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

Horizontal policies
Capital markets union

PUBLIC CONSULTATION DOCUMENT

LISTING ACT: MAKING PUBLIC CAPITAL MARKETS MORE ATTRACTIVE FOR EU COMPANIES AND FACILITATING ACCESS TO CAPITAL FOR SMES

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 11 February 2022** at the latest to the **online questionnaire** available on the following webpage:
https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses**.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage: https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act_en

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at fisma-listing-act@ec.europa.eu.

INTRODUCTION

Background for this consultation

EU capital markets remain underdeveloped in size, notably in comparison to capital markets in other major jurisdictions. In particular, EU companies make less use of capital markets for debt and equity financing than their peers in other jurisdictions around the world, with a negative impact on economic growth and macroeconomic resilience.

In recognition of these issues, the Commission's new capital markets union (CMU) action plan of September 2020 has as one of its main objectives to ensure that companies, and in particular small and medium-sized enterprises (SMEs), have unimpeded access to the most suitable form of financing. Given the underdevelopment of market-based finance in the EU, the Commission highlighted the need to support the access of businesses in particular to public markets. Specifically, in Action 2 of the action plan, the Commission announced that it will assess whether the rules governing companies' listing on public markets need to be further simplified. Furthermore, Commission President von der Leyen announced in her letter of intent addressed to Parliament and the Presidency of the Council on 15 September 2021 a legislative proposal for 2022 to facilitate SMEs' access to capital.

In order to inform its further initiatives in this area, the Commission has already taken a number of steps. The Commission has commissioned studies on the topic of how to improve the access to capital markets by companies in the EU and on the functioning of primary and secondary markets in the EU. Furthermore, in October 2020, the Commission set up a Technical Expert Stakeholder Group (TESG) on SMEs to monitor the functioning and success of SME growth markets. In May 2021, the TESG published their final report on the empowerment of EU capital markets for SMEs with twelve concrete recommendations to the Commission and Member States to help foster SMEs' access to public markets. They build on the work already undertaken by the High Level Forum on capital markets union (HLF CMU) and on ESMA's recently published MiFID II review report on the functioning of the regime for SME growth markets.

Structure of this consultation and how to respond

In line with the better regulation principles, the Commission is launching this public consultation to gather evidence in the form of stakeholders' views on the need to make listing on EU public markets more attractive for companies and on ways of doing so. A special focus is dedicated to SMEs and issuers listed on SME growth markets.

For the purposes of this consultation, the reference to SMEs should be understood as encompassing both SMEs as defined in the Commission Recommendation 2003/361 and SMEs as defined in Article 4(1)(13) of MiFID II. The Commission Recommendation 2003/361 classifies as SMEs companies that employ fewer than 250 people and have a turnover not exceeding EUR 50 million and/or a balance sheet not exceeding EUR 43 million. MiFID II classifies SMEs as companies that had an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years. The concept of SME growth markets was introduced by MiFID II as a new category of multilateral trading facilities (MTFs) to facilitate high-growth SMEs' access to public markets and increase their funding opportunities. In order to be registered as an SME growth market, an MTF must comply with the requirements laid down in Article 33 of MiFID II, including the rule that at least *'50% of issuers are SMEs'*.

This public consultation covers 7 general questions and is available in 23 official EU languages. Given its general nature it may be more suitable for the general public.

In parallel to this open public consultation, the Commission is launching a 12-week targeted consultation available in English only. In addition to the above-mentioned 7 general questions, the targeted consultation includes questions addressing more technical issues, which are likely to be more suitable for capital market practitioners, competent authorities and academics. As the general questions are asked in both questionnaires, we advise stakeholders to reply to only one of the two versions (either the targeted consultation or the open public consultation) to avoid unnecessary duplications. Please note that replies to both questionnaire will be equally considered.

Views are welcome from all stakeholders.

You are invited to provide feedback on the questions raised in this online questionnaire. We invite you to add any documents and/or data that you would deem useful to accompany your replies at the end of this questionnaire, and only through the questionnaire. Please explain your responses and, as far as possible, illustrate them with concrete examples and substantiate them numerically with supporting data and empirical evidence. This will allow further analytical elaboration.

You are requested to read the privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

The consultation will be open for 12 weeks.

CONSULTATION QUESTIONS

The current EU rules relevant for company listing consist of provisions contained in a number of legal acts, such as the Prospectus Regulation, the Market Abuse Regulation (MAR), the Market in Financial Instruments Directive (MiFID II), the Market in Financial Instruments Regulation (MiFIR), the Transparency Directive and the Listing Directive. These rules primarily aim at balancing the facilitation of companies' access to EU public markets with an adequate level of investor protection, while also pursuing a number of secondary or overarching objectives.

1. In your view, has EU legislation relating to company listing been successful in achieving the following objectives? On a scale from 1 to 5 (1 being "achievement is very low" and 5 being "achievement is very high"), please rate each of the following objectives by putting an X in the box corresponding to your chosen options.

	1	2	3	4	5	Don't know/no opinion/not relevant
a) Ensuring adequate access to finance through EU capital markets						
b) Providing an adequate level of investor protection						
c) Creating markets that attract an adequate base of professional investors for companies listed in the EU						
d) Creating markets that attract an adequate base of retail investors for companies listed in the EU						
e) Providing a clear legal framework						
f) Integrating EU capital markets						

Please explain your reasoning: *[4000 character(s) maximum]*

As noted by numerous stakeholders and recognised in the CMU action plan, public listing in the EU is currently too cumbersome and costly, especially for SMEs. The Oxera report on primary and secondary equity markets in the EU stated that the number of listings in the EU-28 declined by 12%, from 7,392 in 2010 to 6,538 in 2018, while GDP grew by 24% over the same period. As a corollary of this, EU public markets for capital remain depressed, notably in comparison to public markets in other jurisdictions with more developed financial markets overall. Weak EU capital markets negatively impact the funding structure and cost of capital of EU companies which currently over rely on credit when compared to other developed economies.

2. In your opinion, how important are the below factors in explaining the lack of attractiveness of EU public markets? Please rate each factor from 1 to 5, 1 standing for "not important" and 5 for "very important".

	Regulated markets	**SME growth markets**	**Other Markets (e.g. other MTFs, OTFs)**
a) Excessive compliance costs linked to regulatory requirements			
b) Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options			
c) Lack of attractiveness of SMEs' securities			
d) Lack of liquidity of securities			
e) Other (please specify below)			

Please explain your reasoning: *[4000 character(s) maximum]*

Companies, in particular SMEs, do not consider listing in the EU as an easy and affordable means of financing and may also find it difficult to stay listed due to on-going listing requirements and costs. More specifically, the new CMU Action Plan identified factors such as high administrative burden, high costs of listing and compliance with listing rules once listed as discouraging for many companies, especially SMEs, from accessing public markets. When taking a decision on whether or not to go public, companies weigh expected benefits against costs of listing. If costs are higher than benefits or if alternative sources of financing offer a less costly option, companies will not seek accessing public markets. This *de facto* limits the range of available funding options for companies willing to scale up and grow.

3. In your view, what is the relative importance of each of the below costs in respect to the overall cost of an initial public offering (IPO)?

	Please rate each cost from 1 to 5, 1 standing for "very low" and 5 for "very high"
Direct costs	
a) Fees charged by the issuer's legal advisers for all tasks linked to the preparation of the IPO (e.g. drawing-up the prospectus, liaising with the relevant competent authorities and stock exchanges etc.)	
b) Fees charged by the issuer's auditors in connection with the IPO	

c) Fees and commissions charged by the banks for the coordination, book building, underwriting, placing, marketing and the roadshow	
d) Fees charged by the relevant stock exchange in connection with the IPO	
e) Fees charged by the competent authority approving the IPO prospectus	
f) Fees charged by the listing and paying agents	
g) Other direct costs (please specify)	
Indirect costs	
h) The potential underpricing of the shares during the IPO by investment banks	
i) Cost of efforts required to comply with the regulatory requirements associated with the listing process	
j) Other indirect costs (please specify)	

Please explain your reasoning: *[4000 character(s) maximum]*

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

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

	Please rate each cost from 1 to 5, 1 standing for "very low" and 5 for "very high"
Direct costs	
a) Ongoing fees due by the issuer to the listing venue for the continued admission of its securities to trading on the listing venue	
b) Ongoing fees due by the issuer to its paying agent	
c) Ongoing legal fees due by the issuer to its legal advisors (if post-IPO external legal support is necessary to ensure compliance with listing regulations)	
d) Fees due by the issuer to auditors if post-IPO, extra auditor work is necessary to ensure compliance with listing regulation	
e) Corporate governance costs	

f)	Other (e.g. costs for extra headcount, costs allocated to investors' relationships, development and maintenance of a website)	
Indirect Costs		
g)	Increased risk of litigation due to investor base and increased scrutiny and supervision derived from being listed	
h)	Risk of being sanctioned for non-compliance with regulation	
i)	Other (please specify)	

Please explain your reasoning: *[4000 character(s) maximum]*

In order to comply with all regulatory requirements such as those included in the MAR or the Prospectus Regulation, companies have to invest time and resources. This may be seen as a disproportionate burden compared to the advantages this may bring in terms of investors protection.

5. **(a) In your view, does compliance with IPO listing requirements create a burden disproportionate with the investor protection objectives that these rules are meant to achieve?**

   o Yes

   o No

   o Don't know/ no opinion / not relevant

   Please explain your reasoning: *[4000 character(s) maximum]*

   (b) In your view, does compliance with post-IPO listing requirements create a burden disproportionate with the investor protection objectives that these rules are meant to achieve?

   o Yes

   o No

   o Don't know/ no opinion / not relevant

   Please explain your reasoning: *[4000 character(s) maximum]*

Public markets are not flexible enough to accommodate companies' financing needs. This lack of flexibility may be driven by regulatory constraints (e.g. concerning the ability of companies owners to retain control of their business when going public by issuing shares with multiple voting rights), as well as by the lack of legal clarity in relevant legislation (e.g. the conditions under which a company may seek dual listing). Regulatory constraints or legal uncertainty may discourage the use of public markets by firms that find requirements inadequate or unclear.

6. **In your view, would the below measures, aimed at improving the flexibility for issuers, increase EU companies' propensity to access public markets? Please put an X in the box corresponding to your chosen option for each measure listed on the table.**

	Yes	**No**	**Don't Know / No Opinion / Not Relevant**
a) Allow issuers to use shares with multiple voting rights when going public			
b) Clarify conditions around dual listing			
c) Lower minimum free float requirements			
d) Eliminate minimum free float requirements			
e) Other (please specify below)			

Please explain your reasoning: *[4000 character(s) maximum]*

The lack of available company research and insufficient liquidity discourage investors from investing in some listed securities. Many securities issued by SMEs in the EU are characterised by lower liquidity and higher illiquidity premium, which may be the direct result of how these companies are perceived by investors, in particular institutional investors, who do not find them sufficiently attractive. Furthermore, institutional investors may fear reputational risk when investing in companies listed on multilateral trading facilities, including SME growth markets, given the lack of minimum corporate governance requirements for issuers on those venues.

7. **In your view, what are the main factors that explain why the level of institutional and retail investments in SME shares and bonds remains low in the EU?**

	Please rate each below element from 1 to 5, 1 standing for "not important" and 5 for "very important"
a) Lack of visibility and attractiveness of SMEs towards investors leading to a lack of liquidity for SME shares and bonds	

b) Lack of investor confidence in listed SMEs	
c) Lack of tax incentives	
d) Lack of retail participation in public capital markets (especially in SME growth markets)	
e) Other (please specify below)	

Please explain your reasoning: *[4000 character(s) maximum]*

Additional information

Should you wish to provide additional information (for example a position paper) explaining your position or raise specific points not covered by the questionnaire, you can upload your additional document here. Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this open public consultation.