ECON Listing Act Meeting – Introductory address

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European Parliament public hearing / ECON committee
"EU Listing Act: Is the EU Listings Regime fit for purpose" - 30 May 2023, 14:30-16:30

Introductory remarks–and welcoming

- I would like to thank the European Parliament and in particular the ECON Chair Ms Irene Tinagli for organizing this important public hearing to look into the role of the Listing Act legislative package, published by the European Commission in December 2022 in developing further the EU's Capital Markets Union (CMU). BETTER FINANCE has been a strong supporter of this flagship project of the European Commission, but our recent report on the CMU assessment[1] clearly shows that there is still a lot to be done to achieve a CMU that truly "works for people".

- I am addressing you today as president of BETTER FINANCE, the European Federation of Investors and Financial Services Users. BETTER FINANCE is the public interest non-profit and non-governmental organisation advocating and defending the interests of European citizens as financial services users at European level. By the way, we currently represent more than 4 million investors all over Europe.

[1] To be published with the release of the RIS Package on 24th May 2023

Introduction

- First, let me underline that BETTER FINANCE welcomes the objectives of the listing act review in making EU Capital Markets more attractive for companies, with a clear focus particularly on SME growth companies.
- Important issues are covered in its scope, notably tackling the need for prospectuses standardisation across the EU and streamlining IPO cost reduction which steadily increased over time from 50 k in 1990s until almost 1 Mio € today. However, our concern is that it may fall short of attracting retail investors' participation in capital markets due to major shortcomings, and potentially unsuitable initiatives.
- For a long-time, representatives of individual investors have voiced the need to revitalise the CMU, notably by addressing the low level of new IPOs in the EU, particularly of SMEs. However, this cannot be done at the expense of investor protection.
- On the contrary, this objective can only be achieved by increasing their confidence, the overall market transparency and accessibility. Ultimately, it is about getting the incentives right while strengthening investor protection and enhancing the representation of retail investors: i.e. shareholders' rights where engagement and issuers' transparency is key.
- So, what we need is the right balance between the incentives for SME growth companies and the interests of the minority investors.
- While the UK is currently deregulating in order to increase the attractiveness of their stock markets, I am convinced that we should not enter this race to the

bottom but focus on quality. Since the BREXIT the UK is trying to strengthen its role in the capital markets by regulatory competition, but this should not be the way for us Europeans to go forward. On the contrary with our experiences in Germany with scandals around the breakdown of Neuer Markt in the 2000s and the bankruptcy of Wirecard as a DAX 30 company, we learned our lessons: the dramatic lowering of entrance standards for young companies at the segment Neuer Markt attracted the wrong ones: low-quality companies and invited even fraudulent behaviour.

- Regulation can therefore be seen as an advantage in competition and not a disadvantage. High standards of investor protection rules also aim for higher quality of companies in the capital markets. So, in my view it is key to uphold a high level of investor protection, this will help us to distinguish our capital markets from the UK as quality markets, and this will pay out over time and on the long run.

Today I would like to focus on 4 elements:

1. Multiple Voting Shares (MVS)
2. Prospectus
3. Market Abuse Regulation
4. Research unbundling

Key specific points to address

1- Multiple Voting Share Structure (MVS)

- Starting with the MVR Directive and the idea of a multiple Voting Share Structure – **BETTER FINANCE and its members are concerned that such initiative may be "harmful for investor protection** and will not attract private investors to invest in capital markets."
- We share ESMAs view that "to date there is not much evidence to indicate that multiple voting shares are effective in providing such incentives and a proper assessment would be beneficial".[2]
- While this initiative may create an incentive for certain SMEs' founders to go public (retaining control of their company) – in its current form, important other incentives for EU investors, for example by strengthening employee share ownership or fostering loyalty dividends are lacking.

In fact, our concerns are manifold:

- Whilst we encourage harmonisation of market structure and practices across Member States, we identified in our studies severe shortcomings in cross-border shareholder engagement (see BF study on Cross Border Voting 2023[3]); not to mention taxation issues (see BF study on Withholding Taxes in Europe 2023[4]). Therefore, instead of addressing the main problems of investors, the MVS may open Pandora's box in which the equality of shareholders could be further jeopardised!

[2] https://www.esma.europa.eu/sites/default/files/library/esma24-436-1152_letter_to_ec_on_listings_act_consultation.pdf
[3] https://betterfinance.eu/publication/barriers-to-shareholder-engagement-srd-ii-revisited/
[4] https://betterfinance.eu/publication/report-withholding-taxes-EU-dividends-shareholders-2023/

- **MVS are against the 'one share – one vote' principle,** providing equal rights to all shareholders regardless of their shareholding size. MVS could further aggravate the current lack of shareholder democracy and ability to engage.
- **In Germany we abolished multiple voting shares by law in 1998 and the reasoning was clear:** "the admittance of more influence for one shareholder/family without an appropriate correlation to the capital weakens the position of the other shareholders". This rule is still true today.

<u>Our proposals:</u>

Nevertheless, if we as BETTER FINANCE could exceptionally accept MVS, then we have to make sure that the level of investor protection is not lowered but on the contrary guaranteed. MVS should remain temporary and attached to the initial holder only. So, in Art. 5 of the Directive, the legislator has to ascertain that:

- There is a **qualified majority for the introduction** of MVS and the introduction can only be done **pre-IPO**,
- There is a **maximum vote quota** to be allowed, and a **maximum percentage of the capital linked to MVS**. Also, we could think of a **limitation of MVS in case of resolutions with qualified majority**.

Since the founder/family/initial holder shall have easy access to the capital market and at the same time want to keep control on the majority of the company, we see a **strong need for further obligatory safeguards for the retail investor** such as:

- **A transfer-based sunset clause** which means that in case of any kind of transfer/trade of the holdings (also in case of inheritance) the MVS of the original owner will get lost,
- **A time-based sunset clause** which includes the loss of MVS after a certain period of time (e.g. max. 5 years).

Also, it should be ensured that MVS are being **limited in cases of fundamental decisions on the shareholder' position including all ESG issues**. The "G" should then also include important Governance topics for minority shareholders such as the **vote on the remuneration system and report, as well as fundamental decisions such as delisting, squeeze out, mergers, etc.**

We ask the legislator to carefully re-assess the real need for such a directive - especially in light of national market practices and complement it with incentives for investors and to propose strong safeguards for free float investors to make sure we do not lower the level of investor protection.

2 - The Prospectus

- We would like to underline that mandatory disclosure relating to the fundamental value of an issuer is a necessary precondition for a well-functioning IPO market, irrespective of the size of the issuer.
- We therefore recommend to mainly focus on abolishing inconsistencies in disclosure requirements between various prospectuses, for example the Universal Registration Document and the Summary Prospectus.

- We welcome the standardization effort, enabling NCAs to achieve harmonised assessments. A maximum 300-page prospectus is still long but should remain, however, for legal purposes and as an important investor information tool. By the way we, as investors' associations, are probably the ones that really study the long prospectus for the sake of our members.
- We welcome that English can be used as customary language, and its digital accessibility must be ensured. The follow-on prospectus for secondary issuance should be 'fit for purpose,' that is, to enable retail investors investment as opposed to targeting institutional investors.

BETTER FINANCE explicitly supports the introduction of the EU-Follow-On Prospectus (max. 50 pages) and the EU Growth Issuance Document (max. 75 pages) as Summary prospectuses.

As for the Summary prospectus, it should become a true "investor-friendly" document.

- As the primary document consulted by retail investors it should emphasize in simple terms:
  1) the business model of the company and 2) the way the company has been valuated.
  3) transparency of share class information – as a prominent warning (currently not the case). 4) the main risks of the business model.
- We welcome it if the summary will be available in English next to the local language – this may foster cross-border investments.

- But: Legislator should be careful NOT to overwhelm investors with cross-references, legal clauses and links – those should be reduced to the minimum and linked to the most useful information details. The summary prospectus needs to be widely accessible and intelligible.

3 - MAR

- BETTER FINANCE members see regulation as a necessity to attract investors and maintain a high quality and sound market environment. And this is also valid for SMEs Growth Markets but should not come at the detriment of the rules established against market abuse; although we welcome the proportionality regime in case of infringement.
- We share ESMAs opinion[5] that "any changes to MAR to promote listing should apply horizontally to all issuers, as rules to preserve market integrity should not be modulated according to the typology of issuers, such as SMEs".
- We observe a step-backward in many of the proposed amendments, as current practice does not seem to bear excessive cost for issuers (SMEs or not).
- We should be careful of the practical interpretations of the new disclosure rules that may obstruct valuable market information.
- A right balance remains to be found between retail investors who must be empowered to make decisions, and issuers' accountable for the flow of information.

[5] https://www.esma.europa.eu/sites/default/files/library/esma24-436-1152_letter_to_ec_on_listings_act_consultation.pdf

In particular:

• We consider that a proper upkeep of insider's list should remain. We share ESMA's concerns regarding the proposed "permanent insider list" (instead of the event insider list) to be a less effective monitoring tool for NCAs (leaving them to carry more investigation of potential insider dealing); as both issuers' awareness and control will be diminished – and competent NCAs left to investigate further any malpractices.

• The current threshold disclosing managers' transactions of 5k should be retained and not increased to 20K. Considering SMEs, 5 K is already a rather high amount. Doubling this sum to max. 10K could be a compromise. Beyond, we dislike the possibility for NCA's to further increase this sum to an excessive 50K. This will again lead to diverging rules in MS, thereby distorting any EU level playing field.

• It was a long way up to the ECJ (European Court of Justice) to find a common understanding of the MAR rules on delayed disclosure. Legislators should remain cautious to interfere again in this fragile environment and cause unintended negative consequences.

4 – MiFID research unbundling: Severe doubts whether the unbundling will be to the advantage of the private investors

Brokerage houses have historically bundled order execution services with research in exchange for higher execution commissions. This practice was highly controversial because of its potential conflict of interest (cross-subsidizing) and therefore abolished in 2018 by MIFID II. As direct consequence studies show research for SMEs by brokerage firms was neglected since then. Furthermore, a lack of transparent pricing of research on the one side and execution services on the other side impaired real competition between the brokers again to the detriment of the retail investor.

So far, the threshold for the unbundling was limited to a market capitalisation of up to 1 billion €, now the proposal hits for 10 billion € – 10 times more seems not acceptable.

In general, we support that the new research category “issuer-sponsored research” will be allowed in the future since it is better than no research at all. Nevertheless, it is of major importance that it is **labelled as such** and thereby can be easily recognized by investors. Furthermore, we believe that a **voluntary Code by the issuers** to respect certain standards in their research is an unsatisfactory proposal since it opens the door to lower standards and endangers a level playing field. Also, we regret that the legislator did not take the opportunity to **include this research as an**

obligatory information in the ESAP as it is a very important information for the investor.

The current proposal to increase the threshold for the costs for the unbundling of research and execution will not help the investor unless there will be at the same time an increased transparency with respect to all detailed costs for research and the other services.

Once again thank you for inviting the representative of individual investors to this important hearing.

I am looking forward to the debate and the questions.