

FIT FOR FUTURE Platform Opinion

Topic title	Facilitating small and medium sized enterprises' access to capital AWP 2022 Directive 2014/65/EU on markets in financial instruments ; Market abuse regulation 596/2014 , Prospectus Regulation 2017/1129 ; Listing Directive 2001/34/EC <i>Legal reference</i>
Date of adoption	05 December 2022
Opinion reference	2022/SBGR2/04
Policy cycle reference	<input checked="" type="checkbox"/> Contribution to ongoing legislative process CWP 2022, Annex I , <i>Commission work programme reference</i> The public listing process is cumbersome and costly for EU companies, especially small businesses (SMEs). This deters EU companies from raising funds on capital markets and means they miss out on the benefits of going public, such as exposure to a wider investor base, higher growth and job creation. This initiative aims to simplify the listing requirements, including post-listing, in order to make public capital markets more attractive for EU companies and facilitate access to capital for SMEs. Planned adoption: Q4 2022 Public consultation : 19 November 2021 - 11 February 2022 (deadline extended to 25 February) Targeted consultation : 19 November 2021 – 11 February 2022 (deadline extended to 25 February) <input type="checkbox"/> Contribution to the (ongoing) evaluation process - <i>Title of the (ongoing) evaluation</i> No <input type="checkbox"/> Included in Annex VI of the Task force for subsidiarity and proportionality No

Other

No

**Have your say:
Simplify!**

No relevant suggestions on this topic have been received from the public.

**Commission
follow up**

REFIT Scoreboard:

[The Listing Act](#)

Have your say portal:

[The Listing Act](#)

Annual Burden Survey:

[The EU's efforts to simplify legislation \(2022\)](#)

SUGGESTIONS SUMMARY

Suggestion 1:	Align the concepts of SME for capital market purposes across relevant legislation
Suggestion 2:	Simplification of the procedures for the admissibility of securities issued by SMEs and of administrative obligations
Suggestion 3:	Standardised and simplified rules concerning accounting obligations

SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

[Directive 2014/65/EU](#) on markets in financial instruments aims to make financial markets in the EU more robust and transparent; it creates a new legal framework that better regulates trading activities on financial markets and enhances investor protection. The new rules called ‘MiFID 2’, revise the legislation currently in place and applied since 2018. This directive ensures that financial products are traded on regulated venues; increases transparency; limits speculation on commodities; adapts rules to new technologies and reinforces investor protection.

[Market abuse regulation 596/2014](#) aims to ensure that EU legislation keeps pace with market developments to combat market abuse on financial markets; explicitly bans the manipulation of commodities and of benchmarks; strengthens the investigative and sanctions powers of the regulators appointed by EU Member States to ensure the proper functioning of their financial markets; ensures a single EU rule book while reducing administrative burdens on smaller and medium sized issuers.

[Regulation 2017/1129 on the prospectus](#) to be published when securities are offered to the public or admitted to trading on a regulated market aims to help companies, including small and medium-sized enterprises (SMEs), access different forms of finance in the European Union. It does so by simplifying and streamlining the rules and procedures for drawing up, approving and distributing the prospectus they publish when offering securities to the public or admitting securities to trading on a regulated market. The legislation reduces costly and burdensome red tape for companies and enables investors to make the right investment decision by providing comprehensible, easy to analyse and concise information. The new prospectus regime aims to ensure that appropriate rules cover the full life-cycle of companies from start-up until maturity as frequent issuers on regulated markets. It makes part of the Capital Markets Union Action Plan ([CMU Action Plan](#)).

[Directive 2001/34/EC](#) on the admission of securities to official stock exchange listing and on information to be published on those securities (the Listing Directive) aims to coordinate the rules with regard to:

- admitting securities to official stock-exchange listing, and;
- the information to be published on those securities in order to provide equivalent protection for investors at EU level.

The Listing Directive concerns securities for which admission to official listing is requested and those admitted, irrespective of the legal nature of their issuer. However, certain exemptions are possible in the case of securities issued by an EU country or its regional or local authorities, or units issued by collective investment companies other than the closed-end type. The Listing Directive is a minimum harmonisation directive.

The subsequent [Directives 2003/71/EC](#) (Prospectus Directive) and [2004/109/EC](#) (Transparency Directive) have replaced most of the Listing Directive's provisions harmonising the conditions for the provision of information regarding requests for the admission of securities to official stock exchange listing and the information on securities admitted to trading on a regulated market. Furthermore, Directive 2004/39/EC (MiFID) conducted to substitute the notion of "admission to trading on a regulated market" to the previous notion of "admission to the official listing". Nevertheless, MiFID recognizes admission to official stock exchange listing¹ and this has been carried forward in the revised regime under Directive 2014/65/EU (MiFID II)¹.

Further sources of evidence:

[Have your Say entry page](#)

[Targeted consultation on the listing act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs | European Commission \(europa.eu\)](#)

[Action 2 - Supporting access to public markets | European Commission \(europa.eu\)](#)

An action plan to improve access to finance for SMEs [COM/2011/0870 final](#)

[CMU Action Plan](#)

[Legislation framework webpages:](#)

[Market abuse regulation](#)

[Prospectus regulation](#)

[Directive 2014/65/EU on markets in financial instruments \(MIFID II\)](#)

[Listing Directive](#)

PROBLEM DESCRIPTION

Existing Commission evidence suggests the following issues:

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

Subject to further analysis, the following two problem drivers related mainly to burden reduction and possible simplification, have been identified:

1. **Companies, in particular SMEs, do not consider listing in the EU as an easy and affordable means of financing and may find it difficult to stay listed due to ongoing listing requirements and costs.** More specifically, the new [CMU Action Plan](#) identified factors such as high administrative burden, high costs of listing and compliance with listing rules once listed as discouraging many companies, especially SMEs, from accessing public markets.
2. **EU public markets are not flexible enough to accommodate companies' financing needs.** This lack of flexibility may be driven by, amongst other factors, a lack of clarity in relevant legislation (e.g. the conditions under which a company may seek dual listing). Such uncertainty may discourage some firms from using EU public markets and hinder the attractiveness of the EU as a destination for IPOs, including in a global context.

(Source: [Call for evidence](#))

Further issues have also been raised:

In addition to the suggestions in the main body of this opinion, some additional relevant issues not directly under the scope of the exercise of Fit for Future Platform can be raised, as they are relevant to final goal of providing European SMEs with the needed funds to develop their activities. These issues concern the simplification and modernization of procedures (some of them already proposed by the European Commission and under debate by the co-legislators) and the access of SMEs to additional means and sources of financing.

The crucial role of ESAP

The European Single Access Point will centralise information on companies and financial assets. This can be beneficial for investors, who will have better access to information, and SMEs, who will be able to use this tool to increase their visibility and, hence, access to capital markets. The ESAP should possess the most relevant information that investors may need concerning SME's that are listed (or wish to be listed) on capital markets, both of financial and non-financial nature.

The EU Single Access Point should give enterprises and small and medium sized enterprises the possibility to send and publish information on a voluntary base as early as possible. The centralization and accessibility of data will save costs for companies, and attract investors, including cross-borders — another objective of the European Commission. Such investors will have access to a single database to obtain their information from all listed SMEs in the European Union, and SMEs a single platform to submit their financial and non-financial information to attract them. If subsidies for SMEs were introduced, the costs of providing data, especially for mandatory reports, would be further reduced.

Providing better information for investors

Data on the financial standing of a SME allows to have a limited (in time and in substance) image of a company, which for institutional or professional investors is manifestly insufficient – and for retail investors and small savers may be difficult to understand.

A solution to this situation could be European credit rating entities that assess companies and make the results of such assessments available. Tax incentives at national level (with proper supervision at European level) for the purchase of SME assets, either stocks or debt, could be envisaged. Without a strong incentive, it will be very unlikely that investors prioritise such assets over less risky ones.

Provided the administrative burdens to provide the data for specialised European rating agencies are not higher than the ones needed for more traditional types of credits directed at SME's, this solution can provide potential investors with direct, reliable information over potential investment recipients, attracting investment.

An EU-wide scheme for wider funding options

Nevertheless, another aspect that would be interesting to explore is to provide public support to the development of bond markets for SMEs, in particular in the formation of bond funds which may aggregate several companies.

By issuing 'bonds' – effectively IOU's (informal document acknowledging debt) or loan notes – as an alternative to offering equity in the form of shares, SME's can potentially tap into a source of financing alternative to retail banking and capital markets.

An EU-wide SME referral scheme building on the ESAP could also be a way to facilitate SMEs' access to a wider set of funding options, including alternative funding options. Requiring banks (and other providers of funding) to direct small and medium enterprises whose funding application they have turned down to providers of alternative funding is consequently another possibility to enlarge the investors' base.

SUGGESTIONS

Suggestion 1: Align the concepts of SME for capital market purposes across relevant legislation

Description: There are different definitions of SME throughout the EU legislative framework. The European Commission Recommendation 2003/361/EC of 6 May 2003 determines what an SME is, based on indicators relating to the number of employees, turnover or balance sheet¹.

¹ OJ L 124, 20.05.2003, p. 36. According to this recommendation, a medium-sized enterprise is considered to be between 51 and 250 employees and a turnover of between EUR 10 million and EUR 50 million per year, or a balance sheet value of between EUR 10 million and EUR 43 million. A small enterprise is considered to have

According to the latest data, in 2021, 99.8 % of non-financial companies in the European Union were SMEs, of which 93,2 % were micro-enterprises². According to MiFID II, SME "means companies that had an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years"³.

The definition of SME as contained in MiFID II is extremely broad, can lead to confusion, may cover a wide range of companies of different size and needs, and may not be fit to market realities. Moreover, it is not aligned with other EU acts, such as the European Long-Term Investment Fund (ELTIF)⁴. Firstly, both a micro enterprise and a company categorised as large based on the Recommendation above can be declared an SME under the MiFID II definition, what results in a lack of clarity and can lead to confusion. Secondly, there are differences between larger and smaller companies that lead to different needs and capacities to access capital markets. As the definition of SME is used to tailor policies (i.e. SME Growth markets), it is necessary to clarify and adapt the definition of SME so these policy actions have a clear target. Thirdly, different reports have stated that the EUR 200 million threshold may no longer be commensurate to market realities, and have recommended its increase up to EUR 1 billion, along with the creation of the concept "Small and Medium capitalisation companies"⁵. ESMA, however, has positioned against such revision of the threshold⁶.

To solve the abovementioned issues, we recommend to further explore possibilities to combine the Recommendation 2003/361/EC with a capitalisation threshold, which should not necessarily be revised at this moment. This would contribute, on the one hand, to a more consistent definition of SME in the EU legislative framework, increasing clarity and avoiding confusion. On the other hand, it would facilitate tailored policies, that is, legislative alleviations adapted to the specific needs and characteristics of companies of different size. Even more, this could allow to create subcategories of SMEs depending on their size, in order to, for instance, adapt reporting and listing requirements. ESMA positioned in favour of further investigating on the possibility to create segments targeting micro SMEs⁷.

Expected benefits: A redefinition and alignment of the concept of SME for capital market purposes would introduce clarity and allow more adapted polices to companies of different size. This would ease access to capital markets and make capital markets financing more appealing

between 10 and 50 employees and a turnover of between EUR 2 million and EUR 10 million or a balance sheet value of between EUR 2 million and EUR 10 million and a micro enterprise is defined as having an establishment plan of up to 10 employees and an annual turnover of up to EUR 10 million or a balance sheet value of up to EUR 2 million. As such, this definition was considered fit for purpose in the recent [fitness check on the SME definition](#);

² European Commission — Annual Report on European SME's 2021/2022, June 2022 — pp. 16-17;

³ [OJ C 299 04.10.2012, p.76](#)

⁴ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds OJ L 123, 19.5.2015, p. 98–121;

⁵ See: [Empowering EU capital markets for SMEs](#), TESG on SMEs, May 2021; [EESC opinion on a Capital Markets Union for people and business – new action plan](#); MiFID II [Review report on the functioning of the regime for SME Growth Markets](#), ESMA, 2021; [A new vision for Europe's Capital Markets](#), High Level Forum on the Capital Markets Union, 2020;

⁶ [MiFID II Review Report](#), ESMA, 2021;

⁷ [MiFID II Review Report](#), ESMA, 2021;

to smaller companies. This ultimate objective will be better achieved if correctly articulated with the other suggestions mentioned below.

Suggestion 2: Simplification of the procedures for the admissibility of securities issued by SMEs and of administrative obligations

Description: In view of the conceptual question of the definition of SME for the purpose of capital markets, it is necessary to address the question of simplifying the procedures for the admissibility of securities of SMEs in capital markets, along with the simplification of administrative obligations. Finding solutions that can harmonise the various interests at stake is a complex task, since administrative obligations needed to avoid market abuses should also be maintained.

MiFID II and Prospectus Regulation have eased access to capital markets for the smaller entities thanks to a simplification of the procedures and requirements. In fact, over 65% of all entities listed in EU capital markets are SMEs as defined in MiFID II, of which 60% have been listed in the last two decades⁸. However, capital markets have not provided with a generalised alternative to financing for most SMEs in the European Union, as envisaged by the European Commission⁹. In fact, the main source of external funding for EU's SMEs is bank lending, accounting for a 70% of the total, against 40% in the US¹⁰. In this regard, capital markets offer the possibility to increase their funding opportunities, resilience to shocks and investment¹¹. This could be of special relevance in the current situation of economic distress. In fact, the SAFE 2022 report has noted an increase in difficulties to raise funding for companies in general, and especially for SMEs¹². An increase in investment by SMEs is fundamental to mobilise the investment needed to the Green and digital transitions, which yearly investment gap is around EUR 650 billion¹³.

Access to capital markets has pre- and post-listing costs. On the one hand, pre-listing costs include bank, legal and auditing fees, sponsors, and the creation and dissemination of **prospectus**. On the other hand, post-listing costs include fees, sponsors, brokerage services and **regulatory compliance**¹⁴. The issuance costs amount from 3 to 7,5 per cent for an initial offering over EUR 100 million, increasing to 10-15 per cent for issuances under EUR 6 million¹⁵. Thus, emission of securities and staying listed in the capital markets is especially discouraging for SMEs. In addition, according to a FESE survey, 36% of executives list the costs of listing and staying in the public markets as a factor undermining the attractiveness of capital markets¹⁶.

⁸ [Enhancing Capital Market Financing for Europe's Growth Companies](#), CEPS, 2021;

⁹ [Capital Markets Union action plan](#) and [SME Strategy](#)

¹⁰ European SMEs, Financing Cap, Euler Hermes;

¹¹ [Recapitalising EU businesses post COVID-19](#), AFME and PwC;

¹² [Survey on the Access to Finance of Enterprises in the Euro Area](#), 2022;

¹³ [COM\(2021\) 662 final](#)

¹⁴ [Recapitalising EU businesses post COVID-19](#), AFME and PwC;

¹⁵ [Recapitalising EU businesses post COVID-19](#), AFME and PwC;

¹⁶ [European IPO Report 2020](#), FESE, 2020;

Beside the costs it would also be useful to explore ways to simplify the reporting requirements requested from companies, especially SMEs. In terms of the admission of securities to the market, both the periodic information that the markets require issuers to provide, and the requirements of the legislation on market abuse, in their current form, give rise to high costs that discourage them from listing in the first place or staying in the capital markets. Another important aspect going beyond the mere financial aspects is making sure that the owners of SMEs do not lose control of their companies. To that end, enterprises can use bonds to obtain financial resources, a financial instrument that allows SMEs' owners to retain control of their business management.

However, in order to make capital markets accessible for SMEs, institutional investors (investment and pension funds – including banks and insurers), as well as retail investors and savers, precise and accurate information needs to be provided and reported. Precise and accurate information would allow investors to assess better the risks and can potentially encourage investment in SMEs. Using English as *lingua franca* for reporting and prospectus could increase the visibility of securities in different markets under the condition that it does not increase burdens for the companies. This could be facilitated by the implementation of trustworthy automated translation services, as proposed in ESAP, which can help to overcome linguistic barriers to cross-border investment.

Another measure along the same lines would be the pre-listing of securities in SME Growth markets. This measure, that could be implemented as a sandbox, should be linked to lower admission requirements.

Expected benefits: The simplification of the procedures for the admissibility of securities issued by SMEs and of administrative obligations would reduce the currently high costs of emissions of securities. Emissions of securities in EU capital markets will be more appealing and SMEs will benefit from more funding opportunities. The effect of this measures would be higher if combined with the redefinition of the concept of SME.

Suggestion 3: Standardised and simplified rules concerning accounting obligations

Description: An issue closely related to the establishment of European specialised rating agencies is that of harmonising or standardising the accounting data. This question does not have a simple answer, as can be seen from the report produced by ESMA¹⁷, in which, when faced with this type of solution, most national regulators have clearly shown themselves to be contrary to it. Indeed, the adaptation to new standardised procedures could be too burdensome for many companies.

The Accounting Directive 2013/34 is a significant driver to harmonisation, at the minimum addressing the presentation and key principles of financial statements, thus enabling

¹⁷ See ESMA — [MiFID Review Report — MiFID II Review report on the functioning of the regime for SME Growth Markets](#), 25 March 2021;

comparability to a non-negligible extent. The ESAP could, in addition, facilitate the digital use and re-use of that information.

Still, the lack of harmonised or standardised accounting information could constitute a barrier to **cross-border transactions**. For instance, by preventing the investment of transactional funds¹⁸. The existence of investment funds acquiring those assets is necessary in order to increase operations, hence improve liquidity and attractiveness, which would lead to a broadening of the investor base.

Another obstacle to attracting cross border investors is the fact that unlisted firms do not use International Financial Reporting Standards (IFRS), complicating the comparison of financial data for companies on a cross-border basis. As the costs for SMEs to address it would be too burdensome it could be considered to introduce an opt-in EU standard (an alternative to the local GAAP) that SMEs could opt-into if they want to attract EU cross-border investments. This EU standard would need to be less burdensome for SMEs than the IFRS but follow the same principles. This would smoothen companies' transition to IFRS if they seek for official stock exchange listing in the future.

The European Commission should assess periodically accounting standards, to ensure that the current homogenisation is sufficient to guarantee comparability of the data and information of EU companies, while preserving proportionality to avoid that harmonisation puts an excessive burden on companies that overcomes the benefits for capital and financial markets development. Once more, the ESAP could be beneficial for this, as it would gather data and information disclosed by EU companies.

Expected benefits: Standardisation of accounting procedures would simplify the link between investors and companies, which is especially pressing in the case of SMEs. Specifically, they would close information gaps and lighten the administrative burdens that make access to capital markets difficult for SMEs.

¹⁸ It consists of funds that provide of short-term lending to close operations in the financial markets.