed. Over 33% of respondents considered that the definitions laid down in Article 1 of the Listing Directive are outdated. Almost 47% of them being not able to answer. Very few respondents (20%) thought that the definitions were not outdated. Most respondents (54%) considered that the broad flexibility that the Listing Directive leaves to Member States and NCAs 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. The majority of respondents who expressed their opinion considered the expected market capitalisation (Article 43(1) of the Listing Directive), the disclosure pre-IPO (Article 44 of the Listing Directive) and the free float requirement (Article 48(5) of the Listing Directive) as very or rather relevant (67%, 68% and 72% respectively). While some respondents added that flexibility is needed to adjust the requirements according to the size of the market or issuer (to have the possibility to lower the free float threshold), others argued that national discretion would not be necessary if an appropriate minimum threshold is set at EU level.

- **Collection and use of expertise**

Over the recent years, companies' and especially SMEs' access to public markets has been the focus of the Commission's continuous evaluations. Issues relating to regulatory burden on companies when accessing public markets were raised in the context of the TESG and the 2020 CMU Action Plan. The Commission also took into account extensive research on the topic undertaken in the Oxera study.

The Commission also organised two technical meetings/workshops with industry stakeholders in April 2022 with a view to further refining the policy options under consideration.

Furthermore, the Commission presented the objective of the proposal at the European Securities Committee Expert Group and at the Coordinators of the Economic and Monetary Affairs Committee (ECON) of the European Parliament.

Expert group recommendations

In October 2020, the European Commission initiated the TESG. The Group had been tasked with monitoring and assessing the functioning of SME growth markets, as well as providing

expertise and possible input on other relevant areas of SME access to public markets. The TESG confirmed the concerns expressed by the stakeholders that further legislative action is needed to support listing of companies and especially of SMEs. In its final report, published in May 2021, the TESG formulated 12 recommendations, including encouraging Member States to put in place measures to promote equity research coverage of all listed small and medium sized companies.

Stakeholder meetings

The Commission services also organised two technical meetings/workshops with industry stakeholders in April 2022 with a view to further refining the policy options that the Commission was considering. The meeting with the exchanges was held on 5 April 2022. Most exchanges were in favour of repealing the Listing Directive as long as certain elements (free float and minimum foreseeable market capitalisation) were incorporated in the MiFID II regime. Some were also in favour of lowering the minimum free float to 10%. One exchange expressed a view that the concept of "admission to the official listing" is important and should be kept. This exchange opposed the repeal of the Directive for that reason. The meeting with issuers and investors was conducted on 8 April 2022. On the Listing Directive, the stakeholders that expressed their view saw merit in deleting the provisions on free float.

Meetings with Member State experts

The Commission also presented the objective of the proposal at the European Securities Committee Expert Group (EGESC) on 15 October 2021 as well as on 17 and 30 May 2022. Delegations participating in the discussion showed support for the Commission's objective to improve the attractiveness of EU public markets, while ensuring investor protection and market integrity.

Meeting with the ECON coordinators in the European Parliament's Committee

The MEP Coordinators that participated in the discussion welcomed the Commission's proposed way forward on the Listing Act, acknowledging the problem with EU public markets. They stressed that the Commission needs to find a right balance to ensure that all companies, especially SMEs, can access public markets for funding, while at the same time ensuring adequate investor protection.

- **Impact assessment**

The impact assessment was submitted to the Regulatory Scrutiny Board (RSB) on 10 June 2022 and approved by the Regulatory Scrutiny Board (RSB) – with reservations – on 8 July 2022.The RSB requested to amend the draft impact assessment to clarify: (i) the articulation and coherence of the Listing Act initiative with other linked capital markets initiatives; (ii) the risks and limitations of the analysis; and (iii) the different views expressed by different categories of stakeholders on the problem definition, the options and their impacts. The Board's comments were addressed and integrated in the final version of the impact assessment.

The impact assessment focuses on identifying and addressing specific regulatory barriers at each stage of the listing process. It discusses barriers at the pre-IPO stage stemming from company law, in particular, from the fact that a multiple-vote share listing is not possible in some Member States. It then focuses on barriers at the IPO stage arising from the Prospectus Regulation, notably from the high costs of drawing up a prospectus. Finally, it addresses barriers encountered at the post-IPO stage stemming from MAR, in particular, costs due to the legal uncertainty regarding the issuers' obligation to publicly disclose inside information. For

each stage of the listing process, the impact assessment sets out two alternative policy options, after having analysed the available empirical evidence and accounting for stakeholders' views.

The impact assessment analyses the options in relation to three objectives, that is whether they: (i) reduce the regulatory and compliance costs for companies seeking to list or those that are already listed, (ii) ensure a sufficient level of investor protection and market integrity, and (iii) provide issuers with more incentives to list. The preferred option (for each stage of the listing process) should thus be cost-efficient and effective in addressing the identified barrier while safeguarding a sufficiently high level of investor protection and market integrity. The proportionality of measures for smaller companies has been considered when identifying and assessing options.

While the regulatory amendments set out in the options, on their own, could not address all the challenges faced by EU public markets, together with other measures considered as part of a wider plan to enhance companies' access to public capital markets, they seek to contribute to reversing the current negative trend in EU public markets. Absent of those regulatory improvements, EU public markets would continue to rely on the suboptimal regulatory framework for listing, which in turn would reduce the attractiveness of public markets, resulting in an economic cost for EU issuers, investors and the EU economy as a whole. The baseline scenario hence envisages no amendments to the legislative framework governing the rules for listing and already listed companies.

With regard to the Listing Directive, the impact assessment recommends the repeal of the Listing Directive and transferring the relevant provisions from the Listing Directive into MiFID II.

With regard to MiFID, the impact assessment recommends looking into measures that could be adopted to revitalise the market for investment research such as increasing the market capitalisation of issuers/companies below which the exemption applies to include coverage of broader scope of SMEs. Furthermore, another measure that would help encourage more issuer-sponsored research would be to create a "code of conduct" which would regulate such research.

As regards the social, economic and environmental impacts, climate consistency check and do no significant harm principles, this proposal will contribute to the CMU agenda and its objectives to ensure the development and further integration of capital markets in the EU. The regulatory measures proposed in this initiative are expected to have an impact on all companies in the EU, but in particular on SMEs, which are more exposed to the (excessive) regulatory burden than larger companies with a higher cost absorption potential. This proposal would also be conducive to the development of more open and more competitive capital markets, benefitting in particular faster-growing companies in innovative and research-intense sectors that tend to have higher capital needs.

The initiative is not expected to have a direct social impact. However, there can be a positive indirect impact on employment. Although the (indirect) social impact cannot be quantified, it is likely to be positive. Provided that the proposal achieves its objective of easing the access to public markets by EU companies, the latter will be able to benefit from a more diversified and larger pool of funding sources, allowing these companies to innovate, grow and employ more people.

No direct environmental impacts and no significant harm, either direct or indirect, are expected to arise from the implementation of this proposalA significant number of companies listed on public markets, however, may engage in the development and innovation process of

new environment-friendly technologies. A better access to finance will allow these companies to grow at a more rapid pace and allocate more financial resources to R&D programmes that can contribute to the European Green Deal objectives.

This proposal is in line with the SDG 8[26]- decent work and economic growth as it contributes to the growth of SMEs by providing easier access to funding through public markets. Newly listed companies are a key motor of new investment and job creation. Easier access to public markets creates incentives for entrepreneurs to diversify in times of economic turmoil, leading to a more resilient economy. It also contributes directly to Target 8.3 "Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalisation and growth of micro-, small- and medium-sized enterprises, including through access to financial services" and Target 8.10 " Strengthen the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all" as well as indirectly to Target 8.2 "Achieve higher levels of economic productivity through diversification, technological upgrading and innovation".

Furthermore, it is in line with SDG 9 – industry, innovation, and infrastructure as an easier access to public markets would increase access of smaller (industrial) companies to new funding opportunities. This would provide them with alternative sources of financing and ensure their ability to grow and innovate, including in the areas of key strategic importance for the EU. Contributes indirectly to Target 9.3 "Increase the access of small-scale industrial and other enterprises to financial services, including affordable credit, and their integration into value chains and markets".

This proposal overall is not expected to have any impact on digitalisation.

- **Regulatory fitness and simplification**

The overall Listing Act package is expected to bring about annual administrative cost savings of approximately EUR 167 million for issuers, including SMEs. It is expected that NCAs would be able to reduce their costs because simpler and clearer requirements will make it possible to conduct their supervisory activities more efficiently. As the relevance and added value of the Listing Directive has decreased as a result of recent enacted legislation, the Listing Act package also proposes to repeal the Listing Directive. It is expected that there would be only minor adjustment costs arising from the implementation of the proposal for issuers and NCAs.

- **Fundamental rights**

The proposal respects fundamental rights and observes the principles recognised by the Charter, in particular the freedom to conduct a business (Art. 16) and consumer protection (Art. 38). As this initiative aims at alleviating the administrative burden placed on issuers, this initiative would contribute to improving the right to conduct business freely.

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26 Amongst the Sustainable Development Goals (SDG) of the United Nations, SDG 8 concerns "decent work and economic growth". The Listing Act is expected to contribute to the growth of SMEs by providing easier access to funding through public markets. Newly listed companies are a key motor of new investment and job creation. Easier access to public markets creates incentives for entrepreneurs to diversify in times of economic turmoil, leading to a more resilient economy.

4. BUDGETARY IMPLICATIONS

The initiative is not expected to have any impact on the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An evaluation is envisaged 5 years after the implementation of the measure and according to the Commission's better regulation guidelines. The objective of the evaluation will be to assess, among other things, how effective and efficient the Directive has been in achieving the policy objectives and to decide whether new measures or amendments are needed.

- **Detailed explanation of the specific provisions of the proposal**

Amendments to Directive 2014/65/EU

Article 1 of the proposal amends Directive 2014/65/EU in the ways described hereunder.

- Article 1(1) of the proposal amends Article 4(1), point (12) of Directive 2014/65/EU, which is the definition of "SME growth markets", to also include the segment of an MTF in the definition.

- Article 1(2), point (a) of the proposal introduces a new point 3a on the qualities of investment research. It sets out that research provided by third parties shall be fair, clear and not misleading.

- Article 1(2), point (a) of the proposal also inserts a new point 3b on the conditions to label research as "issuer-sponsored research". Such conditions include the requirement for research to comply with a code of conduct, as well as the requirements for the content, publication and review of such code of conduct. The Article also clarifies that issuers may submit their issuer-sponsored research to the collection body under the proposal for a European single access point. A final clarification is added that any research material paid by the issuer but not produced in compliance with such code of conduct shall be labelled as a marketing communication.

- Article 1(2), point (a) of the proposal introduces a new point 3d. For research labelled as issuer-sponsored research, it must be a clearly indicated on the front page of the research that it has been prepared in line with a code of conduct.

- Article 1(2), point (b) of the proposal increases the threshold of companies' market capitalisation to EUR 10 billion, below which the unbundling rules do not apply.

- Article 1(3), points (a) to (c) clarify that a segment of MTF can be registered as an SME growth market and set out the conditions and requirements for its registration or de-registration.

- Article 1(4) of the proposal introduces a new Article 51a to cover the specific conditions for the admission of shares to trading on a regulated market. Such conditions are the EUR 1 million minimum market capitalisation requirement for companies that seek to list their shares on a regulated market, as well as a 10% minimum free float requirement. Furthermore, the Commission is empowered to adopt delegated acts to change such thresholds when they hamper the liquidity on public markets, taking into account financial developments.

Amendments to Directive 2001/34/EC

Article 2 of the proposal repeals the Listing Directive.

Article 3 sets out the requirement and timeline to transpose this Directive.

Article 4 sets the date when this Directive will enter into force.

Article 5 sets out to whom this Directive is addressed.

2022/0405 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50, 53(1) and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[27],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 2014/65/EU of the European Parliament and of the Council[28] has been amended by Regulation (EU) 2019/2115 of the European Parliament and of the Council[29], which introduced proportionate alleviations to enhance the use of SME growth markets and to reduce the excessive regulatory requirements for issuers seeking admission of securities on SME growth markets, while preserving an appropriate level of investor protection and market integrity. However, to streamline the listing process and to render the regulatory treatment of companies more flexible and proportionate to their size, further amendments to Directive 2014/65/EU are necessary.

(2) Directive 2014/65/EU and Commission Delegated Directive (EU) 2017/593[30] set out the conditions under which the provision of investment research by third parties to investment firms providing portfolio management or other investment or ancillary services is not to be regarded as an inducement. In order to foster more investment

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27 OJ C , , p. .

28 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

29 Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1).

30 Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500).

research on companies in the Union, in particular small and medium capitalisation companies, and to bring those companies greater visibility and more prospect of attracting potential investors, it is necessary to introduce some amendments to that Directive.

(3) The provisions concerning research laid down in Directive 2014/65/EU require investment firms to separate payments which they receive as brokerage commissions from the compensation perceived for providing investment research ('research unbundling rules'), or to pay for investment research from their own resources and assess the quality of the research they purchase based on robust quality criteria and the ability of such research to contribute to better investment decisions. In 2021, those rules have been amended by Directive (EU) 2021/338 of the European Parliament and of the Council[31] to allow for bundled payments for execution services and research for small and medium capitalisation companies below a market capitalisation of EUR 1 billion. The decline of investment research has, however, not slowed down.

(4) In order to revitalise the market for investment research and to ensure sufficient research coverage of companies, in particular the small and medium capitalisation companies, further alleviation of the research unbundling rules are necessary. By increasing from EUR 1 billion to EUR 10 billion the threshold of companies' market capitalisation below which the unbundling rules do not apply, more small and medium capitalisation companies, and in particular more medium capitalisation companies will benefit from a larger research coverage, bringing those companies more visibility from potential investors and thus increasing their capacity to raise funding in the markets.

(5) In addition, to further support the coverage of small and medium capitalisation companies by investment research, research material paid fully or partially by issuers should be labelled as 'issuer-sponsored research'. To ensure an adequate level of objectivity and independence of such research material, such material should be produced in line with a code of conduct developed or endorsed by a market operator registered in a Member State or by a competent authority. In order to support more visibility of the issuer-sponsored research, issuers should have the possibility to submit their issuer-sponsored research to the relevant collection body as defined[32] in [Article 2 (2) of the proposal for a Regulation[33] on a European Single Access Point].

(6) Directive 2014/65/EU introduced the SME growth market category to increase the visibility and profile of markets specialised in SMEs and foster the development of common regulatory standards in the Union of markets specialised in SMEs. SME growth markets play a key function in facilitating access to capital for those smaller issuers by catering for their needs. To foster the development of such specialised markets and to limit the organisational burden for the operators of multilateral trading facilities (MTFs), it is necessary to allow the segment of a MTF to apply to become a SME growth market provided that such segment is clearly separated from the rest of the MTF.

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31 Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

32 See Article2.2 o proposal for a Regulation [2021.78.COD]

33 Proposal for a Regulation [2021/03.78.COD]

(7) Directive 2001/34/EC of the European Parliament and of the Council[34] lays down rules concerning listing on Union markets. That Directive aims at coordinating the rules on the admission of securities to official stock exchange listing and on information to be published on those securities to provide equivalent protection for investors at Union level. That Directive also lays down the rules of the regulatory and supervisory framework for Union primary markets. In the course of the years, Directive 2001/34/EC has been amended significantly several times. Directives 2003/71/EC of the European Parliament and of the Council[35] and Directive 2004/109/EC of the European Parliament and of the Council[36] have replaced most of the provisions 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, and have made large parts of Directive 2001/34/EC redundant. Directive 2001/34/EC as a minimum harmonisation Directive gives Member States a rather broad discretion to deviate from the rules laid down in that Directive, which has led to market fragmentation in the Union. To drive market harmonisation at Union level and create a single rule book, Directive 2001/34/EC should be repealed.

(8) Directive 2014/65/EU, like Directive 2001/34/EC, provides for the regulation of markets of financial instruments and strengthens investor protection in the Union. Directive 2014/65/EU also sets out rules on the admission of financial instruments to trading. By extending the scope of Directive 2014/65/EU to cover specific provisions from Directive 2001/34/EC will ensure that all relevant provisions from Directive 2001/34/EC are maintained. A number of provisions of Directive 2001/34/EC, including the requirements on free float and market capitalisation which still apply, are enforced by competent authorities and are considered important rules for seeking admission to trading of shares on regulated markets in the Union by market participants. It is therefore necessary to transfer those rules in Directive 2014/65/EU to set out, in a new provision of that Directive, specific minimum conditions for the admission to trading of shares on regulated markets. The application of that new provision should complement the general provisions on the admission of financial instrument to trading laid down in Directive 2014/65/EU.

(9) To allow for more flexibility for issuers and to make Union capital markets more competitive, the minimum free float requirement should be decreased to 10%, which is a threshold that ensures for a sufficient level of liquidity in the market. The free float requirement laid down in Directive 2001/34/EC that a sufficient number of shares is to be distributed to the public in one or more Member States refers to the public within the Union and the European Economic Area (EU/EEA). That geographical restriction of the free float requirement to the EU/EEA should not be maintained as Directive 2014/65/EU does not provide for such restriction for financial instruments admitted to

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34 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 (OJ L 184, 6.7.2001, p. 1).

35 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

36 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 and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

trading. The requirement that a company is to have published or filed its annual accounts for a specific period of time should not be transferred to Directive 2014/65/EU since Regulation (EU) 2017/1129 of the European Parliament and of the Council[37] already contains a provision to that effect. Directive 2014/65/EU already lays down provisions to designate competent authorities. Thus, the provisions laid down in Directive 2001/34/EC to appoint one or more competent authorities are redundant. The requirement for debt securities that the amount of the loan is not be less than EUR 200 000 are considered obsolete in light of current market practice.

(10) The concept of admission of securities to official listing on stock exchanges provided for in Directive 2001/34/EC is no longer frequently used given market developments, as Directive 2014/65/EU already provides for the concept of 'admission of financial instruments to trading on a regulated market'. The two concepts 'admission to official listing' and 'admission to trading on a regulated market' are often used interchangeably in some Member States. That means that, in some Member States, no distinction is made between the two concepts. Furthermore, the dual regime of admission to trading, on the one hand, and admission to official listing, on the other hand, could lead to legal uncertainty at Union level, in particular, due to the fact that the requirements laid down in Directive 2003/71/EC, Directive 2004/109/EC and Directive 2014/57/EU of the European Parliament and of the Council[38] do not apply to instruments admitted to official listing, while those requirements apply to instruments admitted to trading on a regulated market.

(11) To enhance the visibility of listed companies, in particular SMEs and to adapt the listing conditions to improve requirements for issuers, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Directive 2014/65/EU. The market capitalisation threshold for companies, for which the re-bundling of trading execution and research fees would be possible, to capture small and medium capitalisation companies, and providing a framework for the development of a particular form of research for which the issuer pays should be adapted. The adaption of the listing rules in the Union should also reflect market practice for it to be effective and promote competition. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[39]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(12) Directive 2014/65/EU should therefore be amended accordingly.

(13) Since the objectives of this Directive, namely to ease Union small and medium capitalisation companies' access to capital markets, and to increase the coherence of Union listing rules cannot be sufficiently achieved by the Member States but can

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37 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, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

38 Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).

39 OJ L 123, 12.5.2016, p. 1.

rather, by reason of the improvements and effects sought, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 4(1), point (12) is replaced by the following:

'(12) 'SME growth market' means a MTF, or a segment of a MTF, that is registered as an SME growth market in accordance with Article 33;';

(2) Article 24 is amended as follows:

(a) the following paragraphs 3a to 3d are inserted:

'3a. research provided by third parties to investment firms providing portfolio management or other investment or ancillary services and research prepared and distributed by such firms shall be fair, clear and not misleading. Research shall be clearly identifiable as such or in similar terms, provided that all conditions applicable to the research are met.

3b. Where the research is paid, fully or partially, by the issuer and disseminated to the public or to investment firms or to the clients of investment firms providing portfolio management or other investment or ancillary services, such research shall be labelled as "issuer-sponsored research" provided that it is produced in compliance with a code of conduct developed or endorsed by a market operator registered in a Member State or by a competent authority.

The code of conduct shall set out minimum standards of independency and objectivity to be complied with by the providers of such research. The market operator or the competent authority shall publish the code of conduct on its website and review and re-endorse it every 2 years.

3c. Member States shall ensure that any issuer may submit its issuer-sponsored research, as referred to in paragraph 3b of this Article, to the relevant collection body as defined in [Article 2(2) of the proposal for a Regulation on a European Single Access Point[40]].

3d. Research that is labelled as issuer-sponsored research shall indicate on its front page in a clear and prominent way that it has been prepared in accordance with a code of conduct. The name of the market operator or competent authority that has developed or endorsed such code of conduct shall also be mentioned. Any other research material paid fully or in part by the issuer but not produced in compliance with a code of conduct as referred to in paragraph 3b shall be labelled as marketing communication.';

[40] Proposal for a Regulation [2021/0378.COD].

(b) in paragraph 9a, point (c) is replaced by the following:

'(c) the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as expressed by end-year quotes for the years when those issuers are or were listed or by the own-capital for the financial years when those issuers are or were not listed.';

(3) Article 33 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Member States shall provide that the operator of a MTF may apply to its home competent authority to have the MTF or a segment thereof, registered as an SME growth market.

2. Member States shall provide that the home competent authority may register the MTF, or a segment thereof, as an SME growth market if the competent authority receives an application as referred to in paragraph 1 and is satisfied that the requirements in paragraph 3 are complied with in relation to the MTF, or that the requirements in paragraph 3a are complied with in relation to a segment of the MTF.';

(b) the following paragraph 3a is added:

'3a. Member States shall ensure that the relevant segment of the MTF is subject to effective rules, systems and procedures which ensure that the conditions referred to in paragraph 3 and all of the following conditions have been complied with:

(a) the segment of the MTF registered as 'SME growth market' is clearly separated from the other market segments operated by the MTF operator, which is *inter alia* indicated by a different name, different rulebook, different marketing strategy, and different publicity, as well as a specific allocation of the market identification code to the SME growth market segment;

(b) the transactions made on the specific SME growth market segment are clearly distinguished from other market activity within the other segments of the MTF;

(c) upon request of the MTF's home competent authority, the MTF shall provide a comprehensive list of the instruments listed on the SME growth market segment concerned, as well as any information on the operation of the SME growth market segment that the competent authority may request.';

(c) paragraphs 4 to 6 are replaced by the following:

'4. The criteria laid down in paragraphs 3 and 3a are without prejudice to compliance by the investment firm or market operator operating the MTF, or a segment thereof, with other obligations under this Directive relevant to the operation of MTFs.

5. Member States shall provide that the home competent authority may deregister a MTF, or a segment thereof, as an SME growth market in any of the following cases:

(a) the investment firm or market operator operating the MTF, or a segment thereof, applies for its deregistration;

(b) the requirements in paragraph 3 or 3a are no longer complied with in relation to the MTF, or a segment thereof.

6. Members States shall require that if a home competent authority registers or deregisters a MTF, or a segment thereof, as an SME growth market under this Article, that authority shall as soon as possible notify ESMA of that registration or deregistration. ESMA shall publish on its website a list of SME growth markets and shall keep that list up to date.';

(d) paragraph 8 is replaced by the following:

'8. The Commission is empowered to adopt delegated acts in accordance with Article 89 to supplement this Directive by further specifying the requirements laid down in paragraphs 3 and 3a of this Article. Those requirements shall take into account the need to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market. They shall also take into account that de-registrations do not occur nor shall registrations be refused merely because of a temporary failure to comply with the requirement laid down in paragraph 3, point (a), of this Article.';

(4) the following Article 51a is inserted:

'*Article 51a*

Specific conditions for the admission of shares to trading

1. Member States shall require that the foreseeable market capitalisation of the shares for which admission to trading is sought, or if this cannot be assessed, the company's capital and reserves, including profit and loss, from the last financial year, shall be at least EUR 1 000 000 or an equivalent amount in a national currency other than the Euro.

2. Paragraph 1 shall however not apply to the admission to trading of shares fungible with shares already admitted to trading.

3. Where, as a result of an adjustment of the equivalent amount of the Euro in national currency, the market capitalisation expressed in national currency remains for a period of 1 year at least 10 % approximately the value of EUR 1 000 000, the Member State shall, within the 12 months following the expiry of that period, adjust its laws, regulations or administrative provisions to comply with paragraph 1.

4. Member States shall require that regulated markets ensure that at any time at least 10% of the subscribed capital represented by the class of shares concerned by the application for admission to trading is held by the public.

5. Where the percentage of shares held by the public is below 10% of the subscribed capital, Member States shall ensure that regulated markets require that a sufficient number of shares is distributed to the public to fulfil the requirement laid down in paragraph 4.

6. Where admission to trading is sought for shares fungible with shares already admitted to trading, regulated markets shall assess, to fulfil the requirement laid down in paragraph 4, whether a sufficient number of shares has been distributed to

the public in relation to all the shares issued and not only in relation to the shares fungible with shares already admitted to trading.

7. The Commission is empowered to adopt delegated acts in accordance with Article 89 to amend this Directive by modifying the thresholds referred to in paragraphs 1 and 3 or in paragraphs 4 and 5 or in both, when the applicable thresholds impede the liquidity on public markets taking into account the financial developments.';

(5) Article 89 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an indeterminate period of time.

3. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4) Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(b) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) or Article 79(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.'.

Article 2

Repeal of Directive 2001/34/EC

Directive 2001/34/EC is repealed as of … [OP please insert the date = 24 months from date of entry into force of this Directive].

Article 3

Transposition

1. Member States shall adopt and publish, by … [OP please insert the date = 12 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from … [OP please insert the date = 18 months after the date of entry into force of this Directive].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*