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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 763 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the documents - Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC - Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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

Delegations will find attached document SWD(2022) 763 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the documents

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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

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A core aim of the Capital Markets Union (CMU) is to improve the access to market-based sources of financing for small and large firms. This would help them grow and diversify their funding, which is particularly important for small and medium-sized enterprises (SMEs) that rely excessively on bank financing. To the extent that this limits companies' funding opportunities, the lack of market-based funding affects the real economy as it leads to foregone investment, and lower levels of economic growth, job creation and innovation. EU capital markets also remain underdeveloped compared to other major jurisdictions, with EU stock exchanges sometimes facing difficulties in attracting new listings as evidenced by a number of EU companies that preferred to list on a third country exchange.

Since the first CMU Action plan in 2015, it has become easier and cheaper for companies and in particular SMEs to access public markets. Stakeholders however continue to argue that further regulatory actions need to be considered, in particular in order to streamline the listing process and to achieve a more proportionate regulatory treatment of, in particular, smaller companies.

The current initiative follows up on the Commission's commitment to simplify the listing rules, as detailed in Action 2 of the 2020 CMU Action Plan. It aims to alleviate and render more proportionate to companies of different size the requirements that apply both at the moment of listing and when listed. The proposed alleviations seek in parallel to preserve a sufficient degree of transparency, investor protection and market integrity. In addition, the initiative seeks to address the issue of fragmentation in national laws that restricts the flexibility of companies to issue dual-class shares.

Two problems are identified and assessed as part of this Impact Assessment: 1) founders of some EU companies cannot maintain the desired level of control when listing, due to the restriction on voting rights (multiple voting right shares) in some Member States; 2) there is currently a degree of unnecessary regulatory burden for companies seeking a listing or already listed.

The Impact Assessment focuses on identifying and addressing specific regulatory barriers at each stage of the listing process. It discusses barriers at the pre-IPO stage stemming from company law, in particular, from the fact that a listing based on a multiple voting right share structure is not possible in some Member States. It then focuses on barriers at the IPO stage arising from the Prospectus Regulation, notably from the high costs of drawing up a prospectus. Finally, it addresses barriers encountered at the post-IPO stage stemming from the Market Abuse Regulation (MAR), in particular, costs due to the legal uncertainty regarding the issuers' obligation to publicly disclose inside information.

The Impact Assessment identifies a need to act at EU level. Member States have only limited possibility to address the identified problems via changes at national level, either because the financial legislation applying to issuers and trading venues is largely harmonised at EU level or because Member States are unlikely to introduce reforms on their own (i.e. on company law). The regulatory amendments to EU legislation set out in the Impact Assessment are expected to make it more attractive for companies to seek listing and stay listed on EU public markets, by mitigating the identified barriers and costs. On their own, the proposed actions will, however, not be able to address all the challenges that EU public markets face today. Nevertheless, they should contribute to improved access to public markets by companies and further development of EU capital markets in general.

Possible solutions

For each stage of the listing process, the Impact Assessment sets out two alternative policy options, after having analysed the available empirical evidence and accounting for stakeholders' views. This evidence base, which was used to assess and compare policy options, includes the input received from the European Securities and Markets Authority (ESMA), two groups of experts, a commissioned study on the functioning of primary and secondary EU equity markets, research papers, and stakeholders' consultations, including through targeted workshops.

For the pre-IPO stage, policy option 1 advocates for minimum harmonisation of multiple voting share structures across the EU via general principles, while policy option 2 complements those general principles with a detailed set of safeguards for minority investors. For the IPO-stage, policy option 1 proposes: (1) transferring the scrutiny of listing documents (including the prospectus) to exchanges, allowing the alleviation of contents only in specific cases (i.e. in the case of listings on SME growth markets and for secondary issuances). Policy option 2 proposes to have a shorter prospectus (or admission document) in all circumstances and a more streamlined scrutiny process by national competent authorities. For the post-IPO stage, policy option 1 seeks to clarify the disclosure obligation under MAR, also by reviewing the conditions for delaying such disclosure, and to render the sanctioning regime more proportionate for SMEs, while policy option 2 proposes to limit MAR disclosure of inside information to a closed pre-identified list of events.

Comparison of options and impacts of preferred options

The impact assessment analyses the options in relation to three objectives, that is whether they: (i) reduce the regulatory and compliance costs for companies seeking to list or those that are already listed, (ii) ensure a sufficient level of investor protection and market integrity, and (iii) provide issuers with more incentives to list. The preferred option (for each stage of the listing process) should thus be cost-efficient and effective in addressing the identified barrier while safeguarding a sufficiently high level of investor protection and market integrity. The proportionality of measures for smaller companies has been considered when identifying and assessing options.

For the pre-IPO stage, under the preferred option, it is proposed to pursue minimum harmonisation of the multiple voting right share regime. For the IPO stage, the analysis revealed that the introduction of shorter prospectuses combined with streamlined scrutiny by NCAs, as proposed in option 2, would be the most appropriate way to address the identified regulatory barriers. Finally, for the post-IPO phase, clarifying the disclosure obligation under MAR and a more proportionate sanctioning regime for SMEs, as set out in option 1, have been identified as the preferred policy option.

Overall, the proposed measures would make it more attractive to seek listing and remain listed. Founders of companies and family-owned companies would be able to seek listing in any Member State, while preserving more control over their firm via the use of multiple voting right shares. In addition, the possibility to draft shorter and less costly prospectuses would make the listing requirements during the IPO process less complex and cheaper to comply with, while a more efficient scrutiny and approval procedure will result in a quicker listing process. The clarification regarding the disclosure (and delay of disclosure) of inside

information will make it easier (and less costly) to disclose information at the right moment. Furthermore, smaller issuers would also benefit from the introduction of a more proportionate sanctions regime.

The qualitative and quantitative assessment suggests that it is possible to take the measures identified under the preferred options, while maintaining a sufficiently high level of market integrity, investor protection and proportionality for smaller listed companies.

The initiative is expected to bring about annual cost savings of approximately EUR 167 million for issuers, including SMEs. It is expected that NCAs would be able to reduce their costs because simpler and clearer requirements will make it possible to conduct their supervisory activities more efficiently. Investors would also benefit from the envisaged regulatory changes, as corporate information (at the moment of listing and thereafter) will become shorter, more timely and easier to navigate. In terms of wider consequences, the initiative may also positively, although marginally, affect the EU labor market and Sustainable Development Goals, while at the same time lead to better integrated, deeper and more liquid EU capital markets.