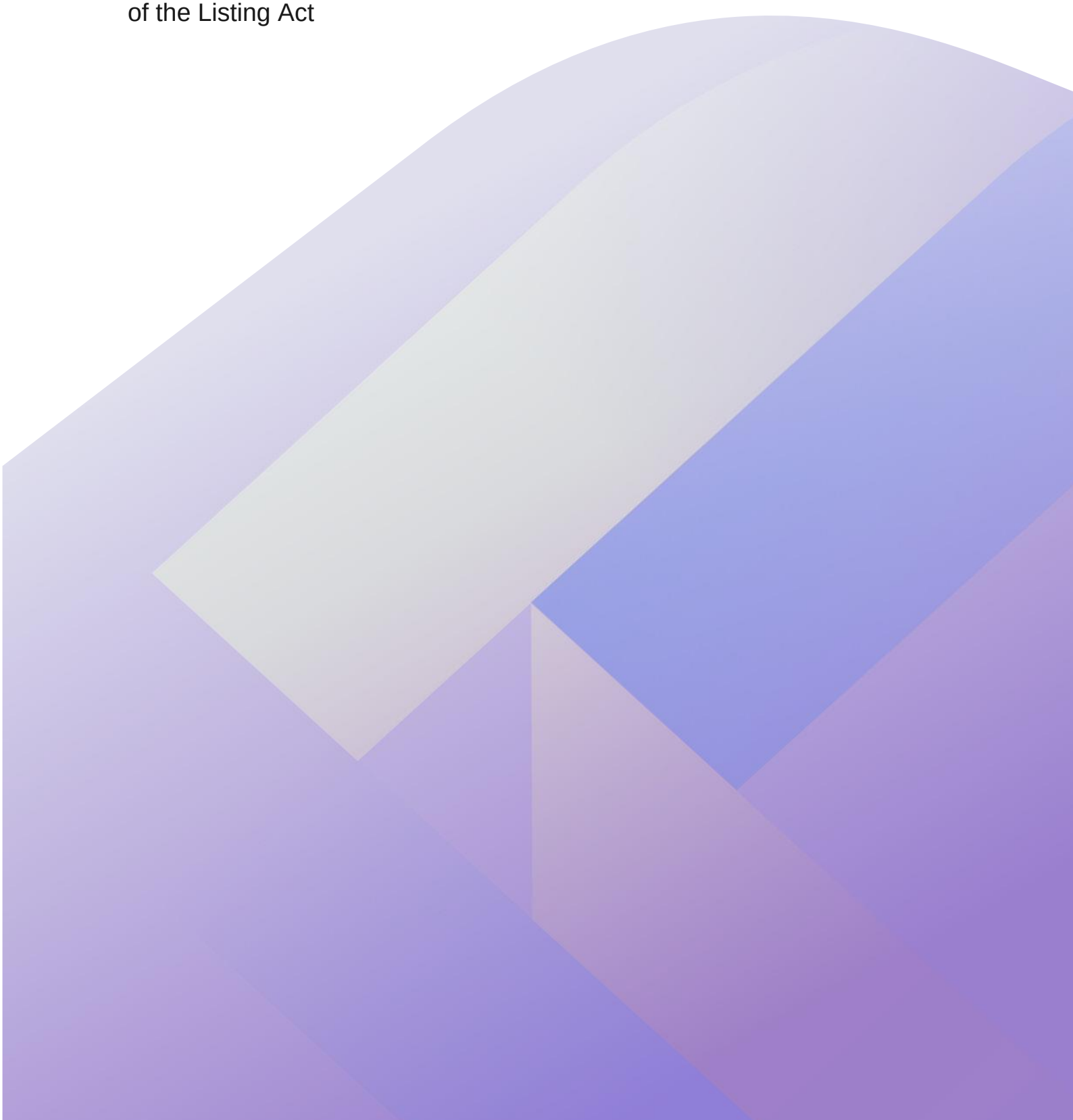
28 October 2024
ESMA35-335435667-5979

Consultation Paper

Draft technical Advice to the European Commission on the amendments to the research provisions in the MiFID II Delegated Directive in the context of the Listing Act



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **28 January 2025**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Data protection'.

Who should read this paper?

All interested stakeholders are invited to respond to this consultation paper. This paper is primarily of interest to competent authorities, firms that are subject to Directive 2014/65/EU on Markets in Financial Instruments (MiFID II), research providers and investors.

Table of Contents

1 Executive Summary

Reasons for publication

The European Securities and Markets Authority ("ESMA") received a request from the Commission on 6 June 2024 to provide technical advice on the implementation of the amendments to Prospectus Regulation, Market Abuse Regulation and MiFID II in the context of the Listing Act[1]. This Consultation Paper focuses on the changes in MiFID II related to the payment for research and execution services.

Contents

Section 2 explains the relevant background for this draft technical advice. Section 3 sets out ESMA's proposal to amend Commission delegated Directive (EU) 2017/593. Annex I presents the list of questions included in this consultation paper. Annex II includes the relevant extract from the Commission's request for advice. Annex III presents the cost-benefit analysis and Annex IV shows the proposed draft amendments to Commission Delegated Directive (EU) 2017/593.

Next Steps

ESMA will consider the feedback it received to this consultation and expects to publish a final report to submit its Technical Advice to the Commission in Q2 2025.

[1] In this CP, references to the Listing Act should be understood as references to the text published on 8 October 2024. Respondents should note that the 'Listing Act' is not yet published in the Official Journal of the European Union. https://www.consilium.europa.eu/en/press/press-releases/2024/10/08/listings-on-european-stock-exchanges-council-adopts-the-listing-act/

2 Background

2.1 Research regime in force

1. Currently, Article 24(9a) of MiFID II and Article 13 of Commission Delegated Directive (EU) 2017/593 set out the conditions that the provision of research by third parties to investment firms must meet in order not to be regarded as an inducement.

2. Previously, MiFID II only allowed payments for research by an investment firm out of its own resources or payments from a separate research payment account.

3. However, in 2021, changes were made to the research regime in MiFID II, as part of the Capital Markets Recovery Package. Directive (EU) 2021/338 amended Directive 2014/65/EU by, *inter alia*, inserting new paragraph (9a) in Article 24. This amendment introduced the possibility for joint payments of execution services and research covering issuers whose market capitalisation did not exceed EUR 1 billion.

2.2 New payment option and conditions for research not to be treated as an inducement

4. In the context of the Listing Act Directive[2], joint payments for execution services and research will be made possible irrespective of the market capitalisation of the issuers covered by the research.

5. However, whatever payment option an investment firm may choose in relation to its payments for research (out of its own resources, payments from a separate research payment account or joint payments for research and execution services), it should always adhere to the following conditions for the provision of research not to be regarded as an inducement:

    a) an agreement has been entered into between the investment firm and the third-party provider of execution services and research, establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services;

[2] In this CP, references to the Listing Act Directive should be understood as references to the text of the Amending Directive as published on 8 October 2024. https://data.consilium.europa.eu/doc/document/PE-39-2024-INIT/en/pdf

b) the investment firm informs its clients about its choice to pay either jointly or separately for execution services and research and makes available to them its policy on payments for execution services and research, including the type of information that can be provided depending on the firm's choice of payment and, where relevant, how the investment firm prevents or manages conflicts of interest pursuant to Article 23 when applying a joint payment method for execution services and research;

c) the investment firm assesses the quality, usability and value of the research used, as well as the ability of the research used to contribute to better investment decisions, on an annual basis.

6. In addition, where the firm chooses to pay separately for execution services and third-party research, the provision of research by third parties is received in return for either of i) direct payments by the investment firm out of its own resources; or ii) payments from a separate research payment account controlled by the investment firm.

3 Proposed changes to Commission Delegated Directive (EU) 2017/593

3.1 Global approach adopted for the proposed amendments to Commission Delegated Directive (EU) 2017/593

7. On 6 June 2024, ESMA received from the Commission a request to provide technical advice on the implementation of the amendments to the Prospectus Regulation, Market Abuse Regulation and MiFID II Delegated Directive in the context of the Listing Act.

8. The deadline to submit the technical advice is 30 April 2025.

9. This consultation paper focuses on the changes to the MiFID II Delegated Directive related to the payments for research and execution services. The relevant extract from the Commission's request is included in Annex II.

10. The approach for the changes to Article 13 of Delegated Directive (EU) 2017/593 could be divided into three options:

    a) *Option 1 – Make no changes.* No changes were made after the introduction in 2021 of the possibility for investment firms to make joint payments for execution services and research covering issuers whose market capitalisation did not exceed EUR 1 billion (Article 24(9a) of MiFID II, as described in paragraph 3 above).

    b) *Option 2 – Detailed requirements.* As described in paragraphs 5 and 6 above, the Listing Act introduces some new requirements that investment firms shall follow in order for the provision of research by third parties not to be regarded as an inducement. Article 13 of Commission Delegated Directive (EU) 2017/593 could therefore set out detailed requirements applicable to these three conditions (e.g., what should be included in the remuneration methodology and how should firms inform their clients).

    c) *Option 3 - High-level requirements.* As an intermediate option to options 1 and 2 described above, it would be possible to amend Article 13 to i) better articulate the MiFID II Delegated Directive with the amendments made to the relevant level 1 provisions, ii) clarify how the conditions set out in level 1 apply and iii) introduce some high-level requirements applicable to the three different payment options now available to investment firms.

11. ESMA did not opt for Option 1 described above as it does make sense for Article 13 of Commission Delegated Directive (EU) 2017/593 to acknowledge the amendments made to Level 1 and the existence of three payment possibilities and related conditions applicable.

12. ESMA also did not retain Option 2. This is because the amendments to the research regime introduced by the Listing Act have the objective to revitalise the market for investment research and to ensure sufficient research coverage of companies in the Union. Introducing detailed requirements in the MiFID II Delegated Directive might interfere with these objectives. It would also be a departure from the approach adopted in the Listing Act for the amendments to the research regime, which are also high level.

13. ESMA therefore adopted Option 3, as described above. ESMA proposes to include some high-level requirements in Article 13 of Delegated Directive (EU) 2017/593 so as to:

    a) better align the level 2 legislation with the new options offered in the level 1 text;

    b) promote the market for investment research, in a context that continues to regulate inducements and to require the proper management of conflicts of interests.

14. The new high-level requirements proposed thus relate to joint payments for execution services and research, as well as to the conditions provided by new Article 24(9a)(a) to (c) of MiFID II. The aim being to provide investment firms with guidance on how to comply with the new rules by retaining the same high-level approach adopted by the Level 1 and avoid being too prescriptive.

15. The proposed changes to Article 13 of Delegated Directive (EU) 2017/593 are included in Annex IV. The following chapters explain in detail the new possible legislative requirements that could be added to the delegated directive. The chapters also include detailed questions on whether these requirements are appropriate as well as questions aimed at helping ESMA and NCAs to consider alternative proposals or alternative approaches to these possible requirements to achieve the objectives mentioned above.

Question 1: Do you agree with the proposed approach? Or would you prefer a more or less detailed approach? Please state the reasons for your answer.

3.2 Annual assessment of the research used

16. ESMA proposes to include a new paragraph 1b on the annual assessment provided in new Article 24(9a)(c) of MiFID II. This new paragraph proposes to require firms to conduct their assessment on robust quality criteria. This requirement is already included

in the current Article 13, point 1(b)(iv) Delegated Directive. To streamline the text, this point could be deleted and the content included in the new paragraph 1b, applicable to research in general, in line with new Article 24(9a)(c) of MiFID II. Additionally, ESMA also proposes that firms, as part of their annual assessment, could be required to compare, where feasible, the quality, usability and value of the research used with alternative offers available from other research providers. This would enable the firm to compare the research used and could prevent potential over-reliance on the current research provider. This comparison would provide valuable information for the annual assessment and would not mean that the firm should or must buy research from several research providers. Indeed, some research providers offer free trials and firms could use these, for instance, to determine whether they are still getting the best value.

Question 2: Do you agree with the introduction of new paragraph 1b in Article 13 of Commission Delegated Directive (EU) 2017/593? Please explain why.

Question 3: If you do not agree with the introduction of new paragraph 1b in Article 13 of Commission Delegated Directive (EU) 2017/593, please provide alternative suggestions and/or explain how investment firms operating a research payment account currently assess the quality of research purchased (Article 13, point 1(b)(iv) Delegated Directive).

Question 4: Do you agree that, when conducting the annual assessment provided in new Article 24(9a)(c) of MiFID II, an investment firm could be required to include a comparison with potential alternative research providers? Please state the reasons for your answer. Please also provide feedback on the availability of free trials for research services and why they may or may not be appropriate for investment firms to fulfil their obligations under Article 24(9a)(c). If free trials are not appropriate, which other methods could be used for comparison?

3.3 Requirements applicable to the joint payments method

17. ESMA proposes to introduce a new paragraph 10 that specifically deals with joint payments for execution services and research and clarifies how firms will meet the conditions for the mandatory agreement between the investment firm and the third-party provider in new Article 24(9a)(a) of MiFID II.

18. Level 1 states that the total costs of research should generally be taken into account when establishing the total charges. This implies that firms should have sufficient knowledge of how much they are paying for the research (and thus the value of the research), and that they should not overpay (in line also with a firm's general obligation to act in the best interests of clients in accordance with Article 24(1) of MiFID II). Therefore, ESMA is consulting on the possibility that the delegated directive requires that

the methodology for remuneration should be structured in such a way that it prevents the firm from paying substantially more than it would be paying if it was using another payment method. This could be achieved in several ways, for instance by a remuneration methodology that includes a tiered tariff structure where the 'research part' of fees per transaction decreases after a certain number of transactions or through a fee cap or regular monitoring and reconciliations. This would prevent firms from paying more for research than its value in situations where the number of transactions is higher than anticipated.

19. Additionally, paragraph 10(b) reminds firms that they need to comply with the best execution requirements. This is important since the joint payments for execution services and research make this assessment more challenging. Therefore, firms should, before entering into an agreement, make sure that the total charges are structured in such a way that it does not impede the firm's ability to comply with the best execution requirements.

Question 5: Do you agree with the introduction of new paragraph 10 in Article 13 of Commission Delegated Directive (EU) 2017/593? Please state the reasons for your answer.

Question 6: Do you think that any further requirements or conditions applicable to investment research provided by third parties to investment firms should be introduced in the proposed amendments to Commission Delegated Directive (EU) 2017/593? Please state the reasons for your answer.

4 Annexes

4.1 Annex I – Summary of questions

Question 1: Do you agree with the proposed approach? Or would you prefer a more or less detailed approach? Please state the reasons for your answer.

Question 2: Do you agree with the introduction of new paragraph 1b in Article 13 of Commission Delegated Directive (EU) 2017/593? Please explain why.

Question 3: If you do not agree with the introduction of new paragraph 1b in Article 13 of Commission Delegated Directive (EU) 2017/593, please provide alternative suggestions and/or explain how investment firms operating a research payment account currently assess the quality of research purchased (Article 13, point 1(b)(iv) Delegated Directive).

Question 4: Do you agree that, when conducting the annual assessment provided in new Article 24(9a)(c) of MiFID II, an investment firm could be required to include a comparison with potential alternative research providers? Please state the reasons for your answer. Please also provide feedback on the availability of free trials for research services and why they may or may not be appropriate for investment firms to fulfil their obligations under Article 24(9a)(c). If free trials are not appropriate, which other methods could be used for comparison?

Question 5: Do you agree with the introduction of new paragraph 10 in Article 13 of Commission Delegated Directive (EU) 2017/593? Please state the reasons for your answer.

Question 6: Do you think that any further requirements or conditions applicable to investment research provided by third parties to investment firms should be introduced in the proposed amendments to Commission Delegated Directive (EU) 2017/593? Please state the reasons for your answer.

4.2 Annex II – Relevant extract from the Commission's request for advice

Article 24.9a of MiFID II specifies that the provision of research by third parties to investment firms providing portfolio management or investment or other ancillary services to clients shall fulfil the obligations for a firm to act honestly, fairly and professionally and shall be in the best interest of the client. The Listing Act amends the text of MiFID II by introducing the option for investment firms to pay either jointly or separately for execution services and for research (retracting the previous obligation to pay for those services separately – so called "unbundling regime"). The Listing Act, consequently, introduces new conditions for firms to comply with in order to be regarded as fulfilling the above-mentioned fiduciary duties, notably they have to:

1) inform their clients about their choice to pay either jointly or separately for execution services and research;

2) make available to their clients their policy on payment for execution services and research, including the type of information those clients can be provided depending on the firm's choice of payment method and when a joint payment method is selected by the firm, how such firm prevents or manages conflict of interest;

3) enter into an agreement with the third-party provider of research and execution services establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services;

4) assess on annual basis the quality, usability and value of the research used, as well as the ability of the research used to contribute to better investment decisions; and

5) where they choose to pay separately for execution services and third-party research, receive the research from the third party in return for either direct payments out of the firm's own resources or payments from a separate research payment account controlled by the firm.

Where known to them, investment firms must also keep a record of the total costs attributable to third-party research provided to them and upon request, such information shall be made available on an annual basis to the clients of the firms.

Considering that those new conditions have an impact on Article 13 of Delegated Directive (EU) 2017/593, which only describes conditions associated to the unbundling regime, such delegated act will have to be amended in order to supplement the application of the new optional regime. **The Commission invites ESMA to provide technical advice on the amendments of such delegated directive taking into account the new payment regime**

for research and execution services, ensuring harmonisation in their application and fostering research on companies/issuers.

4.3 Annex III – Cost-benefit analysis

Impact of the recommendations in Annex IV

1. As per Article 16(2) of Regulation (EU) No 1095/2010, any recommendations developed by ESMA are to be accompanied by an analysis of '*the related potential costs and benefits of issuing such guidelines and recommendations*'. Such analysis shall be "*proportionate in relation to the scope, nature and impact of the guidelines or recommendations*".

2. The following section outlines ESMA's assessment of the main policy options included in the recommendations on payments for research.

Problem identification

3. The research regime laid down in Directive 2014/65/EU required investment firms to separate payments which they receive as brokerage commissions from the compensation received for providing investment research (the "research unbundling rules"), or to pay for investment research from their own resources and assess the quality of the research they purchase based on robust quality criteria and the ability of such research to contribute to better investment decisions. In 2021, those rules have been amended by Directive (EU) 2021/338 of the European Parliament and of the Council[3] to allow for bundled payments for execution services and research for small and middle capitalisation companies below a market capitalisation of EUR 1 billion.

4. The Listing Act further adjusts the research unbundling rules to offer investment firms more flexibility in the way that they choose to organise payments for execution services and research.

5. However, whatever payment option an investment firm may choose in relation to its payments for research (out of its own resources, payments from a separate research payment account or joint payments for research and execution services), it should always adhere to a number of conditions for the provision of research not to be regarded as an inducement (please see paragraphs 5 and 6 of section 2.2 hereto). It includes some new conditions introduced by the Listing Act.

[3] Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

6. Those new conditions have an impact on Article 13 of Delegated Directive (EU) 2017/593, which only describes conditions associated to the unbundling regime. Thus, this delegated act will have to be amended in order to supplement the application of the new optional regime. The Commission asked ESMA to provide technical advice on desirable amendments to the delegated directive taking into account the new payment regime for research and execution services, to ensure harmonisation in their application and to foster research on companies/issuers.

7. When drafting the recommendations, ESMA's objective was thus to ensure that: i) amendments to the delegated directive reflect the new research regime resulting from the Listing Act and ii) to strike a balance between the revitalisation of the market for investment research and the need to protect investors.

Policy objectives

8. The objective of these recommendations is to help revitalise the market for investment research whilst balancing this objective with investor protection. To reach such objective, the recommendations further clarify the conditions that must be met by payments for research so that research may not be considered as an inducement.

Baseline scenario

9. In a baseline scenario, with no amendments to Article 13 of the Delegated Directive:

    i) Article 13 of the Delegated Directive is, in part, redundant with the level 1 text resulting from the amendments to the research regime by the Listing Act;

    ii) no further specifications to the regime set out in level 1 are provided giving rise to little harmonisation.

10. The above would lead to:

    i) an unclear regime; and

    ii) investor detriment.

Options considered and preferred options

Policy issue 1: global approach

11. ESMA has considered 3 options for the global approach for the changes to Article 13 of Delegated Directive (EU) 2017/593. As described in paragraphs 10 to 13 of section 3.1, ESMA opted for Option 3 that proposes to include some high-level requirements in Article 13 to:

    a) better align the level 2 legislation with the new options offered in the level 1 text;

    b) strike a balance between the revitalisation of the market for investment research and the existing framework for inducements and the proper management of conflicts of interests.

Policy issue 2: annual assessment of the research used

12. ESMA has considered 2 options:

    Option 2a. As such assessment is included in the level 1 text and is now applicable to research in general, not just when the firm is using a research payment account, one option was to remain silent and leave firms to entirely decide how to carry out the assessment.

    Option 2b. To ensure that the annual assessment is used by firms as an opportunity to ensure the quality, usability and value of the research used, as well as the ability of the research to contribute to better investment decisions, , it could be useful that firms stay informed of alternatives available on the market. As such, one option is to require, where feasible, that the annual assessment includes a comparison with alternative offers available on the market.

13. Option 2a is already applicable to firms currently paying for research through research payment accounts. It remains unclear how such assessment is currently made and whether it is made in a thorough manner. To ensure that firms at least compare the research used and to prevent over-reliance on the current research provider, a comparison may be a useful tool to include in the assessment process. Whilst this comparison will provide valuable information for the annual assessment, it does not mean that the firm should or must buy research from several research providers but rather that they should survey other offers. As research providers often offer free trials, firms may use these for instance to determine whether they are still getting the best value.

14. ESMA therefore chose Option 2b but is requesting specific feedback on how the quality of research can be assessed and on the feasibility of the comparison with alternative research providers.

Policy issue 3: requirements applicable to the joint payments method

15. ESMA has considered 2 options:

    Option 3a. The first option is not to specify further the requirements set out in the level 1 text resulting from the Listing Act.

    Option 3b. Further specify the following requirement "*establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services*" as well as how the firm should consider its best execution obligations when considering using joint payments.

16. Option 3a would leave much room for interpretation and lead to little harmonisation. How the total cost of research should be taken into account when establishing the total charges for investment services would remain unclear.

17. Option 3b on the other hand, whilst still leaving flexibility to firms as to the remuneration methodology they choose, would ensure that choosing the joint payments method would not lead to investor detriment in that clients would be paying more for research (if, ultimately, they bear the costs) than they would if the firm had chosen a different payment method.

18. For the above reasons, ESMA chose Option 3b.

Cost-benefit analysis

19. The recommendations are expected to result in limited costs for investment firms and research providers, but also in benefits for investment firms and investors.

20. The costs described hereafter are mainly attributable to Level 1 regulation, which already sets in the level 1 text the requirements applicable for research not to be considered as an inducement. Some very limited costs may however be expected where firms have to conduct the annual assessment of the research used, including, where feasible, a comparison of other offers available on the market, as well as for initially agreeing on the remuneration methodology for research where using joint payments.

Costs

21. Investment firms are expected to incur very limited costs where they conduct the annual assessment of the quality, usability and value of the research used, as well as the ability of the research used to contribute to better investment decisions, as they could be required to include in this assessment, where feasible, a comparison of other offers

available on the market. Such costs would thus be recurring costs as some limited amount of time should be devoted to such comparison annually. However, it may also be an opportunity to renegotiate research agreements or find better value offers and therefore, ultimately, to lower costs.

22. Investment firms may also incur some limited costs where they set up the remuneration methodology to comply with the requirements of draft paragraph 10 of the Delegated Directive. However, such costs should be very limited and one-off costs that are, in any case, directly entailed by the level 1 requirements.

Benefits

23. The introduction of draft paragraph 1b in Article 13 of the Delegated Directive promotes investor protection and may potentially entail gains for firms as it is meant to ensure that investment firms do not over rely on one research provider whilst overlooking other offers that may be more attractive and/or of better quality.

24. The introduction of draft paragraph 10 in Article 13 of the Delegated Directive would also promote investor protection by lessening the risk of investors ultimately being charged substantially more for the same research, depending on the payment method used.

Table: costs and benefits

Stakeholder groups affected	Costs	Benefits
Investment firms	Limited one-off and/or recurring costs to carry out the annual assessment, including a comparison of other offers available (where feasible), and to establish a remuneration methodology preventing that they pay more for research if they choose joint payments (compared to another payment method).	Ensuring that the research they use is of adequate quality and value. Ensuring that the cost of research does not depend on the payment method chosen.
Competent authorities	Ongoing cost of supervision that firms comply with the research regime resulting from the	Leave enough flexibility for investment firms as to how they comply with the new research regime requirements. Better outcome for investors.

Stakeholder groups affected	Costs	Benefits
	amendments resulting the Listing Act.	
Investors	None	Better value
Research providers	Limited costs to agree on a remuneration methodology as part of the (price) negotiations that are already taking place.	Increased competition if firms should compare alternative research providers as part of the annual assessment.

4.4 Annex IV – Proposed draft amendments to Commission Delegated Directive (EU) 2017/593

Article 13 of Commission Delegated Directive (EU) 2017/593
1. ~~Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if it is received in return for either of the following:~~ ~~(a) direct payments by the investment firm out of its own resources;~~ ~~(b)~~ Where an investment firm operates ~~payments from~~ a separate research payment account as referred to in Article 24(9a)(d)(ii) of Directive 2014/65/EU, ~~controlled by the investment firm, provided~~ it shall ensure that the following conditions relating to the operation of the account are met: ~~(i)~~(a) the research payment account is funded by a specific research charge to the client; ~~(ii)~~(b) as part of establishing a research payment account and agreeing the research charge with their clients, investment firms set and regularly assess a research budget as an internal administrative measure; ~~(iii)~~(c) the investment firm is held responsible for the research payment account; ~~(iv) the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.~~ 1a. ~~With regard to point (b) of the first subparagraph,~~ ~~w~~Where an investment firm makes use of the aforementioned research payment account, it shall provide the following information to clients: (a) before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them; (b) annual information on the total costs that each of them has incurred for third party research. 1b. The assessment provided in point (c) of Article 24(9a) of Directive 2014/65/EU shall be based on robust quality criteria and include, where feasible, a comparison with potential alternative research providers. 2. Where an investment firm operates a research payment account, Member States shall ensure that the investment firm shall also be required, upon request by their clients or by competent authorities, to provide a summary of the providers paid from this account, the

total amount they were paid over a defined period, the benefits and services received by the investment firm, and how the total amount spent from the account compares to the budget set by the firm for that period, noting any rebate or carry-over if residual funds remain in the account. For the purposes of point ~~(b)(i)~~(a) of paragraph 1, the specific research charge shall:

(a) only be based on a research budget set by the investment firm for the purpose of establishing the need for third party research in respect of investment services rendered to its clients; and

(b) not be linked to the volume and/or value of transactions executed on behalf of the clients.

3. Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in ~~point (b) of the first subparagraph of~~ paragraph 1 and ~~in the second subparagraph of~~ paragraph 1a.

4. The total amount of research charges received may not exceed the research budget.

5. The investment firm shall agree with clients, in the firm's investment management agreement or general terms of business, the research charge as budgeted by the firm and the frequency with which the specific research charge will be deducted from the resources of the client over the year. Increases in the research budget shall only take place after the provision of clear information to clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the firm should have a process to rebate those funds to the client or to offset it against the research budget and charge calculated for the following period.

6. For the purposes of point (b)~~(ii)~~ of ~~the first subparagraph of~~ paragraph 1, the research budget shall be managed solely by the investment firm and shall be based on a reasonable assessment of the need for third party research. The allocation of the research budget to purchase third party research shall be subject to appropriate controls and senior management oversight to ensure it is managed and used in the best interests of the firm's clients. Those controls include a clear audit trail of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in paragraph 1b ~~(b) (iv)~~. Investment firms shall not use the research budget and research payment account to fund internal research.

7. For the purposes of point ~~(b)(iii)~~(c) of paragraph 1, the investment firm may delegate the administration of the research payment ac-count to a third party, provided that the arrangement facilitates the purchase of third-party research and payments to research providers in the name of the investment firm without any undue delay in accordance with the investment' firm's instruction.

8. For the purposes of ~~point (b) (iv) of~~ paragraph 1b, investment firms shall establish all necessary elements in a written policy and provide it to their clients. Where an investment firm uses a separate research payment account, it ~~It~~ shall also address the extent to which research purchased through the research payment account may benefit clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the firm will take to allocate such costs fairly to the various clients' portfolios.

9. An investment firm providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each other benefit or service by the same investment firm to investment firms, established in the Union shall be subject to a separately identifiable charge; the supply of and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.

10. Where an investment firm pays jointly for execution services and research, Member States shall ensure that the investment firm shall enter in an agreement for joint payments when the methodology for remuneration:

(a) prevents that the investment firm would pay substantially more for the research component than the costs of the research when the firm would have paid directly for it;

(b) does not impede the firm’s ability to comply with the best execution requirements.