

# SMEs: THE STOCK MARKET SIMPLIFICATION SHOCK

*Driven by the shared objective to encourage SMEs to turn to capital markets to finance their growth, European and French lawmakers have just adopted a series of measures aiming to simplify their IPO and equity financing. Annie Maudouit-Ridde, partner at Winston & Strawn, and Vincent Le Sann, deputy director at Portzamparc, explain these changes.*

## JOINT INTERVIEW

with **Annie Maudouit-Ridde**, partner at Winston & Strawn, and **Vincent Le Sann**, deputy director at Portzamparc

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**On April 24, 2024, the European Parliament adopted the “Listing Act package” to improve access to market-based sources of financing for SMEs. What are the main measures included in that text, which shall be approved by the European Council in the months to come?**

**Annie Maudouit-Ridde:** It is a major text since it not only modifies three of the main corpuses governing capital markets within the European Union – namely, the Prospectus regulation, the markets in financial instruments directive (MiFID II), and the market abuse regulation (MAR) – , but it also introduces a new corpus on multiple-vote share structures. To alleviate the requirements and costs relating to the listing process of SMEs, and to the subsequent capital raisings, the Listing Act introduces several relaxing measures as far as filing documents are concerned. Even if prospectus exemption cases already exist, most of the times at category of

enterprises is required, at the time of their IPO, to publish a “EU growth prospectus” intended for investors. Whereas it is lighter than the prospectus to be prepared by larger companies, said prospectus is still thick and lengthy (about 150 pages). In the future, said prospectus will be replaced by a “EU growth issuance prospectus,” in which the level of information to be provided shall be in better proportion to the size of the issuer –

it is based in this regard on the “EU recovery prospectus,” including about only thirty pages, which was established during the coronavirus pandemic for a limited period. Once listed, SMEs will benefit from relaxed rules in case of equity or equity-linked transactions, such as the possibility to issue new shares without publishing a prospectus where the number of shares does not exceed, over a rolling 12-month period, 30% of the existing capital. That limit is currently set at 20%. Other modifications favorable for enterprises are provided for, in particular in case of public offerings which minimum period decreases from 6 to 3 trading days.

**Vincent Le Sann:** The Listing Act also aims to correct the adverse effects induced by MiFID II. By requiring brokers to invoice separately their consulting and research activities since 2018, it indeed resulted in a significant decline in brokerage income on the market, with a following noticeable decline in the small and midcap share coverage by financial analysts. To change that trend, the new text provides that brokers would be able to group together again the price of both services, and to deploy sponsored research financed in all or in part by the company concerned. That model has moreover spread widely in France in the last years thanks to the charter called “Charte de Place” governing that practice (June 2022). About one third of French companies valued up to 1 billion euros use that model.

**Annie Maudouit-Ridde:** Finally, a few other changes shall be mentioned, which move toward a relaxing of market abuse prevention rules, for instance regarding the reporting of transactions by managers and the establishment of insider lists, and

## “GOOD NEWS IS THAT ELIGIBILITY CRITERIA FOR SHARE SAVINGS PLAN RESERVED FOR SMEs HAVE BEEN SIMPLIFIED.” VINCENT LE SANN, PORTZAMPARC

greater flexibility given to founding shareholders, in particular with the possibility to attach multiple-voting rights to some shares at the time of IPO.

**For several years, the number of listed SMEs in Europe has been declining. In France, that number decreased to 499 at the end of 2023 according to the Observatoire du Financement des Entreprises par le marché (OFEM), compared to 534 ten years before. May all these measures contribute to restore stock market attractiveness for that kind of enterprises?**

**Vincent Le Sann:** The Listing Act is in line with other provisions adopted by the European Union in the last years, by relaxing the conditions of access to stock markets for SMEs. In this connection, the Listing Act is unquestionably welcome. Yet, as it only concerns the regulatory scope, without any measures to direct capital to SMEs, it should not constitute a real “game changer” in the short term.

**On June 13, 2024, the French Parliament approved act no. 2024-537, which ambition is to increase the financing of enterprises and the attractiveness of France. How is that text different from the Listing Act?**

**Annie Maudouit-Ridde:** Beyond the standardization of the framework governing capital markets in the European Union, it is important to keep in mind that all financial centers in the Member States are also competitors. Within that framework, the act introduces a provision allowing for the issuance of shares with multiple voting rights, while at the same time regulating it strictly, a flexible feature which was already authorized under Dutch law. But I think the most important change in the text, which includes many measures, is elsewhere. Among the key provisions aiming to anticipate the novelties of the Listing Act, some provisions will thus contribute to facilitate the implementation of equity financing consolidation transactions: increase of the delegation size limit for contributions in kind from 10% to 20% for issuers listed on a regulated market; removal of price floor for new shares issued as part of a public offering or a private placement; increase from 20% to 30% of upper limit of share capital likely to be raised over a rolling 12-month period as part of private placements...

**At the same time, French lawmakers also want to encourage the investment of investors, be they individual or professional, in SMEs... Annie**

**Maudouit-Ridde:** Indeed, mutual funds (*Fonds Communs de Placement à Risque* – FCPR) may now invest in listed SMEs having up to 500 million euros of market capitalization (compared to 150 million euros previously) – provided that the investment does not exceed 20% of their total assets. **Vincent Le Sann:** Good news is that eligibility criteria for share savings plan (*Plan d'épargne en actions* - PEA) reserved for SMEs have also been simplified. Before the act, several conditions added up, in relation to the turnover, the number of employees and market capitalization. In case one of the thresholds determined for an issuer eligible for the scheme was exceeded, there was a vagueness regarding the possibility for a manager to keep that share within a fund called “PEA-PME.” With the “Attractiveness” act of June 13, market capitalization becomes the only factor to be considered for listed companies. The related limit moreover doubles, increasing to 2 billion euros, which contributes to increase, at a given moment, the number of eligible French enterprises from about 400 to 600 – and about 3,200 in Continental Europe.

**Could that domestic act on attractiveness have been more ambitious?**

**Vincent Le Sann:** In my opinion, incentive measures of a tax nature are missing, to encourage investors to direct further their savings to the securities of SMEs. Yet, that direction need seems especially necessary as that category of assets suffered in the last years from stock market outflows and current schemes such as FCPI (innovation-focused mutual funds) could be questioned. **Annie Maudouit-Ridde:** I share that point of view. Now, the question is to determine if such a measure, which would contribute to finance real economy, will be retained by the new government in the next finance bills and amending finance act.

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