

Final Report

MAR Guidelines on delay in the disclosure of inside information

Table of Contents

1	List of abbreviations and legal acts.....	3
2	Executive Summary	5
3	Introduction	6
4	The MAR guidelines	9
4.1	The impact on the MAR Guidelines of the non-exhaustive list of protracted processes in the DA implementing the Listing Act	9
4.1.1	Proposal	9
4.1.2	Feedback	10
4.1.3	ESMA's assessment and final approach	10
4.2	Orders by a public authority to maintain confidentiality	11
4.2.1	Proposal	11
4.2.2	Feedback	11
4.2.3	ESMA's assessment and way forward	12
4.3	Need to collect further information on the event or the circumstances to be disclosed.....	13
4.3.1	Proposal	13
4.3.2	Feedback	13
4.3.3	ESMA's assessment and final approach	14
4.4	Risk of losing a business opportunity	16
4.4.1	Proposal	16
4.4.2	Feedback	17
4.4.3	ESMA's assessment and way forward	18
4.5	Additional Suggestions	19

4.5.1	Proposal	19
4.5.2	Feedback	19
4.5.3	ESMA’s assessment and final approach	20
4.6	General remarks on the non-exhaustive list of legitimate interests	23
5.1.1	Feedback	23
5.1.2	ESMA’s assessment and final approach	24
4.7	Situations in which delay of disclosure of inside information is likely to mislead the public 25	
5	Annexes	26
5.2	Annex I – Proposed amendments on the Guidelines on delay in the disclosure of inside information and interactions with prudential supervision	26
5.3	Annex II – Cost-benefit analysis	34
5.4	Annex III – Advice of the Securities and Markets Stakeholder Group	35
5.5	Annex IV – Summary of questions	36

1 List of abbreviations and legal acts

CIR 2016/1055	Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council
CMOB	Cross Market Order Book mechanism
CP	Consultation Paper
DA implementing the Listing Act	Commission Delegated Regulation (EU) 2026/789 of 8 April 2026 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards disclosure of inside information in protracted processes and delay of disclosure
DORA	Regulation (EU) 2022/2554 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011.
EC	European Commission
ESMA	European Securities and Markets Authority
GDPR	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
Listing Act	Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises
Market Abuse Regulation or MAR	Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and

	repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
MAR Guidelines or Guidelines	MAR Guidelines on delay in the disclosure of public information first published on 20/10/2016 (ESMA/2016/1478) and reviewed on 13/04/2022 (ESMA70-159-4966)
MIFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
NCA	National Competent Authorities
NIS 2	Directive (EU) 2022/2555 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148
SBR	Simplification and Burden Reduction
SME	Small and Medium Enterprise
SME GM	Small and Medium Enterprise Growth Markets
SMSG	The ESMA Securities and Markets Stakeholder Group
OJEU	Official Journal of the European Union
Prospectus Regulation	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
TFEU	Treaty of the Functioning of the European Union
Technical Advice for the Listing Act	ESMA's Technical Advice to the European Commission concerning the public disclosure regime under MAR and the SME Growth Market rules under MiFID II(ESMA74-1103241886-1086)

2 Executive Summary

Reasons for publication

On 14 of November 2024, the “Listing Act” legislative package was published in the OJEU. The Listing Act simplifies the listing requirements to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on listed companies or companies that seek a listing. The legislative package comprised a Regulation amending the Prospectus Regulation, MAR and MiFIR and a Directive amending MiFID II and repealing the Listing Directive.

The Listing Act amended MAR to simplify the regime governing the disclosure of inside information by stipulating that, from June 2026, protracted processes are no longer subject to the obligation of disclosure of inside information until completion. Additionally, in relation to the delay, the Listing Act amended MAR by replacing the condition that the delay should not mislead the public with the requirement that the information the issuer intends to delay should not be in contrast with its latest announcement on the same matter.

As mandated by the Listing Act, in July 2026 a DA implementing the Listing Act was published in the Official Journal, including a non-exhaustive list of protracted processes and identifying for each one of them the moment when the relevant final event or final circumstance is deemed to have occurred and the inside information is to be disclosed. In addition, the Listing Act empowered ESMA to review the existing MAR Guidelines on delayed disclosure of inside information to make them compatible with the new regime. In February 2026, ESMA published a CP on the review of the MAR Guidelines. This Final Report presents the revision of those Guidelines. In line with the SBR objective, ESMA is keen to promote a consistent and simple regime for disclosure of inside information and to provide guidance to issuers as regards the changes introduced by the Listing Act.

Contents

This Final Report starts with an introduction in Section 3 which provides information on the legal background and the mandate for ESMA to review its MAR Guidelines.

Section 4 sets out ESMA’s assessment and the final approach on the basis of the feedback received from stakeholders to the initial proposal made in the CP.

Given that protracted processes are no longer subject to disclosure obligations until completion, in line with the SBR objectives, ESMA maintains its proposal to delete from the

MAR Guidelines all those legitimate interests for the delayed disclosure that relate to protracted processes. Furthermore, to support issuers and enhance clarity, ESMA confirms the introduction in the MAR Guidelines of certain additional legitimate interests for the delay, such as where the issuer is requested not to disclose information by a public authority, needs to collect additional information or may risk the loss of business opportunities as a result of the disclosure of sensitive commercial information.

In addition, following the consultation, ESMA added to its initial proposal two legitimate interests relating respectively to (i) the appointment of a member of the issuer's governing body or a manager holding a key position and (ii) the delay of disclosure of inside information among companies within the same group.

As the Listing Act removed from MAR the condition that the delay in the disclosure should not mislead the public, ESMA is also deleting the relevant section from its Guidelines.

Finally, Section 5 includes four Annexes. Annex I contains the reviewed MAR Guidelines on delay in the disclosure of inside information, Annex II sets out ESMA's cost and benefit analysis of the reviewed MAR Guidelines, Annex III contains the advice received from the Securities and Markets Stakeholder Group and Annex IV presents a summary of the questions.

Next Steps

The Guidelines will apply from the date of their publication on ESMA website in all the EU official languages.

3 Introduction

1. On 14 November 2024, the Listing Act package was published in the OJEU as part of the SBR initiative and entered into force 20 days later. The main objective of the Listing Act is to simplify the listing requirements to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden for listed

companies or companies that seek listing. The legislative package includes a Regulation amending the Prospectus Regulation, MAR and MiFIR¹.

2. The Listing Act introduces some amendments to MAR, including a CMOB, as well as changes relating to SME liquidity contracts, insider lists and the public disclosure and delayed disclosure of inside information².
3. To simplify the regime for the disclosure of inside information, the new Article 17(1) of MAR introduced by the Listing Act laid down that the obligation for an issuer to inform the public as soon as possible about the inside information directly concerning the issuer shall not apply to *“inside information related to intermediate steps in a protracted process [...], where those steps are connected with bringing about or resulting in particular circumstances or a particular event. In a protracted process, only the final circumstances or final event shall be required to be disclosed, as soon as possible after they have occurred.”*
4. Consistently, the new paragraph 4a of Article 17 of MAR specifies that the inside information related to intermediate steps in a protracted process is not subject to the requirements for the delayed disclosure.
5. In line with the current regime on delayed disclosure, the first and second subparagraphs of Article 17(7) of MAR introduced by the Listing Act provide that, if the confidentiality of that inside information regarding intermediate steps in a protracted process is no longer ensured, issuers should disclose that information as soon as possible.
6. Moreover, while the Listing Act has maintained the mechanism for delaying the disclosure of inside information, it introduces certain amendments to the relevant conditions. Namely, the condition under Article 17(4)(b) of MAR whereby *“delay of disclosure is not likely to mislead the public”* has been replaced with *“the inside information that the issuer or emission allowance market participant intends to delay is not in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers”*. The other conditions under Article 17(4)(a) and 17(4)(c) of MAR remained unchanged.
7. Furthermore, the Listing Act has alleviated the notification requirements in case of delayed disclosure for issuers whose financial instruments are admitted to trading only on an SME

¹ Available at [Regulation \(EU\) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations \(EU\) 2017/1129, \(EU\) No 596/2014 and \(EU\) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises \(Text with EEA relevance\)](#).

² Other topics amended are buy-back programmes; market sounding; managers' transactions; power of competent authorities and sanctions/administrative measures.

GM. In line with the SBR objectives, a new subparagraph in Article 17(4) provides that SME GM issuers are required to submit a written explanation on how the conditions for delay were met only upon request by the NCA. Moreover, they are not obliged to keep records of that explanation, provided that upon request they can justify their decision to delay.

8. Pursuant to Article 4(3) of the Listing Act, the changes to the regime for the disclosure of inside information in MAR entered into application on 5 June 2026.
9. Furthermore, the new Article 17(12) of MAR introduced by the Listing Act empowered the EC to adopt a delegated act to establish and review, as necessary, a non-exhaustive list of (i) the final events in protracted processes together with the moment when they are deemed to have occurred and must be disclosed and of (ii) the situations in which the inside information that the issuer intends to delay is in contrast with the latest public announcement or other communication by the issuer on the same matter.
10. In June 2024, ESMA received a request for technical advice by the EC on the DA implementing the Listing Act.
11. In May 2025, ESMA published its Final Report on the Technical advice concerning MAR and MiFID II SME GM with a proposal for the DA implementing the Listing Act³.
12. On 16 July 2026, the DA implementing the Listing Act was published in the OJEU⁴.
13. In addition, the Listing Act amended the MAR provision about ESMA's mandate to issue guidelines by replacing Article 17(11) of MAR containing the original mandate with "*ESMA shall issue guidelines to establish a non-exhaustive indicative list of the legitimate interests of issuers, as referred to in paragraph 4, first subparagraph, point (a).*"
14. In February 2026 ESMA published a CP which presented a draft version of the revised MAR Guidelines on delay for the disclosure of inside information.
15. The purpose of the consultation was to gather feedback on the amendments proposed to the Guidelines. The CP included four questions and closed on 29 of April 2026. ESMA received feedback from 28 respondents, most of whom were issuers.

³ Available at [ESMA74-1103241886-1086 Final Report on the Technical advice concerning MAR and MiFID II SME GM](#).

⁴ Commission Delegated Regulation (EU) 2026/789 of 8 April 2026 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards disclosure of inside information in protracted processes and delay of disclosure. Available at [Delegated regulation - EU - 2026/789 - EN - EUR-Lex](#)

16. In parallel, ESMA sought the advice of the Securities and Markets Stakeholder Group (SMSG) established under Regulation (EU) No 1095/2010. The advice submitted by the SMSG in relation to this consultation is included in Annex III.
17. Taking into account the feedback received during the consultation phase including reactions to the CP, as well as the advice from the SMSG, ESMA now presents its final amendments to the Guidelines.

4 The MAR guidelines

4.1 The impact on the MAR Guidelines of the non-exhaustive list of protracted processes in the DA implementing the Listing Act

4.1.1 Proposal

18. In the CP, ESMA noted that, since intermediate steps in a protracted process are no longer subject to disclosure before a process is completed, the instances in which issuers may resort to the delay mechanism are limited to the disclosure of the final event or circumstance in protracted processes, provided that the conditions for delay are met.
19. In this context, the non-exhaustive list of final events in protracted processes set out in Annex I of the DA implementing the Listing Act supports issuers in identifying both the relevant final event or circumstances and the appropriate moment of disclosure.
20. The Guidelines remark that many legitimate interests in the Guideline 1 are related to intermediate steps that are now subject to disclosure only upon completion, as per the list of protracted processes contained in the DA implementing the Listing Act. Therefore, ESMA proposed to amend Guideline 1 to delete all the legitimate interests which relate to a protracted process, with a view to ensuring consistency within the revised regulatory framework.
21. For this purpose, ESMA mapped the correspondence between the protracted processes in the DA and the legitimate interests in Guideline, and proposed deleting points (a), (c), (d), (e), (f), (g) and (h) of Guideline 1.
22. On the contrary, ESMA proposed to maintain point b) of Guideline 1, which concerns situations where the financial viability of the issuer is in danger, and immediate public disclosure would seriously prejudice the actions aimed at restoring the financial viability of

the issuer (loans, bonds emissions, sales of business or assets, etc) as it concerns cases where the issuer is seeking informal rescue measures that precede formal proceedings.

23. ESMA sought input from market participants on whether to maintain point (b) of Guideline 1⁵.

4.1.2 Feedback

24. Almost all respondents supported maintaining the legitimate interest described in point (b) of Guideline 1. They considered that it remains relevant to preserve the effectiveness of the measures aimed at restoring the issuer's financial viability and to avoid adverse effects for the issuer, including withdrawal of financing. This was considered particularly relevant for SMEs, credit institutions or systematically relevant issuers.
25. Nevertheless, some of these respondents called for clear safeguards to ensure a restrictive use of this legitimate interest. In particular, they stressed that it should be applied only in limited exceptional circumstances, and subject to conditions such as the (i) identification of concrete recovery measures, (ii) an explanation of the prejudice that immediate disclosure would cause, and (iii) ongoing reassessment. Some respondents referred to the need for robust governance arrangements, including senior management oversight and adequate record-keeping, and limiting its application to stages prior to formal proceedings that are included in the DA.
26. A few respondents noted that the strict MAR conditions for delayed disclosure already provide sufficient safeguards against misuse of this legitimate interest.

4.1.3 ESMA's assessment and final approach

27. In light of the general strong support, ESMA maintains in its final proposal the legitimate interest currently described in point (b) of Guideline 1. In addition, to clarify that this legitimate interest covers situations outside insolvency proceedings, ESMA has replaced the wording in the original Guideline generally used in insolvency law, such as "viability of the issuer", with broader and less technical terms such as "financial distress".
28. In this respect, ESMA highlights that this legitimate interest should be applied restrictively to situations of early-stage financial distress not covered by the DA implementing the

⁵ Point b) of Guideline 1 reads as follows "the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders by jeopardising the conclusion of the negotiations designed to ensure the financial recovery of the issuer".

Listing Act, and only where the issuer is actively pursuing concrete measures aimed at restoring its liquidity and capital.

29. The issuer should also verify on an ongoing basis that the conditions for the delay continue to be met.
30. ESMA further clarifies that this legitimate interest does not extend to situations where the issuer is merely experiencing a deterioration in its financial performance, such as profit warnings, which remain subject to the general disclosure obligations under Article 17(1) of MAR.

4.2 Orders by a public authority to maintain confidentiality

4.2.1 Proposal

31. To clarify the use of the delay mechanism in the revised regime, ESMA identified certain legitimate interests of the issuers to delay the disclosure of inside information and proposed to add them to the Guidelines.
32. In the CP, ESMA noted that authorities, including authorities in third countries, may require an issuer to maintain the confidentiality on the basis of law, a specific legal provision, or powers otherwise attributed to that public authority.
33. On that basis, ESMA proposed to add to point (a) of Guideline 1 that the need to comply with an order from a public authority may, in certain circumstances, qualify as a legitimate interest of the issuer for the purpose of delaying the disclosure of inside information.
34. This may occur where a national authority requires confidentiality on the grounds of public policy, public security or public health. An example could be when a ministry of defence requires confidentiality about the conclusion of a defence contract on the basis of national security.

4.2.2 Feedback

35. Respondents to the consultation supported the proposal, highlighting the importance of maintaining confidentiality in situations related to public policy, public security and the proposal contribution to legal clarity.
36. Some respondents asked to clarify the criteria for when and to what extent an order prevails over the disclosure obligation to avoid overly broad interpretations of the legitimate interest

by issuers. In particular, it was suggested to limit the legitimate interest to cases where the order has an identifiable legal basis, is precisely defined, is proportionate and is time-limited. A few respondents also suggested requiring issuers to retain documentation regarding that order.

37. In addition, ESMA was asked to clarify when disclosure should take place where an order is perpetual or has no expiry and whether the legitimate interest includes obligations deriving from a foreign (third country) legal system.

4.2.3 ESMA's assessment and way forward

38. In view of the strong support by stakeholders, ESMA maintained the addition of a legitimate interest in the Guidelines regarding an order by a public authority in its final proposal.

39. As regards the criteria to limit the use of that legitimate interest to cases where the order has an identifiable legal basis, is precisely defined, proportionate and is time-limited, ESMA notes that point (a) in Guideline 1 limits the legitimate interest to orders by a public authority issued on the basis of a specific legal provision, or powers otherwise conferred to that public authority.

40. In this respect, ESMA remarks that across the constitutional traditions of Member States, public authorities are generally required to exercise powers according to certain specific principles such as proportionality, legal certainty, necessity, good administration, limited duration of exceptional measures, including proper justification and documentation requirements. These principles exist both in the law of the European Union (e.g. Article 41 of the Charter of the Fundamental rights of the European Union) and in the national administrative law of Member States.

41. As a result, ESMA considers that when an order is lawfully issued by the public authority, all the suggested requirements should be met.

42. To further emphasize the need for the order to have a strong legal basis to trigger the legitimate interest, ESMA considers it useful to clarify that “powers otherwise recognised” are meant to be powers recognised by case law. The wording of point (a) in Guideline 1 has been amended accordingly.

43. As regards the suggestion to require the issuer to retain the documentation relating to the order, ESMA notes this suggestion is pertinent to the written explanation to be provided by the issuer to the NCA about how the conditions for the delay were met, set out in the last subparagraph of Article 17(4) of MAR. As a result, ESMA suggests issuers to maintain

such records to support the written explanation to be provided to the NCAs pursuant to such provision.

44. As regards the clarification about when disclosure shall take place where an order is perpetual or has no expiry date, ESMA recalls that, pursuant to the principles of proportionality and necessity, public authorities' powers should not last longer than the reason justifying them. Such principles can appear through sunset clauses (automatic expiration unless renewal), periodic review or renewal requirements. As the delay should last only for the time required by the order to maintain confidentiality, as soon as the order expires, the issuer is obliged to proceed with the disclosure.
45. In relation to the request to specify that the legitimate interest is applicable also in case of obligations deriving from a foreign (third country) legal system, ESMA recalls that the definition of "public authority" provided in the Guidelines includes third country authorities. Nevertheless, to further enhance clarity, ESMA added such clarification directly in the text of point (a) of Guideline 1.

4.3 Need to collect further information on the event or the circumstances to be disclosed

4.3.1 Proposal

46. In the CP, ESMA proposed to add under point (b) of Guideline 1 a legitimate interest for when issuers need to collect additional information about an exceptional event or circumstance which is not immediately available, to enable a correct assessment of the relevant event by market participants.
47. This could be for example the case where issuers need to collect information on the effects of a major incident or cyber-attack to provide correct information to the public and to avoid the negative effects that a premature communication to the public about an incident or an attack may cause.

4.3.2 Feedback

48. Overall market participants agreed that issuers may need additional time following exceptional events to avoid premature or misleading disclosure and to enable a comprehensive assessment of the relevant consequences.

49. However, many respondents noted that, where information is not yet sufficiently precise to qualify as inside information, no disclosure obligation arises. They therefore asked ESMA to clarify when information may be sufficiently precise to constitute inside information, while still allowing disclosure to be delayed on the basis of this legitimate interest.
50. In addition, some respondents asked ESMA to better distinguish between permissible information-gathering and undue delay, noting that any additional time granted before disclosure should remain limited. In this respect, they requested practical guidance on the possible duration of the delay in different scenarios, such as cyber-attacks and major industrial incidents.
51. Few respondents recommended clarifying that the disclosure should occur only once the available information is sufficiently precise to allow the market to assess the likely implications of the event or circumstance, even if some complementary information may follow later.
52. As regards cybersecurity incidents, respondents pointed out that the timeframe within which the issuer is required to gather sufficient information to make a public disclosure should be interpreted in coordination with the notification deadlines set out under NIS 2⁶, DORA⁷ and the GDPR⁸, as applicable.
53. In addition, some respondents asked ESMA to expand the legitimate interest to include in the Guideline a delay to analyse the data collected, evaluate indirect impacts of the incidents and adopt remediation actions, and list in the examples industrial, climate-related, geopolitical, operational, and financial market disruptions.

4.3.3 ESMA's assessment and final approach

54. Taking into consideration the positive feedback received, ESMA takes forward the proposal regarding the legitimate interest to collect further information following an exceptional event.

⁶ Available at: [Directive \(EU\) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation \(EU\) No 910/2014 and Directive \(EU\) 2018/1972, and repealing Directive \(EU\) 2016/1148 \(NIS 2 Directive\) \(Text with EEA relevance\).](#)

⁷ Available at: [Regulation \(EU\) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations \(EC\) No 1060/2009, \(EU\) No 648/2012, \(EU\) No 600/2014, \(EU\) No 909/2014 and \(EU\) 2016/1011 \(Text with EEA relevance\).](#)

⁸ Available at: [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\).](#)

55. ESMA recalls that Article 7(2) of MAR indicates that information shall be deemed to be precise if it indicates a set of circumstances or an event that is specific enough to draw a conclusion as to the possible effect of that set of circumstances or event on the prices of the financial instruments.
56. The announcement of a severe incident may in itself have a negative effect on prices, regardless of a detailed specification of the damages caused. As a result, information about a severe incident may qualify as inside information, despite no accurate assessments of its consequences being made yet.
57. On the contrary, where there is no information on the severity of the incident, the relevant information may not qualify as inside of information, as it may not be specific enough to draw a conclusion as to the possible effect on the prices of the financial instruments.
58. As a result, the legitimate interest under point b) of Guideline 1 may subsist when information about an incident is precise enough and price sensitive, but a more accurate description of the damages provided by the issuer is necessary to provide a non-misleading description of the event.
59. As regards the timing of disclosure, the delay is justified only for the time necessary to collect sufficient information to ensure that the disclosure does not mislead market participants. For example, where some important information is missing, the delay is allowed only for the time necessary to obtain it. Consequently, as soon as a rough estimation of the damage is possible - the disclosure should take place. Such publication is to take place before a detailed analyses of the damages and does not prevent the issuer from providing further information later on as it becomes available.
60. The time needed to collect sufficient information not to mislead the public may vary according to the type and modality of the incidents. Thus, as regards the length of the delay, ESMA recommends that issuers assess this on a case-by-case basis.
61. On the contrary, setting specific time limits for certain types of incidents, such as 48 hours for cyber incidents, may not adequately take into account all relevant circumstances.
62. MAR disclosure obligations apply without prejudice to the obligations to notify to the authority of the incidents pursuant to NIS 2, DORA and the GDPR as applicable. It is worth recalling that the authorities receiving the notification are legally bound to keep it confidential under the mentioned sectorial legislation.
63. ESMA considers that including the need to carry out an analysis of the data collected within the list of legitimate interests, or any assessment on the necessary remedial actions would

lead to an excessive delay in informing the market, to the detriment of investors. To ensure that investors have timely access to material information the duration of the delay should be limited to the time strictly necessary for the issuer to avoid any potential and unnecessary harm connected with the lack of data. An initial assessment of the consequences of the event can therefore justify a delay, whereas the additional time to carry out further analysis of the data or the adoption of remedial actions would not be in line with the objectives of the MAR transparency. Furthermore, any additional information on the analysis of the data collected or on the remedial actions envisaged by the issuer may be communicated separately at a later stage.

64. As regards the suggestion to include climate-related, geopolitical, operational and financial market disruptions among the examples, ESMA notes that such events are often of public domain. As regards the examples of events not of public domain (e.g. the case of an industrial disruption), ESMA prefers to take into consideration the indication received during the consultation, to preserve the principles-based nature of the Guidelines and prevent them from becoming a closed catalogue of relevant situations (see Section 4) with a detailed list of examples.

4.4 Risk of losing a business opportunity

4.4.1 Proposal

65. In the CP, ESMA recognised that the disclosure of sensitive commercial information may jeopardise an issuer's business opportunity. This could be the case where an issuer participates in more than one public procurement procedure in the EU or in a third country, with a similar subject but different deadlines. If the issuer is awarded a contract in one of those, while the period to submit bids for the other tender(s) is still open, the disclosure of the first award and its financial terms could negatively affect the outcome of the second tender, the reason being that competitors would be able to adjust their bids considering the information disclosed by the issuer.
66. In light of the above, point (c) of Guideline 1 in the proposal identifies a legitimate interest for the delay in maintaining the confidentiality of commercially sensitive information, where this is necessary to preserve open competition and equal treatment vis-à-vis competitors in similar tender procedures, and ultimately to avoid jeopardising business opportunities.
67. To further specify the MAR Guidelines, ESMA in the CP sought market participants' input on other possible cases where disclosure of sensitive commercial information may jeopardise an issuer's business opportunity and should thus qualify as a legitimate interest for the purposes of the delay.

4.4.2 Feedback

68. Respondents supported recognising a legitimate interest aimed at preventing the loss of business opportunities in a procurement context. However, they requested clearer boundaries to ensure that the relevant delay takes place only where there is a concrete competitive harm and only for as long as the risk of prejudice subsists.
69. The general feedback was to extend the legitimate interest beyond public procurement, to private tender or competitive processes, as also in those instances the disclosure of commercially sensitive information could prejudice a concrete business opportunity.
70. Respondents brought up several examples where disclosure of commercially sensitive information could result in a loss of a business opportunity. These included (i) private sale or acquisition processes, significant customer or supplier negotiations, exclusive IP licensing or distribution agreements; (ii) market-entry strategies, new product launches, and pricing policies; (iv) financing arrangements, refinancing or restructuring discussions; and (v) transactions that are conditional (for example where the transaction is subject to regulatory non-objection or third-party consent).
71. For negotiations, it was noted that the receipt of a non-binding offer from a third party qualifies as a one off-event rather than a process, and its disclosure may undermine the issuer position in the ongoing negotiations.
72. Similarly, early disclosure of strategic partnerships, market entry plans or product launches may damage the issuer's commercial strategy. This is because the announcement of the signature of the relevant agreement or decision may enable competitors to adjust their own positioning in the relevant business line or geographical market to the detriment of the issuer, ultimately pre-empting its strategy.
73. Respondents however recommended that the Guidelines avoid an overly prescriptive or exhaustive enumeration of scenarios and instead preserve sufficient flexibility for issuers to assess, on a case-by-case basis, whether immediate disclosure would materially harm their interests.
74. In this respect, respondents proposed certain general requirements to identify a legitimate interest for the delay where there is a risk of disclosing sensitive commercial information in the private sector. They suggested (i) the existence of a concrete and identifiable business opportunity; (ii) the commercial sensitivity of the information whose disclosure is delayed, (iii) a clear and specific risk of prejudice resulting from disclosure and (iv) compliance with

the other requirements for the delay, especially the ability of the issuer to maintain confidentiality.

4.4.3 ESMA's assessment and way forward

75. Given the support for a legitimate interest aimed at preventing the loss of business opportunities in procurement context, ESMA maintains its initial proposal.
76. ESMA also agrees to extend this legitimate interest beyond public procurement to include private competitive contexts.
77. For this purpose, ESMA has amended point (c) of Guideline 1 to indicate more generally the requirements for the legitimate interest to subsist, as suggested by respondents (i.e. the existence of an identifiable and concrete business opportunity, which may be directly jeopardised by the disclosure of commercially sensitive information).
78. As regards the examples, ESMA notes that most of the examples brought up by respondents may qualify as processes under the EC Delegated Act on protracted processes (e.g. private negotiations, new product launches or financing arrangements), and as such, they are not subject to disclosure until completion. The information regarding the final event of those processes (e.g. signature of a strategic partnership agreement or decision to launch a new product or enter a new market) is subject to disclosure and may cause a disadvantage to the issuer vis-a- vis its competitors when it reveals sensitive business information.
79. Thus, ESMA expanded the examples in the Guideline to include, in addition to the one on public procurement, the case where the disclosure of the agreements or decisions to enter into a new market may enable competitors to adjust their strategy to the detriment of the issuer.
80. ESMA also notes that a strategy to launch a new product or enter into a new market may entail the issuer to disclose sensitive commercial information to other entities involved in the implementation of the strategy. For example, launching a new product may require certain sensitive information to be shared with the distributors of those products. In this respect, ESMA recalls that one of the conditions for the delay is the ability of the issuer to maintain confidentiality around the information to be disclosed. As a result, the issuer is obliged to disclose the information as soon as the concrete steps to be made for the strategy to be adopted do not allow for the confidentiality to be maintained.

4.5 Additional Suggestions

4.5.1 Proposal

81. ESMA sought market participants' view on whether to include additional legitimate interests to the MAR Guidelines for the purpose of delaying the disclosure of inside information.

4.5.2 Feedback

82. The majority of respondents were in favour of including additional legitimate interests to the Guidelines. At the same time, some of them emphasized the need for them to remain clearly defined, exceptional, and based on objectively identifiable and verifiable criteria.

83. Only some respondents opposed introducing additional legitimate interests to keep the guidance broad and principles-based. They highlighted the importance of flexibility to cover the diverse situations issuers may face and to ensure the guidance remains adaptable over time. Others warned that adding examples could either widen excessively the scope for delays or that a restrictive interpretation could limit the use of the delay mechanism.

84. As regards the additions to be made, respondents suggested to cover in the Guidelines the following situations:

a) where an issuer's governing body has decided to appoint a new key manager or senior executive and the individual concerned has not yet terminated his contractual relationship with the current employer. In this case, the issuer might have a legitimate interest to delay the disclosure of the appointment decision to avoid (i) disruptions of the orderly termination of the manager's current engagement, (ii) jeopardising the appointment itself (potential retaliatory or pre-emptive actions to be taken by the current employer), or (iii) professional or reputational harm to the individual concerned, before the transition is secured;

b) where a key executive has resigned to minimize the negative effects resulting from the uncertainty pending the appointment of a successor or to avoid a perceived management vacuum. In this case, the delay should last until a successor is identified;

c) where a parent and subsidiary companies or companies of the same group are subject to the same disclosure obligations and the use of the delay mechanism by one of them would constitute a legitimate interest for the delay of the same information by the other company;

- d) where disclosure requires prior coordination with third parties and authorities or a prior internal communication to employees and the issuer might have a legitimate interest to delay in order to ensure an orderly and accurate disclosure;
- e) the context of crisis management where the issuer might have a legitimate interest to delay the disclosure of operational, technological or security-related incidents (e.g. cyber-security or operational resilience events);
- f) where the disclosure of sensitive strategic data by the issuer could cause a loss of a business opportunity, and could thus entail a legitimate interest to delay the disclosure;
- g) where confidentiality obligations deriving from contractual arrangements with a counterparty prevent the issuer from proceeding with the disclosure, similarly to the confidentiality obligations imposed on the issuer by an authority;
- h) where the issuer faces legal and regulatory constraints that could justify delaying disclosure, including (i) situations involving regulatory investigations, (ii) court orders or interim injunctions preventing disclosure and (iii) tax rulings or regulatory settlement negotiations, where premature disclosure could undermine the outcome and harm the issuer; and
- i) situations involving strategic decisions and data where disclosure would allow competitors or counterparties to take immediate actions that frustrate the issuer's ability to implement a time sensitive strategy.

4.5.3 ESMA's assessment and final approach

- 85. ESMA recalls that the list of legitimate interests provided by the Guidelines is of a non-exhaustive and indicative nature. Thus, ESMA agrees with stakeholders that the list of examples should remain broad enough to cover the diverse situations issuers may face.
- 86. As regards the specific proposals put forward, ESMA agrees that issuers may have a legitimate interest in delaying the disclosure of a decision to appoint a member of their governing body or a manager, or another person holding a key role where the individual concerned has not yet informed their current employer of their intention to terminate their employment contract. In such circumstances, a delay may be justified to ensure the effectiveness of the decision taken by the issuer's governing body. Immediate disclosure could otherwise jeopardise the orderly and timely transition from the individual's current position to their new role with the issuer, thereby undermining the interests of the issuer. Moreover, where taking up office remains subject to the effective termination of a prior

contractual arrangement, immediate disclosure could create a risk of misleading the market if the appointment ultimately does not materialise or materialises later than expected. As a result, ESMA added point e) to the Guidelines to include such legitimate interest for the delay.

87. As preliminary discussions regarding the appointment are part of a negotiations and thus are not subject to the disclosure obligation, the possibility to delay disclosure applies only to the appointment decision formally taken by the issuer's governing body and concluding the underlying internal decision-making process. In all cases, the duration of the delay should be limited to the period strictly necessary to secure the effectiveness of the issuer's appointment decision.
88. As regards the resignation of key managers, ESMA recalls that by legitimate interest an interest of the issuer sufficiently important to justify a temporary withholding of inside information (e.g. compliance with an order of a public authority), grounded in objective and justified circumstances is meant. The concept is therefore to be interpreted narrowly and does not include any circumstance whose disclosure would result in a loss of value for the issuer.
89. In the case at matter the delay would result in concealing a situation of governance vacuum or mismanagement within the company to the investors, without any ground to withhold the inside information. Consequently, no changes to the initial proposal were made following this suggestion.
90. As regards the situation of a holding company and its subsidiaries (or, more generally, companies within the same group) that are subject to the same disclosure obligation, ESMA recognises that, where one of these entities delays the disclosure in accordance with Article 17(4) MAR, the parent company or another entity within the same group may have a legitimate interest in delaying the disclosure of the same information for the same period of time when such information directly concerns both entities. This could be for example the case of a holding company who has no operating business on its own and the circumstances arising from the operating business of a dependent company have a direct effect on its value⁹.
91. In such a case, the legitimate interest in the delay may be evident for one company, but immediate disclosure by another company within the group would undermine the objectives

⁹ See as an example of a case where an holding company may be affected by the disclosure of inside information regarding the business activities of a subsidiary the pending preliminary ruling request in case C-53/26 submitted by the Bundesgerichtshof (Germany) to the Court of Justice of the European Union available here <https://infocuria.curia.europa.eu/tabs/affair?lang=EN&searchTerm=%22C-53%2F26%22&publishedId=C-53%2F26>

of the delay, ultimately damaging both companies or the whole group. This could be for example the case where an issuer receives an order from a public authority to maintain confidentiality, but the order is not addressed to the parent company. In such a case, one company's legitimate interest is to comply with the order's authority, whereas for the other it is not to undermine the delay activated by the first company. As a result, ESMA added point f) to the Guidelines to include such legitimate interest for the delay.

92. Nevertheless, ESMA emphasizes that the recognition of this legitimate interest in the Guidelines does not imply the existence of an automatic group-wide legitimate interest whereby a delay by one entity would systematically justify a delay by other entities within the group.
93. Furthermore, ESMA recalls that the prohibition of unlawful disclosure of inside information set forth in Article 10 of MAR remains applicable to the disclosure of inside information within the same group. As a result, the inside information relating to one entity (e.g. the subsidiary) can be disclosed to persons working for a different company within the same group (e.g. the parent company) only in the normal exercise of employment, profession or duties.
94. As for the cases where coordination is needed prior to the disclosure of inside information with third parties, authorities or internal staff, as already highlighted in its Final Report on the Technical advice concerning MAR and MiFID II SME GM¹⁰, ESMA reminds market participants that issuers should ensure the coordination with the parties involved in the decision-making processes to avoid any conflicting or non-synchronised communications to the public. In other terms, coordination with third parties is part of the necessary steps and safeguards to be adopted by the issuer, as part of its obligation to ensure that inside information is disclosed as soon as possible and in a manner which enables fast access and complete, correct and timely assessment of the information by the public. In this respect, recourse to the delay mechanism is limited to those situations where the issuer has no other option to avoid damage to its legitimate interests. For these reasons, ESMA did not expand the list to cover these cases.
95. Regarding the situations of crisis managements and the disclosure of operational, technological or security-related incidents, ESMA considers they will now be covered by the legitimate interest identified in new point (b) of Guideline 1 and therefore there is no need to add a separate category to the indicative list of legitimate interests.

¹⁰ See for example ESMA Final Report on the Technical advice concerning MAR and MiFID II SME GM, paragraph 83 (pg. 19) or paragraph 101 (pg. 20). Available at https://www.esma.europa.eu/sites/default/files/2025-05/ESMA74-1103241886-1086_Final_Report_on_the_Technical_advice_concerning_MAR_and_MiFID_II_SME_GM.pdf

96. Furthermore, ESMA considers that the concerns raised in relation to situations involving commercial information, sensitive strategic data and strategic decisions, have been addressed by the new legitimate interest in point (c) of Guideline 1 (section 4.4.3).
97. As for the confidentiality clauses included in a contractual arrangement with a counterparty, ESMA is concerned that recognising such arrangements as a standalone ground for delay could create a risk of misuse. This is because the voluntary insertion of confidentiality clauses in agreements between the issuer and its counterparty might result in excessive discretion for the issuer on whether to be subject to the obligation to disclose inside information in a timely manner. Thus, ESMA does not consider that such cases constitute a legitimate interest to delay disclosure.
98. In relation to the legal and regulatory constraints that could justify delaying disclosure, ESMA considers that the cases involving regulatory investigations, tax rulings or regulatory negotiations should be considered intermediate steps in a protracted process that are no longer subject to the disclosure requirement ahead of completion. Moreover, the cases of court orders or interim injunctions will be now covered by the legitimate interest described in new point (a) of Guideline 1. Therefore, ESMA did not add any of them to the list of legitimate interests.

4.6 General remarks on the non-exhaustive list of legitimate interests

5.1.1 Feedback

99. Many respondents stressed that the list of legitimate interests should remain illustrative and non-exhaustive and asked to clarify that legitimate interests should not be limited to those mentioned in the list.
100. Some respondents asked to clarify that the list should not create the presumptions that the information is inside information (Article 7 MAR) or that delay is automatically justified in the cases mentioned in the Guidelines, as the other conditions are also to be met.
101. Respondents repeatedly underlined that issuers must retain a case-by-case margin of assessment to determine whether inside information subsists and whether the conditions for the delay are met.
102. Respondents asked ESMA to clarify whether delay remains possible after completion of a protracted process, whether the Guidelines offer any safe-harbour effect and what is the legal status of the Guidelines.

5.1.2 ESMA's assessment and final approach

103. The new mandate in Article 17(11) of MAR indicates that the objective of the MAR Guidelines is to identify a non-exhaustive list of legitimate interests for the issuers for the purposes of the delay. Guideline 1 indicates that the cases for the delay “could include but are not limited to” the examples reported in the guideline.
104. ESMA thus does not consider any amendment to the proposal necessary to indicate that the list of legitimate interests for the delay is non-exhaustive.
105. In addition, ESMA clarifies that the non-exhaustive nature of the list implies that the issuer may identify additional legitimate interests which could justify a delay in the disclosure of inside information through a case-by-case assessment.
106. Furthermore, the illustrative purpose of the list, combined with the obligations set forth in Article 17 of MAR implies that the issuers retain a case-by-case margin of assessment to determine whether inside information subsists in the case at hand and whether the conditions for the delay are met.
107. The occurrence of a legitimate interest is one of the three requirements set forth by Article 17(4) of MAR for the delay in the disclosure of inside information, together with (i) the delay not being in contrast with the latest public announcement or other type of communication by the issuer (point b of Article 17(4) of MAR) and (ii) the ability of the issuer to maintain the confidentiality of the information whose disclosure is delayed (point c of Article 17(4) of MAR). As a result, in addition to a legitimate interest, to activate the delay mechanism the other two requirements set forth in Article 17(4) of MAR need to be met. The assessment of compliance of such requirement in the case at hand is also left to a case-by-case assessment by the issuer.
108. For completeness, ESMA also recalls that as the general rule contained in Article 17(1) of MAR requires the issuer to disclose inside information as soon as possible, the legitimate interests for the delay presented in the MAR Guidelines shall be interpreted restrictively. For the same reason, when making use of the delay in the disclosure of inside information, the issuer is expected to proceed with the disclosure as soon as the circumstances justifying the delay come to an end.
109. In addition, as provided by the first and second subparagraphs of Article 17(7) of MAR if the confidentiality of the inside information whose disclosure has been delayed is no longer ensured, issuers are required to disclose that information as soon as possible. To

enhance clarity, in the 2022 review of the MAR Guidelines ESMA added a paragraph to Guideline 1 to recall such obligation.

110. As regards the relationship between the Guidelines and protracted processes, ESMA clarifies that once the issuer established the existence of inside information, it has first to evaluate whether the information pertains to an intermediate step in a protracted process by using as support the list of protracted processes in the DA implementing the Listing Act.
111. When the outcome of this assessment is that the information relates to step in a protracted process, no delay mechanism is needed as only the final event or circumstance of the protracted process is subject to public disclosure. On the contrary, where the information refers to a one-off event (as opposed to a step within a process) or a final event or circumstance in a protracted process, the issuer can use the delay mechanism, provided all the relevant requirements are met.

4.7 Situations in which delay of disclosure of inside information is likely to mislead the public

112. The Listing Act added to MAR as a condition for the delay that the inside information that the issuer intends to delay is not in contrast with the latest public announcement or other communications by the issuer on the same matter. In addition, it mandated the EC to supplement MAR by issuing a non-exhaustive list of those situations. Consistently, it also removed from the ESMA mandate regarding the Guidelines the “situations in which delay of disclosure of inside information is likely to mislead the public”.
113. In light of these changes, in the CP ESMA proposed to remove Guideline 2 on “situations in which delay of disclosure of inside information is likely to mislead the public” in its entirety, as it is not covered by the mandate anymore.
114. No feedback to the consultation opposed to this amendment, thus ESMA maintains its initial proposal to delete Guideline 2.

5 Annexes

5.2 Annex I – Proposed amendments on the Guidelines on delay in the disclosure of inside information and interactions with prudential supervision

1 Scope

a. Who?

1. These guidelines apply to Competent Authorities designated under Article 22 of MAR and issuers.

b. What?

2. These guidelines apply in relation to Article 17 of Regulation (EU) No 596/2014 (MAR) and provide a non-exhaustive and indicative list of legitimate interests of the issuers that are likely to be prejudiced by immediate disclosure of inside information. ~~and situations in which delay of disclosure is likely to mislead the public, according to Article 17(11) of Regulation (EU) No 596/2014.~~ In addition, these guidelines provide, according to Article 16(1) of the ESMA Regulation, clarifications concerning the existence of inside information in relation to Pillar 2 Capital Requirements and Capital Guidance.

c. When?

3. These guidelines apply from ~~13/06/2022~~ [the date of publication on ESMA website of the Guidelines in all the official EU languages].

2 Legislative references, abbreviations and definitions

Legislative references

CRD	Capital Requirements Directive – Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing
-----	--

Directives 2006/48/EC and 2006/49/EC¹¹

CRR	Capital Requirements Regulation - Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ¹²
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ¹³
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ¹⁴

Abbreviations

CRD NCA	National Competent Authority as defined under Article 3(1)(36) of CRD
ECB	European Central Bank
ESFS	European System of Financial Supervision
P2G	Pillar 2 Capital Guidance
P2R	Pillar 2 Capital Requirements
Prudential Competent Authorities	CRD NCAs and the ECB

¹¹ OJ L 176, 27.6.2013, p. 338.

¹² OJ L 176, 27.6.2013, p. 1.

¹³ OJ L 173, 12.6.2014, p. 1.

¹⁴ OJ L 331, 15.12.2010, p. 84.

SREP Supervisory Review and Evaluation Process

Definitions

Institutions Credit institutions and institutions as defined under Article 4(1) and (3) of CRR respectively, combined with Article 11(2) of CRR

Issuer A legal entity as defined in Article 3(1)(21) of MAR and that is subject to the ~~disclosure transparency~~ obligations under Article 17(1) of MAR.

Public Authority A public authority of a Member State, the EU or a third country

3 Purpose

4. These guidelines are based on Article 17(11) of MAR and on Article 16(1) of the ESMA Regulation. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the [European System of Financial Supervision \(ESFS\)](#) and to ensure common, uniform and consistent application of Articles 7(1), 17(1) and 17(4) of MAR. In particular, these guidelines provide guidance by giving examples to assist the issuers in their decision to delay public disclosure of inside information under Article 17(4) of MAR, through a non-exhaustive and indicative list of legitimate interests of the issuers that are likely to be prejudiced by immediate disclosure of inside information ~~and situations in which delay of disclosure is likely to mislead the public~~. In addition, these guidelines provide clarifications concerning the existence of inside information in relation to P2R and P2G.

4 Compliance and reporting obligations

4.1 Status of the guidelines

5. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with guidelines.

6. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

4.2 Reporting requirements

7. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA ~~(to~~ MARGuidelinesGL3@esma.europa.eu) whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.

8. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for non-compliance. A template for notifications is available on ESMA website. Once the template has been filled in, it shall be transmitted to ESMA.

9. Issuers are not required to report whether they comply with these guidelines.

Guidelines on legitimate interests of issuers to delay the disclosure of inside information and interactions with prudential supervision and situations in which the delay of disclosure is likely to mislead the public

1. Legitimate interests of the issuer for delaying disclosure of inside information

Guideline 1:

10. For the purposes of point (a) of Article 17(4) of MAR, the cases where immediate disclosure of the inside information is likely to prejudice the issuers' legitimate interests could include but are not limited to the following circumstances:

- a. the issuer needs to comply with an order to maintain the confidentiality of the inside information issued by a public authority of a Member State, the EU or a third country on the basis of law, a specific legal provision, or the powers otherwise attributed to that public authority (i.e. case law). For example, public authorities may order not to disclose the tender award in a public procurement on the basis of the applicable law, or to maintain the confidentiality on the grounds of public policy, public security and public health.
- b. the issuer needs to collect additional information about an exceptional event or circumstance, which is not immediately available, , in order to enable a correct assessment of the inside information by market participants. This could be for example the case where the issuer needs to collect information on the effects of a major incident or cyber-attack to provide correct information to the public and to

avoid the negative effects a premature communication to the public of the incident or of the attack may cause.

- c. the issuer needs to maintain the confidentiality of sensitive commercial information whose disclosure may result directly in the loss of an identifiable and concrete business opportunity . Examples of cases where the disclosure of sensitive commercial information may jeopardise business opportunities for the issuer include the case where, following the award of the contract in a procurement process, participants in other similar ongoing public tenders could take into consideration the terms and conditions disclosed by the issuer to submit more competitive bids, or where the disclosure of the agreement or decisions to enter into a new market, or to launch a new product, may enable competitors to adjust their strategy to the detriment of the issuer.

~~a. the issuer is conducting negotiations, where the outcome of such negotiations would likely be jeopardised by immediate public disclosure. Examples of such negotiations may be those related to mergers, acquisitions, splits and spin-offs, purchases or disposals of major assets or branches of corporate activity, restructurings and reorganisations.~~

~~b.~~ d. the ~~financial viability of the~~ issuer is facing serious and imminent financial distress in grave and imminent danger, although even though not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders by jeopardising the conclusion of the negotiations designed to ~~restore the capital and liquidity ensure the financial recovery~~ of the issuer;

~~e.~~ e. the issuer has appointed a member of its governing body, a manager, or another person holding a key position, when the individual concerned has not yet informed their current employer of their intention to terminate their employment contract and the disclosure of the new appointment could jeopardise the effectiveness of the decision taken by the issuer's governing body.

~~d.~~ f. inside information concerning the issuer has been delayed by another company within the same group (including the holding or subsidiary company) and the close economic and operational links between the entities mean that immediate disclosure by the issuer

would cause a direct prejudice to the issuer and undermine the effectiveness of the delay activated by the other company.

- ~~e. the inside information relates to decisions taken or contracts entered into by the management body of an issuer which need, pursuant to national law or the issuer's bylaws, the approval of another body of the issuer, other than the shareholders' general assembly, in order to become effective, provided that:~~
 - ~~i. immediate public disclosure of that information before such a definitive decision would jeopardise the correct assessment of the information by the public; and~~
 - ~~ii. the issuer arranged for the definitive decision to be taken as soon as possible.~~
- ~~f. the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the issuer;~~
- ~~g. the issuer is planning to buy or sell a major holding in another entity and the disclosure of such an information would likely jeopardise the implementation of such plan;~~
- ~~h. a transaction previously announced is subject to a public authority's approval, and such approval is conditional upon additional requirements, where the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the deal or transaction.;~~
- ~~i. the issuer is an institution subject to the CRR and a decision to carry out a redemption, reduction, repurchase, repayment or call of own funds instruments or a reduction, distribution or reclassification as another own funds item of the share premium accounts related to own funds instruments has been taken but not yet authorised by the competent authority as defined under Article 4(1)(40) of CRR, pursuant to Article 77 of CRR;~~
- ~~j. the issuer is an institution subject to prudential supervision under the CRD and has received a draft SREP decision or preliminary information related thereto which will become final at a later stage~~

~~upon completion of the decision-making process of the Prudential Competent Authority. In such case, a premature announcement of any inside information constituting the draft SREP decision or preliminary information related thereto would be in contrast with the SREP procedure and in particular with the institution's right to be heard, potentially unduly prejudicing the institution's interest for a fair appreciation of the impact of that information by the market.~~

11. ESMA recalls that, pursuant to Article 17(7) of MAR, even in those cases where immediate disclosure of the inside information is likely to prejudice the issuers' legitimate interests, whenever the confidentiality is no longer ensured the issuer shall disclose that inside information to the public as soon as possible.

~~2. Situations in which delay of disclosure of inside information is likely to mislead the public~~

~~Guideline 2:~~

~~12. For the purposes of point (b) of Article 17(4) of MAR, the situations in which delay of disclosure of inside information is likely to mislead the public includes at least the following circumstances:~~

- ~~a. the inside information whose disclosure the issuer intends to delay is materially different from the previous public announcement of the issuer on the matter to which the inside information refers to; or~~
- ~~b. the inside information whose disclosure the issuer intends to delay regards the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced; or~~
- ~~c. the inside information whose disclosure the issuer intends to delay is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, roadshows or any other type of communication organized by the issuer or with its approval.~~

3. P2R and P2G and inside information

Guideline 23:

~~1213.~~ For the purposes of the assessment of whether draft or final P2R constitutes inside information according to Article 7(1)(a) of MAR, issuers that are institutions subject to prudential supervision under the CRD should verify that their **P2R** is:

- a. non-public information;
- b. directly relating to the institution that has received it;
- c. of precise nature.

1344. P2R is also highly likely to be price sensitive. Institutions should assess the price sensitivity of P2R considering the magnitude of the difference between the institution's P2R and the current level of capital. Price sensitivity should not be excluded even where the institution's current level of capital is higher than its P2R.

1445. Except for a very limited number of cases and as a result of a thorough assessment by the institution, P2R is expected to be considered as inside information.

Guideline 3:

1546. For the purposes of the assessment of whether draft or final P2G constitutes inside information according to Article 7(1)(a) of MAR, issuers that are institutions subject to prudential supervision under the CRD should verify that their **P2G** is:

- a. non-public information;
- b. directly relating to the institution that has received it;
- c. of precise nature.

1647. P2G may also be price sensitive. Institutions should assess the price sensitivity of P2G also considering the magnitude of the difference between the institution's P2G and the current level of capital, whether a corporate reaction is expected to be necessary to meet the P2G and the relevant timing to launch it and complete it.

1748. Examples of situations where P2G is expected to be price sensitive are where:

- a. the difference between the P2G and the institution's level of capital is not minor and is likely to involve a major reaction by the institution, such as a capital increase;
- b. the institution's P2G is not in line with market expectations, so a price impact can be expected.

5.3 Annex II – Cost-benefit analysis

115. This section provides a qualitative assessment of the costs and benefits arising from the amendments to the Guidelines on delay in the disclosure of inside information.
116. The amendments are adopted in the context of the Listing Act, which introduced targeted changes to the MAR framework with the objective of simplifying disclosure requirements and reducing administrative burdens for issuers, in particular SMEs. These changes include, inter alia, the introduction of a revised regime for protracted processes, amendments to the conditions for delayed disclosure under Article 17(4) of MAR, and an updated mandate for ESMA to issue guidelines on legitimate interests under Article 17(11) of MAR.
117. In line with these legislative changes, ESMA has amended the Guidelines by removing examples that are now covered by the new regime for protracted processes, retaining and clarifying the legitimate interest relating to the issuer's financial viability, and adding new examples of legitimate interests in limited circumstances.
118. The cost-benefit analysis focuses on the expected impact of the proposed amendments to the Guidelines, taking into account their alignment with the revised legislative framework and their role in supporting a consistent application of MAR across the Union.

Benefits	The amendments to the Guidelines are expected to enhance legal certainty and support a consistent application of the MAR framework across the Union. The clarifications provided in relation to the retained legitimate interest concerning financial viability, as well as the additional examples of legitimate interests introduced in limited circumstances, are expected to assist issuers in assessing whether the conditions for delayed disclosure are met in specific cases. More generally, the amendments should assist issuers to assess whether in presence of a legitimate interest to delay the public disclosure of inside information, contribute to greater supervisory convergence and reduce the risk of divergent interpretations across Member States.
Costs to regulators	None. The amendments do not create new obligations for competent authorities and are not expected to entail material implementation or supervisory costs.
Compliance costs	None. The amendments do not introduce new procedural requirements for issuers, but clarify the application of the existing legal framework.

	Issuers may need to familiarise with the new disclosure regime but this is not a compliance cost attributable to the Guidelines.
Costs to other stakeholders	None identified. The amendments are not expected to impose direct costs on investors or other market participants. On the contrary, greater clarity and consistency in the application of the delay regime may support market confidence in the disclosure framework.
Indirect costs	None.

5.4 Annex III – Advice of the Securities and Markets Stakeholder Group

119. On 26 May 2026, the ESMA SMSG adopted its advice on the CP on MAR Guidelines on delay in the disclosure of inside information ('SMSG Advice'). The SMSG advice was published on ESMA website¹⁵. The executive summary of the advice reads as follows:

120. *"The SMSG broadly supports ESMA's proposed revisions to the MAR Guidelines on delayed disclosure of inside information, reflecting the changes introduced by the Listing Act (Regulation (EU) 2024/2809).*

121. *The SMSG recommends retaining point (b) of Guideline 1 (financial viability), supports the three proposed new legitimate interests with refinements, and proposes additional legitimate interests including internal investigations, pending regulatory inquiries, litigation/arbitration, and cross-border legislative conflicts.*

122. *The SMSG draws attention to a significant transitional guidance gap between 5 June 2026 and the expected publication of final Guidelines in Q4 2026, and recommends that ESMA provide interim guidance. The SMSG also underlines that the specific situations listed in the Guidelines should serve as illustrations of a broader principle, not as a closed catalogue."*

¹⁵ See here for full the full SMSG advice: [ESMA24-229244789-5649 SMSG advice on the Consultation Paper on MAR Guidelines on delay in the disclosure of inside information](#)

5.5 Annex IV – Summary of questions

Q1: Do you see merits in maintaining the legitimate interest currently described in point b of Guideline 1 (i.e. possibility for the issuer to delay the disclosure of its financial situation, where an immediate publication may jeopardise the measures to reestablish its viability)? Please indicate the arguments supporting your answer.

123. Almost all respondents (24 out of 26) supported maintaining the legitimate interest currently described in point (b) of Guideline 1. The main arguments in favour were:

- 1) **Situations not covered by EC's draft delegated act:** several respondents considered that the list of protracted process covers formal proceedings instead of earlier-stage situations of grave and imminent financial distress outside the scope of insolvency law. Moreover, some respondents noted that such situations may not qualify as protracted processes (i.e., unplanned and unforeseen emergency situation).
- 2) **Legal uncertainty and supervisory convergence:** several respondents warned that removing this legitimate interest would increase legal uncertainty and the risk of divergent interpretation and application across the EU.
- 3) **Safeguarding recovery measures and preventing adverse market effects:** most respondents considered the possibility to delay disclosure as crucial to protect the effectiveness of measures aimed at restoring the issuer's financial viability. Premature disclosure could undermine their implementation, jeopardize recovery prospects, harm investors and trigger destabilising or self-fulfilling market reactions (e.g. loss of confidence, withdrawal of financing, early debt calls). Some respondents also highlighted the potential negative implications for market stability and the wider economy. A few respondents noted that safeguarding the conditions for recovery is particularly relevant for (i) SMEs given the greater sensitivity of their financial structure and access to financing to information volatility and for (ii) credit institutions and systematically relevant issuers, where contagion effects may arise. Finally, one respondent expressed concerns that removing the legitimate interest could reduce the attractiveness of EU markets for financially distressed issuers.
- 4) **Consistency with MAR and Listing Act objectives:** a few respondents noted that maintaining the guideline is consistent with the objectives of MAR and the Listing Act, including avoiding premature, incomplete and potentially misleading disclosure and reducing administrative burdens.

124. Some of these respondents called for clear safeguards to ensure a restrictive use of this legitimate interest. In particular, it was stressed that:

- it should be applied only in exceptional circumstances, and as a limited, reviewable exception;
- it should be subject to clear conditions (e.g., identification of concrete recovery measures, explanation of prejudice from disclosure and ongoing reassessment), or robust governance arrangements including senior management oversight and detailed internal record keeping;
- its application should be limited to steps prior to formal proceedings included in the list of protracted process in the EC Delegated Act.

125. By contrast, a few respondents considered that the current framework already provides sufficient safeguards against misuse, noting the strict MAR conditions for delayed disclosure.

126. Additionally, one respondent emphasized the importance of maintaining flexibility in disclosure decisions, particularly for SMEs, noting that issuers may choose to disclose ongoing negotiations or procedures to signal active senior-level management of the situation.

127. Only two respondents opposed maintaining the legitimate interest. They questioned its relevance in light of the amendments to the disclosure regime, arguing that such situations should be regarded as intermediate steps in a protracted process and that the EC's draft delegated act already covers the case of "[pre-insolvency] *proceedings not supervised by a court*". One respondent warned that the current wording may be misinterpreted, potentially leading to unjustified delays in disclosing material information to the detriment of investors.

128. Finally, one respondent called for additional guidance to clarify (i) how to determine whether a situation qualifies as a protracted process and (ii) that insider list requirements remain applicable even where disclosure is delayed.

Q2: What is your view on the legitimate interest which are proposed to be added to the MAR Guidelines? When commenting on a specific legitimate interest, please report in your answer the title as given in the relevant subsection.

129. All the respondents supported ESMA's proposal on legitimate interests. However, some respondents requested clarifications regarding the application of the Guidelines in general (see section 3) as well as amendments regarding the specific legitimate interests.

A) Orders by a public authority to maintain confidentiality

130. All respondents welcomed the addition of this legitimate interest as enhancing legal clarity. Some considered it particularly important to maintain confidentiality in situations related to public policy, public security, and public health. Only one respondent questioned the utility, arguing that any order from an authority should in any event prevail over disclosure obligations.

131. Some respondents asked to clarify the criteria for when and to what extent an order prevails over the disclosure obligation to avoid overly broad interpretations of the legitimate interest by issuers. Such responses reflected concerns about insufficient information being available where the legitimate interest is not clearly defined. This could be for example the case where an issuer working in the defence industry is prohibited from disclosing details of its activity on regular basis, making the provision of meaningful information on the company's revenue difficult.

132. Some respondents suggested to limit the legitimate interest to cases where the order has an identifiable legal basis, is precisely defined, proportionate and time-limited, and where the issuer is able to document its existence. A few of these respondents (three) suggested introducing a requirement for issuers to retain documentation to ensure the traceability of the orders received as regards their scope, date, and person responsible for its compliance within the issuer. This would avoid that informal communications become justifications for the delay. A few respondents also called for clarification that the delay must cease immediately upon the expiry of the obligation imposed by the authority.

133. One respondent asked ESMA to add the situation where a public authority issues a recommendation or request for confidentiality rather than a formal binding order as a legitimate interest (adding "request or recommendation" next to orders in point a).

134. One respondent asked to delete the examples to better reflect that the Guideline expresses a broad principle.

135. In addition, almost one third of respondents asked ESMA to:

- 1) address situations where an order is perpetual or has no expiry date (including when/if disclosure must ultimately occur, and whether/when the information may cease to be inside information); and

- 2) clarify this legitimate interest includes obligations deriving from a foreign (third-country) legal system.

B) Need to collect further information

136. Respondents broadly agreed that limited additional time may be necessary to avoid premature or misleading disclosure and to enable a comprehensive assessment.
137. However, many respondents noted that where information may not yet be sufficiently precise to qualify as inside information, there is no disclosure obligation. Thus, they asked ESMA to clarify when the information is specific in this context but a delay in accordance with this legitimate interest is possible.
138. Respondents also asked to better distinguish between permissible information-gathering and undue delay.
139. Practical guidance was requested on what constitutes "undue delay" in different scenarios (e.g., a cyber-attack may require a 24-72 hour assessment window, whereas a major industrial accident may justify a longer period).
140. As regards cybersecurity for incidents subject to mandatory notification pursuant to Directive NIS 2 respondents pointed out that the timeframe within which the issuer is required to gather sufficient information to make a public disclosure should be interpreted in coordination with the notification deadlines set out under NIS 2. Similarly, interactions with provisions contained in DORA or in the GDPR for what concerns data leaks should be considered.
141. More generally, few respondents recommended clarifying that the disclosure should occur only once the available information is sufficiently precise to allow the market to assess the likely implications of the event or circumstance, even if some complementary information may follow later.
142. As regards more specific suggestions, some respondents asked ESMA to:
 - 1) expand the legitimate interest to include (i) the analysis of the data collected (as opposed to the mere collection) (one respondent) and the ii) evaluation of indirect impacts and possible **remediation actions** (four respondents);
 - 2) broaden the examples beyond cyberattacks to other major incidents (e.g., **industrial, climate-related, geopolitical, operational disruptions, financial market**

disruptions) (eight respondents). Wording suggestions was provided to facilitate such additions (e.g. ANSA and Lafep).

143. One respondent suggested deleting the examples so that the Guidelines better reflect a broad principle.
144. A request was also made to clarify distinction between the collection of information and a protracted process as defined in the EC Delegated Act.

C) Parallel procurement processes

145. Respondents generally accepted the rationale supporting this legitimate interest, but requested clearer boundaries so it can be applied narrowly to concrete competitive harm and can be limited to the period when the prejudice risk remains live.
146. Four respondents suggested extending the concept beyond public procurement to relevant private tender/competitive processes.
147. One respondent indicated private negotiations are already covered by the EC Delegated Act on protracted processes.
148. One respondent asked to further elaborate the example to provide clarity.
149. Another respondent noted that in some cases of procurements there may be a confidentiality order from the authority, and asked ESMA to clarify how the two legitimate interests could interact.

Q3: In addition to the case of parallel procurements of the same nature, are you aware of other instances where disclosure of sensitive commercial information may jeopardise an issuer's business opportunity, and should thus qualify as a legitimate interest for the delay?

150. Respondents generally acknowledged that circumstances beyond parallel procurements of the same nature may also justify delayed disclosure where disclosure of commercially sensitive information would prejudice a concrete business opportunity. The general feedback is however that the Guidelines should avoid an overly prescriptive or exhaustive enumeration of scenarios and instead preserve sufficient flexibility for issuers to assess, on a case-by-case basis, whether immediate disclosure would materially harm their interests.

151. Some respondents argued that the additional scenarios are so many that is impossible to comprehensively identify them in the Guidelines. Thus, it would be preferable that the relevant legitimate interest is drafted in general terms, allowing issuers to assess, on a case-by-case basis, whether a legitimate interest exists. In this respect the criteria to be used to identify the legitimate interest are (i) the existence of a concrete and identifiable business opportunity; (ii) the commercial sensitivity of the information whose disclosure is delayed, (iii) a clear and specific risk of prejudice resulting from disclosure and (iv) compliance with the other requirements for the delay, especially the ability of the issuer to maintain confidentiality.

152. Among the additional situations which would entail a legitimate interest the most frequently identified were:

- confidential negotiations with a limited number of private counterparties, including strategic partnerships, large scale assets transactions;
- private sale or acquisition processes, significant customer or supplier negotiations, exclusive IP licensing or distribution agreements;
- market-entry strategies, new product launches, pricing policies, and staged commercial roll;
- financing arrangements, refinancing or restructuring discussions; and
- transactions that are conditional (for example where the transaction is subject to regulatory non objection or third-party consent).

153. With respect to M&A negotiations, one respondent noted that despite being covered by the EC Delegated Act on protracted processes, a non-binding offer from a third party does not qualify as a formally initiated process, and its disclosure may undermine the issuer position in the ongoing negotiations.

154. Similarly, a respondent pointed out that in multiple parallel private negotiations, premature disclosure may reveal the issuer bargaining position, including concessions on price, volume, exclusivity, liability or termination rights, thereby weakening its position with other counterparties. Early disclosure may also undermine strategic partnerships, market entry plans or product launches by exposing the issuer's commercial strategy. Along the same line, the decision to enter into a new geographic market or to launch a new product line would enable competitors to pre-empt the strategy by adjusting their own positioning to the detriment of the issuer.

155. Other examples mentioned by individual respondents include:

- litigation or settlement negotiations;
- regulatory or supervisory discussions linked to capital or funding measures (P2R, MREL);
- pre-approval regulatory communications, and approval process in third countries;
- research and development /clinical trial outcomes;
- cybersecurity or operational resilience incidents;
- applications for grants, concessions, or authorisations where disclosure could undermine the issuer's position; and
- distress and restructuring-related negotiations before formal proceedings.

156. Three respondents replied they were not aware of any other instances where disclosure of sensitive information may jeopardise an issuer business opportunity and which would qualify as a legitimate interest for the delay in the disclosure of inside information.

Q4: In your view, which legitimate interests could be added to the MAR Guidelines for the purpose of the delay in the disclosure?

157. Several respondents opposed introducing additional legitimate interests. Some respondents emphasised the need to frame legitimate interest in general terms and warned against a closed or overly prescriptive list of examples, given the diversity of factual situations. One respondent stressed the importance of ensuring that the guidance remains adaptable and future-proof (see also Section 3). Some also cautioned that expanding the list could either broaden the perceived scope for delay, thereby undermining supervisory convergence, or conversely lead to overly rigid interpretations, unintentionally restricting the availability of the delay mechanism.

158. One respondent suggested adding an explanatory paragraph to Guideline 1 encouraging issuers to maintain a proportionate decision record.

159. By contrast, many respondents supported the inclusion of additional legitimate interests. Some of these stressed that any addition should remain limited, clearly defined and exceptional, and subject to an objectively identifiable and verifiable legitimate interest.

160. The proposals put forward by respondents can be grouped into the following categories:

1) Governance situations:

- Decision by issuer's governing body to appoint a new key manager or senior executive when the individual concerned has not yet terminated his or her existing employment or contractual relationship with a third party (mentioned by three respondents as occurring with frequency in practice): delay justified to avoid (i) disruptions of the orderly termination of the manager's current engagement, (ii) jeopardising the appointment itself (retaliatory or pre-emptive action taken by the current employer), or (iii) professional or reputational harm to the individual concerned, before the transition is secured.
- **Unexpected announcement of unavailability of Board member for a further term of office:** delay justified to minimize the uncertainty period pending the appointment of a successor, or to allow for a simultaneously announcement successor.
- **Resignation of key executive officer (CEO / CFO):** delay justified to avoid a perceived management vacuum until a successor is identified.

2) Coordination and orderly disclosure:

- **Group-level disclosure coordination:** where both parent and subsidiary companies (or companies of the same group) are subject to the disclosure obligations, the use of the delay by one of them constitutes a legitimate interest for the delay of the other;
- **Coordination with third parties or authorities:** where an event materially involves critical suppliers, platforms, infrastructure providers, customers, or public authorities, a short delay could be justified to coordinate an accurate disclosure, to avoid inconsistent public communications, or to prevent avoidable harm to affected parties;
- **Simultaneous communication to affected stakeholders and external communication to the market** (e.g. where an issuer with global operations decides on a major lay-off of employees, closing of operations abroad and in different time zones): delay justified as proper management requires that affected persons are informed via an internal communication concurrent with the public announcement.

3) **Contractual constraints and protection of commercially sensitive information.**

Some respondents argued the protection of commercial information and of sensitive strategic data (revealing critical technical, industrial or commercial information that could cause the issuer to lose a vital and irreplaceable competitive advantage) could entail a legitimate interest to delay the disclosure. Within this group the following instances were brought forward:

- Confidentiality obligations from contractual arrangements with counterparties, in conjunction with an underlying verifiable legitimate commercial interest: one respondent argues that contractual obligations of confidentiality, may justify a delay, provided that such interest is substantiated by a recognizable ground and is not merely instrumental to circumventing the disclosure obligation.
- Inside information that includes and is inseparable from commercially sensitive third-party information that the issuer is contractually or legally obliged to protect: delay justified as premature disclosure could expose the issuer to material legal, regulatory, or commercial consequences and to allow the issuer to manage disclosure in a manner that complies with both MAR and its third-party obligations.
- Active competitive processes beyond formal public procurement (competitive negotiations, licensing processes, grant or concession processes, and comparable structured opportunities): where disclosure would reveal information competitors could use to defeat the opportunity. This should be narrowly framed to avoid turning commercial sensitivity into a routine ground for delay.

4) Strategic and financial stability considerations:

- **Safeguarding the effectiveness of time critical strategic decisions:** delay justified as the disclosure of specific strategic decisions at an early stage may irreversibly undermine their execution, e.g., where disclosure would allow competitors or counterparties to take immediate actions that frustrate the issuer's ability to implement a time sensitive strategy. Recognition of such a legitimate interest should be carefully restricted and should not extend to ordinary strategic planning or commercial negotiations.
- **Protection of early-stage strategic transformations not yet amounting to a protracted process:** delay justified not to mislead the market.
- **Temporary liquidity support negotiations for non-banks:** delay justified to avoid creditors' detrimental reactions.

- 5) **Regulatory constraints**: respondents suggested several legal and regulatory constraints that could justify delaying disclosure. These include:
- **court orders or interim injunctions** preventing disclosure;
 - **tax ruling or regulatory settlement negotiations**, where premature disclosure could undermine the outcome and harm the issuer;
 - situations involving **legal professional privilege** or **regulatory investigations**, especially where an authority has asked the issuer not to disclose;
 - reliance on the ***nemo tenetur se detegere principle***, where disclosure could force an issuer to incriminate itself in a regulatory or criminal investigation.
- 6) **Crisis management and operational resilience**: some respondents supported recognising a legitimate interest for the delay for operational, technological or security-related incidents (e.g., cyber-security or operational resilience events). Their concern is that immediate disclosure could (i) undermine the issuer's ability to contain or remediate the incident, (ii) increase the risk of further harm, notably by revealing vulnerabilities and (iii) lead to disorderly or misinformed market reactions, where the issuer has not yet established the scope and impact of the event. At the same time, respondents emphasised that such a legitimate interest should be limited to (i) the period strictly necessary to clarify the facts, (ii) sensitive information, (iii) ongoing reassessment, (iv) rapid internal escalation and identification of the missing information.