Assonime' Key remarks on the consultation on EU listing Act

According to the OECD Reports in 2021[1] in the last years in Europe there was a decline of IPOs compared to the USA and Asian markets and a raise of delisting. Moreover, many EU companies chose to be listed in USA and in the Asian markets instead of being listed in Europe; even if the reasons are manyfold, among them there are the burdens due to the compliance to the regulation in place.

In 2021 the UK Government launched a consultation for a reform of capital markets targeting especially the prospectus regime; among the proposals, the UK government asked whether to exempt from the prospectus regime the secondary issuances, on the assumption that listed companies are already subject to a full disclosure regime under MAR and Transparency Directive.

The above-mentioned OECD Reports and the Reports of the Expert Groups (CMU High Level Forum, Next CMU High Level Group, Oxera, Technical Expert Stakeholder Group), while suggesting different solutions, converge on the need to simplify the regulatory burdens.

The Capital Markets Union initiative, launched in 2015, was a missed opportunity to simplify the regulatory environment; now, after the COVID-19 crisis, it is the right moment to seek a robust simplification of financial regulation, especially, of the prospectus and market abuse regime which are the most burdensome pieces of EU legislation.

We, therefore, appreciate the initiative of the EU Commission to launch a public consultation on a EU Listing Act which is a necessary step to build efficient, integrated and competitive capital markets in Europe. In the following, we highlight our key comments on the current consultation which are fully expressed along our answer to the questionnaire.

Regarding the **prospectus** regime we would suggest:

- to **simplify** the **prospectus** which could be replaced by a key information document with a standardized set of information on the issuer, on the financial instrument and on the risks associated to the subscription of the financial instrument and relying, where it is possible, on the information (and on the structure and order of information) already included in the offering circular, which usually is used for the previous offer to qualified investors, and allowing also to use English already used for the offering circular.
- to **exempt secondary issuances** from the publication of the prospectus and, instead, requiring an admission document providing information on the characteristics of the issuance and e securities to be offered; and a compliance statement to MAR and Transparency;
- to allow writing the prospectus only in **English,** as suggested by the TESG Report;
- to allow equity and non-equity issuers **to choose as Home Member State** either the Member State **where they have a registered office** or the Member State **where their securities are offered**

[1] OCSE, *Corporate governance Factbook*, 2021 and *The Future of corporate governance in Capital markets following the COVID-19 crisis*, 2021.

to the public or admitted to trading);

We also think that **direct listings** should be encouraged in EU; this practice has been used in USA several times and allows a costs cut for well-known issuers which want access capital markets.

Regarding **MAR**:

- The legislator should **repeal the extension of the scope of MAR to other markets then Regulated markets** in order to allow junior markets to be established in environment of "low touch" regulation. Though most welcomed, the "SME listing package" is an incomplete substitute for the junior markets that had been established before 2014; just to make an example, the extension of MAR to certain MTFs of bonds discouraged issuers to list their bonds and pushed others to delist ; some simplifications have been proposed in the context of the SME Listing Package but available only for SMEs on SME Growth Markets and not to all MTF. **We therefore advocate for excluding all non-regulated markets from the scope of certain MAR provisions (especially on managers transactions and insider lists);**
- **The legislator should differentiate the definition of inside information,** in order to have one to be used for the prohibition of abusive trading, and another one for the disclosure obligations. This would ensure the possibility of delaying disclosure of issuers against abusive market practices and make compliance more affordable for issuers, where the current definition lacks clarity and creates a risk of premature disclosure. **Therefore, we support the TESG's proposal according to which a two-fold notion of inside information should be adopted: one for the prohibitions for abusive trading and one for the duties of disclosure**;
- **The legislator should review the regime of insider lists** in order to avoid overly burdensome compliance procedures and in order to grant issuers more flexibility in practice;
- **The legislator should review the regime of Managers' Transactions** in order to reduce bureaucracy and protect the signalling value of the notifications.

Regarding **SMEs**:

- **a transition period with a lighter regulation should be applicable for SMEs listing on a regulated market**. This transition period would allow companies to get used to the more stringent market requirements and would alleviate the implementation of the full set of standards. In line with the TESG and the HLF on CMU recommendations, we suggest that an optional period for a duration of 3 years for SMEs should apply to issuers wishing to transition from a SME GM to a RM, as well for SMEs wishing to list directly on RMs.

- **a broader definition of SME**, designating companies with a market capitalisation below 1 billion Euro, should be applied to issuers listed on RM, SME GM and any other MTF.

Regarding **multiple voting right shares**:

- **EU law should enable the adoption of MVR shares** without hampering the existing national regime and should allow issuers who wish to list or are already listed on a RM or MTF to adopt multiple voting rights structures.

Regarding **integration of capital markets**:

- **Strengthening the independence and powers of the ESMA** is key to foster the harmonization of the implementation of common rules and supervisory standards by the National Competent Authorities (ANC) **and enlarging the attribution of selected direct supervisory powers** to consolidate the creation of the single rule book.

- **Providing for a European Prospectus directly approved by ESMA and automatically recognized in all markets**, as an alternative to the approval by the national authority which would remain under the passport regime. The "European prospectus" should be optional and available to those companies willing to offer their financial instruments in multiple markets.