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Statement

Feedback on the Listing Act
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What is the Listing Act?

The fact that the flagship company Biontech did not go public in Germany but in the USA made headlines in this country. Yet Biontech is just one of many innovative European startups and scaleups that go outside Europe to go public. A study from 2021 analysed the reasons for the increasing number of IPOs of German startups in the USA. In addition to the availability of capital, regulatory hurdles and requirements were cited by the participating companies as decisive factors for their choice of financing location.[1]

This is also shown by the figures of the current Bitkom Startup Report: 57 percent of the startups surveyed can imagine going public in the future.[2] At the same time, every third startup is thinking about going abroad. This is a real problem for the EU, because it means that a significant part of value creation is migrating outside Europe. The EU has a vibrant startup scene, especially in European hotspots such as Berlin, Paris, Munich or Amsterdam. So there is no shortage of potential for new and innovative cutting-edge companies. In order for these companies to become global players in the EU, going public is the logical step for many startups and scaleups to cover their capital needs, scale internationally and at the same time maintain their entrepreneurial independence. To solve this dilemma, it is the declared goal of the European Commission to make the European capital markets more attractive and to facilitate access to the capital market for small and medium-sized enterprises (SMEs). This is intended in particular to counteract the trend of European startups migrating to the USA and other non-EU countries, which has been observed increasingly in recent years. Two measures of the Listing Act are central to realising these goals:

- The issuance of shares with multiple voting rights should be made possible for SMEs in all EU Member States, provided they carry out an IPO in an SME growth market. This should give founders the opportunity to raise capital through an IPO without losing control of the company.[3]

57 %

of startups in Germany can imagine going public in the future (Bitkom Startup Report 2022).

[1] Deutsches Aktieninstitut 2021
[2] Startup Report Bitkom 2022
[3] Börsen-Zeitung, 2022

- By streamlining the listing procedure, the administrative burden, especially for startups and SMEs, is to be reduced and more harmonised across the EU. In this way, listing costs can be reduced.

1. Shares with multiple voting rights

A key locational advantage for IPOs in the USA, but also between individual EU member states, is the possibility of introducing share structures with multiple voting rights shares (also called dual class shares). Shares with multiple voting rights grant their holders more voting rights at a company's general meeting than holders of "normal" shares. They are often held by founders and senior employees to maintain their control over the company. In startups, the specific knowledge of the founders is elementary for success. But if shareholders' share and voting rights are proportional to each other (one share = one vote), a degree of control over operational decisions on the part of the founders will always be relinquished in the case of an IPO. This loss can impair the founders' incentives to innovate, but it also increases the risk of a takeover by a competitor. To solve this dilemma for startups and create a level playing field between EU Member States, Get Started welcomes the introduction of a multiple voting share model in all EU countries. In this way, the incentive for founders to raise growth capital via an IPO within the EU can be strengthened without thereby relinquishing control over their company. The USA serves as a model here, which allows for the widespread use of dual class shares in IPOs of startups. It should be emphasised that the option of dual class shares is used especially in technology-oriented IPOs. Almost half of the IPOs with dual class shares in the USA are for research-intensive companies.[4]

2. Listing

The fact that startups and scaleups are increasingly going public in the US is often due to the complicated prospectus rules in the EU. Research has shown that compliance and disclosure costs are among the most frequently cited factors discouraging startups and SMEs from going public in Europe.[5] Despite a uniform legal framework across the EU, the average prospectus is 800 pages long in Italy and less than 300 pages in the Netherlands. Germany is in the middle.[6] It follows that the complexity of the prospectus depends on the administrative practice and the requirements of the respective member states. This discrepancy is also due to the fact that the current regulations do not sufficiently regulate the supervisory control by the competent national authorities.

We welcome the fact that this problem is to be addressed within the framework of the Listing Act and that a uniform standard for the format and structure of prospectuses is to be developed. We welcome the aim to limit the length to a maximum of 300 A4 pages and to establish a standardised sequence of the information to be included. The simplification and standardisation of the preparation of prospectuses that this entails can thus reduce a significant obstacle for companies. Analyses show that a considerable part of management's working time is spent on IPOs (in the last six

[4] BMWK 2021
[5] Oxera 2020
[6] BMWK 2021

months before the IPO, the CEO and CFO spend 30 to 50% of their working time on this).[7] Simplifying the prospectus preparation process thus relieves management in particular and allows more capacity for the development of innovations and the company's own product.

Conclusion

The EU Commission's draft legislative proposal takes up important points in a multi-part package of measures to make going public within the EU more attractive and easier for startups and SMEs. In view of the increasing migration of startups and scaleups to non-EU countries, this is an important step towards strengthening the European startup location and the attractiveness of the Capital Markets Union. In particular, the structure of multiple voting rights for shares is an important lever to enable founders to access growth capital without losing control over their company. Combined with the planned simplifications and a clear standardisation of prospectus drafting, this opens up the opportunity for startups to obtain financing via the public capital market in a simplified manner.

[7] Oxera 2020