

Position Paper

| Listing Act Review - EC Package Proposal



June 2023

Introduction

BETTER FINANCE welcomes the objectives of the Listing Act review put forward by the European commission to make EU Capital Markets more attractive for companies, particularly for SMEs.¹ Investor associations have long emphasised that to revitalise the Capital Markets Union, the EU's primary and secondary markets need a boost, that is, greater participation from EU households in direct equity investments. The limited effectiveness of current EU policies stems from the reluctance of many SMEs to go public (lack of accessibility and/or funding predictability); the absence of an EU equity investing culture; and a lack of retail investor trust in capital markets due to a lack of transparency.

Whilst SMEs are the most exposed to regulatory hurdles imposing high direct (and even indirect) costs when going public², BETTER FINANCE stresses that to reverse this trend, we need to provide the right incentives, not go backwards.

The EU stands to gain, also internationally, from a quality-based primary financial market. The Listing Act review rightly addresses the need for standardising prospectuses across the EU and streamlining the cost reduction of IPOs as well as the secondary issuance of companies. That said, BETTER FINANCE also calls for more clarity in investor information, notably by means of an investor-friendly summary prospectus, including standardised and comparable ESG information for both debt- and equity-based prospectuses. We also challenge shortcomings in terms of investor protection, such as lighter rules envisaged under the Market Abuse Regulation (MAR), and potentially unsuitable initiatives (Multiple-vote share structures, MiFID unbundling rules). Ultimately, we put forward recommendations for a framework that guarantees equality between shareholders, while preventing insider trading through robust, enforceable mechanisms and corporate accountability.

Since boosting investors' confidence, enhancing market transparency, and improving accessibility are prerequisites to increase investors' participation in the CMU, long-term engagement of minority shareholders plays a vital role in achieving this objective. Therefore, it is crucial to maintain robust investor protection standards that are also specifically designed to uphold the integrity of corporate conduct and effectively steer companies towards ESG orientation.

Further initiatives will need to accompany the revision of the Listing Act. EU legislators should consider ways of fostering competition in the audit market and between underwriters, which is the only tangible precondition for lowering the entry cost of listing. Significant take-up of SME growth market segments across the EU is long overdue. To support equity-based financing that generates economic growth and wealth for investors, coordinated tax incentives must also be put in place to channel capital flows and increase citizens' knowledge, notably through the strengthening of employee share ownership schemes (ESOPs) in Europe.

¹ The New listing Act proposal package is available at https://finance.ec.europa.eu/publications/capital-markets-union-clearing-insolvency-and-listing-package_en (Published 7 December 2022).

² **The lower the value raised by IPOs, the higher the proportion of costs (up to 15% for IPOs with a value of less than EUR 6 million).** See also: European Commission, 'A Public-Private Fund to Support the EU IPO Market for SMEs', October 2020. According to FESE in its report '2020 IPO Task force', p.12: "the costs estimates range from 10% to 15% of the amount raised from an initial offering of less than EUR 6 million; 6 to 10% from less than EUR 50 million; 5 to 8% from between EUR 50 million and EUR 100 million; 3 to 7,5% from more than EUR 100 million".

BETTER FINANCE Key Positions on the EC Listing Act Package Proposal

Multiple Voting Rights Directive

- BETTER FINANCE considers the **MVS Directive Proposal to be unsuitable, and strongly advocates for the “one share – one vote” principle for all shareholders.**
- Legislators must re-evaluate the need for its implementation by conducting additional assessments, notably in light of the lack of adequate evidence that it would sufficiently incentivise directors to take their companies public. The implementation of MVS would further undermine shareholders’ engagement and sound corporate governance processes while reducing insiders’ accountability.
- **Should an MVS Directive be introduced, a strong EU-wide safeguard framework must be ensured, under ‘maximum’-harmonised sunset clauses. BETTER FINANCE regrets the ‘minimis’ approach put forward by the EC. Discretionary safeguards would engender an uneven playing field between Member States’ and companies’ practices.**

Prospectus Regulation

- BETTER FINANCE supports further prospectus standardisation and the envisaged page limit for primary issuances, their digital availability, and the customary use of English. We support fostering harmonised assessments by NCAs and compliance facilitation for issuers.
- BETTER FINANCE welcomes the EU Growth Issuance Document to facilitate the listing of SMEs under less stringent requirements.
- BETTER FINANCE supports alleviating secondary issuances through the Follow-on prospectus with a higher threshold. It must be ‘fit for purpose’ by enabling investments by retail investors rather than solely targeting institutional ones.
- **BETTER FINANCE recommends further harmonising the layout of Prospectuses (and its summary) to ensure its page limitation and readability (e.g. fonts, structure, etc.),** while limiting in-text referencing to the strict necessary and focussing on streamlining risks eventualities under specific sectorial and business-oriented ones.
- **BETTER FINANCE calls for a summary prospectus that truly embodies an “investor-friendly” document. Its warning-oriented approach (clauses) must leave place for accessible and strictly relevant information for investors. A share class warning should be prominent, alongside the inclusion of ESG information.** Clear guidelines on the use of graphs should be established to promote standardised practices that are easily identifiable. The summary of the prospectus must always be provided in English, as well as in national languages to facilitate investor access to IPOs.
- **The envisaged ESG disclosures should also be introduced in the equity-based prospectus (as it would in debt-security ones). In summary of prospectuses, a short, comparable ESG disclosure must be introduced (e.g. via graphs), whilst**

providing transparent ESG ratings. Cross-referencing ESG information would prove inefficient to inform investors. We recommend ESG factors or objectives to be established in line with standards (ESRS, EUGBS). Enabling a comparison of issuers' ESG targets, through benchmarks, should also be possible (e.g. GHG emission transitioning plan, and/or peers sector's carbon footprint comparison).

Market Abuse Regulation

- **BETTER FINANCE considers that maintaining an accurate insider's list is essential (current MAR Art. 18) for effective risk management.** This process is not a costly one for companies and has proven efficient. Discontinuing it in favour of a rigid permanent insider's list could reduce the liability of insiders in their operations and pose challenges to NCA's investigation on alleged malpractices.
- **BETTER FINANCE recommends maintaining the current threshold for disclosing managers' transactions at EUR 5,000, – or to settle for a reasonable compromise of EUR 10,000 maximum.** The new proposed standards threshold of EUR 20,000 is unfit with view on the valuation of many companies (i.e. SMEs) and market information requirements. BETTER FINANCE opposes the ability for NCAs to increase it to an excessive EUR 50,000, further undermining transparency, and harmonisation practices.

MiFID Unbundling Rules (MiFID)

- **BETTER FINANCE considers it disproportionate to allow a 10-fold increase in the 'unbundling' exemption under MiFID II Art 24 – 9a for equity research services. The unbundling would only apply to companies with a relatively high market capitalisation of over EUR 10 bn, instead of the current threshold of EUR 1 bn.** This could represent a large majority of companies on certain EU markets and favour coverage by large firms, without targeting the visibility of SMEs, while undermining cost transparency for investors.
- **BETTER FINANCE supports the development of EU "issuer-sponsored research", under a strict labelling requirement.** However, the sole approval by NCAs of an 'operator-based' or voluntary code of conduct on issuer-sponsored research practices is highly unsatisfactory. Rather, guidelines should be proposed by ESMA to standardise new market practices in equity research, with enhanced transparency and prevention of conflicts of interest.
- **BETTER FINANCE calls for the mandatory inclusion of any issuers-sponsored equity research information in the ESAP (European Single Access Point).**

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Policy Recommendations

• Multiple-Vote Share Structures Directive (MVS)

BETTER FINANCE firmly believes in the “one share – one vote” principle, providing equal rights to all shareholders, regardless of their shareholding stake or the size of the company they are invested in.

We are opposed to the introduction of an MVS Directive, which we consider inappropriate. New share classes with enhanced voting rights would result in discriminatory treatment between shareholders. This imbalance of power inherent in the MVS, unfair to small investors, can further reduce insiders’ accountability towards all stakeholders. We also fear a MVS directive will further deter minority/engaged retail investors from entering capital markets, particularly in the context of the current impediments to cross-border shareholder engagement.³ Moreover, the current MVS proposal, set without time-based clause, would further contribute to the entrenchment of controlling shareholders. Instead, the EC should promote sound corporate governance practices by companies (‘G’ part of ESG) by strengthening the rights of minority shareholders, notably by enabling them to express an active position in support of issuers’ sustainable development objectives. This rationale is valid for all types of companies listing on all EU-based regulated markets or other MTFs, including SMEs Growth Markets.

Specifically, if BETTER FINANCE usually favours harmonisation of market practices, **we disagree with any ‘minimis’ approach of the MVS directive that would engender an uneven playing field between Member States’ practices.** Various discretionary national safeguards for investors could further jeopardise shareholder protection rules and democracy across the EU. The introduction such additional MVS share classes would also create uncertainty regarding the interaction with other types of shares (e.g. as loyalty shares) in place in some Members States. In certain EU countries, MVS instruments were introduced based on specific market and company law considerations, whereas provisioning MVS on an EU-wide scale may lead issuers to seek their introduction under unsuitable markets conditions. Finally, the introduction of an additional share class on financial markets may render purchasing less comprehensible and therefore less transparent for minority shareholders.

We therefore call on legislators to reconsider the implementation of an MVS directive by carrying out additional assessments, notably on its interference with the EU principle of subsidiarity. BETTER FINANCE concurs with ESMA that there is insufficient evidence to justify MVS as a meaningful incentive for SMEs’ founders to go public solely for the purpose of retaining greater control over their business. Rather, legislators should focus on efficient market-oriented incentives to streamline IPO (and secondary issuances) procedures that will alleviate the administrative burden and subsequent costs for SMEs to list (e.g. fostering competition in auditing and reducing underwriting costs).

³ Less than half (48%) of European, individual shareholders were able to attend (or cast a vote) at the AGM of a listed company located in another Member-State, while 64% of them incurred intermediary’s fees in the process. See BETTER FINANCE & DSW Report: ‘Barriers to shareholder engagement | SRD II Revisited (AGM season 2022)’: <https://betterfinance.eu/publication/barriers-to-shareholder-engagement-srd-ii-revisited/>

• **Proposals for safeguard measures for EU investors in relation to MVS.**

For BETTER FINANCE, should an MVS Directive be introduced, a strong EU-wide safeguard framework must be ensured, under ‘maximum’-harmonised sunset clauses (‘not the preferred EU option’ in the Proposal). Primarily, any MVS should remain temporary and attached to the initial holder only (i.e. non-tradeable nor transferable). **In the spirit of the MVS directive proposal, we insist that it should only be granted in the pre-IPO phase, while strictly limiting the scope of application to the SME growth markets.**

Consequently, **Art. 3 should not allow Member States to introduce new national provisions allowing MVS outside the scope of the directive, but rather prohibit it**, while the maintaining of MVS national provisions in place should be reassessed.

In particular, **Art. 5 of the Directive proves too weak**. While a **qualified majority rule** for any MVS adoption (at pre-IPO only) and its modification must remain, **BETTER FINANCE further recommends that two subsequent envisaged safeguards to be introduced EU-wide** (and not only left to the discretion of Member States), **but alongside additional ones also** (see infra):

- **A maximum voting weight ratio** introducing restrictions to the MVS design.
- **and under a maximum capital percentage** [Article 5, paragraph 1, (b) (i)] including additional exemption on MVS for voting matters at AGMs requiring a qualified majority [Article 5, paragraph 1 (b) (ii)]

Subsequently [Article 5, paragraph 2], the MVS Directive should mandate Member states to adopt additional safeguards (i.e. mandatory sunset clauses) as a minimum standard, including:

- (a) **Transfer-based** provisioning that the MVS would be revoked in case of trade/transfer (or inheritance) of holdings
- (b) Implement a **time-based** provision for the revocation of MVS after a set period of time (e.g. preferably 5, or 10 years maximum).
Those are essential to ensure that voting rights are not excessively prolonged and to fully adhere to “one share – one vote” as an internationally acknowledged principle in capital markets.
- (c) **Event-based**, to be determined when applicable upon the occurrence of a specified event.
- (d) **Set strict limitations on MVS concerning fundamental decisions** to avoid any abuse of the controlling shareholders (i.e. on ESG-related issues).

Finally, as per Art. 7 of the Proposal, we favour strong disclosure requirements for MVS. Those must ensure that MVS information remains prominently disclosed at the point of SME admission, is clearly indicated annually (i.e. annual reports) including information on the share structure of the company by highlighting the capital of outstanding shares, their remaining validity, and their specific limitations. Furthermore, the company should clearly state the extent to which it applies further control mechanism on MVS.

• Prospectus Regulation (PR)

BETTER FINANCE supports the revision of the Prospectus Regulation and the aim to simplify its content and standardisation, enabling NCAs to achieve harmonised assessments for primary and secondary issuances. We welcome the proposed limitation of 300 pages for the Prospectus to serve its legal purpose of investor information, while we also favour the use of English as customary language and its digital accessibility, provided long-term availability is ensured.

BETTER FINANCE explicitly supports the introduction of the new EU-Follow-On Prospectus for secondary issuances (of max. 50 pages) provided its higher threshold remains. We remind that it should be 'fit for purpose', meaning that it should primarily enable greater participation of retail investors rather than primarily targeting institutional investors. The replacement of the Growth prospectus by the EU Growth Issuance Document (max. 75 pages) with lighter disclosure requirements is also welcomed as it better aligns with the specific needs and circumstances of SME issuers. We therefore recommend that emphasis be placed on eliminating inconsistencies in disclosure requirements between the various issuance documents, including the Universal Registration Document and the Summary Prospectus, as well as the short-form summaries applied to the EU-Follow-on prospectus and EU Growth issuance document.

On Prospectus:

The equity issuance prospectus leaves some uncertainty as to the standardisation of its layout, including font size, and the way in which sub-contents should be displayed. As a result, doubts remain as to the effective application of the page limit and the readability of the prospectus. **We call legislators to identify best practices and set out a standardised design for Prospectuses** through the Annexes, beyond the structure. Moreover, it remains unclear how a flexibility clause on page limitation will be implemented in practice, with regard to information incorporated by reference and complex financial history. We therefore ask that only strictly necessary information be included. Finally, we welcome Art. 16 aiming to streamline risk eventualities listed in the prospectus (to avoiding generic ones) and suggest focussing on specific sectorial and business-related ones, while limiting the introduction of new complex and unlikely risk disclosures.

On Summary Prospectus

The summary of prospectuses should be designed as a truly "investor-friendly" document. In general, BETTER FINANCE regrets the inclusion of additional pages (in case of multiple guarantors) and the retention of a warning-oriented approach using complex legal language and ask to clearly prevent any referenced information. Such elements lead to information overload for the reader, without providing retail investors with clear, accessible key information. Since we are in favour of including graphs, diagrams, or tables in the summary, we call for their scope to be clarified under strict set of standards, both to guarantee their accuracy and simplicity and to avoid the emergence of potentially advert-oriented figures.

The Summary is the main document consulted by retail investors. It needs to be widely accessible and intelligible and should therefore limit legal clauses and disallow cross-referenced information. Instead, **BETTER FINANCE calls for a rethinking of the Summary Prospectus that must emphasise, in simple terms:**

1) The business model of the company (explained clearly); **2) The issuers' stock valuation method** (i.e. entry value of fundamental financial factors), and potential nonfinancial entries must be disclaimed and justified (e.g. against industry comparable); **3) Transparency in share class information** (as a prominent warning); **4) Risks under market considerations** (strictly relevant ones); and **5) ESG factors or objective information (e.g. ESRS and/or GHG emission for equity-based prospectus, or EU Green Bond Standard for debt-based prospectus).**

Finally, a clearer stance that the summary prospectus should always be available in English (alongside current local market language requirements, and if no English prospectus is produced) would be beneficial to ensure that its drawing up encourages cross-border investment by making IPOs accessible to a wider range of European investors.

On ESG Disclosures

BETTER FINANCE intends to address the Prospectus disclosure annexes in due course, since the proposal empowers the EC to adopt said delegated acts (Article 13) taking into account whether the issuer is subject to the proposed CSRD and whether debt securities are advertised as taking into account ESG factors/pursuing ESG objectives. As envisaged by the proposal, for issuers already required to undertake corporate sustainability reporting, the equity prospectus should only 'reference' its sustainability report, while prospectuses relating to non-equity securities will have to include specific information regarding ESG factors or objectives. Regarding the latter point, BETTER FINANCE deems it appropriate to ensure alignment through the development of the EU Green Bond Standard (i.e. a standardised template for issuers of environmentally sustainable bonds, for example).

We call to introduce relevant ESG information also in the equity-based Prospectus, while also provisioning ESG key information in all summary prospectuses (e.g. via graphs). Legislators should be mindful of the fact that ESG disclosures will have to be enhanced in line with clearly established benchmarks and means of comparison (as proposed under the ESRS, for example, and the EUGBS), whilst providing transparent ESG ratings. Other benchmark comparison could be based on GHG emission transitioning plan, and/or peers sector's carbon footprint comparison. On this note, it is worth exploring US rules to improve the EU ones as the SEC already proposed the inclusion of climate-related disclosures as well as data on GHG emissions in offering documents, as well as in periodic reports.

• Market Abuse Regulation (MAR)

BETTER FINANCE considers rules established against market abuse of utmost importance for investors' confidence, regardless of the market in which the shares are issued. Legislators should exercise caution when interfering again in this fragile environment and avoid causing unintended negative consequences on the current framework of unlawful disclosure of inside information (i.e. delayed disclosure), insider dealing, and market manipulation.

For SMEs, we agree with the new proportionality regime proposal, which has the potential to prevent discouraging listing by providing greater financial confidence in the event of infringement.

While understanding the necessity to scope the perimeters of the “inside information” definition, we are, however dubious regarding several proposals for amendments to the MAR Directive, where practical interpretations of the new disclosure rules may diminish issuers’ liability, but also NCAs ability to conduct investigation. Moreover, the revised provision would conceal valuable market information for investors. The right balance needs to be struck between retail investors, who must be empowered to make decisions, and issuers, who must remain accountable for the flow of information.

On Insiders’ List

BETTER FINANCE considers that a proper upkeep of insider’s list should remain (current MAR Art. 18) as a consistent risk-management instrument (including ad hoc and situation-specific insiders list). We share ESMA’s concerns regarding a proposed ‘permanent insider list’ (further replacing any ‘event-based insider list’) to ultimately be a less effective monitoring tool. Consequently, issuers’ liability and control will be diminished, competent NCAs will have to carry more investigation on malpractices and/or alleged insider dealing, while new litigation procedures and interpretations may lead to delays and increased costs in the event of referral to the ECJ. We therefore call legislators not to setbacks on the current efficiency of the MAR process and conserve the current insider regime related to specific events.

On the Delay of Disclosure

BETTER FINANCE has doubts that the new proposed delayed disclosure regime will ease issuers’ compliance under the guidelines of a ‘non-exhaustive list of relevant information’ set by the EC to help assessing the moment when a disclosure could be ‘reasonably’ expected may prove difficult to assess, as opposed to the current system that provisions a single appraisal to determine whether disclosure is necessary at a given time (immediately or delayed). The new rules proposed for a “prolonged process” may therefore give issuers too much discretion as to the justification of the “end result”. We understand this as a risk, potentially leading to new conflictual challenges under the interpretation of “the reasonable expectation” of disclosures. **Therefore, BETTER FINANCE considers this change of practice subject to interpretation and advise not to change the current regime that works and remains enforceable.**

On Managers’ Transactions

Under MAR, Art. 19, BETTER FINANCE recommends retaining the current standard threshold for disclosing managers’ transactions (‘own account transactions’) at EUR 5,000 – or to settle for an acceptable compromise of a maximum of EUR 10,000. This threshold

could be doubled as per current rules (up to EUR 20 000) by NCAs.⁴ We firmly reject the proposal to allow NCAs to raise this limit to an excessive EUR 50 000. We remind that diverging rules in MS would result in distorting any EU level playing field, which may impede financing activities cross-border. We believe the proposed thresholds of the proposal to obstruct valuable market information participating to price formation. Besides, envisaged thresholds would not fit SMEs' valuation. These thresholds must remain reasonable throughout the EU and be adapted to all markets, with a view to harmonising practices.

On CMOBS

To properly enforce the establishment of a cross market order book surveillance mechanism (CMOBS) between NCAs, we welcome that ESMA should enforce its format. However, we also call for an assessment of the possibility to include data from bilateral and dark trading space to ensure market integrity with comprehensive information (i.e. SIs and OTC transactions).

• MiFID Unbundling Rules (MiFID)

BETTER FINANCE acknowledges the necessity to boost SMEs visibility in stock markets. However, we doubt the new unbundling threshold rule for equity research will benefit private investors. A setback in transparency regarding costs could be detrimental, and prevention of conflict of interests related to equity research should remain enforceable.

On Unbundling Rules

BETTER FINANCE deems disproportionate allowing a 10-fold increase for 're-bundling' equity research services costs, under MiFID II Art 24 (9a). The unbundling would thus only apply to companies with quite high market capitalisation above EUR 10 bn (instead of EUR 1 bn currently). The lack of transparent pricing for research services, on the one hand, and for execution services, on the other, may hinder effective competition between brokers using these services – and this to the detriment of retail investors. As regards market capitalisation in several Member States, only a few issuers exceed EUR 10 billion in. This increase in the threshold for unbundling exemption would de facto cover a large part of local capital markets, fail to be geared primarily towards local SMEs. Larger research firms could also further benefit from undertaking large research coverage in certain markets, as opposed to focussing on equity discovery.

We call a reassessment by legislators, as the current MiFID unbundling rules proposal will not help the investor. Retail investors must not suffer a setback in transparency. Costs breakdown provided to retail investors must keep favouring competition for equity research linked to investment services. BETTER FINANCE calls for a reasonable unbundling threshold that remains adequate for all EU markets and that should remain focussed on SMEs' visibility.

⁴ The proposed increase of 20,000 EUR to be introduced as an EU-wide standard is unreasonable, and should instead continue to be justified by specific – national – market considerations. Under the current MAR 19(9) clause, only a few NCAs (i.e. Denmark, France, Italy, Spain, Germany) deemed it necessary to increase the manager's transaction threshold. See: https://www.esma.europa.eu/sites/default/files/library/esma70-145-1020_-_list_of_thresholds_increased_pursuant_to_mar_article_199.pdf; see also: https://www.bafin.de/EN/Aufsicht/BoersenMaerkte/Emittentenleitfaden/Modul3/Kapitel2/Kapitel2_2/Kapitel2_2_3/kapitel2_2_3_artikel_en.html;jsessionid=AEF24403E95621A3E7680A09C9CCB22C.2_cid502?nn=14247944#U2

On Issuer-Sponsored Research

BETTER FINANCE supports the development of “issuer-sponsored research” in the EU, provided that it is subject to strict labelling and a robust EU code of conduct, while such disclosure should be mandatory in ESAP. We recognise that the proper introduction of such research category is consistent with trends in the equity research market, and that it should contribute to the visibility of SMEs. An issuer-sponsored research label must be disclosed clearly to provide investors with fair information on the firm offering the equity research service to alleviate any lack of transparency and conflict of interest.

Therefore, to avoid deterring investors from this label and to attract liquidity for SMEs, BETTER FINANCE believes that the EU legislator should endeavour to ensure that any sponsored equity research closely matches market standards, while including this information in the ESAP must be mandatory.

Finally, we consider unsatisfactory for issuer-sponsored research practice to rely on an operator-based (discretionary or voluntary) code of conduct to be approved solely by NCAs on a case-by-case basis. Instead, proper safeguard should be implemented by ESMA under strict guidelines (i.e. mandatory standards in code of conducts). This should also serve as standard setting for further emerging equity-research market practices. Any issuer-sponsored research framework should focus on setting relations’ standards between issuers and analysts to ensure research objectivity and mitigate conflict of interest. Otherwise, the opening of new practices risks leading to an overall lowering of standards in the realm of equity research.

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