

# Report

On the amendments to Commission Delegated Regulation 2016/1052 on buy-back programmes and stabilisation measures

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## Legislative references and abbreviations

ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
Commission Delegated Regulation (EU) 2016/1052	Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures
Listing Act	Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
MIFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
MRMTL	Most Relevant Market in Terms of Liquidity as referred to in Article 26(1) of MiFIR

## Executive Summary

### Reasons for publication

On 14 November 2024, the Listing Act package, which aims at simplifying the listing requirements to promote better access to public capital markets for EU companies, was published in the Official Journal.

The legislative package includes a Regulation introducing a number of changes to MAR, including to the regime designed for buy-back programmes. In particular, Article 5 of MAR, as amended by the Listing Act, changes the requirement regarding which NCA buy-back transactions must be reported, and introduces an aggregate reporting of buy-back transactions to the public. In light of these changes and to ensure consistency with amended MAR, Commission Delegated Regulation (EU) 2016/1052 on the conditions applicable to buy-back programmes and stabilisation measures (the “RTS on buy-back programmes”) needs to be amended accordingly.

This Report presents the proposed changes to the RTS on buy-back programmes as a consequence of the revision of MAR. Since the amendments are limited in scope and do not impose any additional requirements on market participants, ESMA has considered it disproportionate in relation to the scope and impact of the RTS to conduct a cost-benefit analysis and to publicly consult.

### Content

This Report contains the draft amendments to the RTS on buy-back programmes to reflect the changes introduced to Article 5 of MAR by the Listing Act.

More precisely, Section 1 provides background information on the Listing Act and outlines the amendments introduced in MAR.

Section 2 outlines the ESMA analysis on the changes needed to the RTS on buy-back programmes as a consequence of the amendments to MAR. In particular, to ensure consistency with the Level 1 text, ESMA suggests specifying in the RTS that issuers should have in place mechanisms for the reporting of buy-back transactions to the NCA of the MRMTL and clarifying that issuers should ensure public disclosure of buy-back transactions in an aggregated form. In parallel, with a view to reduce burden on issuers conducting buy-back programmes, ESMA also proposes to streamline reporting requirements by specifying in the RTS that reporting to the NCA of the MRMTL should only be conducted in an aggregated form.

Finally, Section 3 includes the draft amendments to the RTS on buy-back programmes.

**Next Steps**

The amended draft technical standard will be submitted to the European Commission for adoption. In accordance with Article 10 of Regulation (EU) 1095/2010, the European Commission shall decide whether to adopt the technical standards within 3 months.

## 1 Introduction

1. In December 2022, the European Commission adopted a legislative proposal to simplify the listing requirements to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on listed companies or companies that seek a listing. The package comprised a Regulation amending the Prospectus Regulation, MAR and MiFIR and a Directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new Directive on multiple vote share structures.
2. The European Parliament and Council reached a provisional agreement on the Listing Act on 1 February 2024. The compromise was approved by the Council on 14 February 2024 and voted on by the European Parliament in first reading in plenary session on 24 April 2024. On 8 October 2024, the Council adopted the Listing Act. Finally, the legislative package was published in the Official Journal on 14 November 2024.
3. The amending Regulation introduces a number of changes to MAR, including to the regime designed for buy-back programmes. In particular, the revised Article 5 of MAR amends the requirement as to which NCA buy-back transactions must be reported and introduces an aggregate disclosure of buy-back transactions to the public.
4. These changes require the revision of Commission Delegated Regulation (EU) 2016/1052 (the 'RTS on buy-back programmes' thereafter). The ESMA mandate in MAR covering the above referenced RTS has not been amended by the Listing Act and therefore there is no explicit deadline for ESMA to deliver to the European Commission. However, ESMA recommends amending the RTS in a timely manner in order to facilitate a smooth adjustment of market participants to the amended provisions and to ensure legal certainty.
5. In this context, Section 2 of this Report presents the proposed amendments to the RTS on buy-back programmes while Section 3 provides the draft legal text resulting from the proposals.
6. Considering that the proposed changes to the RTS on buy-back programmes are a direct consequence of the change in MAR and are expected to have a limited impact on market participants, ESMA deems it disproportionate to publicly consult and carry out a cost-benefit analysis. In particular, ESMA considers that the proposed changes to the RTS do not impose any additional requirement or burden on market participants, as they simply clarify the NCA to which buy-back transactions should be reported, remove misalignment with the amended MAR and provide that reporting takes place in a more streamlined manner compared to the current requirement. From that perspective, ESMA deems that running a public consultation and conducting a cost-benefit analysis would be disproportionate.
7. This is in line with Article 10(1) of the ESMA Regulation which foresees that before submitting a draft RTS to the Commission, ESMA should conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits

*“unless such consultations and analyses are highly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned”.*

## 2 Amendments to the RTS on buy-back programmes

### 2.1 Background

8. Article 5 of MAR provides a safe harbour from the prohibitions of insider dealing and market manipulation for legitimate buy-back and stabilisation programs, provided they are conducted in accordance with certain conditions.
9. Article 5(6) of MAR mandates ESMA to develop draft RTS to specify the conditions that buy-back programmes and stabilisation measures must meet, including trading conditions, restrictions regarding time and volume as well as price conditions. Those arrangements are specified in the RTS on buy-back programmes which establishes, amongst others, conditions for both reporting to NCAs and disclosure to the public of buy-back transactions.
10. As mentioned in the introductory section, the Listing Act amended some of the MAR requirements for the disclosure of buy-back transactions. In particular, the revised Article 5(1) of MAR explicitly sets out that disclosure of buy-back transactions should take place in an **aggregated form**.
11. In addition, the Listing Act also amended Article 5(3) of MAR with respect to the NCA to which buy-back transactions should be reported. Namely, while the pre-Listing Act MAR required reporting of **each transaction** to the NCA of the trading venue on which the shares are traded, the revised Article 5(3) of MAR requires the reporting of **all transactions** relating to the buy-back programme to the competent authority of the MRMTL as referred to in Article 26(1) of MiFIR.
12. In parallel, while the old MAR referred to Article 25(1), (2) and Article 26(1), (2) and (3) of MiFIR as part of the information to be transmitted to NCAs when reporting buy-back transactions, this is no longer the case following the amendments introduced by the Listing Act.
13. The changes to Article 5(1) and (3) of MAR call for a revision of the RTS on buy-back programmes.

### 2.2 Analysis

14. ESMA has reviewed the provisions in the RTS on buy-back programmes in light of the changes introduced to MAR. In that respect, ESMA considers that certain amendments to the Level 2 text are needed as a consequence of the revision of MAR in the context of the Listing Act.

15. Firstly, it appears straightforward that Article 2(2) of the RTS should be amended to clarify that buy-back transactions should now be reported only to the NCA of the MRMTL. At the same time, ESMA considers that no further amendments to this provision appear necessary, for example regarding the timing of the reporting or the transmission of this information to other NCAs, considering that MAR already requires the NCA of the MRMTL to forward, upon request, the information to the NCA(s) of the other trading venue(s) on which the shares are traded.
16. Regarding the other amendments introduced by the Listing Act, it may be useful to recall that Article 2 of the RTS on buy-back programmes requires issuers to report buy-back transactions to the relevant NCAs both in a detailed form and in an aggregated form. The same Article also mandates issuers to ensure adequate public disclosure of this information.
17. The revised Article 5(1) of MAR explicitly provides that only aggregated information on buy-back transactions should be made public. The rationale for this amendment is explained by Recital 62 of the Listing Act which states: *"It is also necessary to simplify the disclosure obligation by allowing an issuer to only disclose to the public aggregated information which indicates the aggregated volume and the weighted average price per day and per trading venue"*.
18. In this context, it appears appropriate to amend Article 2(3) of the RTS on buy-back programmes to clarify that issuers should ensure public disclosure of information on transactions relating to buy-back programmes in an aggregated form.
19. At the same time, Level 1 does not clearly define the level of detail required for reporting buy-back transaction to NCAs. However, to reduce burden for issuers conducting buy-back programmes while ensuring that NCAs still have access to relevant information for the purpose of their supervisory activities, ESMA considers that reporting to the NCA of the MRMTL should be streamlined.
20. ESMA therefore proposes that the RTS on buy-back programmes should also require reporting to the relevant NCA **only in an aggregated form**.
21. In ESMA's view, this would also align with the simplification objectives that the Listing Act intends to achieve. To support this proposal, it should also be noted that NCAs have access to other sources of information, such as transaction reporting data, which enable them to monitor trading activity and detect potential suspicious conducts related to the execution of buy-back programmes.

## 2.3 Proposals

22. In light of the analysis presented in the previous section and mindful of the changes introduced to MAR, ESMA suggests introducing the following amendments to the RTS on buy-back programmes:

- i) specify in Article 2(2) that issuers should have in place mechanisms for the reporting of buy-back transactions to the NCA of the MRMTL;
- ii) clarify in Article 2(2) that issuers are required to report transactions to the NCA of the MRMTL only in an aggregated form;
- iii) amend the first sentence of Article 2(2) to no longer refer to each transaction and to the information under Article 5(3) of MAR, considering that the relevant MAR Article has been amended by the Listing Act;
- iv) clarify in Article 2(3) that issuers should ensure public disclosure of information on transactions relating to buy-back programmes in an aggregated form.

23. The amendments proposed to the RTS on buy-back programmes are presented in Annex I below.

## 3 Annexes

### 3.1 Annex I – Draft technical standards

#### **COMMISSION DELEGATED REGULATION (EU) No .../..**

amending Delegated Regulation (EU) No 2016/1052 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures.

of [ ]

**(text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse<sup>1</sup> and in particular Article 5(6) third subparagraph, thereof,

Whereas:

- (1) The amendments to Regulation (EU) No 596/2014 made by Regulation (EU) 2024/2809<sup>2</sup> included changes to the conditions of exemption applicable to buy-back programmes and stabilisation measures, in particular to the conditions relating to how issuers' report and disclose buy-back transactions.
- (2) In accordance with those amendments to Article 5 of Regulation (EU) No 596/2014, the scope of the reporting of buy-back transactions included in Commission Delegated Regulation (EU) 2016/1052<sup>3</sup> should be revised to ensure that issuers report all transactions to the competent authority of the most relevant market in terms of liquidity as referred to in Article 26(1) of Regulation (EU) No 600/2014.
- (3) Such reporting should be streamlined and only in aggregated form to reduce the administrative burden for issuers conducting buy-back transactions while preserving the ability of competent authorities to monitor trading activity and detect potential suspicious

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<sup>1</sup> OJ L 173 12.6.2014

<sup>2</sup> Regulation (EU) No 596/2014 made by Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprise; OJ L, 2024/2809, 14.11.2024

<sup>3</sup> Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures; OJ L 173 30.6.2016.

behaviours connected with the execution of buy-back programmes. Buy-back transactions should also be adequately publicly disclosed in aggregated form.

- (6) This Regulation is based on draft regulatory technical standards submitted by ESMA to the Commission.
- (7) ESMA did not conduct open public consultations on the draft regulatory technical standards on which this Regulation is based, nor did it analyse the potential related costs and benefits of introducing such standards, as to have done so would have been highly disproportionate in relation to the scope and impact of those standards, taking into account that they are limited in scope and do not impose any additional requirements on market participants,.

HAS ADOPTED THIS REGULATION

*Article 1*

*Amendment to Delegated Regulation (EU) No 2016/1052*

Delegated Regulation (EU) 2016/1052 is amended as follows:

1. In Article 2, paragraph 2 is replaced by the following:

“The issuer shall have in place mechanisms that allow it to fulfil reporting obligations to the competent authority and to record all transactions related to a buy-back programme. The issuer shall report to the competent authority of the most relevant market in terms of liquidity as referred to in Article 26(1) of Regulation (EU) No 600/2014 no later than by the end of the seventh daily market session following the date of the execution of the transaction, all the transactions relating to the buy-back programme, in an aggregated form. The aggregated form shall indicate the aggregated volume and the weighted average price per day and per trading venue.

2. In Article 2, paragraph 3 is replaced by the following:

“The issuer shall ensure adequate public disclosure, in an aggregated form, of the information on the transactions relating to buy-back programmes referred to in paragraph 2 no later than by the end of the seventh daily market session following the date of execution of such transactions. The issuer shall also post on its website the transactions disclosed and keep that information available to the public for at least a 5-year period from the date of adequate public disclosure.”

*Article 2*

*Entry into force*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*

*The President*