

## **Ensure legal certainty on delay in the disclosure of inside information**

## Reply on ESMA's Questions in the Consultation Paper on MAR Guidelines on delay in the disclosure of inside information

**Q1: Do you see merits in maintaining the legitimate interest currently described in point b of Guideline 1 (i.e possibility for the issuer to delay the disclosure of its financial situation, where an immediate publication may jeopardise the measures to reestablish its viability)? Please indicate the arguments supporting your answer.**

Deutsches Aktieninstitut welcomes ESMA's consultation paper on MAR Guidelines on delay in the disclosure of inside information which concerns adaptation of the ESMA Guidelines resulting from the amendments to the Market Abuse Regulation regarding protracted processes following the EU Listing Act. Generally, we appreciate the amendments of MAR regarding protracted processes. Nevertheless, we hope that the reform process will continue to move forward and lead to further reductions in the administrative burden on listed companies. We always have pointed out during the consultation process of the EU Listing Act that e.g. issuers should not be obliged to disclose inside information during protracted processes or during the delay when rumours arise but have the opportunity to a "no comment" policy as long as issuers have undertaken reasonable effort to ensure confidentiality (Art. 17). Another example is that managers should be obliged to only publish transactions with active investment decision and not gifts, donations and inheritances (Art. 19 MAR).

We support maintaining the legitimate interest currently described in point b of Guideline 1. The possibility to delay the disclosure in a financial situation, where an immediate publication may jeopardise the measures to reestablish its viability, is of significant importance for issuers. At this stage, the issuer must be able to consider and implement various measures to avert potential insolvency. A disclosure at a too early stage could ruin the success of these measures.

**Q2: What is your view on the legitimate interest which are proposed to be added to the MAR Guidelines? When commenting on a specific legitimate interest, please report in your answer the title as given in the relevant subsection.**

We welcome the proposals for legitimate interests ESMA inserts in the new Guideline 1, no 10 a) to d) (page 29/30).

However, ESMA should point out more clearly that these are examples and the legitimate interest is not reduced to these examples.

We suggest a change of wording in a) as to introducing the constellation where **a statutory confidential obligation under a foreign legal system** prohibits the immediate disclosure of an inside information. A legitimate interest may also be presumed where an issuer is subject to two conflicting legal obligations because it must comply with a foreign (e.g., U.S.) legal system that prohibits the immediate disclosure of inside information (for example, in the context of imminent capital market transactions by the U.S. subsidiary of an issuer based in the EU).

We would welcome to receive clarification from ESMA on situations where a non-disclosure order issued by a public authority is permanent or does not specify an expiry date. The postponement of the disclosure of inside information should be of legitimate interest i.e., for as long as the order remains in force – or whether the legitimate interest in delaying disclosure ceases to apply in the absence of a clearly defined time limit.

For b) (new) we suggest to broaden the scope of examples also for major incidents as to major geopolitical or climate issues.

**Q3: In addition to the case of parallel procurements of the same nature, are you aware of other instances where disclosure of sensitive commercial information may jeopardise an issuer's business opportunity, and should thus qualify as a legitimate interest for the delay?**

No Comment.

**Q4: In your view, which legitimate interests could be added to the MAR Guidelines for the purpose of the delay in the disclosure?**

We suggest the following additional categories of legitimate interests for the delay of disclosure of inside information to be added to the MAR Guidelines:

**Group-level matters:** Where both parent and subsidiary companies are subject to MAR regulation, the regulator should ensure that the disclosure obligation under Art. 17 (1) MAR and the available exemptions operate in parallel where a matter arising at the subsidiary level simultaneously constitutes inside information at the level of the parent company. Where a listed subsidiary has delayed the disclosure of inside information pursuant to Art. 17 (4) MAR, the listed parent company must equally be permitted to delay the publication of that inside information for the same duration. Otherwise, non-affiliated companies would have significantly better opportunities to delay the disclosure of information subject to disclosure requirements than companies forming part of a group, which are exposed to the disclosure obligations of their respective parent or subsidiary company.

**Changes in key personnel:** Annex I D.13 of the delegated act adopted by the European Commission on 8 April 2026 pursuant to Art. 17 (12) MAR (DA implementing the Listing Act) does not cover the scenario in which a member of

the Board unexpectedly announces that he or she will not be available for a further term of office. However, the issuer has a legitimate interest in disclosing that board member's departure as late as possible in order to keep to a minimum the period of uncertainty in the market pending the appointment of a successor, or to be in a position to present a successor simultaneously with the announcement of the departure. This constitutes a legitimate interest which should be added also to the MAR Guidelines.

***Protection of the Issuer's Corporate Reputation:*** The MAR Guidelines have so far remained silent on the highly relevant practical question of whether an issuer may delay the disclosure of inside information on the grounds that immediate publication would jeopardise its corporate reputation. However, an issuer's good reputation constitutes one of its most valuable assets, and the protection of that reputation is, in turn, a shared interest of all shareholders. A legitimate interest in delaying disclosure should therefore be recognised at least where the delay affords the issuer a realistic opportunity to contain an imminent loss of reputation. This should be assumed in particular where there is a risk that the market would overreact to the inside information if it were published immediately.

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