

MAR updates: ESMA launches consultation on MAR Guidelines on delay in the disclosure of inside information ahead of the Listing Act implementation

April 2, 2026

On February 19, 2026, the European Securities and Markets Authority (ESMA) published a consultation paper (the Consultation Paper)¹ proposing amendments to its guidelines on delay in the disclosure of inside information (the MAR Guidelines)² to align them with the changes to Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 (the MAR)³ introduced by Regulation (EU) No. 2024/2809 of the European Parliament and of the Council of 23 October 2024 (the Listing Act) that will be effective from June 5, 2026.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

MILAN

Paolo Rainelli
+39 02 7260 8246
prainelli@cgsh.com

Gerolamo da Passano
+39 02 7260 8232
gdapassano@cgsh.com

Nicole B. Puppiani
+39 02 7260 8616
npuppiani@cgsh.com

Valentina Camusso
+39 02 7260 8688
vcamusso@cgsh.com

ROME

Giuseppe Scassellati-Sforzolini
+39 06 6952 2220
gscassellati@cgsh.com

Domenico Balletta
+39 06 6952 2221
dballetta@cgsh.com

LONDON

Chrishan Raja
+44 20 7614 2224
craja@cgsh.com

Ilya Nekrasov
+44 20 7614 2238
inekrasov@cgsh.com

¹ ESMA will collect feedback on the Consultation Paper until April 29, 2026 in order to be able to publish the new version of the MAR Guidelines closer to the entry into force of the new MAR regime in June 2026. A final report summarizing all consultation responses and setting out the amended MAR Guidelines is expected to be published in Q4 2026. The full text of the Consultation Paper is available [here](#).

² The full text of the MAR Guidelines is available [here](#).

³ The full text of the MAR is available [here](#).



I. Introduction

In preparation for the implementation of certain provisions of the Listing Act on June 5, 2026, ESMA is seeking input on its proposal to review the MAR Guidelines to ensure consistency with the new disclosure regime introduced by the Listing Act⁴ aimed at achieving simplification and reduction of regulatory burdens.

In particular, under the new rules introduced by the Listing Act, (i) issuers will no longer be required to disclose intermediate steps in a protracted process,⁵ as the disclosure obligation will arise only once the “final event” in such process has occurred; and (ii) the current requirement that delayed disclosure must not mislead the public will be replaced with the requirement that the delayed information must not contradict the issuer’s latest public communication on the same matter.

In light of the above-mentioned changes, the Listing Act empowered the European Commission to adopt a delegated act establishing a non-exhaustive list of (x) final events in protracted processes and when they must be disclosed and (y) situations where delayed disclosure would contradict the issuer’s latest communication. In addition, the Listing Act empowered ESMA to review the existing MAR Guidelines on delayed disclosure of inside information to make them compatible with the new regime.

⁴ For further details on the Listing Act, please refer to our memoranda “*The Listing Act: new developments for financial markets in the European Union*” and “*The EU Listing Act: Important Changes to MAR*”, available [here](#) and [here](#), respectively.

⁵ See Article 17, paragraph 1, of the MAR.

⁶ The full text of the Draft Delegated Regulation is available [here](#). To prepare this Draft Delegated Regulation, the European Commission requested technical advice from ESMA, which published, in May 2025, its final report on the technical advice concerning the MAR and the part of Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU on small and medium enterprises growth markets, which is available [here](#).

⁷ Annex I of the Draft Delegated Regulation comprises 35 examples of protracted processes linked to seven main categories: (a) business strategy; (b) capital structure, dividends and interest payments; (c) financial information; (d) corporate governance; (e) interventions by public authorities; (f) credit institutions, insurance, and reinsurance undertakings; and (g) legal proceedings, sanctions, and delisting.

II. European Commission Draft Delegated Regulation

On December 15, 2025, the European Commission published a draft delegated regulation supplementing the MAR as regards the disclosure of inside information in protracted processes and the delay of disclosure (the Draft Delegated Regulation),⁶ and launched a public consultation which closed on January 15, 2026. As of the date of this memorandum, the Draft Delegated Regulation has not yet been adopted, but it is expected to apply from June 5, 2026.

The Draft Delegated Regulation:

- (i) includes a non-exhaustive list of final events or final circumstances in protracted processes,⁷ designed to assist issuers in identifying the moment when disclosure of inside information is required (Annex I). The list applies without prejudice to the assessment of whether a specific protracted process gives rise to inside information under Article 7 of the MAR;
- (ii) includes a non-exhaustive list of situations in which the inside information intended to be delayed is deemed in contrast with the issuer’s latest announcement on the same matter (Annex II); and

- (iii) identifies the types of issuer communications relevant when assessing the situation referred to in (ii) above (Annex III).

III. Consultation Paper and Proposed Amendments

ESMA frames its review of the MAR Guidelines around the provisions directly affected by the amendments introduced by the Listing Act.

In particular, ESMA proposes to:

- (i) streamline Guideline 1 on legitimate interests for delaying disclosure of inside information by removing examples relating to processes already covered by the list set out in Annex I of the Draft Delegated Regulation;
- (ii) delete Guideline 2 which addresses situations in which delaying the disclosure of inside information is likely to mislead the public; and
- (iii) retain Guidelines 3 and 4, concerning Pillar 2 capital requirements and Pillar 2 capital guidance and inside information, without amendments.
 - a. *Guideline 1 “Legitimate interests of the issuer for delaying disclosure of inside information”*

In light of the amended MAR framework described above (*i.e.*, inside information relating to intermediate steps in protracted processes will no longer be subject to disclosure obligations prior to the completion of the relevant process), ESMA proposes to amend the MAR Guidelines by removing examples of legitimate interests that relate exclusively to intermediate steps within protracted processes.

The current Guideline 1 comprises eight examples of legitimate interests, which have

served as an important practical reference for issuers seeking to justify a delay in disclosure. These include, among others: (a) issuer’s negotiations (including mergers, acquisitions, reorganizations etc.); (b) management decisions requiring the approval by another corporate body; (c) development of a product or invention the disclosure of which could prejudice the issuer’s intellectual property rights; (d) plans to buy or sell major holdings; and (e) transactions subject to approval by public authorities conditioned upon additional requirements.

ESMA proposes to remove all examples relating to protracted processes listed in Annex I of the Draft Delegated Regulation, as in such cases issuers would no longer be subject to disclosure obligations before the conclusion of the process.

Under the proposed approach, the only example likely to remain in the revised list is the scenario where the issuer’s financial viability is in grave and imminent danger, and immediate disclosure would seriously prejudice shareholders’ interests by jeopardizing negotiations aimed at restoring the issuer’s financial stability.⁸

ESMA also proposes to (x) retain the clarification that issuers must disclose inside information as soon as confidentiality can no longer be ensured and (y) add the following three examples of legitimate interests:

- (i) orders by a public authority to maintain confidentiality: issuers may delay disclosure where they must comply with an order to maintain confidentiality issued by a public authority under a specific legal provision or pursuant to the authority’s powers (e.g., where a public authority requests that a tender award of a public procurement remain confidential);
- (ii) need to collect further information on the event or the circumstances to be

⁸ ESMA notes that this situation may remain relevant under the new regime, but nevertheless invites market participants to comment on whether this example should be retained.

disclosed: issuers may delay disclosure where they need to collect additional information – not immediately available – about an exceptional event or circumstance before disclosure (e.g., when issuers need to collect information on the effects of major incidents or cyber-attacks);⁹ and

- (iii) risk to lose a business opportunity when participating in parallel procurement processes: issuers may delay disclosure where they need to maintain the confidentiality of commercial sensitive information relating to a contract awarded in a public procurement process or the conclusion of private negotiations (e.g., an issuer participates in multiple procurement processes with similar subject matter but different deadlines, and disclosure of one contract award could jeopardize another ongoing bid).
- b. *Guideline 2 “Situations in which delay of disclosure of inside information is likely to mislead the public”*

In light of the amended MAR framework described above (*i.e.*, the “*mislead[ing] the public*” condition is replaced with a new requirement whereby disclosure may be delayed if the information is “*not in contrast with the latest announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers*”),¹⁰ ESMA proposes to delete Guideline 2 in its entirety.

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⁹ ESMA further clarifies that to rely on this legitimate interest: (a) the need to collect data or information must be based on objective and verifiable grounds; (b) the information-gathering process must be carried out without undue delay; and (c) disclosure should occur as soon as the market can properly assess the event, even if further details may subsequently complement the initial assessment.

¹⁰ See Article 17, paragraph 4, letter b, of the MAR, as amended by the Listing Act. In addition, the Listing Act removed this topic from ESMA’s mandate under Article 17, paragraph 11, of the MAR.