

General remarks by the Ministry of Finance of The Netherlands

Consultation making public capital markets more attractive for EU companies and facilitating access to capital for SMEs (Listing Act)

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One of the key issues in further developing the European Capital Markets Union (CMU) is facilitating companies' access to capital markets. European companies seeking funding to invest, especially small- and medium-sized enterprises, are still mostly dependent on bank credit. This can hinder swift economic recovery as shown by the financial crisis, when a lack of bank credit hindered companies' investments in for instance innovation. Moreover, certain activities and company structures are more suited for equity funding and other forms of market finance. For example, innovative technology-based start- and scale-ups with limited collateral and irregular cash flows.

Issuing financial instruments and listing them on trading venues is an important way to attract capital. Unfortunately, the share of this type of market finance lags behind other jurisdictions with developed capital markets. This holds especially true for small- and medium sized companies (SMEs). It takes time, money and commitment to list, which for SMEs might not outweigh the benefits. We therefore welcome the initiative of the Commission to make listing more attractive for SMEs. In our view, there are a few guiding principles that must be taken into account going forward that will contribute to the success of the CMU.

Firstly, we underline the importance of harmonising rules. This would benefit advisors, issuing companies and investors throughout the EU, as harmonised rules will make it easier to invest and seek capital outside of the national markets consequently enlarging options for both investors and issuers. We would for example be in favour of harmonising the threshold up to which an issuer is exempted from the obligation to publish a prospectus for an offer of securities.

Secondly, we believe that relaxing existing rules is not in all circumstances beneficial to the access of SMEs to capital markets. A large part of the rules is aimed at protecting the investors' interests. A change to these rules could affect the willingness of investors to invest. The interests of issuers and investors are in this way interconnected. We would urge to take into account any possible side or counter effects when considering changes. We do see an opportunity in lifting some practical restrictions in the Prospectus Regulation and Market Abuse Regulation (MAR), such as shortening the book building period, simplifying the market sounding regime and insider list requirements.

Thirdly, we would warn against fundamentally altering MAR. We believe that generally speaking the rules strike the right balance between promoting market integrity and placing burdens on the issuer. In that regard, the Netherlands would like to stress that we do not support fundamentally changing the definition of inside information. Altering the definition would mean that years of case law and practical experience are rendered useless; issuers, advisors and other relevant parties would have to adjust to a new definition, which will undoubtedly create new interpretation challenges. There are however some impracticalities in MAR that can be addressed. We believe the insider list obligation can be simplified to ensure that only the most essential information is included in the issuers' administration. Furthermore, we would welcome a different approach to the market sounding rules. The rules should in our view focus on the objective, without dictating in detail the steps that have to be followed.

Lastly, in order to achieve a better listing climate for SMEs, we argue that it is crucial to look at the entire ecosystem. An IPO's success hinges on the preferences of investors, brokers and market operators. We recognise the need for a multidimensional approach, in which taking down barriers in legislation concerning listing is one aspect. Creating more financing options has to go hand in hand with improving supply of capital. Initiatives such as the retail investment strategy, the ELTIF review and the Solvency review are therefore also significant in strengthening the listing climate for SMEs.