



EUROPEAN
COMMISSION

Brussels, **XXX**
[...] (2020) **XXX** draft

COMMISSION DELEGATED DIRECTIVE (EU) .../...

of **XXX**

amending delegated directive (EU) 2017/593 as regards the regime for research on small and mid-cap issuers and on fixed-income instruments to help the recovery from the COVID-19 pandemic

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

In the immediate aftermath of the crisis resulting from the COVID-19 pandemic, small and mid-cap issuers will need to be supported by a strong ecosystem. This will be important for the economic recovery and it is also an important objective of the Capital Markets Union. One element of this ecosystem is research that helps issuers to connect with investors. Research ensures an increasing sufficient visibility of issuers and, in turn, a sufficient level of investment and liquidity.

While issuers, and in particular small and mid-cap companies, have experienced a decline in research coverage for several years, the COVID-19 pandemic has further increased the need of these companies for alternative financing measures. After the entry into application of the new MiFID II provisions, and in particular of the “research unbundling” rule, the overall trend of decline continues largely along the same trajectory. The Commission therefore expects that an exemption from the unbundling rule for small and mid-cap companies should result in an increase of research coverage for those companies.

A declining trend has also been observed for research on fixed income, covering a broad range of instruments with different characteristics (such as tenor, payment terms, coupon rates). In addition, bid-offer spreads in fixed income instruments depend on factors other than the provision of research to a counterpart (such as cost of capital, cost of hedging, size of the security and size of the market). Moreover, as research costs on fixed income instruments are not embedded in spreads, introducing the unbundling rules added to compliance costs, but also led to additional fees required to obtain research. The Commission therefore expects that an exemption from the unbundling rule for research on fixed income instruments should result in an increase of resources devoted to business continuity and in an increase of the available information on fixed income issuances.

The exceptional circumstances resulting from the COVID-19 pandemic have instilled a sense of urgency into the debate on research on small and mid-cap issuers and fixed income instruments. Increasing the visibility of European companies to investors will promote more investment for the economic recovery.

Therefore, this amending act introduces a narrowly defined exception authorising the joint payment for execution services and research on small and midcap issuers and research on fixed income instruments. Small and mid-cap companies would be defined as companies that did not exceed a market capitalization threshold of EUR 1 billion over a 12 months period.

In the case of joint payments for the execution of trades in the above described market segment, the current requirement to set up a research payment account (RPA) or to issue separate invoices for research would not apply. As a counter-balancing measure, however, joint payments would only be allowed in case of an ex-ante agreement between the investment firm and the research provider on what part of the joint payments are attributable to the provision of research. In addition, the investment firm should inform its clients of the joint payment.

This targeted exemption would be achieved with amendments to Article 13 of the delegated Directive (EU) 2017/593.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

As part of a targeted recovery package research, has been discussed with Member States in the course of three meetings of the Expert Group of the European Securities Committee (EGESC) and the Financial Services Committee (FSC) in May, June and July 2020.

Further, research has been part of the public consultation on MiFID II/MiFIR that the Commission ran until 18 May 2020. Authorizing bundling for SME research was one of the options that received the most positive responses compared to the other options presented.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for this Directive is set out in Article 24(13) of Directive 2014/65/EU (MiFID II).

This Directive covers the amendments to Directive (EU) 2017/593 described below.

Article 1 creates an optional exemption from the current Article 13 of Directive (EU) 2017/593. When research is exclusively on small and mid-cap issuers or on fixed income instruments, investment firms can choose not to apply the current requirement defined in Article 13, mainly to set up a research payment account (RPA) or pay research on its own resources or to issue separate invoices for research. Small and mid-cap issuers will be defined as issuers that did not exceed a market capitalization of EUR 1 billion over a 12 months period.

It creates an optional exemption, under certain conditions, from the current research unbundling requirement if execution services and the provision of research pertain to small and midcap issuers. This exemption will allow investment firms to pay jointly for the execution services and the provision of research. The same exemption applies to the provision of fixed income research, including rates, credit and loan research. As a counter-balancing measure, however, joint payments would only be allowed in case of an ex-ante agreement between the investment firm and the research provider on what part of the joint payments are attributable to the provision of research. In addition, the investment firm should inform its clients of the joint payment.

Articles 2, 3 and 4 deals respectively with the transposition, entry into force and addresses of this delegated Directive.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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/EU¹, and in particular Article 24(13), point (d), thereof,

Whereas:

- (1) The COVID-19 pandemic is severely affecting people, companies, health systems and the economies of Member States. The Commission, in its Communication to the European Parliament, the European Council, the Council, the European economic and social committee and the Committee of the regions of 27 May 2020 entitled ‘Europe’s moment: Repair and Prepare for the Next Generation’² stressed that liquidity and access to finance will be a continued challenge in the months to come. It is therefore crucial to support the recovery from the severe economic shock caused by the COVID-19 pandemic by introducing targeted amendments to existing pieces of financial legislation. This package of measures is adopted under the label “Capital Markets Recovery Package”.
- (2) In the immediate aftermath of the COVID-19 pandemic, issuers, and in particular small and mid-cap companies, need to be supported by strong capital markets. Research on small and mid-cap issuers as well as on fixed income (including rates, credit and loan research) is essential to help issuers to connect with investors. That research increases the visibility of issuers and thus ensures a sufficient level of investment and liquidity.
- (3) Research on small and mid-cap issuers as well as on fixed-income instruments has declined for several years. To alleviate burden on investment firms and foster research coverage of small and mid-cap issuers and on fixed-income instruments, the research requirements lying on investment firms should be alleviated. When the research is provided exclusively on small and mid-cap issuers or fixed-income instruments, the investment firms would have the choice either to follow the rules already in place or to follow an alternative alleviated regime. This alternative regime should be optional, so that investment firms, even when executing trades in small and mid-cap issuers, would not be obliged to make IT changes to their order and accounting systems if they do not

¹ OJ L 173 12.6.2014, p. 349.

² COM(2020) 456 final of 27.5.2020.

want to do so. The exemption would therefore mostly benefit investment firms that specialise in small and midcap investments, but would also provide an “opt-in” for larger investment firms that run a dedicated small and midcap trading desk.

- (4) Under this new alleviated regime, the investment firms would in particular be allowed to pay jointly for the provision of research and for the provision of execution services. To ensure transparency, this joint payment would only be allowed under certain conditions related to the information of the research provider as well as the clients of the investment firms.
- (5) Delegated Directive (EU) 2017/593 should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Delegated Directive (EU) 2017/593

In Article 13 of Delegated Directive (EU) 2017/593, the following paragraphs 10 and 11 are added:

- “10. By way of derogation from paragraphs 1 to 8, an investment firm can choose not to comply with the requirements set down in those paragraphs in either of the following cases:
 - (a) the research is exclusively provided on issuers which did not exceed a market capitalisation of EUR 1 billion during a period of 12 months preceding the provision of the research;
 - (b) the research is exclusively provided in relation to fixed income instruments.
11. By way of derogation from paragraph 9, an investment firm that uses the option referred to in paragraph 10 shall be authorised to pay for the provision of execution services and the provision of research jointly, provided that all of the following conditions are met:
 - (a) before the execution or research services have been provided an agreement has been entered into between the investment firm and the research provider, which identifies which part of the joint payment is attributable to research;
 - (b) the investment firm informs its client about the joint payment;
 - (c) in case of research as referred to in paragraph 10, point (a), the execution services for which the joint payment is made are exclusively on issuers which did not exceed a market capitalisation of EUR 1 billion during a period of 12 months preceding the provision of the research.”

Article 2
Transposition

- (1) Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by [9 months from the entry into force of this Delegated Directive]. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- (2) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*