



Council of the
European Union

Brussels, 12 December 2022
(OR. en)

Interinstitutional File:
2022/0405(COD)

15834/22
ADD 1

EF 369
ECOFIN 1299
CODEC 1970

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2022) 760
Subject:	FISMA opinion on Listing act 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

Delegations will find attached document SEC(2022) 760.

Encl.: SEC(2022) 760



EUROPEAN COMMISSION

8.7.2022

SEC(2022) 760

REGULATORY SCRUTINY BOARD OPINION

Review of the listing rules applicable to companies issuing
securities in the EU (Listing Act)

{COM(2022) 760-762}

{SWD(2022) 762-763}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / Review of the listing rules applicable to companies issuing securities in the EU (Listing Act)

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

One of the aims of the Capital Markets Union is to increase funding options for businesses. Small and Medium sized Enterprises (SMEs) can already list shares in the EU on Multilateral Trading Facilities, such as the SME Growth market and other junior market with reduced regulatory requirements. Despite this, the uptake so far has been limited.

This initiative aims to introduce a number of further simplifications to the Prospectus Regulation and the Market Abuse Regulation covering all companies to make listing and remaining listed more attractive.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and the commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report lacks clarity on the articulation and coherence of this initiative with other linked Capital Markets initiatives. The evidence base demonstrating the need to revise the Market Abuse and Prospectus Regulations is weak.**
- (2) The report does not provide sufficient clarity on the risks and limitations of the analysis. It does not acknowledge any unintended consequences.**
- (3) The report does not provide a balanced presentation of the different views expressed by different categories of stakeholders on the problem definition, the options and their impacts.**

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should better put the initiative into context. It should explain that the decision to list is affected by a multitude of factors and the Listing Act proposal rather than being a panacea instead is limited in scope and confined to a targeted set of measures aimed at further simplifying the Prospectus Regulation and the Market Abuse Regulation to make listing and remaining listed more attractive. The report should state more clearly upfront that the proposed targeted legislative changes are unlikely to fully revive EU public capital markets on their own. It should set out the existing legislation targeting other aspects of this. It should present a clear logic for how the initiative will articulate with related recent and parallel initiatives to solve the underlying problems, including the recent initiative on insolvency law.

(2) The report should present the evidence on the problem and justification for intervention in a balanced way, taking into account all available information both from issuer and investor perspectives. It should present the concrete evidence that demonstrates regulatory failure in the Market Abuse and Prospectus Regulations. In particular, it should better explain the rationale for proposing changes to the Market Abuse Regulation related to inside information given that the European Securities and Markets Authority concluded that the notion of inside information should be left unchanged, and their guidance would suffice to provide the necessary clarification. The report should be clearer on the available evidence on the effects of Dual Class Shares structures on listing decisions and investors willingness to invest in these shares (potential trade-offs). It should acknowledge the uncertainties in the conclusions reached in the analysis.

(3) Given the uncertainties related to the effects on incentives both for issuers and investors, the report should explain the risk that the expected increase in Initial Public Offerings may not fully materialise. It should discuss how the preferred options will affect investor protection and market integrity. It should explain why the proposed reduction of reporting requirements will not lower the level of necessary safeguards requested under the Market Abuse Regulation, the Markets in Financial Instruments Directive II and the Prospectus Regulation and how this will affect investor confidence. It should discuss the risk of the proposed initiatives resulting in unintended legal loopholes.

(4) The way that stakeholder views are reported gives the impression that the views are only taken into account when they support the argument. The report should provide a more balanced presentation of the different views expressed by different categories of stakeholders on the problem definition, the options and their impacts. Dissenting views should also be presented clearly to allow the reader to gain a balanced impression of the level and sources of support for the initiative.

(5) Annexes 10 and 11 provide an extensive list of accompanying measures that have not been impact assessed. The analysis should give some scale of magnitude on the expected impacts these accompanying measures may have in achieving the objectives at minimum cost.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

<u>(D) Conclusion</u> The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.	
Full title	Impact assessment on the listing initiative on making public capital markets more attractive for EU companies and facilitating access to capital for SMEs
Reference number	PLAN/2021/11366
Submitted to RSB on	10 June 2022
Date of RSB meeting	6 July 2022

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	Amount	Comments
Direct benefits		
Issuers would benefit from cost savings due to the reduction in the complexity and length of prospectuses as well as a more efficient, convergent and streamlined scrutiny and approval process by NCAs [Prospectus Regulation].	EUR 67 million (cumulatively for equity and non-equity issuers)	The contents of the prospectus for issuers on regulated market would be shortened and streamlined. In the case of SME growth markets, the prospectus would be replaced with a simpler EU admission documents. Issuers would also be exempted from the obligation to draw up a prospectus in certain cases, where a lot of information about the company and securities is already available to public (i.e. issuers with a track record on regulated markets or SME growth markets). Furthermore, the prospectus would be further standardised (i.e. its sections would be subject to a fixed order of disclosure), it would be published in an electronic format only (i.e. no paper copies on request) and it would be allowed to draw it up in English only (except for the summary). Issuers would also benefit from a more efficient and streamlined scrutiny process, both in terms reduced legal fees paid to counsels to respond to numerous requests from NCAs, and from the ability to better plan the expected scrutiny duration (and the general IPO process). These savings, however, would be difficult to estimate. The estimate for the overall cost savings is therefore likely to underestimate the total cost savings stemming from the measure. The quantification of benefits is based on annual cost savings (for more details, see Chapter 6.2.2. of the Impact Assessment and Annex 4).
NCAs would benefit from lower cost of scrutiny of prospectuses, as in the case of secondary issuances of fungible securities, NCAs would no longer be required to approve the prospectus (issuers would only need to file with the NCA a	N/A	It was not possible to estimate the cost savings for NCAs that would no longer be required to scrutinise secondary issuance prospectuses for securities fungible with the securities already admitted to trading, as ESMA/NCAs were not able to provide an estimate of their cost associated with the scrutiny. Based on the annual issuance figures (ESMA's data for 2021), this cost saving would correspond to about 150 less

statement of ongoing compliance and a short summary document, neither of which would require ex-ante scrutiny). [Prospectus Regulation]		prospectuses requiring scrutiny and approval than today (e.g. in 2021 there were 138 simplified prospectuses for secondary issuances of equity securities and 16 EU Recovery prospectuses for shares that would be in scope of the exemption (See Table 9 of Annex 4.)) This figure assumes that all secondary issuances of equity would be fungible with the primary issuance of securities for an already listed company (i.e. with equity in circulation). This is a conservative estimate that does not take into account cost savings from follow-on issuances of non-equity.
Issuers would benefit from a clearer and narrower notion of inside information accompanied by a non-exhaustive indicative list of events and by clarifications to the conditions to delay disclosure of inside information. [Market Abuse Regulation]	EUR 100 million	Targeted amendments to the rules on the disclosure of inside information would reduce burden for listed issuers by: (i) limiting the amount of time and costs, including external advisers' fees, currently spent to ensure compliance with the disclosure obligation; (ii) limiting the recourse to delayed disclosure only to exceptional circumstances. The list would provide a clear indication of events that issuers would be expected to disclose, removing the lack of legal clarity and associated with it cost for issuers in those instances. Moreover, clarifications on the conditions to delay the disclosure of inside information would help make ambiguities of the notion less relevant in practice, and reduce the costs currently incurred by issuers in the interpretation and application of these conditions. The estimate is based on the assumed annual cost savings from less legal advice/legal assessment necessary in relation to the notion of inside information, on the one hand, and reduced cost of disclosure (as only mature information would need to be disclosed under a narrower notion). For more details, see Chapter 6.3.1. of the IA and Annex 4.
Indirect benefits		
Companies/founders (prospective issuers) would be given the option to go public while retaining control of their business through the issuance of MVR shares across the EU and enjoy the benefits of public markets.	EUR 737 million per year [or 11 additional IPOs per year]	A minimum harmonisation of MVR share structures would be beneficial for issuers established in a Member State that currently bans these structures, as it would allow them to retain control of their company (and continue shaping the business in accordance with their respective original ideas and aspirations) while raising a larger amount of funds and enjoying the benefits associated with listing. It would, in

		particular, reduce (if not fully remove) opportunity costs currently incurred by issuers that remain private to avoid losing control. It would also eliminate the additional costs incurred by issuers that choose to list in another country in order to benefit from this flexibility. It was possible to estimate the opportunity cost incurred by companies that are currently not listed (and hence cannot enjoy the growth associated with a public listing) but could have been listed in those Member States that currently prohibit MVR share structures, if those structures were allowed there. For more details, see Chapter 6.1.1 and Annex 4.
Investors would benefit from enhanced comprehensibility, comparability and readability of the prospectus and from more targeted and more informative disclosures under MAR [Prospectus Regulation and MAR]	N/A	Investors are expected to also benefit from a lighter and more streamlined prospectus document, which is easier to read and navigate through. Furthermore, the standardised format for prospectuses on regulated markets (i.e. fixed order of disclosure of the prospectus sections) would facilitate their comprehensibility and comparability across the EU. In addition, as only mature inside information would be disclosed under a narrowed notion, investors would be able to benefit from more informative disclosures (and less of them), which would further contribute to better decision making by these investors. These indirect benefits for investors would not be possible to quantify as there is insufficient data to provide an estimate with reasonable accuracy.
NCAs would benefit from the improvements to the scrutiny and approval process for standard (IPO) prospectuses, which would be rendered more efficient and streamlined. Furthermore, NCAs would benefit from simpler process of examining notifications on delays of inside information and possibly lower number of such notifications. [Prospectus Regulation and MAR]	EUR 77 018	By streamlining the scrutiny and approval process, the NCAs would benefit from a faster, more efficient process. The NCAs' powers in scrutiny would be better framed whereby the more precise objective of the scrutiny and of the type of information collectable by issuers would allow to reduce the scrutiny period. The timeline for NCAs to provide notification on the decision regarding the approval of an EU Recovery prospectus is reduced from 10 to 7 days as laid down in Article 20(6a) of the Prospectus Regulation. Similar reductions on the scrutiny and approval process are therefore expected in case of non-fungible securities, for which the EU Recovery prospectus will replace the simplified prospectus for secondary issuances.

		The indirect benefits for NCAs resulting from a lower number of delay notifications were estimated at EUR 77 018 (See Annex 4 for further details). It was, however, not possible to estimate other indirect benefits for NCAs (notably those stemming from an improved scrutiny process).
Smaller issuers would face a more proportionate level of potential sanctions, thus reducing liability risks [MAR]	N/A	A more proportionate level of sanctions for breaches related to disclosure would avoid a disproportionate burden on SMEs, thus reducing the disincentive for them to list in the first place and allowing them to better diversify their sources of financing (e.g. funding through private or public markets). These indirect benefits for smaller issuers would not be possible to quantify as there is insufficient data to provide an estimate with reasonable accuracy.
Exchanges and market operators would benefit in the long run from increased levels of public issuances of equity and debt compared to the baseline scenario [all measures cumulatively]	N/A	It is expected that exchanges would gradually experience an increase in companies seeking admission to trading/listing, as a result of the regulatory alleviations and higher attractiveness of public listing. Exchanges therefore stand to benefit from the initiative in the longer-term. These indirect benefits for exchanges would not be possible to quantify as there is insufficient data to provide an estimate with reasonable accuracy.
<i>Administrative cost savings related to the 'one-in one-out' approach</i>		
Streamlined prospectus documentation and more efficient and convergent NCAs' approval procedure	EUR 67 million (cumulatively for equity and non-equity issuers)	The quantification is based on annual cost savings for issuers (for more details, see Chapter 6.2.2. of the IA and Annex 4). It is expected that the largest share of these cost savings would be administrative cost savings.
NCAs would no longer be required to approve the prospectus for secondary issuances of fungible securities [Prospectus Regulation]	N/A	See the table above.
Clarification of the notion of inside information and of the conditions for delay disclosure [MAR]	EUR 100 million	A clearer notion of inside information will reduce the administrative efforts needed, both on the side of market participants and NCAs. It will provide on-going benefits for companies already listed. The quantification is based on annual cost savings for issuers (for more details, see Annex 4). It is expected that the largest share of these costs savings would be administrative cost

		savings.
Repeal of the Listing Directive (see Annex 7)	N/A	Given the largely outdated nature of the Listing Directive, and the fact that most of its provisions have already been replaced by other EU legislation, it is expected that the repeal of the Listing Directive would generate only marginal cost-savings for issuers. Furthermore, the few provisions in the Listing Directive that may still be relevant, or relevant in at least some Member States (e.g. free float, foreseeable market capitalisation, admission to the official listing), would be incorporated in the MiFID II framework, thus continuing to apply to issuers.

<i>II. Overview of costs – Preferred option</i>							
		Citizens/Consumers		Businesses		Administrations (NCAs)	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Minimum harmonisation of MVR share structures	Direct costs	None	None	Minimum cost for companies to ensure that a listing is structured in accordance with the new rules (and more specifically, with the investor protection safeguards in place).	None	None	None
	Indirect costs	None	None	None	None	None	None
Replacement of the EU Growth prospectus with a EU admission documents on SME growth	Direct costs	None	None	None	None	Minor one-off costs for NCAs given required changes to internal scrutiny and approval procedures.	None (recurrent costs will be lower than status quo as the overall approval procedure

markets							would be made more efficient and streamlined)
	Indirect costs	None	None	None	None	None	None
Streamlined scrutiny and approval procedure of prospectuses by NCAs	Direct costs	None	None	None	None	Minor one-off costs on NCAs given required adjustments to internal scrutiny and approval procedures.	None (recurrent costs will be lower than status quo as the overall approval procedure would be made more efficient and streamlined)
	Indirect costs	None	None	None	None	None	None
Clarification of the notion of inside information and of the conditions for delay disclosure	Direct costs	None	None	Issuers would need to adjust internal procedures to identify inside information and to decide when to delay disclosure. This will give rise to marginal one-off costs	None	None	NCAs would benefit from less complex notifications on delays and possibly lower number of such notifications, due to the fact that there would be a narrower and clearer notion of inside information for

							disclosure purposes. If we assume a 20% reduction in costs related to the examination of delay notifications, an estimated cost reduction for NCAs would amount to EUR 77 018. (See Annex 4 for more details)
	Indirect costs	None	None	None	None	None	None
<i>Costs related to the 'one-in one-out' approach</i>							
Total	Direct adjustment costs	None	None	Minor adjustment costs for issuers to adapt to new definition of inside information	None	Minor adjustment costs for NCAs	None
	Indirect adjustment costs	None	None	None	None	None	None
	Administrative costs (for offsetting)	None	None	None	None	None	None