



Republic of Bulgaria
ECONOMIC
AND SOCIAL COUNCIL

RESOLUTION

on

**"Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets"
COM(2018) 331 final 2018/0165 (COD)**

(own-initiative resolution)

Sofia, 2018

The ESC President's Board decided to elaborate a resolution on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets COM/2018/331 final - 2018/0165 (COD)

Mr. Vassil Velev, a member of the ESC from the employers' group and vice-president of the Economic and Social Council, was appointed rapporteur on the resolution.

At its meeting of 10 December 2018, the Plenary Session adopted the resolution.

ABBREVIATIONS USED

- AICB - Association of Industrial Capital in Bulgaria
- ADIB - Association of Directors of Investor Relations in Bulgaria
- GDP - Gross Domestic Product
- BALII - Bulgarian Association of Licensed Investment Intermediaries
- BSE - Bulgarian Stock Exchange AD
- TEU - Treaty on the European Union
- VPF - Voluntary Pension Funds
- TFEU - Treaty on the Functioning of the European Union
- SG - State Gazette
- EBRD - the European Bank for Reconstruction and Development
- EU - European Union
- EC - European Commission
- AA - Bulgarian Accounting Act
- POSA - Bulgarian Public Offering of Securities Act
- TPSMEA - Bulgarian Transformation and Privatization of State and Municipal Enterprises Act
- IP - Investment Intermediary
- ESC - Economic and Social Council
- SSC - Bulgarian Social Security Code
- FSC - Financial Supervision Commission
- SMEs - Small and medium-sized enterprises
- CoM - Council of Ministers
- MF - Ministry of Finance
- NSI - National Statistical Institute
- NA - National Assembly
- ICF - Investor Compensation Fund
- CD - Central Depository

FEATURES OF THE BULGARIAN CAPITAL MARKET IN THE CONTEXT OF THE PROPOSAL FOR REGULATION

1. ESC endorses in principle the European Commission's (EC) legislative proposal for a Regulation amending Regulation (EU) No 596/2014 and Regulation (EU) No 2017/1129¹ (Proposal for a Regulation) for the promotion and use of the small and medium-sized enterprises (SMEs) growth markets aimed at creating a favourable and stable regulatory framework to support SME financing.
2. Given that in Bulgaria nearly 99.8% of the operating companies are partake of the SME segment, ESC considers that the Proposal for a Regulation of the European Parliament and of the Council on promoting the use of the SME growth markets is of great public importance.
3. By the adoption of the proposed Regulation, a new category of issuers - SMEs, which will acquire the status of public companies on the regulated market in Bulgaria, organized and maintained by the Bulgarian Stock Exchange, will be admitted to trading. Taking into account the fact that at present almost 98% of the Bulgarian capital market is dominated namely by public companies that fall under the SME category, according to the ESC, it is necessary to introduce criteria and mechanisms by which these companies will be distinguished from the companies that will be admitted to the growth markets of SMEs.
4. At the same time, however, companies in the same category of SMEs will be treated unequally by legislation on the amount of disclosed information. In this regard, ESC draws attention to the fact that for the companies that are currently traded on the Bulgarian Stock Exchange (BSE), all national and European regulations, including those for the new issuers from the growth market, will be abolished in view of reducing the administrative burden.
5. ESC assesses the proposed changes in Regulation No. 596/2014 and in Regulation 2017/1129 as particularly relevant in terms of the European Commission's attitude towards creating conditions for overcoming the excessive administrative burden on SMEs, both in the registration of public markets or in the issuance of stocks and bonds, as well as the amount of disclosed information by these issuers to the national competent authority and the public.
6. ESC considers that without making changes to the legislation regulating the activity of the issuers in its part concerning the minimum required information provided to the regulatory body and the public, as well as to the observance of the specific requirements for large value transactions, there is a real risk the Bulgarian capital market to be dominated by companies that fall under the category of SMEs with public status in respect of which there are reduced requirements for disclosure of information to investors, while existing public SMEs are subject to a more restrictive regime.
7. ESC shares the view that the proposed legislative solutions at the European level will create easier conditions for SMEs to access capital from capital markets. At the same time, the current regulatory framework in the country, combined with the frequent changes in relation to the activities of public companies, would make the growth markets for SMEs unattractive for a large part of this kind of enterprises in Bulgaria. The ESC is concerned that if future legislative amendments do not introduce additional criteria and mechanisms that will distinguish the companies whose financial instruments are admitted to trading on the BSE by the issuers to be traded on the growth market of SMEs, this will create

¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets

prerequisites for marginalizing the capital market in Bulgaria and the goal of attracting large investors will not be reached.

8. The legislative solutions proposed in the Regulation must also be accompanied by a number of changes to national legislation that can effectively lead to a reduction in the administrative burden and the costs of public offering of SMEs.
9. ESC believes that in order to for SME growth markets to be attractive for investors and for the SMEs themselves, a robust regulatory environment must be guaranteed, and the protection of the ownership of acquired assets and confidence in the capital market in Bulgaria as a whole must be ensured.
10. ESC notes that the capital market, which is by definition considered to be a source of financing and an alternative to credit, is still not sufficiently popular and recognizable in Bulgaria. Many of the companies in our country, when they decide to develop and expand their business, due to the lack of information of the existing administrative and regulatory burden, avoid financing their investment projects through the capital market. In addition, the implementation of vicious corporate practices in managing a part of Bulgarian enterprises, back in time, coupled with the outflow of foreign investors, predetermines the low interest in companies that have chosen to seek funding for their projects in this way.
11. EBRD Survey of November 2017 shows that the Bulgarian capital market is dominated by a small number of institutional players on the market (pension companies through the pension funds managed by them), which is predominantly conditioned by the statutory pension insurance system in our country regulated by the Social Insurance Code (SIC). Due to this reason, the pension funds have invested a significant part of the raised pension contributions namely in issuers traded on a regulated market, organized and maintained by BSE.
12. The interest in investing in financial instruments traded on the regulated market in Bulgaria is also determined by the low interest rates on deposits of the population in banks. However, ESC acknowledges the fact that the majority of the population prefers to invest their free cash in bank deposits². At the same time, individual investors have been refraining from investing in financial instruments due to the large drop in the stock market since the financial crisis in 2008³.
13. The data clearly show both the low liquidity of the capital market in Bulgaria and the low investment interest in financial instruments on part of the population. In this regard, ESC notes with concern that all this limits the possibilities for financing large projects through the capital market and this situation results from several main reasons:
 - 13.1. Presence of companies whose financial instruments are admitted to trading on a regulated market forced through mass privatization. The facts show that the management of these companies has no vision of publicity and transparency and therefore is not motivated to apply good corporate practices. At the same time, some of these companies do not hold regular annual general meetings of shareholders, disclose their financial statements, and do not offer their shareholders a distribution of dividends. This, according to the ESC, largely leads to a lack of investor confidence and unwillingness to invest.
 - 13.2. Lack of supply - the largest companies in Bulgaria are not listed on the BSE.
 - 13.3. Lack of financial literacy of a large part of the active population in Bulgaria. ESC notes with concern that, in the context of digitization of services, a large part of the active population in Bulgaria does not receive information or training on the benefits of

² According to the BNB, the total amount of deposits continues to increase, reaching BGN 76 billion in August. [Http://www.bnb.bg/Statistics/StMonetaryInterestRate/StDepositsAndCredits/StDCQuarterlyData/index.htm](http://www.bnb.bg/Statistics/StMonetaryInterestRate/StDepositsAndCredits/StDCQuarterlyData/index.htm)

³ According to BSE data, the turnover for the nine-month period of 2018 reached BGN 370 million, with a decline of 25% on an annual basis. The total market capitalization of the traded non-BSE companies in 2018 is less than BGN 10 billion.

investing in the capital market, with the exception of the campaigns of some non-governmental organizations in the country.

- 13.4. High transaction costs in inheritance procedures, as well as the additional complexity of these procedures. Widespread are the cases where holders of financial instruments acquired through mass privatization are no longer among the living, and their heirs are forced to pay extremely high fees to investment intermediaries (II), Central Depository (CD) and notaries in order to inherit the securities held by their successors⁴. This demotivates people to use inheritance proceedings and, as a result, the securities of their predecessors remain "dormant" and unfit for trading.
- 13.5. The constantly changing regulatory framework regulating business activity⁵ as well as the activities of capital market participants, including the introduction of new requirements by competent government bodies and structures involved in the development of the capital market.
14. ESC draws attention to a peculiarity of the Bulgarian capital market - the problem that has existed for years called "dormant shares"⁶, which represents 26% of the shares of the public companies and a certain percentage of the already delisted companies. The issue of "dormant" shares is in fact a problem of inactive accounts resulting from their uninterested owners who, in the general case, due to a lack of information campaign targeting the public, do not have the necessary knowledge and, in some cases, the will to manage the assets acquired in the process of mass privatization. According to the calculations of the Central Depository, inactive accounts often form up to 30% of the ownership of certain holding structures. The owners of such shares in general did not participate in general meetings of the shareholders of the companies and did not receive a dividend.
- 14.1. According to ESC, the state, in the person of the institutions concerned, needs to find a solution to this problem through the necessary changes in the legal framework in order to "wake up" assets to an amount significant to the capital market. ESC welcomes the measures set out in the Strategy for the Development of the Capital Market adopted by the Capital Market Development Council, which envisages the reduction of the administrative burden, the elimination of fees and commissions and an information campaign aimed at the holders of shares from the mass privatization. At the same time, it should be taken into account that the objectives set out in that strategy, and in particular the reduction of administrative burdens, in some cases remain practically unfeasible in the case of proposals for amendments to legislation concerning the activities of public companies⁷.

⁴ In the mass case against assets of BGN 25 (the value of the shares of one bond book) the heirs have to pay a fee of BGN 100.

⁵ See the position of BICA sent to the National Statistical Institute (NSI) in connection with the reconciliation of the forms for the annual activity reports of the natural and legal persons in 2018, which Bulgarian enterprises are obliged to submit to NSI, No 323 / 16.08.2018, available on the association's website - <http://bica-bg.org>

⁶ These are securities with a nominal value of about BGN 2-3 billion owned by almost 2.5 million shareholders held in personal accounts in register A. About 60% of these accounts contain 25 shares of a former privatization fund, the remaining 50 to 100 shares and refer to cases where family members have made use of their right to transfer their investment vouchers to another relative. Part of the accounts also contain free shares that workers in state-owned enterprises once received on the basis of their work experience in the enterprise. - http://journal.ue-varna.bg/uploads/20181023104323_15642859565bcefb4b58ba4.pdf; <https://www.bia-bg.com/service/view/21963/>

⁷ As a concrete example in this respect, the publication on the website of the Financial Supervision Commission in the section "Public consultations" - <http://www.fsc.bg/en/normativna-uredba/obshtestveni-konsultatsii/>, project of an Ordinance amending and supplementing Ordinance No 22 of 29.07.2005 on the conditions and procedure for entry and deletion of public companies, other issuers of securities and issues of securities in the Register of the Financial Supervision Commission where, on behalf of companies who have the quality of FSC supervised entities, are required to submit to which have already been submitted to the administrative body. At the same time, the draft Ordinance proposes the creation of a new para. 5 stating that the company may not provide the required documents which have already been submitted to the Commission or declared in the Commercial Register. The use of the term

- 14.2.ESC draws attention to the fact that the announced means of solving the "dormant" problem as well as the way of preserving financial instruments acquired on the capital market in Bulgaria can have a negative impact on the security of the property, the investors' activity and in general - the development of the capital market in Bulgaria.
15. At the same time, analysing the development of the capital market, ESC considers it important to mention some positive trends that could influence the decision of SMEs to finance projects on the capital market. These are the development of good corporate practices and, in general, the enhancement of the level of corporate governance of publicly traded companies in Bulgaria. It should be emphasized that a large number of actively traded companies strive to carry out their activities, in accordance with the following principles:
- Protection of the rights of all shareholders in the public company, irrespective of the ownership interest;
 - Ensuring fair treatment of all shareholders, irrespective of the number of shares held by them;
 - Recognizing the rights of stakeholders and promoting cooperation between the company and stakeholders;
 - Ensuring timely and accurate disclosure of information on all matters pertaining to the company, including the financial position, results, ownership and management of the company;
 - Supporting the strategic management of the company, control over the activity of the Board of Directors and its accountability to the company and the shareholders;
 - Managing companies by ensuring balance between the interests of individual shareholders, regardless of the number of shares they hold.
- 15.1.ESC notes that the strict observance of these principles by the companies that are currently traded on the BSE outlines the preference for their financial instruments, against the background of low interest rates on bank deposits, increases the investment activity and generally has a positive effect on the economy. These positive trends, which are reflected in the National Corporate Governance Code, have contributed in recent years to returning investors' confidence in the capital market in Bulgaria.

GENERAL CHARACTERISTICS AND EXPECTED IMPACT OF THE PROPOSED REGULATION

16. ESC notes again that in Bulgaria 99.8% of operating companies are from the SME segment and 75% (in Europe about 70%) of the jobs are provided by such companies. With a clear assessment of the impact on the Bulgarian economy by these companies, ESC emphasizes that it is of utmost importance to create a favourable institutional and legal framework that is in line with the economic conditions and the degree of maturity of the economic and social relations in the country.
17. ESC draws attention to the fact that in the published Impact Assessment to the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 596/2014 and (EC) 2017/1129 on promoting the use of the SME growth markets points out that the initiative taken to stimulate and promote the use of SME growth markets

"may" is inconsistent with the provision of Art. 31, para. 6 of the Administrative Procedure Code (APC), in conjunction with Art. 5a, para. 1 of the Administration Act, in conjunction with Art. 11 of the Regulation on Administrative Services. In Section II "Service Start", Art. 11 of the above-mentioned Ordinance stipulates that "the administrations are obliged to provide ex officio all the documents issued by them necessary for the administrative service they provide". In this sense, it is completely irrelevant to present or not to present certain documents available to the public administration is unjustified and contradicts a fundamental principle in the administrative procedure - procedural economy.

is "at the heart of the Union's Capital Markets Work Program (SCP) and aims to facilitate SMEs' access to public capital markets. In particular, it seeks to overcome the excessive administrative burden on SMEs in registering public markets or issuing stocks and bonds and to increase the liquidity level of the growth markets for SMEs (a new category of multilateral trading systems introduced by Directive II on Markets of Financial Instruments 2014/65 / EC - MiFID II)"⁸.

18. The reason for the action taken is also that EU rules currently provide only a few reliefs for issuers in SME growth markets and imposes disproportionately high costs for them, as is particularly true of the universal approach applied under the Market Abuse Regulation 596 / 2014 (MAR). In order to realize the objective of encouraging and stimulating growth markets for SMEs, there is a number of costs that reduce the relative attractiveness of public issuance of equity or debt instruments. Account has been taken of the fact that the current definition of SMEs that issue debt instruments (for SME growth markets) and the requirement for them to produce half-yearly reports creates significant barriers for operators and prevents SMEs issuing debt instruments to benefit from existing relief as well as those provided for in this initiative.
19. Concerning the economic impact of the proposed approach to the adoption of the Proposal for a Regulation, it is stated that due to the fact that Member States cannot adapt the MiFID, the Market Abuse Regulation and the 2017/1129 Prospectus Regulation to local conditions, it is absolutely necessary to take legislative action at the EU level to reduce the administrative burden on issuers in the growth markets of SMEs stemming from these EU acts.
20. Regarding regulatory barriers that hinder liquidity provision, the rationale for EU intervention is different. Member States can adopt market practice (AMP) on liquidity contracts, but only four countries have done so. According to ESC, this means that in many Member States potential issuers such as SMEs are denied the right to conclude liquidity contracts, which in turn leads to fragmentation of the single market and distortion of competition between issuers entitled to sign a liquidity assurance contract (thus providing liquidity, lowering the cost of capital, etc.) and those who do not have this opportunity.
21. ESC is concerned that limited trade due to insufficient freely traded volume of shares may give investors a negative perception of the liquidity of securities quoted on SME growth markets and could undermine the credibility and attractiveness of these newly established trade.
22. ESC shares EC's view that the possible options for defining an appropriate policy to promote the use of SME growth markets and to increase their efficiency and effectiveness are:
 - reducing regulatory compliance costs for issuers in the growth markets of SMEs;
 - increasing the liquidity of SME growth markets;
 - maintaining a high level of investor protection and market integrity.
23. The regulatory changes proposed in the Regulation have been selected on the basis of the ability to effectively improve liquidity, while retaining sufficient flexibility to adapt to the local market environment. According to EC, this should help improve their efficiency. The analysis has shown that the best approach would be to introduce a European selection regime for participation in liquidity contracts and to give SMEs growth markets the right to apply minimum free float requirements without additional specifications.
24. At the same time, preferred measures to reduce regulatory compliance costs by SMEs are chosen depending on the possibility of lowering costs while maintaining a high level of

⁸ SWD (2018) 244 final <Commission Staff Working Document - Summary Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 596/2014 and (EC) 2017/1129 in relation to promoting the use of SME growth markets.

market integrity. As a result of the analysis of the options, technical amendments are proposed which provide a limited number of reliefs in terms of scope, mandatory disclosure time and documentation obligations arising, in particular, from Regulation (EU) No 596/2014. It has also been decided to allow SMEs to use a simplified "prospectus for transfer" when transferred from an SME growth market to a regulated market (the "core market").

THE SME LEGISLATIVE FRAMEWORK AND PROPOSALS FOR ITS IMPROVEMENT

25. ESC notes that, following Bulgaria's accession to the EU, Bulgarian legislation should be interpreted by national judicial and administrative authorities in the context of EU law.
26. ESC also emphasizes that the development of strategies for SMEs and their admission to a regulated market should take into account the three definitions of SMEs in European legislation, each of which, depending on the purpose, introduces different quantitative indicators which those undertakings have to meet.
27. First, Commission Recommendation 2003/361/EC of 6 May 2003 while defining micro-enterprises, small and medium-sized enterprises⁹ introduces the criteria for determining whether a company is a micro, small or medium-sized enterprise. Based on these different categories, a company may apply for participation in European and national financial assistance and support programmes. Art. 2 of the Recommendation states that "The category of micro, small and medium-sized enterprises consists of enterprises with fewer than 250 employees and with an annual turnover not exceeding EUR 50 million and/or the annual balance sheet total does not exceed € 43 million. "
28. Regarding the legal force of the cited document, ESC draws attention to the fact that the recommendation is an act without legal force because it does not create rights and obligations for the addressees but is essential for the community as a whole, since its purpose is to make propositions to Member States or give them guidelines to adopt in their national legislation certain behaviour, which is more a continuation of the EU policy on unification of business rules. At the national level, the criteria for distinguishing SMEs are reflected in Art. 3 of the Small and Medium Enterprises Act (SMA).
29. Next, ESC draws attention to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on annual accounts, consolidated financial statements and related reports of certain types of undertakings and amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Directives 78/660/EEC and 83/349/EEC. At the national level, the criteria set out in that document have been transposed into Art. 19, para. 3 and para. 4 of the Accountancy Act, according to which:
 - Microenterprises are enterprises that as of 31 December of the current reporting period do not exceed at least two of the following thresholds:
 1. balance sheet value of assets - BGN 700,000;
 2. net sales revenue - BGN 1,400,000;
 3. average number of staff for the reporting period - 10 people.
 - Small enterprises are enterprises that as of 31 December of the current reporting period do not exceed at least two of the following thresholds:
 1. balance sheet value of the assets - BGN 8,000,000;
 2. net income from sales - BGN 16,000,000;
 3. average number of staff for the reporting period - 50 people.
 - Medium-sized enterprises are non-small enterprises and which as of 31 December of the current reporting period do not exceed at least two of the following thresholds:
 1. balance sheet value of the assets - BGN 38,000,000;

⁹ Notified under document number C (2003) 1422 (OJ L 124, 20.5.2003)

2. net sales revenue - BGN 76,000,000;
 3. average number of staff for the reporting period - 250 people.
- Large enterprises are enterprises that as of 31 December of the current reporting period, exceed at least two of the following thresholds:
 1. balance sheet value of the assets - BGN 38,000,000;
 2. net sales revenue - BGN 76,000,000;
 3. average number of staff for the reporting period - 250 people.
30. Third, Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets for financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EC. At the national level, the criteria for distinguishing SME issuers have been transposed into the Markets for Financial Instruments Act.
 31. ESC draws attention to the fact that the Proposal for a Regulation uses the definition of these enterprises, in accordance with the cited Directive 2014/65/EU, Art. 4, § 13 of which states that "small and medium-sized enterprises" means, for the purposes of this Directive, companies whose average market capitalization does not exceed EUR 200 million on the basis of end-of-year quotes for the three previous calendar years. " Therefore, ESC considers it necessary to pay very serious attention to certain features of the Bulgarian capital market, which would qualify it altogether as a "growth market".
 32. Taking into account the development of the Bulgarian capital market as well as the analysis of the market capitalization of issuers whose financial instruments are admitted to trading on a regulated market organized and maintained by the Bulgarian Stock Exchange, it is evident that over 98% of the companies currently traded on the BSE, have a market capitalization significantly below 200 million Euros.
 33. It should be borne in mind that the market capitalization of public companies whose financial instruments were admitted to trading as of 31 December 2017, 31 December 2016 and 31 December 2015. According to BSE statistics on market capitalization, as of 31 December 2017 only three companies whose shares are admitted to trading on a regulated market have a market capitalization of more than 200 million Euros¹⁰.
 34. ESC again reminds that on the basis of the above mentioned data and the application of the definition of SMEs¹¹ it can be concluded that more than 98% of the companies admitted to trading on a regulated market in Bulgaria fall into the category of SMEs. According to ESC, in case the Proposal for a Regulation unconditionally adopts this definition of SMEs without introducing in the national legislation other criteria and mechanisms in which the SMEs admitted to the growth market will be clearly distinguished from the issuers that have acquired public status, a market in Bulgaria will face a real risk of being identified as a "growth market". In this regard, ESC logically raises the question, after providing for some relief for the companies trading in growth markets, why the Bulgarian capital market remains over-regulated and the requirements for disclosure of information and regulatory compliance of public companies in Bulgaria are increased annually.
 35. According to ESC, under the current conditions, the main obstacles to the realization of the objective of the capital market in Bulgaria being accessible to SMEs are the existing definitions of SMEs at the European level, each of which for various purposes and by different criteria outlines the addressees of the measures. This circumstance, in line with

¹⁰ These are: Capital Corp. AD - by BGN 12.9 billion, First Investment Bank AD - by BGN 622 million and Sopharma AD - by BGN 577 million market capitalization. As of 31.12.2016 the statistics of the stock exchange operator indicate that Sopharma AD has a market capitalization amounting to BGN 401.7 million. Chimimport AD - BGN 400.2 million and "Chaika Pharm High-Quality Medicines" JSC - BGN 394.5 million As at 31 December 2015, the market capitalization by companies is as follows: Sopharma AD - BGN 450 million, Bulgartabac-Holding AD - BGN 331 million and "Monbat" AD - BGN 323 mln.

¹¹ In accordance with Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EC.

the economic conditions in Bulgaria, will not contribute to the development of SMEs and their financing through the capital market since, if the definition of SMEs in the Proposal for a Regulation remains in line with that provided by Directive 2014/65 / EC, there will be a complete lack of differentiation of the conditions to be met by issuers whose shares are currently at the national level admitted or to be admitted to trading on a regulated market, with the financial instruments that will be admitted to the growth market of SMEs.

36. In this regard, ESC considers that these problems can be resolved in two ways:
- initiating a procedure for modifying the definition of SME and aligning it to the degree of development of the Bulgarian capital market, or
 - a change in the BSE Regulations in the section on the requirements to be met by issuers for admission to trading on a regulated market of issues of financial instruments that are traded on a main market and an alternative market¹² and introducing additional criteria for SMEs, to include companies whose financial instruments will be traded on a separate segment of the Bulgarian Stock Exchange - a growth market for SMEs.
37. At the same time, ESC notes that, in order to provide better conditions for SMEs to operate and stimulate their willingness to seek financing from capital markets, several steps should be taken that would, as a whole, help to implement the provisions of the Regulation without making its existence in Bulgaria unnecessary, namely:
- 37.1. Changing the definition of SME, which makes it possible to judge whether companies have access to European funding, cheaper credit and a number of administrative reliefs;
- 37.2. Introducing a legal obligation - both in the EU and in Bulgaria to respect the "think small first" principles, "once only" and the principle of silent consent;
- 37.3. Conduct a suitability test to meet the needs of SMEs for all legislative changes proposed by the national government. In this regard, ESC notes that, in some cases and wherever possible, the provisions at the national and the EU level should be simplified. While observing this principle, small businesses could be excluded from certain legal obligations.
- 37.4. Better legislation and regulation - it is necessary to analyse the national legislation governing the rights and obligations of each of the participants in the capital market in the light of good practices and in line with the "think small first" principle.
38. ESC considers that, under the existing legal framework in Bulgaria, SMEs' access to the capital market will be linked to too many obligations that lead to the realization of costs for any enterprise that intends to access finance through the capital markets. The high costs of complying with and bringing SMEs into line with the imperative provisions of national law, as well as the time and resources required to tackle the regulatory burden, may also have a negative impact in shaping the desire of management and company owners to seek funding through capital markets.
39. ESC observes that the national legislation regulating the activity of the companies whose securities are traded on the BSE provides that only shares that are dematerialized and registered in accounts kept by the Central Depository are admitted to trading on a regulated market. Thus, raising capital through the stock exchange for a small enterprise becomes a burdensome and expensive venture that could have a negative impact on the decision to offer an issue to a regulated market.
40. The analysis of national legislation regulating the activity of listed companies shows that there are a number of provisions (such as the provisions of Art. 114, para. 1 et seq. in the Bulgarian Public Offering of Securities Act (POSA), which are included in it, in order to cover and prevent vicious practices in the process of mass privatization in Bulgaria.
41. At the same time, ESC draws attention to the relatively frequent legislative changes that, at present, instead of preventing or restricting the "draining" of companies, give rise to

¹² The two markets organized under Part III "Rules for admission to trading", Art. 3 of the BSE Rules.

ambiguities and confusion in the way these provisions are to be implemented. ESC considers that this in turn is in some contradiction with the establishment of foreseeable, consistent and non-contradictory rules regarding the regulation of the Bulgarian capital market, which is one of the functions of the national competent authority - the Financial Supervision Commission (FSC).

42. Also in a number of cases, there is an unnecessary burden on the companies admitted to trading on a regulated market with the specific authorization regime for entering into transactions (the regime under Art. 114, para. 1 et seq. of the POSA), which contributes to the blocking of their operational activities for a long period of time, until a decision of the General Meeting of Shareholders is duly adopted. In this regard, the extremely long time limits and the operational delays in certain transactions, in order to comply with the procedure described in the national law regulating the activity of public companies, lead to the impossibility of their conclusion, including the dropping of the economic interest both by the company, and by its counterparties.
43. According to ESC, it is necessary to point out that each serious investor bases his judgment on whether to invest in a particular Member State after a proper study of the regulatory environment in various EU Member States, including relevant national practices in investing in securities, traded on regulated markets in the EU. Performing a preliminary study of the national and administrative framework governing issuers' activities is part of the overall process of making a well-founded investment decision for investing in a particular Member State.
44. In this regard, ESC draws attention to the fact that the often changing regulatory framework as well as the ever-increasing requirements regarding the content of the information presented to FSC and the public constitute an additional barrier to realizing the intentions of companies to attract capital through the stock exchange.
45. Recognizing that the initiative to promote the use of SME growth markets is aimed at enterprises whose capitalization is below 200 million Euros, ESC once again stresses that more than 98% of the enterprises that are currently admitted to trading on a regulated market meet the quantitative criteria set, respectively the ones that will be affected by these measures. In this context, ESC considers that at the national level, the requirements for companies traded on the regulated market are reduced to the minimum required by the relevant directives and regulations and other criteria are introduced that will distinguish the issuers whose financial instruments are admitted to trading on a regulated market and which are public companies, from the issuers that will be admitted to the growth market of SMEs.
46. According to ESC, the additional obstacle to SMEs access to equity capital is a requirement that is specific to national legislation and does not represent a fulfilment of Bulgaria's commitment to comply with European legislation. This is the requirement of the provisions of Chapter V "Independent Financial Audit" in the Bulgarian Accountancy Act, and in particular in the provision of Art. 37, para. 1 of the same Act. Pursuant to the above-mentioned provision, annual and consolidated financial statements are subject to an independent financial audit by a registered auditor, except for medium and large enterprises and small enterprises which as of 31 December of the current reporting period exceed at least two of the following thresholds:
 - balance sheet value of the assets - BGN 2,000,000;
 - net income from sales - BGN 4,000,000;
 - the average number of employees for the reporting period is 50 persons, and for the companies which are joint-stock companies or participate in consolidation, the thresholds are even lower: 10 persons, BGN 700,000. balance sheet value of the assets, BGN 1,400,000. net sales revenue.

47. For ESC, the current version of the cited provision unnecessarily increases the administrative and financial burden on small enterprises in Bulgaria (more than 10 times more restrictive thresholds), burdening them with unnecessary costs of auditing their financial statements.
48. According to ESC, the way to solve the issue of the statutory audit of small enterprises is directly dependent on their desire to focus their efforts on the development of their business in Bulgaria or on finding new markets and their willingness to raise capital through the stock exchange to finance its current investment projects. Therefore, a legislative change in Art. 37, para. 1 of the Accountancy Act could also have a positive impact on the future development of small businesses and their release from unnecessary costs that do not add value to them, while at the same time directing efforts to find affordable financial resources.

SOME RECOMMENDATIONS ON THE PROPOSED AMENDMENTS TO REGULATION (EU) No 596/2014 AND TO REGULATION (EU) No 2017/1129

49. ESC expresses its support in principle for the proposed exemption from the market survey regime for private bond issues negotiated only between institutional investors when there is an alternative procedure for admission to secure information as this reduces the administrative burden on issuers.
50. In this regard, ESC considers that reducing the administrative burden and easing the procedures for SMEs' access to trading on a regulated market, organized and maintained by the BSE, creates a favourable environment for SMEs' access to external financing.
51. ESC supports the proposed amendment to postpone the disclosure of inside information about issuers to SME growth markets, given that issuers will continue to be obliged to notify such a delay to the relevant national competent authority and are required to provide explanations of the reasons for postponing the disclosure of inside information only upon request to the competent authority.
52. ESC notes that the proposal for a Regulation provides for the elimination of issuers' obligation to keep a list of detailed information to justify the postponement.
53. In this regard, ESC proposes to refine or delete the text, which provides that "a justification will be prepared subsequently and when the issuer receives a request from the national competent authority." Insofar as the discretion has been granted - possibility for the competent authority to request, at its own discretion, to postpone the disclosure of inside information, the cases of such justification should be exhaustively listed. According to ESC, this would limit the possibility of administrative arbitrariness, avoiding cases of unequal treatment by the national competent authority of fully equivalent economic operators.
54. In recent years, there has been a contradictory application of legal provisions by the FSC in respect of different economic entities in the presence of identical legal situations. Therefore, ESC considers that if the requirement to justify postponing disclosure of inside information is made only on demand (without the need to keep a list of disclosures), it would reduce the administrative burden on issuers on SMEs growth markets by exempting from the obligation to keep a long list of information.
55. ESC notes that, under the Market Abuse Regulation (Article 18, para. 6), issuers on SME growth markets are not required to maintain current lists of persons with access to inside information, provided that the issuer takes all necessary steps to ensure that any person with access to inside information confirms that he or she is aware of the ensuing legal and regulatory obligations and the applicable sanctions and that the issuer is in a position to provide the national competent authority with a list of those with access to inside information upon request.

56. According to ESC, clear criteria should be provided whereby the National Competent Authority will require the provision of a list of persons with access to inside information. In addition, explicit and necessary action on part of the issuer should be provided to ensure that any person with access to inside information is aware of the relevant legal and regulatory obligations and sanctions arising from the requirements of the Regulation.
57. The proposal for a regulation also envisages replacing the current relief set out in the Market Abuse Regulation for issuers in the growth markets of SMEs with the less onerous "list of persons with permanent access to inside information". ESC believes that it will be easier for SMEs to prepare, while contributing to the investigation of the national competent authority in cases of insider dealing.
58. At the same time, this list of "persons with permanent access to inside information" includes all persons who have regular access to one related to this issuer due to the function they perform with the issuer (as members of administrative, management and supervisory bodies) which they occupy (managerial staff who have the right to make managerial decisions affecting the future development and prospects of the issuer's business and administrative employees with regular access to inside information). This relief will be granted only to issuers on SME growth markets, without prejudice to the obligations of persons acting on their behalf or on their behalf (such as accountants, lawyers, rating agencies, etc.) to prepare, update and, request to provide the national competent authority with their own lists of persons with access to inside information in accordance with Article 18 (1) to (5).
59. ESC is also in favour of the proposed relief for the issuers' keeping on SME growth markets only on the "list of persons with permanent access to insider information". Unlike the previous regulation in Regulation 596/2014, this proposal would reduce administrative burdens and completely prevent unnecessary spending on the requirement of Art. 18, para. 6 of Regulation 596/2014.
60. ESC considers the proposed revision of Art. 18, para. 6 as regards the obligation on persons acting on behalf of the issuer or on at its expense (such as auditors, accountants, lawyers, rating agencies and consultants) to draw up, update and, upon request, provide their national persons with access to inside information in accordance with Article 18 (1) to (5), due to the fact that the Regulation introduces obligations for persons external to the issuer, are not supervised by the national competent authority - FSC (Financial Supervision Commission); which, due to the nature of their external audit and consultancy services, will be required to prepare and submit lists to that authority.
61. According to ESC, the obligation to keep a list of "persons with permanent access to inside information" will increase the administrative burden on issuers, thus adding extra costs for drawing up an ad hoc list of persons with access to inside information for any part of this information.
62. ESC also supports the alleviation of the administrative burden for issuers whose securities are admitted to growth markets for SMEs by providing sufficient time to comply with their obligation to publicly disclose the transactions of those holding senior positions in them. Under this Regulation, persons exercising managerial functions in the issuers on SME growth markets as well as closely related parties must notify the issuer and the national competent authority of the transactions within three working days. According to the proposed addition, after such notification, the issuer will have two more days for public disclosure of the information, which is a sufficient period for compliance.
63. ESC underlines that the proposed amendments to Regulation 2017/1120 create the possibility for SMEs wishing to transfer their issue to trading on a regulated market to produce a simplified "prospectus for transfer" (based on the simplified secondary prospectus provided for in The Prospectus Regulation) for companies registered on the growth market of SMEs for a period of at least three years from their admission to trading

on that market. Issuers on SME growth markets are subject to ongoing disclosure requirements under the Market Abuse and SME Growth Market Operators Regulation, as required by Directive 2014/65/EU (MIFID II). Such a prospectus is admissible when the issuers on SME growth markets wish to admit their securities to a regulated market or to admit and offer new securities on a regulated market.

64. ESC therefore supports in principle the possibility for SMEs to apply the simplified disclosure regime for admission to a regulated market set out in Article 14 of Regulation (EC) 2017/1129, provided that these companies are already admitted to trading on a growth market of SMEs for a period of at least three years.
65. In conclusion, ESC considers that substantial improvements are needed in the legal norms that support the development of SMEs in Bulgaria and correspond to the European "think small first" principle but on the other hand the provisions must ensure the principles of equality of the subjects of these markets, transparency and the protection of private property.

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