European Commission

# CALL FOR EVIDENCE
# FOR AN IMPACT ASSESSMENT

This document aims to inform the public and stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in consultation activities.

Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

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| **TITLE OF THE INITIATIVE** | Listing Act – making public capital markets more attractive for EU companies and facilitating access to capital for SMEs |
| **LEAD DG (RESPONSIBLE UNIT)** | FISMA C3 and B1 |
| **LIKELY TYPE OF INITIATIVE** | Legislative, regulation |
| **INDICATIVE TIMETABLE** | Q3 2022 (September 2022) |
| **ADDITIONAL INFORMATION** | Action 2 - Supporting access to public markets \| European Commission (europa.eu) |

*This document is for information purposes only. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described, including its timing, are subject to change.*

## A. Political context, problem definition and subsidiarity check

### Political context

Broadening access to market-based sources of financing for EU companies at each stage of their development is at the heart of the Capital Markets Union (CMU). The CMU initiative therefore aims to create a more conducive regulatory framework that supports access to public markets for companies and small and medium-sized enterprises (SMEs) in particular. The benefits of listing include a reduced dependency on bank financing, a higher degree of diversification of investors, easier access to additional equity capital and debt finance (through secondary offers) and higher public profile and brand recognition. A more balanced funding structure between bank and market sources can make the real economy more resilient to shocks hitting, for example, the banking sector. This is why access to market-based finance is especially vital to support the recovery and to help build a sustainable economy post-crisis.

In June 2020, the Commission adopted the Capital Markets Recovery Package (CMRP) that introduced targeted amendments, among others, to the Prospectus Regulation and MiFID II to encourage investments in the economy and facilitate a rapid re-capitalisation of companies. However, in some cases, the amended rules will only apply for a limited period. While the CMRP facilitated the access of companies to public market financing, it did not replace the need to carefully assess whether further permanent adjustments to the overall listing regime would make it easier for EU businesses to list, on both SME growth markets and regulated markets, without undermining market integrity and investor protection.

In recognition of this, the new CMU Action Plan that was 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 measures already introduced in 2019 under the SME Listing Act to promote the take-up of SME growth markets, the Commission set up a Technical Expert Stakeholder Group (TESG) on SMEs. In its final report, published in May 2021, the TESG made 12 recommendations to further promote SMEs' access to public markets.

Finally, 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.

### Problem the initiative aims to tackle

Data provide evidence of a sub-optimal situation with regard to listings in Europe. Many EU companies, especially SMEs, are currently deprived of the opportunity to access public funding (equity and non-equity), limiting their choice of alternative funding and making them dependent on traditional sources that may be constrained at times of crisis. EU public markets remain underdeveloped in size, notably in comparison to public markets in other major jurisdictions.

Subject to further analysis, the following three problem drivers have been identified.

1. **Companies, in particular SMEs, do not consider listing in the EU as an easy and affordable means of financing and may find it difficult to stay listed due to ongoing 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 many companies, especially SMEs, from accessing public markets. When taking a decision on whether or not to go public, companies weigh expected benefits against disadvantages of listing. If disadvantages outweigh the benefits, or if alternative sources of financing offer a less costly and easier option, companies will not seek to access public markets. This de facto limits the range of available funding options for companies, especially SMEs, willing to scale up and grow. Furthermore, the development of alternative forms of listing, such as special purpose acquisition companies (SPACs), which can present an interesting financing opportunity for scale-ups and start-ups, may also be an indication and direct result of challenges faced by issuers in the EU IPO market. Although listings of SPACs in the EU remain marginal compared to some other jurisdictions, it may be appropriate to assess whether the existing rules are suited for companies/investors in order to foster the opportunity SPACs may represent and to provide the appropriate safeguards in this context.

2. **EU 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 company owners to retain control over their business when going public by issuing shares with multiple voting rights), as well as by the lack of clarity in relevant legislation (e.g. the conditions under which a company may seek dual listing). Such legal constraints or uncertainty may discourage some firms from using EU public markets and hinder the attractiveness of the EU as a destination for IPOs, including in a global context.

3. **The lack of available company research and insufficient liquidity discourage investors from investing in some listed securities.**

Often securities issued by small or not well-known companies 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. The limited liquidity can be explained by a number of factors, such as the lack of available equity research, in particular for SMEs. 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 in those venues.

Beyond the problem drivers listed above, access to EU public equity markets is also constrained by other factors such as more favourable tax treatment of debt over equity and SMEs' lack of knowledge of capital markets. These and other out-of-scope drivers are not addressed in the current initiative focusing on regulatory barriers.

## Basis for EU action (legal basis and subsidiarity check)

### Legal basis

The legal basis for this EU initiative will be Article 114 of the Treaty on the Functioning of the European Union (TFEU) for the Prospectus Regulation and the Market Abuse Regulation (MAR), and, where relevant, Article 53 TFEU for the Markets in Financial instruments Directive (MiFID II) and the Listing Directive.

### Practical need for EU action

Member States acting alone cannot solve the above-mentioned problems. Legislation applying to issuers, exchanges and investment service providers is largely harmonised at EU level (e.g. through the Prospectus Regulation, MAR, MiFID II, etc.), leaving limited flexibility for Member States to adapt the legal framework to local conditions. Therefore, changes to EU legislation would be warranted to bring about desired improvements. EU action would be more appropriate as the initiative should also seek to support cross-border listing and trading activity in the EU, in order to deepen the integration of EU capital markets and achieve scale. The above cannot be achieved through amendments to national rules and other national interventions. In addition, in the absence of a dedicated EU legal framework for SPAC IPOs, it may be appropriate, subject to further fact-finding, to consider appropriate safeguards at EU level to avoid national divergences and possible regulatory arbitrage in the future.

## B. Objectives and policy options

The general objective of this initiative is to make listing of equity and non-equity securities on EU public markets more attractive for companies, in particular SMEs. This would make it easier for EU issuers to finance their activity and to grow, innovate and create jobs, while preserving a high level of investor protection and market integrity. This would in turn increase the resilience of the EU economy, with a positive impact on economic growth and employment prospects in the EU. More specifically, this initiative aims to: (i) simplify and ease both initial and ongoing listing requirements in order to reduce costs and increase legal certainty for issuers; (ii) remove regulatory constraints that may hinder public markets' flexibility; and (iii) raise SMEs' visibility vis-à-vis investors and improve their attractiveness. This could be achieved through the following high-level policy options:

(a) targeted changes to the provisions in several EU acts (such as the Prospectus Regulation, MAR, MiFID II and the Listing Directive) that today may deter companies, especially SMEs, from seeking a listing (e.g. alleviation of the requirements laid down in the Prospectus Regulation, clarifications of the conditions to delay the disclosure of inside information, simplification of the market-sounding regime under MAR, etc.);

(b) through the introduction of new provisions aimed at enhancing flexibility for issuers accessing public markets and improving SMEs' attractiveness towards investors (e.g. introduction of provisions on shares with multiple voting rights, corporate governance standards for companies listed on SME growth markets, etc.)

These policy options will be assessed against a baseline scenario where no amendments are made to the EU rulebook and the EU regulatory framework continues to apply as it is.

If legislative amendments are required, the 'think small first' principle would be applied throughout the Commission's proposal, as one of the proposal's objectives is to reduce the burden for smaller companies and ensure proportionality in the EU regulatory framework.

## C. Likely impacts

By removing red tape and lowering compliance costs, this initiative should facilitate fund raising on public markets through both equity and debt issuances. It is therefore likely to produce a significant economic impact.

On a micro-level, easier access to public equity would help to 're-equitise' EU companies, especially SMEs, and rebalance their funding structures, enabling them to weather future crises better and recover from the aftermath of the COVID-19 crisis, while putting them on a more sustainable growth path for the longer term. By encouraging more companies to list their financial instruments, this initiative could also broaden the investment opportunities for both retail and institutional investors, as well as tackle the liquidity issue, notably on SME-dedicated markets, by increasing the transaction volume in those venues. Fostering IPOs is key to also boosting earlier-stage financing, as providing more exit opportunities for investors through IPOs would increase the attractiveness of venture capital and private equity investments.

On a macro level, this initiative could also foster the competitiveness of EU public markets, improve the EU's open strategic autonomy and foster growth and job creation within the EU. It would achieve this by contributing to strengthening the EU IPO market and by allowing promising companies to access EU public markets in order to raise these companies' visibility vis-à-vis investors, improve their reputation and reach to other markets, as well as accelerate their growth. This initiative could also contribute to financial stability by increasing stable long-term equity financing and by reducing SMEs' overreliance on bank loans. Eventually, deeper and better-integrated equity and bond markets for EU businesses, including SMEs, would contribute to a better allocation of capital to sustainable and innovative companies.

## D. Better regulation instruments

### Impact assessment

Having in mind the "evaluation first" principle, the Commission will conduct a targeted evaluation in order to first assess the suitability of the existing legislative frameworks (e.g. MAR, Prospectus Regulation) to address the specific objectives of this initiative. An impact assessment will be conducted to support the preparation of this initiative and to feed into the Commission's decision. The extensive preparatory work that DG FISMA has already carried out provides valuable insights and will complement the information to be received through a public consultation process (e.g. technical advice from the European Securities and Markets Authority (ESMA), exchanges within the TESG and the High-Level Forum on capital markets union as well as numerous stakeholder

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| meetings). Finally, the Commission has commissioned studies from the industry (e.g. Oxera study on EU primary and secondary equity markets) and collected input from universities and public institutions that can further help prepare the impact assessment. |
| **Consultation strategy** |
| In line with the Better Regulation principles, the Commission has decided to launch a 12-week open public consultation designed to gather evidence on regulatory barriers to companies' listing. Stakeholders' responses will help develop further the understanding of the main drivers behind the recent trends in the IPO market and assess the impact of possible legislative measures. The open 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.<br><br>In parallel to the open public consultation, the Commission has decided to launch a 12-week targeted consultation available in English only. The questions asked in the open public consultation also feature in the targeted consultation together with additional questions addressing more technical issues, which are likely to be more suitable for capital market practitioners, competent authorities and academics. The targeted consultation in particular seeks input in relation to (among others) potential amendments to the Prospectus Regulation, MAR, MiFID II, company law aspects and the Listing Directive, aiming to gather information on which requirements are most burdensome and how it would be possible to alleviate them without impairing market integrity and the overall transparency regime.<br><br>The results of the consultation activities will be summarised in a synopsis report annexed to the impact assessment and published on the consultation page. |
| **Why we are consulting?** |
| In line with the Better Regulation principles, the Commission has decided to launch an open public consultation designed to gather evidence on regulatory barriers to companies' listing. Stakeholders' responses will help develop further the understanding of the main drivers behind the recent trends in the IPO market and assess the impact of possible legislative measures. The Commission will also take into account the feedback and proposals already put forward by the Technical Expert Stakeholder Group on SMEs, the High-Level Forum on capital markets union and other stakeholders in the context of previous exchanges and submitted contributions.<br>In parallel to this open public consultation, a targeted consultation, seeking more technical views and available in English only, has been launched. The questions asked in this open public consultation also feature in the targeted consultation together with additional and more technical questions. Therefore, 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 either questionnaire will be equally considered. |
| **Target audience** |
| Views are invited from all stakeholders, in particular from Member States, national competent authorities and ESMA, market participants including SMEs (listed SMEs and those seeking a listing), businesses other than SMEs, stock exchanges, retail and institutional investors, consumer and investor organisations, brokers, key advisers that support companies through the IPO stage and other service providers. |