

European Commission consultation on the Listing Act

On 11 February 2022, ICMA [responded](#) to the European Commission's [targeted consultation](#) on the Listing Act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs.

The targeted consultation formed part of a European Commission initiative aimed at making the listing of both equity and non-equity securities on EU public markets more attractive for companies, in particular small and medium-sized enterprises (SMEs). The goal is to make it easier for EU issuers to finance their activity and to grow, innovate and create jobs, while preserving a high level of investor protection and market integrity.

This initiative is in line with the objectives of the European Commission's [Capital Markets Union Action Plan](#) of September 2020. Specifically, in [Action 2](#) of the Action Plan, the Commission announced that it will assess whether the rules governing companies' listing on public markets need to be further simplified.

The consultation posed a wide range of questions relating to the state of public capital markets in the EU and the associated regulatory regimes, namely the EU's Prospectus Regulation (PR), Market Abuse Regulation (MAR), MiFID, Transparency Directive and Listing Directive.

The key points from ICMA's response are as follows.

- (1) The EU's primary bond markets currently function efficiently, particularly in the wholesale space. The regulatory environment for listing wholesale bonds in the EU is considered to be reasonably well-calibrated, although is perceived to place more emphasis on investor protection than ensuring access to finance for bond issuers.
- (2) Given the well-functioning nature of wholesale primary bond markets currently, many ICMA members would welcome only necessary adjustments to the PR. However, some more ambitious proposals to increase flexibility for bond issuers could also be considered. In any event, the base prospectus format, wholesale disclosure regime and flexibility for bond issuers to choose their home Member State under the PR work well and must be retained. Similarly, the public offer exemptions and application to securities to be admitted to a regulated market (but not MTFs) provide important flexibility.
- (3) In relation to MAR, the broad scope (namely its application to securities listed on regulated markets, MTFs and OTFs), the definition of "inside information", obligations relating to insider lists and the market soundings regime are considered problematic or disproportionate.
- (4) Changes to the listing-related requirements under MiFID, Transparency Directive and Listing Directive are, on

balance, not considered to be necessary at this time.

- (5) There is scope to develop a pan-EU retail bond market, but regulation is only one factor among various other commercial and market drivers. Constructing an appropriate regulatory regime would require a holistic consideration of various regulatory tools and incentives. The situation is similar for SME issuer access to public bond markets, where investors tend to need more (rather than less) information about the issuer. While challenges exist in both the retail and SME contexts, they should be considered separately given retail investors are less likely to be able to assess and bear the increased risks associated with investing in SME bonds.

The consultation period closed on 25 February. The next step is for the European Commission to consider the responses it received and adopt legislative proposals. This is planned for the third quarter of 2022.

ICMA plans to continue to engage with the European Commission and other relevant policy makers on behalf of its members on this important EU initiative for the international bond markets. As ever, an overarching concern is avoiding unnecessary barriers to cross-border bond issuance. This will be a particular focus as the EU's and UK's regulatory regimes develop and diverge post-Brexit, as seen in the context of the UK prospectus regime reforms discussed below.



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