FESE response to the Commission consultation on the Listing Act

25th February 2022, Brussels

1. General questions on the overall functioning of the regulatory framework[1]

The current EU rules relevant for company listing consist of provisions contained in a number of legal acts, such as the Prospectus Regulation, the Market Abuse Regulation (MAR), the Market in Financial Instruments Directive (MiFID II), the Market in Financial Instruments Regulation (MiFIR) the Transparency Directive and the Listing Directive. These rules primarily aim at balancing the facilitation of companies' access to EU public markets with an adequate level of investor protection, while also pursuing a number of secondary or overarching objectives.

Question 1. In your view, has EU legislation relating to company listing been successful in achieving the following objectives?

	not important	rather not important	neutral	rather important	very important	don't know - no opinion - not applicable
Ensuring adequate access to finance through EU capital markets	☐	☐	☒	☐	☐	☐
Providing an adequate level of investor protection	☐	☐	☐	☒	☐	☐
Creating markets that attract an adequate base of professional investors for companies listed in the EU	☐	☒	☐	☐	☐	☐
Creating markets that attract an adequate base of retail investors for companies listed in the EU	☐	☒	☐	☐	☐	☐
Providing a clear legal framework	☐	☐	☒	☐	☐	☐
Integrating EU capital markets	☐	☐	☒	☐	☐	☐

Please explain the reasoning of your answer to question 1: *(4000 character(s) maximum)*

[1] These questions are also included in the general Commission consultation on the Listing Act (here).

FESE recommends for the Commission to take a holistic approach in reviewing the EU listing regulatory framework. In this regard, the Commission should cover the different regulatory topics that together provide a basis for companies' access to capital markets. Hence, we very much welcome this opportunity to provide our feedback on several pieces of legislation that, together, form the basis of the European listing regime.

We believe that any legislative initiative focused on listings (or capital markets as a whole) should benefit from an integrated approach. The following will be essential:

- A clear benchmarking of Regulations' market outcomes against the initial objectives.
- Economic impact assessments that include a strong focus on the macroeconomic impact of Regulations on the national and local ecosystems which support public capital markets.
- A comprehensive approach, covering all participants in the market ecosystem and value chain, particularly when it comes to determining end-user costs.

Future legislative proposals should be based on such a comprehensive review process, with proposals required to demonstrate a clear relevance and benefit to the development of the CMU agenda. This translates in practice to each initiative having to demonstrate empirically via a thorough analysis and impact assessment its value to the CMU.

As noted by numerous stakeholders and recognised in the CMU action plan, public listing in the EU is currently too cumbersome and costly, especially for SMEs. The Oxera report on primary and secondary equity markets in the EU stated that the number of listings in the EU-28 declined by 12%, from 7,392 in 2010 to 6,538 in 2018, while GDP grew by 24% over the same period. As a corollary of this, EU public markets for capital remain depressed, notably in comparison to public markets in other jurisdictions with more developed financial markets overall. Weak EU capital markets negatively impact the funding structure and cost of capital of EU companies which currently over rely on credit when compared to other developed economies.

Question 2. In your opinion, how important are the below factors in explaining the lack of attractiveness of EU public markets?

a) Regulated markets

	not important	rather not important	neutral	rather important	very important	don't know - no opinion - not applicable
Excessive compliance costs linked to regulatory requirements	☐	☐	☐	☒	☐	☐
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	☐	☐	☐	☒	☐	☐

Lack of attractiveness of SMEs' securities	☐	☐	☐	☒	☐	☐
Lack of liquidity of securities	☐	☐	☒	☐	☐	☐
Other	☐	☐	☐	☐	☐	☐

Please specify to what other factor(s) you refer in your answer to question 2 a): *(4000 character(s) maximum)*

Please explain the reasoning of your answer to question 2 a): *(4000 character(s) maximum)*

b) SME growth markets:

	not important	rather not important	neutral	rather important	very important	don't know - no opinion - not applicable
Excessive compliance costs linked to regulatory requirements	☐	☐	☐	☒	☐	☐
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	☐	☐	☐	☒	☐	☐
Lack of attractiveness of SMEs' securities	☐	☐	☐	☒	☐	☐
Lack of liquidity of securities	☐	☐	☐	☐	☒	☐
Other	☐	☐	☐	☒	☐	☐

Please specify to what other factor(s) you refer in your answer to question 2 b): *(4000 character(s) maximum)*

A common definition of SMEs Currently, SME definitions vary widely throughout financial services legislation, which leads to inconsistencies between legislative files, in turn increasing legal complexity with regards to the applicable rules, and the real potential of fragmentation in the single market. We believe that the definition of SMEs should

be aligned (at least) in MiFID II, Prospectus Regulation, ELTIF Regulation, EuVECA Regulation, and Market Abuse Regulation. We agree with the findings of the TESG Report and the conclusions of the CMU High-level Forum (HLF) to incorporate the concept of Small and Medium Capitalisation Companies (SMCs) – as those that do not exceed a market capitalisation threshold of EUR 1 billion over a 12-month period – by either amending the existing SME definition of the legislation (e.g. in MiFID II) or by complementing it with a separate clause (e.g. in the Prospectus Regulation). With regards to state aid rules, a simplification of the SME definition should also be carefully considered, alongside the application of a higher threshold.

The new SME definition would encompass a larger number of small companies able to benefit from SME-targeted policies and the Growth Markets (GMs) regime, and it could also lead to more liquidity in the market. Therefore, we fully support recommendations 1.A and 1.B from the TESG Report. More specifically, under the regulatory framework of:

- MiFID II, the SME definition in Article 4(1)(13) should be changed to incorporate the concept of SMC.
- The Prospectus Regulation, the SME definition in Article 2(1)(f)(ii) should be amended to include the above changes in the new MiFID II SMC definition and SMCs should then be referenced in Article 15, with the thresholds to be increased accordingly (referred to in Article 15(1)(b) and (ca)).

Please explain the reasoning of your answer to question 2 b): *(4000 character(s) maximum)*

In addition to what we included above, we wish to stress that SME Growth Markets (SME GMs) have the potential to develop an ecosystem across the EU that benefits smaller issuers, enabling them to raise money, grow, create employment and wealth for investors and wider society.

While the intention behind creating SME GMs was to attract smaller companies to listing, feedback from FESE members indicates that issuer interest in listing on an SME GM has not really increased compared to MTFs, as the requirements are only slightly different, making it difficult to see the added value and promote SME GMs. To deliver on the policy objective, we consider that further benefits should be created for the SME GM label. We believe it is important to find a balance between maintaining a liquid and trusted market with reduced burdens on issuers and an appropriate level of investor protection. SME GMs should retain a certain level of flexibility whilst ensuring efficiency and integrity. It is important to attract SMEs to the market by both supporting local eco-systems that generate conditions for listing of companies and enabling cross-border listings for issuers where this provide further opportunities.

Alternatively, the issuer liquidity contract is an adequate tool to improve liquidity. In addition, we welcome the new regime for issuer liquidity contracts on SME Growth Markets introduced in the Market Abuse Regulation as this is another element that should contribute to supporting and increasing liquidity for SME trading.

Exchanges should also retain some flexibility in applying rules suited to local market conditions. Should these requirements be harmonised, the intended proportionality SME GMs seek to provide for smaller issuers would suffer and could increase costs for issuers.

c) Other markets (e.g. other MTFs, OTFs):

	not important	rather not important	neutral	rather important	very important	don't know - no opinion - not applicable
Excessive compliance costs linked to regulatory requirements	☐	☐	☐	☐	☒	☐
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	☐	☐	☐	☐	☐	☐
Lack of attractiveness of SMEs' securities	☐	☐	☐	☐	☐	☐
Lack of liquidity of securities	☐	☐	☐	☐	☐	☐
Other	☐	☐	☐	☐	☐	☐

Please specify to what other factor(s) you refer in your answer to question 2 c): *(4000 character(s) maximum)*

Please explain the reasoning of your answer to question 2 c): *(4000 character(s) maximum)*

For bond issuers with securities on MTFs, the public market requirements imposed are often considered prohibitive. Many of these are geared towards equity issuers, rather than being tailored appropriately to bond issuers. Specifically, we would highlight the Market Abuse requirements as being very onerous and suggest amending to make them more appropriate for bond issuers.

Companies, in particular SMEs, do not consider listing in the EU as an easy and affordable means of financing and may also find it difficult to stay listed due to on-going listing requirements and costs. More specifically, the new CMU action plan identified factors such as high administrative burden, high costs of listing and compliance with listing rules once listed as discouraging for many companies, especially SMEs, from accessing public markets. When taking a decision on whether or not to go public, companies weigh expected benefits against costs of listing. If costs are higher than benefits or if alternative sources of financing offer a less costly option, companies will not seek access to public markets. This de facto limits the range of available funding options for companies willing to scale up and grow.

Question 3. In your view, what is the relative importance of each of the below costs in respect to the overall cost of an initial public offering (IPO)?

a) Direct costs:

	very low	rather low	neutral	rather high	very high	don't know - no opinion - not applicable
Fees charged by the issuer's legal advisers for all tasks linked to the preparation of the IPO (e.g. drawing- up the prospectus, liaising with the relevant competent authorities and stock exchanges etc.)	☐	☐	☐	☒	☐	☐
Fees charged by the issuer's auditors in connection with the IPO	☐	☐	☐	☒	☐	☐
Fees and commissions charged by the banks for the coordination, book building, underwriting, placing, marketing and the roadshow	☐	☐	☐	☒	☐	☐
Fees charged by the relevant stock exchange in connection with the IPO	☒	☐	☐	☐	☐	☐
Fees charged by the competent authority approving the IPO prospectus	☐	☐	☐	☐	☐	☐
Fees charged by the listing and paying agents	☐	☐	☐	☐	☐	☐
Other direct costs	☐	☐	☐	☐	☐	☐

Please specify to what other costs you refer in your answer to question 3 a): *(2000 character(s) maximum)*

b) Indirect costs:

	very low	rather low	neutral	rather high	very high	don't know - no opinion - not applicable
The potential underpricing of the shares during the IPO by investment banks	☐	☐	☐	☐	☐	☐
Cost of efforts required to comply with the regulatory requirements associated with the listing process	☐	☐	☐	☒	☐	☐
Other indirect costs	☐	☐	☐	☐	☐	☐

Please specify to what other costs you refer in your answer to question 3 b): *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 3: *(4000 character(s) maximum)*

Feedback indicates that the cost of going and being public is a cause of the decline in the popularity of equity markets. Companies measure costs both in absolute terms and in relation to available alternatives. The fixed cost of going public includes bank fees, legal fees, listing sponsors, auditing fees, costs for prospectus and material and exchange fees. The overall cost varies considerably among companies and countries and depends significantly on how complex a business is and the amount of capital it is proposing to raise as part of the IPO (see also the Oxera study on Primary and Secondary Markets in the EU, which contains a section on direct and indirect costs of going/being public). FESE has estimated the costs to be approximately:

- 10 to 15% of the amount raised from an initial offering of less than EUR 6 million:
- 6 to 10% from between EUR 6 million and EUR 50 million
- 5 to 8% from between EUR 50 million and EUR 100 million
- 3 to 7,5% from more than EUR 100 million

The ongoing costs of being listed include costs for sponsors, brokerage services, exchange listing fees and sometimes independent research providers. Companies also consider the costs in terms of the complexity of the process, the time it requires from the management team and risks involved in the process. It has been highlighted that the biggest costs are mostly hidden, including the cost of regulatory compliance.

Feedback indicates that preparations for financial reporting are a relatively high-cost factor. The increasing number of disclosure obligations for public companies disincentives listings due to the resulting disclosure asymmetry with respect to competitors. Therefore, it is also important that any new reporting obligations should be based on a thorough analysis/use cases.

In addition, it should be noted that in smaller markets, the extent of new regulations that have come into force in recent years has led to companies struggling with keeping up, i.e. the cost of complying with the requirements of being listed is not only assessed in terms of current regulation but also taking into account the cost of complying with potential new requirements. There is thus a significant opportunity cost created by the lack of regulatory certainty.

Oxera: Primary and Secondary Markets in the EU, https://www.oxera.com/wp-content/uploads/2020/11/Oxera-study-Primary-and-Secondary-Markets-in-the-EU-Final-Report-EN-1.pdf

After their initial listing, companies continue to incur a number of costs that derive from being listed. These costs can be both indirect such as those derived from compliance and regulation requirements and direct such as fees paid to the listing venue. In some cases companies may choose to voluntarily delist in order to avoid these costs which can be viewed as excessive, especially for SMEs.

Question 4. In your view, what is the relative importance of each of the below costs in respect to the overall costs that a company incurs while being listed?

a) Direct costs:

	very low	rather low	neutral	rather high	very high	don't know - no opinion - not applicable
Ongoing fees due by the issuer to the listing venue for the continued admission of its securities to trading on the listing venue	☒	☐	☐	☐	☐	☐
Ongoing fees due by the issuer to its paying agent	☐	☐	☒	☐	☐	☐
Ongoing legal fees due by the issuer to its legal advisors (if post-IPO external legal support is necessary to ensure compliance with listing regulations)	☐	☐	☐	☒	☐	☐
Fees due by the issuer to auditors if post-IPO, extra auditor work is necessary to ensure compliance with listing regulation	☐	☐	☐	☒	☐	☐
Corporate governance costs	☐	☐	☒	☐	☐	☐
Other direct costs (e.g. costs for extra headcount, costs allocated to investors' relationships, development and maintenance of a website)	☐	☐	☐	☒	☐	☐

Please specify to what other direct costs you refer in your answer to question 4 a): *(2000 character(s) maximum)*

b) Indirect costs:

	very low	rather low	neutral	rather high	very high	don't know - no opinion - not applicable
Increased risk of litigation due to investor base and increased scrutiny and supervision derived from being listed	☐	☐	☐	☐	☐	☐
Other indirect costs	☐	☐	☐	☐	☐	☐

Please specify to what other costs you refer in your answer to question 4 b): *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 4: *(4000 character(s) maximum)*

The feedback comes from issuers from one SME GM.

In order to comply with all regulatory requirements such as those included in the MAR or the Prospectus Regulation, companies have to invest time and resources. This may be seen as a disproportionate burden compared to the advantages this may bring in terms of investors protection.

Question 5.1. In your view, does compliance with IPO listing requirements create a burden disproportionate with the investor protection objectives that these rules are meant to achieve?

☐ Yes

☐ No

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 5.1: *(4000 character(s) maximum)*

Question 5.2 In your view, does compliance with post-IPO listing requirements create a burden disproportionate with the investor protection objectives that these rules are meant to achieve?

☐ Yes

☐ No

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 5.2: *(4000 character(s) maximum)*

Public markets are not flexible enough to accommodate companies' financing needs. This lack of flexibility may be driven by regulatory constraints (e.g. concerning the ability of companies owners to retain control of their business when going public by issuing shares with multiple voting rights), as well as by the lack of legal clarity in relevant legislation (e.g. the conditions under which a company may seek dual listing). Regulatory constraints or legal uncertainty may discourage the use of public markets by firms that find requirements inadequate or unclear.

Question 6. In your view, would the below measures, aimed at improving the flexibility for issuers, increase EU companies' propensity to access public markets?

	yes	no	don't know – no opinion – not applicable
Allow issuers to use shares with multiple voting rights when going public	☒	☐	☐
Clarify conditions around dual listing	☒	☐	☐
Lower minimum free float requirements	☒	☐	☐
Eliminate minimum free float requirements	☐	☒	☐
Other	☒	☐	☐

Please specify to what other measure(s) you refer in your answer to question 6: *(2000 character(s) maximum)*

As a general comment, FESE believes that tax incentives are a very important instrument in this area, to enhance the attractiveness of public markets for SMEs. Therefore, targeted reviews of existing tax regimes should complement structural reforms in several areas, mentioned in the sections above, with a view to create a vivid environment with mutually reinforcing regulatory and tax incentives.

We fully support TESG's recommendation 11 to review the Risk Finance Guidelines (RFG) to broaden the definition of eligible undertakings which may benefit from targeted and well-designed tax incentives. We believe this can have a significant positive impact both on companies seeking access to public equity financing and on financial intermediaries assisting these companies.

More specifically, the Commission should consider enabling Member States to support SMEs facing difficulties in gaining access to capital markets by:

- Including a definition of a Small and Medium Capitalisation Company (SMC) – as SMEs listed on alternative venues (MTFs or GMs) with a market capitalisation of €1 billion in the Risk Finance Guidelines – to allow a higher number of smaller companies to benefit from tax incentives compatible with State Aid rules.
- Amending Article 24(2) of the General Block Exemption Regulation (GBER) to clarify that aid for scouting costs can be extended to support SME investment research in unlisted SMEs.
- Clarifying that studies (commissioned and funded by the Commission) attesting the existing public equity capital market failure in the EU may be used by Member States to prove such failure in the clearance procedure.

Please explain the reasoning of your answer to question 6: *(4000 character(s) maximum)*

FESE supports the introduction of an option into EU law for issuers to adopt multiple voting rights structures, such as dual-class shares (recommendation 4 from the TESG Report). We also note that the CMU HLF expressed support for such an option: "Companies should have a choice to opt for dual-class shares with variable voting rights when going public […] to the extent it does not disincentivise investors from investing in companies."

We would suggest opting for a permanent (i.e. not a sandbox) general framework at the EU level to ensure that all Member States include such option. However, the

detailed framework design should rather be done at the national level to adapt to the local ecosystem and needs of local investors.

FESE also supports recommendation 2.G from the TESG Report to provide legal clarity on the issue of dual listing by amending Article 33(7) of MiFID II to make it explicit that issuers admitted to trading on an SME GM may on their own request demand to be admitted to trading on another SME GM.

The lack of available company research and insufficient liquidity discourage investors from investing in some listed securities. Many securities issued by SMEs in the EU are characterised by lower liquidity and higher illiquidity premium, which may be the direct result of how these companies are perceived by investors, in particular institutional investors, who do not find them sufficiently attractive. Furthermore, institutional investors may fear reputational risk when investing in companies listed on multilateral trading facilities, including SME growth markets, given the lack of minimum corporate governance requirements for issuers on those venues.

Question 7. In your view, what are the main factors that explain why the level of institutional and retail investments in SME shares and bonds remains low in the EU?

	not important	rather not important	neutral	rather important	very important	don't know - no opinion - not applicable
Lack of visibility and attractiveness of SMEs towards investors leading to a lack of liquidity for SME shares and bonds	☐	☐	☐	☐	☒	☐
Lack of investor confidence in listed SMEs	☐	☐	☐	☒	☐	☐
Lack of tax incentives	☐	☐	☐	☐	☒	☐
Lack of retail participation in public capital markets (especially in SME growth markets)	☐	☐	☐	☒	☐	☐
Other	☐	☐	☐	☐	☒	☐

Please specify to what other factor(s) you refer in your answer to question 7: *(2000 character(s) maximum)*

FESE considers that measures should be taken to improve access to equity research on SMEs.

A growing number of SMEs are paying independent research providers to write research and take the initiative in approaching investors directly. However, this is challenging due to potential conflict of interests and a lack of recognition and coverage limitations due to budget constraints. Some Exchanges have launched programs to cover the costs of SME research and the first results suggest that it can create additional liquidity for listed SMEs.

As a result of unbundling rules, fund managers are prevented from accepting research on small companies provided by brokers for free. The rules should be amended to allow brokers to send SME-research reports to fund managers without having to establish a research contract with them.

Access to equity research on SMEs could be improved by:

- Launching a Pan-European program to cover the costs of research coverage.
- Establish user-friendly platforms for analysts to share their reports on.

In particular, FESE believes that this last point could well fit within the ESAP proposal. SME research reports can provide added value to the overall information reported to the ESAP in the SME context. It has the potential to incentivise the provision of equity research as providers would gain visibility.

Authorising the bundling of SME research is one way to increase the production and distribution of independent reports and may have a positive effect on the liquidity of SMEs. Therefore, FESE very much welcomed the proposed MiFID Delegated Act on SME Research. Moreover, we agree with the SME definition as companies that do not exceed a market capitalisation threshold of EUR 1 billion over 12 months. However, feedback from the market indicates that it is still premature to draw conclusions on the effectiveness of the Recovery Package in this respect.

Please explain the reasoning of your answer to question 7: *(2000 character(s) maximum)*

2. Specific questions on the existing regulatory framework

2.1. Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market)

The Prospectus Regulation (Regulation (EU) 2017/1129), which started applying in July 2019, lays down the rules governing the prospectus that must be made available to the public when a company makes an offer to the public or an admission to trading of transferable securities on a regulated market in the EU. The prospectus is a legal document that contains information about the issuer (e.g. main line of business, finances and shareholding structure) and the securities offered to the public or to be admitted to trading on a regulated market. A prospectus has to be approved by the competent authority of the home Member State before the beginning of the offer or the admission to trading of the securities.

The Prospectus Regulation has been subject to targeted amendments:

(i) at the end of 2019 under the SME Listing Act

(ii) in 2020 under the Crowdfunding Regulation

(iii) and in 2021 under the capital markets recovery package

However, the prospectus regime remains to be seen by some as burdensome and unfit for attracting companies, in particular SMEs, to public markets. Both the CMU High Level Forum (HLF) and the TESG have highlighted that the process of drawing up a prospectus and getting it approved by the relevant national competent authority is expensive, complex and time-consuming and that targeted yet ambitious simplification of prospectus rules could reduce significantly compliance costs for companies and lower obstacles to tapping public markets.

This section aims at gathering respondents' views on the costs stemming from the application of the prospectus regime as well as on which requirements are most burdensome and how it would be possible to alleviate them without impairing investor protection and the overall transparency regime. Furthermore, this section aims to examine other aspects of the Prospectus Regulation, such as the functioning of the thresholds for exemptions from the obligation to publish a prospectus, the language regime and rules concerning the approval and publication of prospectuses.

2.1.1. Costs stemming from the drawing up of a prospectus

Question 8.1 As an issuer or an offeror, could you provide an estimation for the average cost of the prospectuses listed below (in EUR amount)? If necessary, please provide different estimations per type of prospectus (e.g. prospectus for an IPO, for a right issue, for a convertible bond, for a corporate bond, for an EMTN programme).

Prospectus Type	Estimation for the average cost in EUR
Standard prospectus for equity securities	
Standard prospectus for non-equity securities	
Base prospectus for non-equity securities	
EU growth prospectus for equity securities	

EU growth prospectus for non-equity securities	
Simplified prospectus for secondary issuances of equity securities	
Simplified prospectus for secondary issuances of non-equity securities	
EU recovery prospectus (currently available for shares only)	

Please explain the reasoning of your answer to question 8.1: *(2000 character(s) maximum)*

The average FESE members estimated costs are negatively correlated to the IPO size.

- IPO <EUR 6 million -> 10-15%
- Between EUR 6 and 50 million -> 6-10%
- Between EUR 50 and 100 million -> 5-8%
- > EUR 100 million -> 3-7.5%

Question 8.2 Considering the total costs incurred by an issuer for the drawing up of a prospectus, please indicate what is the relative importance of each of the below costs in respect to the overall costs.

a) IPO prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	don't know - no opinion - not applicable
Issuer's internal costs	☐	☐	☒	☐	☐	☐
Auditors costs	☐	☐	☒	☐	☐	☐
Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)	☐	☐	☒	☐	☐	☐
Competent authorities' fees	☐	☐	☐	☐	☐	☐
Other costs	☐	☐	☐	☐	☐	☐

Please specify to which costs you are referring to in answer to question 8.2 a): *(2000 character(s) maximum)*

b) Right issue prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	don't know - no opinion - not applicable
Issuer's internal costs	☐	☐	☐	☐	☐	☐
Auditors costs	☐	☐	☐	☐	☐	☐
Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)	☐	☐	☐	☐	☐	☐
Competent authorities' fees	☐	☐	☐	☐	☐	☐
Other costs	☐	☐	☐	☐	☐	☐

Please specify to which costs you are referring to in answer to question 8.2 b): *(2000 character(s) maximum)*

c) Bond issue prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	don't know - no opinion - not applicable
Issuer's internal costs	☐	☒	☐	☐	☐	☐
Auditors costs	☒	☐	☐	☐	☐	☐
Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)	☐	☐	☐	☒	☐	☐

Competent authorities' fees	☐	☒	☐	☐	☐	☐
Other costs	☐	☐	☐	☐	☐	☐

Please specify to which costs you are referring to in answer to question 8.2 c): *(2000 character(s) maximum)*

d) Convertible bond issue prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	don't know - no opinion - not applicable
Issuer's internal costs	☐	☒	☐	☐	☐	☐
Auditors costs	☒	☐	☐	☐	☐	☐
Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)	☐	☐	☐	☒	☐	☐
Competent authorities' fees	☐	☒	☐	☐	☐	☐
Other costs	☐	☐	☐	☐	☐	☐

Please specify to which costs you are referring to in answer to question 8.2 d): *(2000 character(s) maximum)*

e) EMTN program prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	don't know - no opinion - not applicable
Issuer's internal costs	☐	☒	☐	☐	☐	☐
Auditors costs	☒	☐	☐	☐	☐	☐

Legal fees (including legal fees borne by underwriters for drawing- up the prospectus)	☐	☐	☐	☒	☐	☐
Competent authorities' fees	☐	☒	☐	☐	☐	☐
Other costs	☐	☐	☐	☐	☐	☐

Please specify to which costs you are referring to in answer to question 8.2 e): *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 8.2: *(5000 character(s) maximum)*

Question 9. What are the sections of a prospectus that you find the most cumbersome and costly to draft?

	not burdensome at all	rather not burdensome	neutral	rather burdensome	very burdensome	don't know – no opinion – not applicable
Summary	☐	☒	☐	☐	☐	☐
Risk factors	☐	☐	☐	☐	☒	☐
Business overview	☐	☐	☒	☐	☐	☐
Operating and financial review	☐	☐	☒	☐	☐	☐
Regulatory environment	☐	☐	☐	☐	☒	☐
Trend information	☐	☒	☐	☐	☐	☐
Profit forecasts or estimates	☐	☐	☐	☐	☒	☐
Administrative, management and supervisory bodies and senior management	☐	☐	☐	☒	☐	☐

Related party transactions	☐	☐	☒	☐	☐	☐
Financial information concerning the issuer's assets and liabilities, financial position and profit and losses	☐	☐	☐	☒	☐	☐
Working capital statement	☐	☐	☐	☐	☒	☐
Statement of capitalisation and indebtedness	☐	☐	☐	☒	☐	☐
Others	☐	☐	☐	☐	☐	☐

Please specify to what other section(s) you refer in your answer to question 9, and explain your rating: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 9: *(4000 character(s) maximum)*

Unaudited outstanding profit forecasts should not be included in the prospectus, regardless of the asset class. This is because forecasts are akin to a business plan and could be misinterpreted or could mislead investors in case they are not audited. The inclusion of unaudited profit forecasts could reflect badly on investor trust and could over time damage financing opportunities for all SMEs, as growth segments would suffer from a less robust reputation than the rest of the market. About summaries, we believe the provisions may be too prescriptive which could in fact lead to increased legal costs for issuers.

Question 10. As an issuer or an offeror, how much money do you consider saving with the EU growth prospectus compared to a standard prospectus (in percentage)?

	Less than or equal to 10%	More than 10% and less than or equal to 20%	More than 20% and less than or equal to 40%	More than 40% and less than or equal to 50%	More than 50%	don't know - no opinion - not applicable
EU growth prospectus for equity securities compared to a	☐	☐	☒	☐	☐	☐

Standard prospectus for equity securities						
EU growth prospectus for non- equity securities compared to a Standard prospectus for non- equity securities	☐	☐	☐	☐	☐	☐

Please explain the reasoning of your answer to question 10: *(2000 character(s) maximum)*

Feedback received by some issuers from one GM.

Question 11. As an issuer or offeror, how much money do you consider saving with the EU recovery prospectus, currently available only for shares, compared to a standard prospectus and a simplified prospectus for secondary issuances of equity securities (in percentage)?

	Less than or equal to 10%	More than 10% and less than or equal to 20%	More than 20% and less than or equal to 40%	More than 40% and less than or equal to 50%	More than 50%	don't know - no opinion - not applicable
EU recovery prospectus compared to a standard prospectus for equity securities	☐	☐	☐	☐	☒	☐
EU recovery prospectus compared to a simplified prospectus for secondary issuances of equity securities	☐	☐	☐	☐	☒	☐

Please explain the reasoning of your answer to question 11: *(2000 character(s) maximum)*

Feedback received by some issuers from one GM.

2.1.2. Circumstances when a prospectus is not needed

The Prospectus Regulation currently lays down several exemptions for the offer of securities to the public (Article 1(4) and 3(2)) or the admission to trading of securities on a regulated

market (Article 1(5)). Moreover, the Prospectus Regulation does not apply to offers of securities to the public below EUR 1 million, in accordance with the conditions laid down in Article 1(3).

Question 12.1 Would you be in favour of adjusting the current prospectus exemptions so that a larger number of offers can be carried out without a prospectus?

a) Exemptions for offers of securities to the public (Article 1(4) of the Prospectus Regulation): *(Please select as many answers as you like)*

☒ i. An offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors (Article 1(4), point (b))

☐ ii. An offer of securities whose denomination per unit amounts to at least EUR 100 000 (Article 1(4), point (c))

☐ iii. An offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer (Article 1(4), point (d))

☒ iv. Other exemptions

Please specify what changes you would propose to the exemption listed in point i. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

We suggest that issuers (especially SMEs) should no longer have to be restricted to addressing their offer to less than 150 investors in order to be exempt from the requirement to produce a prospectus as this is a very limited investor pool. We believe, instead, the investor limit should be increased to 500 to allow companies to access a wider investor base and therefore reduce their cost of capital. This would allow for a step change in companies' approach to fundraising, bearing in mind the recent innovations around crowdfunding and the increasing importance of syndicates of knowledgeable business angels in providing non-bank finance.

Please specify what changes you would propose to the exemption listed in point ii. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

Please specify what changes you would propose to the exemption listed in point iii. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

Please specify what changes you would propose to the exemption listed in point iv. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

FESE urges policy makers to devise new solutions to incentivise retail investors access to a variety of instruments and to increase retail investor participation in capital markets, as it is one key element of the Capital Markets Union that we strongly support.

We recognise the importance of the wholesale regime exemption listed in point two of this question, and we are in favour to keep the exemption unchanged. The EU wholesale market is functioning well and there is no evidence of market participants request for change. Under the current regime issuers choose freely to target wholesale or retail investors, this flexibility should be preserved maintaining our competitiveness with a favourable investor approach. Taking also into consideration that the UK regime will likely retain this provision as well. Having said that, we recognise at the same time that retail investors are often excluded from the corporate bonds market because there are not sufficient incentives for issuers to issue under EUR 100k, targeting retail investors.

Retail investors are usually not able to invest EUR 100k per security. For example, they are often not able to acquire investment-grade corporate bonds of major European companies. Considering this, FESE observes that retail investors are, on average, only able to access a smaller pool of potential investments. Thus, investors' securities portfolio is less diversified.

We believe regulators should consider improvements to the current retail regime. Make it more attractive for issuers and allow retail access to the corporate bonds market while, at the same time, keeping the wholesale regime competitive.

b) Exemptions for the admission to trading on a regulated market (Article 1(5) of the Prospectus Regulation): *(Please select as many answers as you like)*

☒ i. Securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of securities already admitted to trading on the same regulated market (Article 1(5), first subparagraph, point (a))

☐ ii. Shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph (Article 1(5), first subparagraph, point (b))

☒ iii. Other exemptions

Please specify what changes you would propose to the exemption listed in point i. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

We support increasing the threshold from 20% to a level to be determined (such as 30 – 40%) but which ensures that the fundamental characteristics of the business are not likely to be materially altered. Please refer also to our response in Q13.1.

Please specify what changes you would propose to the exemption listed in point ii. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

Please specify what changes you would propose to the exemption listed in point iii. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

As the issuer on an SME GM already complies with transparency requirements, we would consider it reasonable to allow issuers, whose securities have already been traded on an SME GM for a certain period of time and who have prepared an EU Growth Prospectus, to be admitted to trading on a regulated market by preparing a Recovery Prospectus. It demonstrated to be much less burdensome to prepare and a full prospectus, in this case, is not necessary from an investor protection perspective. Accordingly, it should be repealed the Recovery Prospectus conditionality requirement to issue a standard Prospectus in the previous years. Having issued a Growth Prospectus should be considered sufficient to proceed with the Recovery Prospectus to migrate to a Regulated Market.

c) Exemptions applicable to both the offer of securities to the public and admission to trading on a regulated market: *(Please select as many answers as you like)*

☐ i. Non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities: 1. are not subordinated, convertible or exchangeable; and 2. do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument (Article 1(4), point (j) and Article 1(5), first subparagraph, point (i)).

☐ ii. From 18 March 2021 to 31 December 2022, non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities: 1. are not subordinated, convertible or exchangeable; and 2.do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument (Article 1(4), point (l), and Article 1(5), first subparagraph, point (k))

☐ iii. Other exemptions

Please specify what changes you would propose to the exemption listed in point i. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

Please specify what changes you would propose to the exemption listed in point ii. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

Please specify what changes you would propose to the exemption listed in point iii. and include, where relevant, your preferred threshold: *(2000 character(s) maximum)*

Question 12.2 Would you consider that more clarity should be provided on the application of the various thresholds below which no prospectus is required under the Prospectus Regulation (e.g. on total consideration of the offer and calculation of the 12 month-period)?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Question 12.2.1 Please explain on which thresholds and on which elements more clarity is needed and explain your reasoning: *(2000 character(s) maximum)*

According to Article 3(2) of the Prospectus Regulation, Member States may decide to exempt offers of securities to the public from the obligation to publish a prospectus provided that the total consideration of each such offer in the Union is less than an amount calculated over a period of 12 months which shall not exceed EUR 8 million. In the event of a contextual offer of securities to both retail and professional investors, we would welcome more clarity on the application of the described exemption, given that divergent approaches seem to have been adopted by certain NCAs across the different European jurisdictions. In particular, it is our understanding that the exemptions provided under the Prospectus Regulation are stand-alone exemptions, meaning, for example, that an offer to the public of instruments to retail investors with a consideration below the EUR 8 million constitutes an exemption and such exemption is maintained even in the case the EUR 8 million threshold is reached by adding also the consideration of the offer addressed to only qualified investors (which does not equally trigger the obligation to publish a prospectus). Hence, we would welcome the Commission to clarify that in the event of a combined offer to retail and qualified investors, given that each exemption under the Prospectus Regulation is autonomous, no cumulation of consideration will have to be carried out and consequently no requirement to publish a prospectus is triggered in case the threshold set Article 3(2) is not reached by the offer addressed to the retail tranche.

Please explain the reasoning of your answer to question 12.2: *(2000 character(s) maximum)*

Question 12.3 Could any additional types of offers of securities to public and admissions to trading on a regulated market be carried out without a prospectus while maintaining adequate investor protection?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Question 12.3.1 Please specify in the textbox below which additional exemptions you would propose, explaining your reasoning: *(2000 character(s) maximum)*

Employee option programs (Art. 1(5)(h)) should be excluded entirely from the scope of the EU Prospectus Regulation (Art. 1(2)), as employees are sufficiently informed by their employer's ongoing transparency reporting. The information document required under Art. 1(5)(h) does not provide employees with any additional information.

Please explain the reasoning of your answer to question 12.3: *(2000 character(s) maximum)*

Question 13.1 The exemption thresholds in Articles 1(3) and 3(2) are designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers for small offers. If you consider that these thresholds should be adjusted so that a larger number of offers can be carried out without a prospectus, please indicate your preferred threshold in the table below.

Provision	Preferred Threshold
Article 1(3) of the Prospectus Regulation. Explanation: Offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months, are out of scope of the Prospectus Regulation. **Existing Threshold: EUR 1 000 000**	FESE agrees to keep the existing threshold at EUR 1 million.
Article 3(2) of the Prospectus Regulation. Explanation: Member States may decide to exempt offers of securities to the public from the obligation to publish a prospectus provided that such offers do not require notification (passporting) and the total consideration of each such offer in the Union is less than a monetary amount calculated over a period of 12 months which shall not exceed EUR 8 000 000. **Existing Threshold: EUR 8 000 000 (Upper threshold)**	Exemption threshold shall also apply to the exemptions for the admission of securities (Art. 1 section 5). However, the threshold should remain at EUR 8 million.

Please explain the reasoning of your answer to question 13.1: *(2000 character(s) maximum)*

While we do not propose that the thresholds should be increased, we would suggest a different approach. FESE believes there needs to be a clearer distinction made between primary public offers and further issuances that are done by companies with securities already admitted to a regulated market or SME Growth market.

We set out our proposal as follows:

- For primary issuances - the threshold exemption of EUR 8 million should be retained and harmonised across the EU for initial public offers.
  For further issuances – this threshold of EUR 8 million should not apply to further issuances done by companies that already have securities admitted to a regulated market or SME Growth market, and, instead, these companies should be allowed to do further issuances without any requirement to publish a prospectus for issuances up to a certain level (such as 30 – 40% as referred to in Q12.1) of the number of securities already admitted to trading on the same

market. Once the threshold is exceeded over a period of 12 months, Art. 5(a) of the Regulation is triggered, and a simplified prospectus under the secondary issuance regime should be required.

Harmonising the threshold for primary issuances at EUR 8 million should enhance cross-border listings and make it easier for companies that want to list in different jurisdictions, thereby reinforcing the integration of EU capital markets and opening up investments to investors across the EU. We would caution against any consideration of decreasing this threshold as this would be damaging and likely to disincentivise companies from engaging in public offers given the costs involved, contrary to the aims of CMU.

For further issuances, we believe our proposal will provide additional flexibility for these companies. It would reduce costs considerably and would likely increase capital raisings across EU markets.

Question 13.2 Do you agree with Member States exercising their discretion over the threshold set out in Article 3(2) of the Prospectus Regulation with a view to tailoring it to national specificities of their markets?

☐ Yes

☒ No (please make an alternative proposal)

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 13.2: *(2000 character(s) maximum)*

To encourage listings across the EU, and cross-border listings in particular, we suggest that the threshold of the total consideration of the offer to benefit from an exemption from the requirement to produce a prospectus (provided by art. 3(2) of the Prospectus Regulation) should be harmonised at EUR 8 million throughout the EU (over a period of 12 months).

2.1.3. The standard prospectus for offers of securities to the public or admission to trading of securities on a regulated market (primary issuances)

Several industry practitioners have stressed that the increasing length and complexity of the prospectus documentation is one of the most important costs associated to the listing process. According to a survey which analysed the average length of the IPO prospectus for the 10 most recent IPOs in the main EU markets as of March 2019, the median length of an IPO prospectus was 400 pages in Europe, with significant divergence among countries, ranging from 250 pages in the Netherlands to over 800 pages in Italy.

The excessive length – and thus high cost – of a prospectus is deemed particularly challenging for smaller issuers of both equity and non-equity securities. Data show that there is currently little proportionality with respect to the length of the IPO prospectus based on the size of the issuer: the mean number of pages for issuers with a market capitalisation between EUR 150 million and EUR 1 billion is even higher than for issuers with a market capitalisation above EUR 1 billion (577 versus 514 pages, respectively).

General issues

Question 14.1 Do you think that the standard prospectus for an offer of securities to the public or an admission to trading of securities on a regulated market in its current form

strikes an appropriate balance between effective investor protection and the proportionate administrative burden for issuers?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please indicate whether you consider that:

☐ a) The standard prospectus should be replaced by a more streamlined and efficient type of prospectus (e.g. EU growth prospectus)

☐ b) The standard prospectus should be significantly alleviated

☐ c) The standard prospectus for the admission to trading on a regulated market should be replaced by another document (e.g. an admission document)

☐ d) Other

If you chose 14.1 a), how should this more streamlined and efficient type of prospectus look like (or, if you refer to an existing type of prospectus, which one)?

Please explain your reasoning: *(4000 character(s) maximum)*

If you chose 14.1 b), what are the disclosures that could be removed or alleviated from a standard prospectus?

Please explain your reasoning: (You may take as reference the disclosures outlined in the table on question 9). *(4000 character(s) maximum)*

If you chose 14.1 c), how should this document look like?

Please explain your reasoning: *(4000 character(s) maximum)*

Please specify what you mean by 'other' in you answer to question 14.1: *(4000 character(s) maximum)*

Question 15.1. Would you support introducing a maximum page limit to the standard prospectus?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Question 15.2. How should such a limit be defined?

Please distinguish between a standard prospectus for equity and a standard prospectus for non-equity securities and clarify if you would consider any exceptions (e.g. complex type of securities, issuers with complex financial history).

Please explain your reasoning: *(4000 character(s) maximum)*

Please explain the reasoning of your answer to question 15: *(4000 character(s) maximum)*

Prospectus summary

Question 16. Do you believe that the prospectus summary regime has achieved its objectives (i.e. make the summary short, simple, clear and easy for investors to understand)?

	Yes	No	Don't know - No opinion - Not applicable
Summary of the standard prospectus (Article 7 of the Prospectus Regulation, excluding paragraph 12a)	☒	☐	☐
Summary of the EU growth prospectus (Article 33 of Commission Delegated Regulation (EU) 2019/980)	☐	☐	☐
Summary of the EU recovery prospectus (Article 7(12a) of the Prospectus Regulation)	☐	☐	☐

Please explain how the summary of the standard prospectus could be further improved and explain your reasoning: *(2000 character(s) maximum)*

Please explain how the summary of the EU growth prospectus could be further improved and explain your reasoning: *(2000 character(s) maximum)*

Please explain how the summary of the EU recovery prospectus could be further improved and explain your reasoning: *(2000 character(s) maximum)*

Incorporation by reference

The "incorporation by reference" mechanism allows the information contained in one of the documents listed in Article 19(1) of the Prospectus Regulation to be incorporated into a prospectus by including a reference. However, this information must have already been previously or simultaneously published electronically and drawn up in a language fulfilling

the language requirements laid down in Article 27 of the Prospectus Regulation. Incorporation by reference facilitates the procedure of drawing up a prospectus and lowers the costs for issuers.

Question 17. Would you suggest any improvement to the existing rules on incorporation by reference, including amending or expanding the list of information that can be incorporated by reference?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 17: *(2000 character(s) maximum)*

Any information coming from a public source may be included by reference. It would be very useful for SME issuers specifically.

The standard prospectus for non-equity securities

In the Prospectus Regulation non-equity securities are subject to specific rules, such as the possibility to draw up a base prospectus (normally for offering programs) and the dual regime for retail non-equity securities versus wholesale non-equity securities. The latter are non-equity securities that have a denomination per unit of at least EUR 100 000 or that are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in those securities. Wholesale non-equity securities are exempted from the prospectus for the offer to the public and are entitled to a lighter prospectus for the admission to trading on a regulated market (e.g. no prospectus summary, flexible language requirement, lighter disclosures), as set out in Commission Delegated Regulation (EU) 2019/980.

Question 18.1 Do you think that the prospectus (including the base prospectus) for non-equity securities, with differentiated rules for the admission to trading on a regulated market of retail and wholesale non-equity securities, has been successful in facilitating fundraising through capital markets?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 18.1: *(2000 character(s) maximum)*

Yes, we believe that the distinctions within the retail and wholesale non-equity regimes have created a sufficient balance in terms of disclosure requirements based on the nature of the investor targeted and are welcomed by market participants. There is no empirical evidence to suggest otherwise. The current regime is clear and well understood by all market participants.

For FESE it is important to highlight that we would not agree to have the wholesale regime, with the exemptions applicable, abolished or substantially modified. This is of utmost importance for the Eurobond market.

Question 18.2 Would you be in favour of further aligning the prospectus for retail non-equity securities with the prospectus for wholesale non-equity securities, to make the retail prospectus lighter and easier to be read?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 18.2: *(2000 character(s) maximum)*

We would not be in favour of further aligning these two regimes as we believe that a strong balance has already been struck within the current regimes. The disclosure exemptions contained within the wholesale regimes are appropriate as they are not relevant to qualify, sophisticated investors and would just result in additional, unnecessarily burdensome, and costly disclosure requirements. However, retail issuances are typically aimed at a much broader pool of investors with varying levels of knowledge / expertise and therefore we feel the current distinctions are appropriate. That said, if certain improvements could be made to the retail regime that are appropriate to such investors, this would be welcomed.

Question 18.3 Would you consider any other amendment to the existing rules?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 18.3: *(2000 character(s) maximum)*

2.1.4. Prospectus for SMEs

SMEs and other categories of beneficiaries (e.g. mid-caps listed on an SME growth market) defined in Article 15(1) of the Prospectus Regulation, can choose to draw up an EU growth prospectus for offers of securities to the public, provided that they have no securities admitted to trading on a regulated market. The EU growth prospectus is more alleviated than a standard prospectus, as it contains less disclosures (e.g. board practices, employees, important events in the development of the issuer's business, operating and financial review) and in some cases more alleviated ones (e.g. principal activities, principal markets, organisational structure, investments, trend information, historical financial information, dividend policy). As this development is relatively recent, there is limited data available to assess whether the introduction of the EU growth prospectus has affected the average length of prospectuses for SMEs. However, feedback from market participants indicates that there has not been a substantial decrease in the length of documents submitted after July 2019.

Question 19. Do you believe that the EU growth prospectus strikes a proper balance between investor protection and the reduction of administrative burdens for SMEs?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 19: *(2000 character(s) maximum)*

Question 19.1 How could the regime for SMEs be amended?

☐ The EU growth prospectus should remain the prospectus for SMEs but should be alleviated and / or a page size limit be introduced

☐ A new prospectus for SMEs should be introduced and aligned to the level of disclosures required for admission or listing by MTFs, including SME Growth markets

☐ Instead of a prospectus, another form of admission or listing document should be introduced

☒ Other

If you selected question 19.1 (i), please explain your reasoning and specify how it should be alleviated and what the page size limit should be: *(2000 character(s) maximum)*

If you selected option 19.1 (ii), which MTFs, including SME Growth markets, in the EU do you consider having the most appropriate admission or listing documents? Please explain your reasoning: *(2000 character(s) maximum)*

If you selected option 19.1 (iii), which MTFs, including SME Growth markets, in the EU do you consider having the most appropriate admission or listing documents? Could you please explain your reasoning: *(2000 character(s) maximum)*

If you selected option 19.1 (ii) or (iii), please explain your reasoning and specify what other form of admission or listing document should be introduced: *(2000 character(s) maximum)*

If you selected option 19.1 (iv), please specify how else should the regime be amended and explain your reasoning: *(2000 character(s) maximum)*

As the issuer on an SME GM already complies with transparency requirements, we would consider it reasonable to allow issuers, whose securities have already been traded on an SME GM for a certain period of time and who have prepared an EU Growth Prospectus, to be admitted to trading on a regulated market by preparing a Recovery Prospectus. It demonstrated to be much less burdensome to prepare and a full prospectus, in this case, is not necessary from an investor protection perspective. Accordingly, it should be repealed the Recovery Prospectus conditionality requirement to issue a standard Prospectus in the previous years. Having issued a Growth Prospectus should be considered sufficient to proceed with the Recovery Prospectus to migrate to a Regulated Market.

2.1.5. The format and language of the prospectus

Electronic Prospectus

The Prospectus Regulation sets out an obligation for issuers to provide a copy of the prospectus on either a durable medium or printed upon request of any potential investor. It has been noted that, due to the current prevalence of digital mediums, this may be an unnecessary cost and administrative burden for issuers.

Question 20. Do you agree that the above mentioned obligation should be deleted and that a prospectus should only be provided in an electronic format as long as it is published in accordance with Article 21 of the Prospectus Regulation?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 20: *(2000 character(s) maximum)*

We support this proposal as long as the long-term availability of the prospectus is ensured.

Issuers are currently required to publish their prospectus documents electronically and they must be available for a period of 10 years after their publication on the websites. The removal of the requirement to also provide the prospectus to potential investors in a printed / durable medium form would remove unnecessary additional administrative burden and cost.

Language rules for the prospectus

The TESG in its final report argued that publishing a prospectus only in English, as the customary language in the sphere of international finance, independently from the official language of the home or host Member States could reduce the burden on companies offering securities in several Member States and contribute to creating a level playing field amongst market participants.

Question 21. Concerning the language rules laid down in Article 27 of the Prospectus Regulation, with which of the following statements do you agree?

☒ It should be allowed to publish a prospectus only in English, as the customary language in the sphere of international finance

☐ It should be allowed to publish a prospectus only in English, as the customary language in the sphere of international finance, except for the prospectus summary

☐ It should be allowed to publish a prospectus only in English, as the customary language in the sphere of international finance, for any cross-border offer or admission to trading on a regulated market, including when a security is offered/admitted to trading in the home Member State

☐ It should be allowed to publish a prospectus only in English, as the customary language in the sphere of international finance, for any cross-border offer or admission to trading on a regulated market, including when a security is offered/admitted to trading in the home Member State, except for the prospectus summary

☐ There is no need to change the current language rules laid down in Article 27 of the Prospectus Regulation

☐ Don't know/ no opinion / not relevant

2.1.6. The prospectus for secondary issuances of issuers already listed on a regulated market or an SME growth market and/or for transfer from a SME growth market to a regulated market

The Prospectus Regulation currently lays down a simplified regime for secondary issuances of companies whose securities have already been admitted to trading on a regulated market or on an SME growth market continuously and for at least the last 18 months. Such companies are already subject to periodic and ongoing disclosure requirements, such as under the Transparency Directive and the Market Abuse Regulation. It can therefore be argued that there is less of a need to require a prospectus for secondary issuances. A simplified prospectus for secondary issuances can also be used, in accordance with the conditions laid down in Article 14(1), point (d), of the Prospectus Regulation, to transfer from an SME growth market to a regulated market (aka "transfer prospectus").

Furthermore, the capital markets recovery package introduced the new EU recovery Prospectus regime (Article 14a of the Prospectus Regulation) to allow for a rapid re-capitalisation of EU companies affected by the economic shock of the COVID-19 pandemic. The EU recovery prospectus consists on a single document, of only 30 pages and includes a 2 page-summary (neither the summary nor the information incorporated by reference are taken into account to determine the page-size limit), focusing on essential information that investors need to make an informed decision. This new short-form prospectus is meant to be easy to produce for issuers, easy to read for investors and easy to scrutinise for national competent authorities. The EU recovery prospectus is only available for secondary issuances of shares of issuers listed on a regulated market or an SME growth market continuously and for at least the last 18 months. It is currently intended as a temporary regime.

The TESG in its final report highlighted the need to further simplify the prospectus burden for subsequent admissions to trading or offers of fungible securities and recommended that a new simplified prospectus (replacing the current simplified prospectus for secondary issuances), similar in its form to the EU recovery prospectus, be adopted on a permanent basis for secondary issuances and for transfers from an SME growth market to a regulated market, provided that specific conditions are satisfied.

Question 22. Do you agree that, for issuers that have already been listed continuously and for at least the last 18 months on a regulated market or an SME growth market, the obligation to publish a prospectus could be lifted for any subsequent offer to the public and/or admission to trading of securities fungible with existing securities already issued (with a prospectus) without impairing investors' protection?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 22: *(2000 character(s) maximum)*

We welcomed the provision to allow an issuer whose securities are admitted to trading on an SME GM or a regulated market continuously for at least the last 18 months to benefit from a simplified prospectus when raising further issuances. Given the EU Recovery Prospectus was developed more recently and provides for a more simplified approach that is beneficial for both the issuer and the investor, we are of the view that it should be made permanent and should be used for all secondary issuances where a prospectus is required.

Question 22.1 (if not) Do you think that the regime for secondary issuances could nevertheless be simplified?

☐ The obligation to draw up a prospectus should, for both the offer to the public and the admission to trading on a regulated market of securities fungible with existing securities which have been previously issued, be replaced with the obligation to publish a statement confirming compliance with continuous disclosure and financial reporting obligations

☐ The obligation to draw up a prospectus should, for both the offer to the public and the admission to trading on a regulated market of securities fungible with existing securities which have been previously issued, be replaced with the obligation to publish an alternative admission or listing document (content to be defined at EU level). Such document should only be filed with the relevant national competent authority (i.e. neither subject to the scrutiny nor to the approval of the latter)

☒ The obligation to publish a prospectus should remain applicable (unless one of the existing exemptions apply) but only a prospectus significantly simplified and focusing on essential information should be required

☐ Other

☐ Don't know/ no opinion / not relevant

If you chose option 22.1 (ii), please indicate what could be the main characteristics and content of such admission or listing document and how it would compare to the already existing ones? Please explain your reasoning: *(4000 character(s) maximum)*

If you chose option 22.1 (iii), please indicate what the main simplifications should be and explain your reasoning: *(4000 character(s) maximum)*

We believe the EU Recovery prospectus should be required for secondary issuances, once the threshold is exceeded that triggers the obligation to produce a prospectus as per Art 5(a).

Please specify what you mean by 'other' in your answer to question 22.1 and explain your reasoning: *(2000 character(s) maximum)*

Question 23. Since the application of the capital markets recovery package, have you seen the uptake in the use of the EU recovery prospectus?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 23: *(2000 character(s) maximum)*

FESE supported the introduction of the Recovery Prospectus. However, it is still too early to draw conclusions on its efficacy. We are aware that it has been used a few times on our markets, but feedback indicates that issuers still need to adjust to this new regime.

Question 24. Do you think that the EU Recovery prospectus should:

	Yes	No	Don't know - No opinion - Not applicable
i. Be extended on a permanent basis for secondary issuances of shares	☒	☐	☐
ii. Be introduced on a permanent basis for secondary issuances of all types of securities (both equity and non-equity securities)	☒	☐	☐
iii. Be used as a simplified prospectus for all cases set out in Article 14(1)	☒	☐	☐
iv. Other	☐	☐	☐

Please explain the reasoning of your answer to question 24: *(2000 character(s) maximum)*

FESE supports recommendation 2.B from the TESG Report on the proposal to make permanent the Recovery Prospectus regime (effective from March 2021 in the context of the ongoing Covid-19 pandemic). This may lead to the creation of a permanent simplified prospectus regime for secondary issuances and facilitate the transfers from SME GMs to Regulated Markets. The Recovery Prospectus lays down principles of vital importance by recognising that listed companies are already transparent and that any prospectus for follow-on issuance should focus only on new information related to that specific transaction. This would mean modifying

Article 14(a) of the Prospectus Regulation to allow a prospectus to be developed that is easy to produce for issuers that want to raise equity (or debt) on capital markets, whilst ensuring the same level of investor protection. However, we would suggest further simplification to remove the requirement for a working capital statement. This is cited as an extremely costly requirement and we are of the view that should there be a material change in the company's financial position, it would be obliged under the Market Abuse Regulation (MAR) to have notified the market of this in any case, and therefore this requirement should not be necessary.

Question 24.1 If you replied in the affirmative to question 24 (i), which changes, if any, would be necessary to the EU recovery prospectus? Please explain your reasoning: *(4000 character(s) maximum)*

Question 24.2 If you replied in the affirmative to question 24 (ii), which changes would be necessary to the EU recovery prospectus, also to adapt it to the secondary issuance of non-equity securities? Please explain your reasoning: *(4000 character(s) maximum)*

Question 24.3 If you replied in the affirmative to question 24 (iii), which changes, if any, would be necessary to the EU recovery prospectus to adapt it to all cases under Article 14(1)? Please explain your reasoning: *(4000 character(s) maximum)*

Please explain what you mean by 'other' in your answer to question 24 and explain your reasoning: *(4000 character(s) maximum)*

2.1.7. Liability regime

The obligation to publish a prospectus entails a civil liability regime for issuers. Infringements to the provisions of the Prospectus Regulation may lead to administrative sanctions and other administrative measures, in accordance with Article 38 of that Regulation and, depending on national law, criminal sanctions. The prospectus is sometimes referred to as a document that serves to shield from liability issues (i.e. the more information the better) rather than to support investors in taking informed investment decisions.

Question 25. Do you think that the current punitive regime under the Prospectus Regulation is proportionate to the objectives sought by legislation as well as the type and size of entities potentially covered by that regime?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 25, notably in terms of costs: *(2000 character(s) maximum)*

Question 26. Do you believe that the current civil liability regime under the Prospectus Regulation is adequately calibrated?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

If you responded negatively to question 26, which changes would you propose in the context of this initiative? Please explain your reasoning *(4000 character(s) maximum)*

Question 27. Do you consider that the liability of national competent authorities' (NCAs) in relation to the prospectus approval process is adequately calibrated and consistent throughout the EU?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

If you responded negatively to question 27, which changes would you propose in the context of this initiative? Please explain your reasoning: *(4000 character(s) maximum)*

Question 28. According to your opinion, which administrative pecuniary sanctions (as prescribed in Article 38(2) of the Prospectus Regulation) have a higher impact on an issuer's decision to list?

	Pecuniary sanctions in respect of natural persons	Pecuniary sanctions in respect of legal persons
Issuers listed on SME growth markets	☐	☐
Issuers listed on other markets	☐	☐

Please explain the reasoning of your answer to question 28: *(2000 character(s) maximum)*

Question 29.1 Do you think that the maximum administrative pecuniary sanction for infringements laid down in Article 38(2) of the Prospectus Regulation in respect of legal persons should be decreased?

	Yes	No	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	☐	☐	☐
Issuers listed on other markets	☐	☐	☐

Question 29.1.1 Please specify to what level sanctions should be decreased: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 29.1: *(2000 character(s) maximum)*

Question 29.2 Do you think that the maximum administrative pecuniary sanction for infringements laid down in Article 38(2) of the Prospectus Regulation in respect of natural persons should be decreased?

	Yes	No	Don't know -No opinion - Not applicable
Issuers listed on SME growth markets	☐	☐	☐
Issuers listed on other markets	☐	☐	☐

Question 29.2.1 Please specify to what level sanctions should be decreased: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 29.2: *(2000 character(s) maximum)*

Question 30. Do you think that the possibility of applying criminal sanctions in the case of non-compliance with any of the requirements specified in Article 38(1) of the Prospectus Regulation should be removed?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Question 30.1 Please specify for which requirements: *(4000 character(s) maximum)*

2.1.8. Scrutiny and approval of the prospectus

Article 20 of the Prospectus Regulation lays down harmonised rules for the scrutiny and approval of the prospectus, with a view to fostering supervisory convergence throughout the EU. Article 20 also sets out the timelines for approving the prospectus, depending on the circumstances and type of document (e.g. prospectus for a first time offer of unlisted issuers, prospectus for issuers already listed or that have already offered securities to the public, EU recovery prospectus, prospectus which includes a URD). The criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus are further specified in Chapter V of Commission Delegated Regulation (EU) 2019/980.

Question 31. Do you consider that there is alignment in the way national competent authorities assess the completeness, comprehensibility and consistency of the draft prospectuses that are submitted to them for approval?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 31*: (2000 character(s) maximum)*

We are not aware of any significant issues in terms of approaches taken by national competent authorities (NCAs). However, we are aware that in certain jurisdictions additional documentation may be required in certain cases. We believe it is essential to encourage effective supervision that strikes the right balance between protecting investors and simplifying the process for issuers. We strongly advocate for a harmonised approach to the specific documentation that is required in the Prospectus Regulation, and it should be clearly set out the circumstances where such documentation is required. It should also be clarified that NCAs should not be allowed to ask for additional documentation, over and above what is required under the PR. The current system allows for strong coordination between NCAs under uniform rules with a broader level of supervision by ESMA. We do appreciate that convergence is required and applied but still support the role of NCAs at a national level in terms of interpretation and their assessment of domestic specificity. Overall, we believe that a balance needs to be struck between (i) direction and oversight by ESMA, and (ii) the autonomy of NCAs. We suggest that peer reviews can be helpful to identify if there are any issues so that supervisory convergence can be strengthened.

Question 31.1 Which material differences do you see across EU Member States (e.g. extra requirements and extra guidance being provided by certain national competent authorities)? *(2000 character(s) maximum)*

Question 32. Do you consider the timelines for approval of the prospectus as prescribed in Article 20 of the Prospectus Regulation adequate?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 32: *(2000 character(s) maximum)*

We believe the timelines are adequate. We would also highlight that time to market is extremely important for issuers and this ought to be an important consideration when NCAs approve prospectuses.

Question 32.1 Please provide concrete suggestions on how to improve the process: *(4000 character(s) maximum)*

Question 33.1 In its June 2020 report, the CMU HLF suggested that prospectuses could be made available to the public closer to the offer (e.g. in three working days). Should the minimum period of six working days between the publication of the prospectus and the end of an offer of shares (Article 21(1) of the Prospectus Regulation) be relaxed in order to facilitate swift book-building processes?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 33.1: *(4000 character(s) maximum)*

The six days requirement significantly reduces the flexibility for an IPO. Some issuers go for a private placement as a result. Therefore, we suggest decreasing it to three days as for the bond offerings since this may increase the attractiveness of the inclusion of retail in the IPOs.

Question 33.2 Should a minimum period of days between the publication of a prospectus and the end of an offer be set out also for offer of non-equity securities, in particular to favour more retail participation?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 33.2: *(2000 character(s) maximum)*

Determination of the "Home Member State"

The Prospectus Regulation, Article 2(m), sets out rules for the determination of the home Member State. As a general rule, for issuers established in the EU, the home Member State corresponds to the Member State where the issue has its registered office. However, different rules apply for non-equity securities with a denomination per unit above EUR 1 000 and for certain non-equity hybrid securities for which the 'Home Member State' means the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission trading on a regulated market.

Equity issuers established in the EU are therefore currently not able to choose their home Member State, while non-equity issuers established in the EU are allowed to do so, subject to the conditions laid down in Article 2(m), point (iii), of the Prospectus Regulation.

Question 34. Should the dual regime for the determination of the home Member State for non-equity and equity securities featured in Article 2(m) of the Prospectus Regulation be amended?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Question 34.1 Which national competent authority should be the relevant authority due to approve the prospectus?

☐ For all issuers established in the Union, whatever the securities to be issued, the national competent authority of the Member State where the issuer has its register office

☐ For all issuers established in the Union, whatever the securities to be issued, the national competent authority of the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market

☐ Other

☐ Don't know/ no opinion / not relevant

Please specify what you mean by 'other' in your answer to question 34.1: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 34: *(2000 character(s) maximum)*

2.1.9. The Universal Registration Document (URD)

Question 35. In your view, what are the main reasons for the lack of use of the URD among issuers across the EU? *(Please select as many answers as you like)*

☐ The time period necessary to benefit from the status of frequent issuer is too lengthy

☐ The URD supervisory approval process is too lengthy

☐ The costs of regularly updating, supplementing and filing the URD are not outweighed by its benefits

☐ The URD content requirements are too burdensome

☐ The URD is not suitable for non-equity securities as it is built on the more comprehensive registration document for equity securities

☐ The URD language requirements are too burdensome

☐ Other

Please specify to what other reason(s) you refer in your answer to question 35: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 35: *(4000 character(s) maximum)*

Question 36. As the URD can only be used by companies already listed, should its content be aligned to the level of disclosures for secondary issuances (instead of primary issuances as currently) to increase its take up by both equity and non-equity issuers?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 36: *(2000 character(s) maximum)*

Question 37. Should the approval of a URD be required only for the first year (with a filing every year after)?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 37: *(2000 character(s) maximum)*

Question 38. Should a URD that has been approved or filed with the national competent authority be exempted from the scrutiny and approval process of the latter when it is used as a constituent part of a prospectus (i.e. the scrutiny and approval should be limited to the securities note and the summary)?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 38: *(4000 character(s) maximum)*

Question 39. Should issuers be granted the possibility to draw up the URD only in English for passporting purposes, notwithstanding the specific language requirements of the relevant home Member State?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 39: *(2000 character(s) maximum)*

Question 40. How could the URD regime be further simplified to make it more attractive to issuers across the EU?

Please explain your reasoning: *(4000 character(s) maximum)*

2.1.10. Other possible areas for improvement

Supplements to the prospectus

Question 41.1 Has the temporary regime for supplements laid down in Articles 23(2a) and 23(3a) of the Prospectus Regulation provided additional clarity and flexibility to both financial intermediaries and investors and should it be made permanent?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 41: *(2000 character(s) maximum)*

Question 41.2 Would you propose additional improvements? Please explain your reasoning: (2000 character(s) maximum)

Equivalence regime

Question 42. Do you believe that the equivalence regime set out in Article 29 of the Prospectus Regulation, which is difficult to implement in its current version, should be amended to make it possible for the Commission to take equivalence decisions in order to allow third country issuers to access EU markets more easily with a prospectus drawn up in accordance with the law of a third country?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Question 42.1 How would you propose to amend Article 29 of the Prospectus Regulation? Please explain your reasoning: *(4000 character(s) maximum)*

Please explain the reasoning of your answer to question 42: *(4000 character(s) maximum)*

Other

Question 43. Would you have any other suggestions on possible improvements to the current prospectus rules laid down in the Prospectus Regulation?

Please explain your reasoning: *(4000 character(s) maximum)*

As part of ESMA's and the Commission's work on Level 2 measures, we strongly recommend clarifying which derivative instruments are within the scope of the Prospectus Regulation.

Our understanding is that the scope of the Regulation covers products such as securitised derivatives, which are currently subject to prospectus requirements, and does not cover exchange-traded derivative contracts, for which no prospectus requirements currently apply.

Securitised derivatives and derivative contracts are two distinct types of instruments. Exchange-traded options and futures are standardised contracts between financial counterparties – they are created by exchanges rather than issued and do not constitute an offer to the public. Securitised derivatives on the

other hand are issued by financial institutions, typically investment banks, and sold to predominantly retail investors as investment products.

A potential confusion however comes from the fact that the Level 2 measures (and the framework currently applicable in the markets) refer to 'derivatives' and 'non-equities securities' interchangeably without defining these terms. As the term 'derivatives' in the industry is commonly used to refer to options and futures contracts, we believe there would be a benefit in clarifying that derivative contracts are not within the scope of the prospectus regime. This would give further legal backing to current market practice and provide clear guidance to national competent authorities, which could otherwise interpret the provisions in diverging manners.

We welcome ESMA's view that the relevant definitions contained in the Commission Regulation should be carried over to the new regime in order to provide issuers with clarity and ensure that NCAs have the same understanding of similar provisions. However, ESMA's response to this issue is to carry forward Article 15.2 of the Commission Regulation (which clarifies when the derivatives schedule should be used) and therefore considers it unnecessary to include a definition of derivatives and securitised derivatives. However, in order to fully clarify this point, we would suggest introducing a Level 2 recital to explicitly state that the derivative instruments referred to in Annex I Section C (4) to (10) of MiFID II are not in the scope of the prospectus requirements.

2.2. Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse)

The Market Abuse Regulation ('MAR') entered into full application in 2016, it provides requirements for market participants to ensure the integrity of the financial markets.

In view of the periodic review of MAR, the European Commission, in March 2019, requested ESMA to provide a technical advice on the review of MAR on a number of topics (including the notion of inside information, the conditions for delaying the disclosure of inside information, insider lists, managers' transactions and sanctions). On 3 October 2019, ESMA publicly consulted the market on its preliminary view of the technical advice. The consultation ended on 29 November 2019 and received 97 responses. In September 2020, ESMA published its technical advice addressing all the topics on which the Commission asked advice on and identified several other provisions which were considered important to review in MAR ('ESMA TA'). According to ESMA, both the feedback to the consultation and NCAs experience indicate that, overall, the regime introduced by MAR works well. Accordingly, only a few targeted changes to the legislative framework have been recommended, sometimes to provide guidance at level 3 (e.g. on inside information and delayed disclosure of inside information). However, according to the CMU HLF and the TESG reports, there are a number of MAR provisions and requirements that may sometimes act as a disincentive for companies to list and remain listed on regulated markets and/or MTFs. The cost of complying with these requirements is deemed high, especially for SMEs. The legal uncertainty arising from certain provisions is indicated as an additional source of costs. Finally, the sanctioning regime is considered not proportionate and a discouraging factor for going and remaining public.

While the market abuse regime is crucial to safeguard market integrity and investor confidence, the Commission aims to assess if there is room for some targeted amendments and alleviations in the requirements laid down by MAR, in order to ensure proportionality and reduce burdens.

2.2.1. Costs and burden stemming from MAR

Question 44. For each of the MAR provisions listed below, please indicate how burdensome the EU regulation is for listed companies:

Definition of "inside information":

	not burdensome at all	rather not burdensome	neutral	rather burdensome	very burdensome	don't know - no opinion - not applicable
For all companies	☐	☐	☐	☒	☐	☐
For issuers listed on SME growth markets	☐	☐	☐	☐	☒	☐

Disclosure of inside information:

	not burdensome at all	rather not burdensome	neutral	rather burdensome	very burdensome	don't know - no opinion - not applicable
For all companies	☐	☐	☐	☒	☐	☐
For issuers listed on SME growth markets	☐	☐	☐	☐	☒	☐

Conditions to delay disclosure of inside information:

	not burdensome at all	rather not burdensome	neutral	rather burdensome	very burdensome	don't know - no opinion - not applicable
For all companies	☐	☐	☐	☒	☐	☐
For issuers listed on SME growth markets	☐	☐	☐	☐	☒	☐

Drawing up and maintaining insiders lists:

	not burdensome at all	rather not burdensome	neutral	rather burdensome	very burdensome	don't know - no opinion - not applicable
For all companies	☐	☐	☐	☒	☐	☐
For issuers listed on SME growth markets	☐	☐	☐	☐	☒	☐

Market sounding:

	not burdensome at all	rather not burdensome	neutral	rather burdensome	very burdensome	don't know - no opinion - not applicable
For all companies	☐	☐	☐	☐	☐	☐
For issuers listed on	☐	☐	☐	☒	☐	☐

SME growth markets						

Disclosure of managers' transactions:

	not burdensome at all	rather not burdensome	neutral	rather burdensome	very burdensome	don't know - no opinion - not applicable
For all companies	☐	☐	☐	☒	☐	☐
For issuers listed on SME growth markets	☐	☐	☐	☐	☒	☐

Enforcement:

	not burdensome at all	rather not burdensome	neutral	rather burdensome	very burdensome	don't know - no opinion - not applicable
For all companies	☐	☐	☐	☐	☐	☒
For issuers listed on SME growth markets	☐	☐	☐	☐	☐	☒

If there are other MAR provisions that you find burdensome for listed companies, please specify which ones and indicate to what extent they are burdensome for listed companies: *(4000 character(s) maximum)*

Bond markets

The MAR obligations have been highlighted to us as one of the key factors deterring new issuances choosing to list on non-EU markets, as it increases compliance and legal costs significantly for issuers. Therefore, FESE believes this is an opportunity to tailor the requirements to bond-only issuers thereby making the EU bond markets more attractive whilst still ensuring investor protection.

It is generally accepted that MAR was drafted and implemented with equity markets in mind: such a 'one size fits all' approach does not work for debt markets. In particular, there is a radical difference in secondary market dynamics between debt and equity and, as such, we do not believe there is the same justification to apply equity appropriate compliance requirements on debt issuers. The price of equity is significantly more volatile than the price of a bond, making it more attractive to potential manipulation, compared with bonds that do not have the same characteristics. By definition, the key variables that influence the price of a bond are (i) market risk, (ii) liquidity risk, and (iii) credit risk. Bondholders cannot

influence any of these variables, and the only variable that can be influenced by an issuer is the likelihood of default.

The current MAR provisions apply to issuers of all financial instruments admitted to an EU trading venue and there is no distinction made between issuers of different securities. FESE strongly believes that the provisions should be more tailored, in particular for issuers who exclusively issue bonds so as to make the requirement more appropriate to such issuances.

As an example, we understand the provisions related to inside information in respect of debt markets are from the experience bond-only issuers, overly detailed and prescriptive. The current test to determine 'significant effect on the prices of financial instruments' is very difficult to apply to the debt market, in contrast to the more liquid equity markets. Therefore, the information required to be disclosed should be limited to such information that would directly influence their ability to meet the repayment obligations of their debt issuances.

Please explain the reasoning of your answer to question 44, and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs): *(4000 character(s) maximum)*

FESE promotes a legal framework that fosters the integrity of the markets and provides legal certainty both for issuers and investors. FESE, however, has the impression that the current MAR framework does not provide a sufficient level of legal certainty and does not always strike the right balance between the need to ensure market integrity on the one hand and the need not to impose too onerous regulation on issuers.

For smaller markets, the regulatory burden can be sometimes overwhelming. More precisely, the 'one-size-fits-all' model, mostly used in the context of EU level legislative frameworks, is less proportional for smaller markets and brings excessive and disproportionate requirements for services providers, thus making the overall market less competitive.

Alleviations introduced for SME GMs are expected to bring benefits and reduce costs and efforts for SMEs listed on these markets. However, the market feedback we have received shows a broad perception that the planned alleviations are insufficient. The MAR regime is particularly onerous and cumbersome for SMEs. For instance, due to the application of MAR to companies listed on GMs, issuers on these specialised markets still need to a large extent to apply the requirements in place on main markets. This discourages smaller companies who face rising compliance costs and hence prefer to rely on private equity or even de-list.

SMEs often have fewer employees which makes it even more challenging to meet the regulatory requirements. Therefore, alleviations on SME GMs remain limited from an issuer's perspective. The legal costs of preparing the documentation and carrying out the required due diligence for listing on a public market are often considered prohibitive. Contractual documentation in private placements is standardised and perceived as much more cost-effective. Therefore, FESE shares the perspective held by many issuers that more significant alleviations are required to the MAR regime.

MAR requires all issuers of financial instruments to notify the public of inside information. A more proportionate approach is needed going forward. Especially SMEs may be disincentivised by the comparatively high regulatory burden.

We believe that MAR requirements should be further adapted/simplified, in particular with regard to SMEs. We propose:

- Differentiation for SME GMs in terms of disclosure requirements with respect to other market segments (e.g. dissemination of information); the required level of detail of insider lists should be reduced (beyond Regulation (EU) No 2019/2115) for SME GMs and include only the minimum fields necessary for supervisory purposes.
- Requirements in relation to managers' transaction reporting should be proportionately tied to the level of market capitalization (recommendation 3.C from the TESG Report).

Whether the legal uncertainties in relation to MAR overall would be addressed by further ESMA guidance or Level 1 amendments may be discussed.

2.2.2. Scope of application of MAR (Article 2)

Question 45. In your opinion, if MAR requirements started applying only as of the moment of trading, would there be potential cases of market abuse between the submission of the request for admission to trading and the actual first day of trading?

☒ Yes

☐ No

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 45: *(2000 character(s) maximum)*

If MAR requirements started applying only as of the moment of trading, "positive" inside information could be used by an investor to subscribe to financial instruments before the actual first day of trading, with the intention to sell those again at a profit once trading has started. In addition, there are derivative instruments with which one can take a position on yet unlisted financial instruments. This equips individuals with access to unpublished, price relevant information to misuse such information. Therefore, protecting information about an issuer even before the admission for trading becomes effective serves the level playing field, trust, and integrity of financial markets.

2.2.3. The definition of "inside information" and the conditions to delay its disclosure

Currently the notion of inside information makes no distinction between its application in the context, on the one hand, of market abuse and, on the other hand, of the obligation to publicly disclose inside information. However, inside information can undergo different levels of maturity and degree of precision through its lifecycle and therefore it might be argued that in certain situations inside information is mature enough to trigger a prohibition of market abuse but insufficiently mature to be disclosed to the public.

According to stakeholders, the current definition of inside information may raise problems, notably (i) for the issuer, the problem of identification of when the information becomes "inside information" and (ii) for the market, the risk of relying on published information which is not yet mature enough to make investment decisions.

ESMA, however, considers that the current definition of inside information "strikes a good balance between being sufficiently comprehensive to cater for a variety of market abuse behaviours, and sufficiently prescriptive to enable market participants, in most cases, to

identify when information becomes inside information" and recommended to leave the definition unchanged. ESMA however acknowledged that clarifications were sought by stakeholders both on the general interpretation of certain paragraphs of Article 7 of MAR (for instance, as regards intermediate steps, or the level of certainty needed to consider the information as precise), and on concrete scenarios. Therefore, ESMA stands ready to issue guidance on the definition of inside information under MAR.

Question 46. Do you consider that clarifications provided by ESMA in the form of guidance would be sufficient to provide the necessary clarifications around the notion of inside information?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 46: *(2000 character(s) maximum)*

We generally agree with ESMA's assessment that the current definition of inside information "strikes a good balance between being sufficiently comprehensive to cater for a variety of market abuse behaviours, and sufficiently prescriptive to enable market participants, in most cases, to identify when information becomes inside information". The issues on which clarification by ESMA would be appreciated were already raised by market participants as part of ESMA's consultation on the Market Abuse Regulation in Q4 2019. Feedback from smaller issuers points out that it is still difficult to determine when information becomes inside information for the purpose of the MAR regime. In fact, SME issuers doubting the applicability of the "inside information" definition are assuming risks for publishing information that is not mature enough. Hence, FESE believes that either more concrete guidelines from ESMA or amendments to the Level 1 text of MAR are necessary to further clarify the applicability of the definition of "inside information". While the current definition of inside information recognises that information may not be sufficiently mature to qualify as inside information through the attribute of "precise information" and establishes the "reasonable investor test" in order to determine if the information would be likely to have a significant effect on the price of a financial instrument, there is still legal uncertainty around these elements of the definition of inside information. Furthermore, while issuers also can resort to a delay of the publication under certain circumstances, the conditions for such delay are not always clear. The ESMA Guidelines on delay in the disclosure of inside information (as recently amended) do not provide sufficient guidance to issuers in all raised aspects. However, ESMA notes in its final MAR review report that most respondents considered that either the definition of inside information is adequate or that some guidance would be helpful.

Question 46.1 Please indicate if you would support the following changes or clarifications to the current definition of "inside information" under MAR:

	I support	I do not support	Don't know - No opinion - Not applicable

MAR should distinguish between a definition of inside information for the purposes of market abuse prohibition and a notion of inside information triggering the disclosure obligation.	☐	☒	☐
The definition of inside information with a significant price effect should be refined to clarify that "significant price effect" shall mean "information a rational investor would be likely to consider relevant for the long-term fundamental value of the issuer and use as part of the basis of his or her investment decisions".	☐	☐	☒
It should be clarified that inside information relating to a multi-stage process need only be made public once the end stage is reached, unless a leakage has occurred.	☐	☐	☒
Other	☒	☐	☐

Please specify to what other change(s) or clarification(s) you refer in your answer to question 46.1: *(2000 character(s) maximum)*

In our opinion, the definition of inside information is from an overall perspective adequate to identify inside information for the purpose of preventing market abuse. However, several additional aspects are the subject of discussions and uncertainty in connection with the definition of inside information. Feedback from smaller issuers points out that it is still difficult to determine when information becomes inside information for the purpose of the MAR regime. In fact, SME issuers doubting the applicability of the "inside information" definition are assuming risks for publishing information that is not mature enough. Hence, FESE believes that either more concrete guidelines from ESMA or amendments to the Level 1 text of MAR are necessary to further clarify the applicability of the definition of "inside information".

Issuers would therefore benefit from further clarification regarding the following points:

- Guidance on the meaning of "significant effect" and the "reasonable investor" would be appreciated.
- It is challenging for issuers to assess how likely an event should be in order for the information to be of "precise nature". More guidance on this notion would also be helpful.
- Clarity would be appreciated on how the requirement that the information must be non-public to constitute inside information relates to information that has been made public by someone else than the issuer.
- How does the definition of inside information is directly or indirectly related to an issuer, relate to the obligation under Article 17 of MAR to disclose inside information that directly concerns the issuer?
- It should be clarified that an intermediate step cannot be classified as inside information as long as the final result cannot be reasonably expected to occur.

- Preliminary figures from financial interim reporting can be inside information if they deviate significantly from either the published outlook, the market expectations, or the previous year figures.

Please explain the reasoning of your answer to question 46.1: *(2000 character(s) maximum)*

Regarding the question of whether or not a bifurcated definition of inside information should be implemented in MAR:

A distinction between the definition of inside information for the purposes of the insider dealing prohibition (which would relate to the current definition) and a definition for ad hoc publication purposes (which would start later) would potentially take interests of issuers into account who are currently confronted with a broad definition of inside information and the obligation to publish such information immediately. This can sometimes result in premature disclosure of information which is also not beneficial for the markets if investors are not able to draw the right conclusions.

However, the current regime provides instruments to avoid premature disclosure already implemented in the definition of inside information and with the possibility to delay the disclosure (please see our answer to Q46). Also, changing the nature of the definition (as mentioned above) might not lead to a simpler definition but might create new difficulties that would first need to be identified, communicated, and then addressed by the regulator. This would also negate the effort already invested in interpreting the current definition. Moreover, the disclosure of inside information is one of the most important tools for preventing market abuse. Changing the definition could increase the amount of unpublished price-relevant information held by the issuer, thereby increasing the risk of market abuse and it would also increase the need for and cost of additional risk-mitigating measures.

In some jurisdictions outside the EU, in addition to regulatory quarterly reports, issuers are only under the obligation to publicly disclose, on a rapid and current basis, information about material changes that might take place between quarterly reports, in relation to a pre-determined number of events. Those events are predefined and include the entry into (or termination of) a material definitive agreement, the issuer filing for bankruptcy or receivership, a material acquisition or disposition, a modification of the rights of security holders or the appointment or departure of directors or key managers. There may also be other types of inside information that the company would not be obliged to disclose publicly but may decide to do so nevertheless on a voluntary basis.

Question 47.1 Do you consider that a system relying on the concept of material events for the disclosure of inside information would provide more clarity?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 47.1: *(2000 character(s) maximum)*

Major contracts, material M&A activity and changes in key personnel already today represent the majority of events that are relevant for disclosure of inside information. Thus, the proposed new concept does not seem to be very different from the existing one.

Furthermore, if it was the intention under the proposed new concept to publish financial information exclusively via periodic reporting (annual, half-yearly and quarterly reports), this would entail an increased risk of insider dealing if, in the course of the preparation of the periodic report by the issuer's accounting department and before the publication of periodic financial information, it becomes clear that the final financial figures will likely materially deviate from the issuer's financial forecast and/or the market expectation. However, if more inside information remained unpublished, issuers would have to take even more extensive measures for the prevention of market abuse, thereby increasing the burden on issuers even further.

However, the proposal of a concept of material events could be further explored. A conclusive list of what constitutes a "material event" could be able to improve legal certainty for issuers. When looking at the United States, it seems that the concept is working well. However, in the EU regulatory environment, this may be more challenging. It would very much depend on the list and definition of material events whether or not such a new concept would be an improvement of the existing concept. Furthermore, it would require the reinstatement of the requirement for quarterly reporting in the EU, which would be a significant burden for issuers.

Question 47.2 In your opinion, would such a system pose any challenge to the integrity of the market?

☐ Yes

☐ No

☒ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 47.2: *(2000 character(s) maximum)*

Within such a system, an issuer may not publicly disclose inside information concerning events that are not included in the pre-determined number of events. In such a case an investor may take investment decisions based on incomplete information and makes decisions he or she would not make if all relevant information would be available to the public. Please see also our answer to Q47.1.

Article 17(4) of MAR allows, under specified conditions, to delay the disclosure of inside information. The regime of delayed disclosure of inside information is intimately interconnected with the definition of inside information. Any clarifications provided on delayed disclosures would thus have de facto an impact on when the information has to be considered as inside information.

Some stakeholders underline that there are currently interpretative challenges around the conditions to delay disclosure, especially in relation to when the delay is not likely to mislead the public. ESMA in its final report acknowledged the existence of interpretative challenges, but did not consider it necessary to amend the conditions for the application of the delay finding them reasonable and aligned with the overall market abuse regime.

However ESMA engaged into revising its guidelines on delay in the disclosure of inside information.

Question 48. Do you consider that the revision of ESMA's Guidelines on delay in the disclosure of inside information would be sufficient to provide the necessary clarifications?

☐ Yes

☐ No

☒ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 48: *(2000 character(s) maximum)*

From an overall point of view, FESE members, being trading venues, find the scheme well-functioning. However, feedback from our issuers indicates that it is a very difficult assessment to make, and uncertainty arises particularly in connection with rumours without factual basis and behaviour with respect to rumours (of any kind) while in delay. Difficulties also arise in assessing whether an issuer could still have legitimate interests to delay a disclosure even after the event is final, e.g. a contract being entered into and signed, or an interim financial report being adopted by the board of directors. In the latter case, it could be a legitimate interest to keep on delaying the publication of that information to the market with reference to a pre-published date (financial calendar) for the disclosure of the report. The revision of ESMA's Guidelines on delay does not address these issues (sufficiently). Unless further, more helpful, clarifications come forth, additions to the Level 1 text may be necessary. We generally believe that MAR should be further adapted and simplified for SME GMs. We support TESG SMEs recommendation that "the conditions for delaying the disclosure should be amended by repealing any reference to the possibility that investors are misled. This is indeed a highly controversial condition that often creates uncertainty in ex-post checks by NCAs (or criminal prosecutors). The condition that a listed company does not mislead the public when delaying disclosure of inside information easily slides into a circular requirement that is by definition impossible to comply with and should be repealed. This amendment would, for instance, allow issuers to interpret the legal basis correctly when they decide to disclose negotiations and only when they can be confident, with a sufficient degree of certainty, that a positive outcome is reached." See TESG Report 2021, p. 75.

Question 48.1 Please indicate what changes you would propose to Article 17(4) MAR and explain your reasoning: *(4000 character(s) maximum)*

2.2.4. Disclosure of inside information for issuers of bonds only

The TESG underlines that plain vanilla bonds are less exposed to risks of market abuse due to the nature of the instrument and, as a consequence, argues that the disclosure of all inside information for debt issuers (either positive or negative) only would be burdensome and not justified.

Question 49. Please specify whether you agree with the following statements:

Issuers that only issue plain vanilla bonds should:

	Yes	No	Don't know - No opinion - Not applicable
have the same disclosure requirements as equity issuers	☐	☒	☐
disclose only information that is likely to impair their ability to repay their debt	☐	☐	☒

Please explain the reasoning of your answer to question 49, notably in terms of costs (one-off and ongoing costs): *(4000 character(s) maximum)*

Please also see our answer to Q44.

The question does not seem to be clearly phrased. First, when is a bond considered to be "plain vanilla" and when not? Second, what does "the same disclosure requirements" refer to?

FESE believes that the same legal concepts can be applied to equity and debt instruments, but that does not mean that the application of such concepts will come to the same results for equity and debt instruments. A certain piece of information that might have a significant effect on the price of a share is less likely to also have a significant effect on the price of a bond. Bond investors will only consider such information that is likely to impair the issuer's ability to make payments on the bonds as per its terms and conditions. However, not only redemption payments within the meaning of the above question but potentially also interest payments. We would have answered **yes** to the question if it had read as follows:

"Issuers that only issue plain vanilla bonds should disclose only information that is likely to impair their ability to repay their debt or *their ability to make interest payments on the bond*".

We would also like to note that the assessment on whether certain information will have a significant effect on the price of a bond is especially burdensome for SMEs and high yield bond issuers, who are less likely to have access to analysts and brokers or internal staff with financial experience required, to model possible price impacts.

2.2.5. Managers' transactions

Under MAR, the Person Discharging Managerial Responsibilities (PDMR) or associated person must notify the issuer (either on a regulated market or a MTF, including SME growth market) and the competent authority of every transaction conducted for their own account relating to those financial instruments, no later than three business days after the transaction. The obligation to disclose a manager's transaction only applies once the PDMR's transactions have reached a cumulative EUR 5 000 within a calendar year (with no netting). A national competent authority may decide to increase the threshold to EUR 20 000. Issuers must ensure that transactions by PDMRs and persons closely associated with are publicly disclosed promptly and no later than two business days after the transaction.

Most respondents to the consultation launched by ESMA in the context of the technical advice for the Review of MAR (ESMA final report on MAR review, paragraph 8.2) considered that the current threshold (EUR 5 000) for managers' transaction is too low and that it could result in disclosing not meaningful transactions. Those respondents prefer a higher thresholds harmonised within the EU (possibly at the optional threshold of EUR 20 000). ESMA, however, recommended not to amend such requirement considering that the current threshold is appropriate in several Member States to provide for a fair picture of managers transactions. ESMA also recommended not to amend the reporting methodology for subsequent transactions or the regime for the disclosure of closely associated persons. On the contrary, both the TESG final report and the CMU HLF final report propose to increase the threshold for managers' transactions. Moreover, the TESG holds that the requirement to keep a list of closely associated persons should be repealed, as it entails costs that are disproportionate to the benefits offered.

In order for the Commission to strike the right balance between the burden associated with these requirements and the specific need for an efficient supervision of the integrity of the financial markets it is useful to gather quantitative data on how much those requirements weight on issuers.

Question 50. Do you believe that the minimum amount of EUR 5 000 provided in Article 19(8) MAR should be increased without harming the market integrity and investor confidence?

☒ Yes

☐ No

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 50: *(2000 character(s) maximum)*

We believe that this threshold, currently setting a total amount of EUR 5,000 reached within a calendar year (Articles 19 (8) and (9) of MAR), should be raised at the European level and not be left to Member States' discretion. We suggest it could be increased to EUR 20,000 across the EU. A more harmonised framework would be especially useful to facilitate more cross-border transactions in Europe. Market participants should face as few differences as possible as these function as barriers to cross-border financing activities.

Question 50.1 Please specify to what level the minimum amount set out in Article 19(8) should be increased and for which groups of issuers:

	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other
Issuers listed on SME growth markets	☐	☐	☒	☐	☐
Issuers listed on other markets	☐	☐	☒	☐	☐

Please specify to what level the minimum amount should be increased for issuers listed on SME growth markets: *(1000 character(s) maximum)*

Please specify to what level the minimum amount should be increased for issuers listed on all markets: *(1000 character(s) maximum)*

Question 51. Do you agree with maintaining the discretion for national competent authorities to increase the threshold set out in Article 19(8)?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 51: *(2000 character(s) maximum)*

We believe that this threshold, currently setting a total amount of EUR 5,000 reached within a calendar year (Articles 19 (8) and (9) of MAR), should be raised at the European level and not be left to Member States' discretion. We suggest it could be increased to EUR 20,000 across the EU.

A more harmonised framework would be especially useful to facilitate more cross-border transactions in Europe. Market participants should face as few differences as possible as these function as barriers to cross-border financing activities.

Question 51.1 What should be the maximum amount that national competent authorities can increase the threshold to?

	EUR 25 000	EUR 35 000	EUR 40 000	EUR 50 000	Other
Issuers listed on SME growth markets	☐	☐	☐	☐	☐
Issuers listed on other markets	☐	☐	☐	☐	☐

Please specify to what level the minimum amount should be increased for issuers listed on SME growth markets: *(2000 character(s) maximum)*

Please specify to what level the minimum amount should be increased for issuers listed on all markets: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 51.1: *(2000 character(s) maximum)*

Question 52.1 If you are an issuer to whom MAR applies or an NCA, please specify how many notifications you have received in the last 2 years according to Article 19(1):

	Threshold of EUR 5000	Threshold of EUR 20000
2019		
2020		

Question 52.2 How would the above figures change in case of an increased threshold under Article 19 (8) of MAR? *(Percentages represent how many less notifications (in % terms) would you receive in case of an increased threshold under Article 19(8))*

	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other
0%-10%	☐	☐	☐	☐	☐
11% -20%	☐	☐	☐	☐	☐
21% -35%	☐	☐	☐	☐	☐
36% -50%	☐	☐	☐	☐	☐
more than 50%	☐	☐	☐	☐	☐

Please specify what threshold you would retain for 0% to 10%: *(2000 character(s) maximum)*

Please specify what threshold you would retain for 11% to 20%: *(2000 character(s) maximum)*

Please specify what threshold you would retain for 21% to 35%: *(2000 character(s) maximum)*

Please specify what threshold you would retain for 36% to 50%: *(2000 character(s) maximum)*

Please specify what threshold you would retain for more than 50%: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 52.2: *(2000 character(s) maximum)*

Question 53.1 Please provide the approximate level of costs related to disclosure of managers' transactions in the last 2 years:

	Threshold of EUR 5 000	Threshold of EUR 20 000
2019		
2020		

Please explain the reasoning of your answer to question 53.1: *(2000 character(s) maximum)*

Question 53.2 Please provide the estimated level of cost savings (in % terms) in case of an increased threshold under Article 19(8):

(Percentages represent the estimated cost savings (in % terms) in case of an increased threshold in Article 19 (8))

	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other
0% -10%	☐	☐	☐	☐	☐
11% -20%	☐	☐	☐	☐	☐
21% -35%	☐	☐	☐	☐	☐
36% -50%	☐	☐	☐	☐	☐
more than 50%	☐	☐	☐	☐	☐

Please specify what threshold you would retain for 0% to 10%: *(2000 character(s) maximum)*

Please specify what threshold you would retain for 11% to 20%: *(2000 character(s) maximum)*

Please specify what threshold you would retain for 21% to 35%: *(2000 character(s) maximum)*

Please specify what threshold you would retain for 36% to 50%: *(2000 character(s) maximum)*

Please specify what threshold you would retain for more than 50%: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 53.2: *(2000 character(s) maximum)*

Question 54. Would you consider that public disclosure of managers' transactions should always be done by:

☐ Issuer

☐ National competent authority

☒ Either by issuer or national competent authority, depending on national law (status quo)

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 54: *(2000 character(s) maximum)*

There are cases in which the issuer is best suited and informed to support the PDMR with his or her disclosure duties and, therefore, also the best instance for public disclosure.

However, there are national cases where a system is designed by the local NCA to disclose such information. For example, in Sweden, manager's transactions are reported to the NCA where it is recorded into a national database and published.

Hence, we would support either approach depending on the local ecosystem culture, defined by national law.

Question 55. Do you consider that ESMA's proposed targeted amendments to Article 19(12) MAR are sufficient to alleviate the manager's transactions regime?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 55: *(2000 character(s) maximum)*

Question 55.1 Please indicate if you would support the following changes or clarifications to the managers' transactions regime:

	I support	I do not support	Don't know - No opinion – Not applicable
The thresholds should be applied in a non-cumulative way (i.e. each transaction is to be assessed against the threshold)	☐	☒	☐
Clear guidance should be provided on what types of managers' transactions need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction, beyond the targeted amendments already proposed by ESMA	☐	☐	☐
The requirement of keeping a list of closely associated persons should be repealed	☐	☒	☐
Other	☒	☐	☐

Please specify to what other change(s) or clarification(s) you refer in your answer to question 55.1: *(2000 character(s) maximum)*

We support the argument of the CMU HLF according to which "Clear guidance should be provided on what types of managers' transactions need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction. Transactions that do not send market signals (e.g. inheritances, gifts) should be out of scope. Finally, transactions should be aggregated to make the disclosure as simple as possible".

Please explain the reasoning of your answer to question 55.1: *(2000 character(s) maximum)*

2.2.6. Insider lists (Article 18)

While insider lists are supposed to assist NCAs in investigating cases of insider trading, stakeholders underline that the maintenance of insiders list require regular monitoring and adjustment and are particularly burdensome. As a result of the SME Listing Act, issuers whose financial instruments are admitted to trading on an SME growth market have been entitled to include in their lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information. At the same time, Member States may opt out from such regime and require more information.

In light of the fact that national competent authorities consider the insider lists to be a key tool in market abuse investigations, in its final report on the review of the Market Abuse Regulation, ESMA did not suggest extensive alleviations to the insiders list rules, proposing only minor adaptations to the current regime.

The TESG however found the costs of the insiders list for smaller issuers too high and recommended to remove the obligation for issuers with a market capitalisation below EUR 1 billion to keep an insider list, and to further reduce and simplify the content of the insider list for other issuers.

Question 56. What is the impact (or if not available – expected impact) of the recent alleviations (under the SME Listing Act) for SME growth market issuers as regards insider lists?

Please illustrate and quantify, notably in terms of (expected) reduction in costs, and please explain your reasoning: *(2000 character(s) maximum)*

FESE believes that the requirements of Article 18 MAR are an important instrument to prevent market abuse, not only by supporting criminal investigations by the regulator, but also by improving awareness of persons included in an insider list for the requirements and restrictions associated with the access to inside information. However, the amount of effort required to create an insider list can be cumbersome for small companies with limited resources. There is also uncertainty regarding who should be included on the insider lists, specifically external individuals, including advisors, services suppliers and/or other stakeholders. The risk of unintentionally providing an incomplete list is perceived to be inhibitive. FESE believes that the required level of personal information to be included in an insider list (beyond Regulation (EU) No 2019/2115) for SME GMs should include only the minimum fields necessary for supervisory purposes. The legal uncertainty in connection with the scope of persons to be included in an insider list should be reduced by additional ESMA guidance.

Question 57. Please indicate whether you agree with the statements below: The insider list regime should…:

	Yes	No	Don't know - No opinion - Not applicable
be simplified for all issuers to ensure that only the most essential information for identification purposes is included	☐	☒	☐
be simplified further for issuers listed on SME growth markets	☒	☐	☐
be repealed for issuers listed on SME growth markets	☐	☒	☐
other	☐	☐	☐

Please specify what you mean by 'other' in your answer to question 57: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 57 and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs: *(2000 character(s) maximum)*

We agree with ESMA's view that insider lists are useful, not only to NCAs but also to issuers' compliance function. However, further clarity would be helpful. Whether continuous or on request, insider list requirements are considered excessive by issuers as they must be complete, done in real-time and must cover

all possible events that could be investigated before an event occurs. The current uncertainty regarding which external parties must be included in the list creates a risk that the list will not be considered complete by regulators.

We agree with ESMA's position that only persons who have had actual access to inside information should be included in the corresponding insider list. We understand there may be a tendency for issuers to include more individuals than is accurate so as not to miss anyone.

We believe it would be valuable to issuers if ESMA and NCAs clarified the purpose of insider lists and explained why the lists become less effective for NCAs if they contain individuals who are not in fact insiders.

The required level of detail of insider lists should be reduced (beyond Regulation (EU) No 2019/2115) for SME GMs and include only the minimum fields necessary for supervisory purposes. In this sense, ESMA Implemented Technical Standards should clarify that SGM issuers are obliged to maintain only one list of persons having regular access to insider information and are not required to create event-based sections of the insider list each time, in which the details of persons with access to a single piece of inside information are recorded so to alleviate MAR regime and reduce compliance costs associated with it. See TESG Report Recommendation 3.4, pag.76.

2.2.7. Market sounding

Conducting market soundings may require disclosure to potential investors of inside information. However, market soundings are a highly valuable tool for the proper functioning of financial markets, and, as such, they should not be regarded as market abuse. The current regime requires the disclosing market participant, before engaging in a market sounding, to

i. assesses whether that market sounding involves the disclosure of inside information
ii. inform the person to whom the disclosure is made of the possibility of receiving inside information and of all the consequential requirements
iii. and maintain records of the disclosure

In the context of the public consultation launched in 2017 for the preparation of the SME Listing Act, several stakeholders described the requirements for conducting market sounding as burdensome, particularly in connection with private placements. Due to concerns on the risk of unlawful dissemination of inside information, market sounding rules were then only alleviated for private placements of debt instruments. The TESG, in its final report, has however proposed to extend the exemption from market sounding rules to private equity placements.

The public consultation carried out by ESMA in 2020 for the MAR review final report confirmed stakeholders' concerns on the complexity of the market sounding regime and their request to reduce the scope of the market sounding regime. Nonetheless, ESMA recommended to keep the current scope of the market sounding regime unchanged and rather look into ways to simplify the market sounding procedures (ESMA final report paragraphs 6.3.3).

Question 58. Do you consider the ESMA's limited proposals to amend the market sounding procedure are sufficient, while providing a balanced solution to the need to simplify the burden and maintaining the market integrity?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 58: *(2000 character(s) maximum)*

If you answered in the negative to question 58, how would you further amend the market sounding regime?

Issuers listed on SME growth markets: *(4000 character(s) maximum)*

There is a significant amount of uncertainty regarding the scope and definition of market sounding activities. Market participants have specifically identified that there is either limited guidance or no guidance regarding the terms 'transaction announcement', 'acting on the issuer's behalf' and 'gauging interest'. It should be considered whether the requirement to monitor also non-inside information is relevant. Further clarification is clearly needed from regulators to reduce uncertainty and ensure compliance with market soundings requirements.

Regardless of the country of domicile, market feedback indicates that smaller, less frequent issuers, including many high-yield bond issuers, will face significant administrative costs to comply with the market soundings regime. The alleviations for SME Growth Markets do not address SMEs' concerns specifically related to market sounding. The market sounding requirements included in MAR add significant administrative costs for SMEs and create risk, in these companies' perception, that they might be required to disclose sensitive information to competitors.

Issuers listed on regulated markets: *(4000 character(s) maximum)*

Regardless of the country of domicile, market feedback indicates that smaller, less frequent issuers, including many high-yield bond issuers, will face significant administrative costs to comply with the market soundings regime. The alleviations for SME Growth Markets do not address SMEs' concerns specifically related to market sounding. The market sounding requirements included in MAR add significant administrative costs for SMEs and create risk, in these companies' perception, that they might be required to disclose sensitive information to competitors.

Moreover, the current definition of market sounding provided by article 11 of MAR is in our opinion unclear. The reference to a "communication of information" prior to an "announcement of a transaction" can be interpreted in an excessively broad manner. Hence, entailing significant burdens for DMPs obliged to comply with the requirements set out in article 11 of MAR. The uncertainties linked to the implementation of these rules, coupled with the risk of divergent interpretation by National Competent Authorities, may deter intermediaries from performing market soundings. We do not believe that ESMA's limited proposals to amend the market sounding regime would be effective in providing a balanced solution to the need to simplify the burden and maintain market integrity.

There is a significant amount of uncertainty regarding the scope and definition of market sounding activities. Market participants have specifically identified that there is either limited guidance or no guidance regarding the terms 'transaction announcement', 'acting on the issuer's behalf' and 'gauging interest'. It should be considered whether the requirement to monitor also non-inside information is relevant. Further clarification is clearly needed from regulators to reduce uncertainty and ensure compliance with market soundings requirements.

Issuers on other markets (MTFs): *(4000 character(s) maximum)*

There is a significant amount of uncertainty regarding the scope and definition of market sounding activities. Market participants have specifically identified that there is either limited guidance or no guidance regarding the terms 'transaction announcement', 'acting on the issuer's behalf' and 'gauging interest'. It should be considered whether the requirement to monitor also non-inside information is relevant. Further clarification is clearly needed from regulators to reduce uncertainty and ensure compliance with market soundings requirements.

The application of the market soundings regime to private placements of bonds can sometimes be onerous and, in any case, a source of liability related to the necessary management of related confidential information. This may dissuade both issuers and investors from initiating discussions for such transactions.

Based on recent discussions with market participants, it seems that the usefulness of the new provision introduced in art. 11 MAR by the SME Listing Regulation is related to the breadth assigned to the concept of "negotiation of the contractual terms and conditions of their participation in a bond issue ". It is doubtful that such "negotiation" refers to a bond issuance proposal addressed to qualified investors, already defined in its essential elements solely aimed at verifying their interest in participating in the transaction or whether, on the other hand, the term "negotiation" refers the discussion and definition between the issuer (or delegated party) and a small number of investors of the characteristics of the transaction (on how to structure the issuance and arrive at an execution phase). Based on this, to increase the certainty of application of the mentioned provision, we would suggest for Commission to specify that the simplified regime applies in the event of negotiation of the main terms of a transaction between issuer and qualified investors.

Question 59. Do you agree with the TESG proposal to extend the exemption from market sounding rules to private equity placements for all issuers?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain and illustrate your reasoning of your answer to question 59, notably in terms of costs: *(4000 character(s) maximum)*

Question 59.1 Would you agree to extend the exemption from market sounding rules to private equity placements for issuers on SME growth markets?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain and illustrate your reasoning of your answer to question 59.1, notably in terms of costs: *(2000 character(s) maximum)*

2.2.8. Administrative and criminal sanctions

Both the CMU HLF as well as the TESG share the view that in some cases sanctions for market abuse violations are disproportionate and that the risk of an inadvertent breach of MAR (notably in the case of missing deadlines for disclosure of information) and associated administrative sanctions are seen as an important factor that dissuades companies from listing. They both proposed to amend the current framework in order to establish a more proportionate punitive regime. Moreover, the TESG proposed to remove the possibility of applying criminal sanctions in the case of noncompliance with the requirements set out in Articles 17, 18 and 19, as administrative sanctions (including accessory sanctions and the confiscation of the profit made from the unlawful conduct) are sufficiently suitable for sanctioning MAR violations under those provisions.

At the same time, ESMA disagrees that the level of the MAR sanctions is tailored to large companies and stresses that MAR does not oblige NCAs to impose maximum administrative sanctions and, on the contrary, obliges NCAs to take into account all relevant circumstances when determining the type and level of administrative sanctions.

Question 60. Do you think that the current punitive regime (both administrative pecuniary sanctions and criminal sanctions) under MAR is proportionate to the objectives sought by legislation (i.e., to dissuade market abuse), as well as the type and size of entities potentially covered by that regime?

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

Please explain and illustrate your reasoning of your answer to question 60, notably in terms of costs: *(2000 character(s) maximum)*

FESE wishes to remark that this question is better tackled at the national level, considering the different applications of MAR by Member States. Hence, FESE, as a European-based federation, wishes to comment on a few general aspects. As a general approach, we do not contest in principle the appropriateness of applying criminal sanctions in certain cases. However, MAD II criminalises notions that are at times not well defined, posing serious concerns of non-compliance. FESE supports the TESG and the CMU HLF's recommendation that the sanctions provided in Art. 30 MAR and, in particular, the infringements by issuers and managers of Art. 17 (public disclosure and delay of inside information), 18 (insider list), 19 (managers' transaction) should be mitigated.

On a different subject, in some Member States there is a considerable gap between criminal sanctions and administrative sanctions. For example, Sweden has the highest administrative sanctions by far, compared to other Member States. Such high levels of discrepancies between Member States are not in line with the general principles of the CMU.

Question 61. Do you think that the maximum administrative pecuniary sanctions (as prescribed in Article 30 MAR) are an important factor when making a decision by companies concerning potential listing?

	Yes, it has a significant impact	Yes, it has a medium impact	Yes, but it has a low impact	No, it is rather irrelevant
Issuers listed on SME growth markets	☐	☐	☐	☐
Issuers listed on other markets	☐	☐	☐	☐

Please explain the reasoning of your answer to question 61: *(2000 character(s) maximum)*

Question 62. According to your opinion, which administrative pecuniary sanctions (as prescribed in Article 30 MAR) have a higher impact on a company when making a decision concerning potential listing?

	Pecuniary sanctions in respect of natural persons	Pecuniary sanctions in respect of legal persons
Issuers listed on SME growth markets	☐	☐
Issuers listed on other markets	☐	☐

Please explain the reasoning of your answer to question 62: *(2000 character(s) maximum)*

Question 63. Do you think that the maximum administrative pecuniary sanction for infringements of Articles 16- 19 (in respect of legal persons) should be decreased?

Issuers listed on SME growth markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	☐	☐	☐
Art. 17	☐	☐	☐

Art. 18	☐	☐	☐
Art. 19	☐	☐	☐

Issuers listed on other markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	☐	☐	☐
Art. 17	☐	☐	☐
Art. 18	☐	☐	☐
Art. 19	☐	☐	☐

Question 63.1 Please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 of MAR:

	Art. 16	Art. 17
Current maximum sanction: 2 500 000 EUR or the corresponding value in the national currency on 2 July 2014		
Current maximum sanction: 2% of the total annual turnover according to the last available accounts approved by the management body		

Question 63.2 Please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 of MAR.

	Art. 18	Art. 19
Current maximum sanction: 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014		

Question 64. Should the "total annual turnover according to the last available accounts approved by the management body" as a criterion to define the maximum administrative pecuniary sanctions be replaced with a different criterion?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Question 64.1 Please explain the reasoning of your answer to question 64: *(2000 character(s) maximum)*

Question 64.1 Please specify which criterion you would retain to define the maximum administrative pecuniary sanctions, explaining the reasoning of your answer to question 64: *(2000 character(s) maximum)*

Question 65. Do you think that the maximum administrative pecuniary sanction for infringements of Article 16- 19 (in respect of natural persons) should be decreased?

Issuers listed on SME growth markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	☐	☐	☐
Art. 17	☐	☐	☐
Art. 18	☐	☐	☐
Art. 19	☐	☐	☐

Issuers listed on other markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	☐	☐	☐
Art. 17	☐	☐	☐
Art. 18	☐	☐	☐
Art. 19	☐	☐	☐

Question 65.1 Please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 MAR:

	Art. 16	Art. 17
Current maximum sanction: 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014		

Question 65.2 Please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 MAR:

	Art. 18	Art. 19
Current maximum sanction: 500 000 EUR or the corresponding value in the national currency on 2 July 2014		

Question 66. Should the level of maximum administrative pecuniary sanctions with respect to natural persons be defined according to a different criterion?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Question 66.1 Please specify which criterion you would retain to define the level of maximum administrative pecuniary sanctions with respect to natural persons, explaining the reasoning of your answer to question 66: *(2000 character(s) maximum)*

We support TES Recommendation 3.8, according to which:

- Maximum penalty per manager for negligent behaviour not exceeding half of their annual salary as per Art. 17, 1, 5 and 8 (Public disclosure) and one quarter for Art. 17, 2 (Delay), and 18 (Insider list) and 19 (Managers' transactions). Member States shall not be allowed to criminalise negligent commission.
- Maximum penalty for legal person for negligent behaviour not exceeding EUR 500,000 or 1% of the turnover as per Art. 17 (Public disclosure) and EUR 25,000 for articles 17, 8 (Delay), 18 (Insider List), and 19 (Managers' transactions). Member States shall not be allowed to criminalise negligent commission.

See TESG Report 2021, p. 83.

Question 66.1 Please explain the reasoning of your answer to question 66: *(2000 character(s) maximum)*

Question 67. Should the maximum administrative pecuniary sanctions for the other infringements specified in article 30(1)(a) of MAR and different from the infringements of Articles 16, 17, 18 and 19, be decreased accordingly?

	Yes	No	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	☐	☐	☐
Issuers listed on other markets	☐	☐	☐

Please explain the reasoning of your answer to question 67: *(2000 character(s) maximum)*

Question 68. Do you think that the possibility of applying criminal sanctions in the case of noncompliance with the requirements set out in Articles 16, 17, 18, 19 and 30(1)(b) of MAR should be removed?

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	☐	☐	☐
Art. 17	☐	☐	☐
Art. 18	☐	☐	☐
Art. 19	☐	☐	☐
Art. 30(1) first subpar. letter (b)	☐	☐	☐

Please explain the reasoning of your answer to question 68: *(2000 character(s) maximum)*

2.2.9. Liquidity contracts

Question 69. Do you agree with the TESG proposal to remove the obligation on market operators to "agree to the contracts' terms and conditions", defined by issuers and investment firms in liquidity contracts used on SME growth markets?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 69: *(2000 character(s) maximum)*

We recommend amending MAR and the ESMA draft regulatory technical standard on liquidity contracts so that market operators are not required to "agree to the contracts' terms and conditions", defined by issuers and investments firms, for liquidity contracts used in the framework of GMs (see also recommendation 3.E from the TESG Report). While NCAs must be informed of the existence of liquidity contracts, trading venues are not involved in the issuer liquidity contract agreement. Therefore, market operators should not have to agree to their terms.

2.2.10. Disclosure obligation related to the presentation of recommendations under MAR

Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 lays down standards on the investment recommendations or other information recommending or suggesting an investment strategy. These standards aims at ensuring the objective, clear and accurate presentation of such information and the disclosure of interests and conflicts of interest. They should be complied with by persons producing or disseminating recommendations.

In order to boost research coverage on smaller issuers, TESG in their final report argued that investment the recommendations or other information recommending or suggesting an investment strategy should be exempted from the requirements laid down in Commission Delegated Regulation (EU) No. 2016/958 when they relate exclusively to instruments admitted to trading on a SME growth market, or at the least alleviated for such instruments.

Question 70. In your opinion, should investment recommendations or other information recommending or suggesting an investment strategy be exempted from the requirements laid down in Commission Delegated Regulation (EU) No. 2016/958 when they relate exclusively to instruments admitted to trading on a SME growth market?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 70: *(2000 character(s) maximum)*

We support TESG Recommendation 3.10, that proposes that investment recommendations or other information recommending or suggesting an investment strategy should be exempted from the requirements laid down in Regulation (EU) No. 2016/958 when they relate exclusively to instruments admitted to trading on SME GM, or at the least alleviated for such instruments. In this sense, provide for a proportionate and lighter regime for such recommendations to be created in Regulation (EU) No. 2016/958 (especially exemptions from obligations set in the Article 3 and 4 of Regulation (EU) No. 2016/958) while taking into consideration higher flexibility of SME GMs in comparison with RMs and limited scope and resources of SMEs. Similar suggestion may be made also to ease the obligations set out in Article 6.

2.2.11. Other

Question 71. Would you have any other suggestions on possible improvements to the current rules laid down in the Market Abuse Regulation? Please explain your reasoning: *(4000 character(s) maximum)*

The applicability of MAR on cross border entities and listings

We would welcome further clarification on the applicability of MAR when it comes to cross border listings. Currently, there is uncertainty on what it concerns:

- Issuers with subsidiaries in the EU and non-EU countries: What is the scope of MAR regarding activities of non-EU subsidiaries that could have an impact on listings of EU subsidiaries?
- European Issuers with listings in the EU and non-EU countries: What is the scope of MAR regarding information and activity that could impact the price of instruments listed in non-EU countries?

Need for alignment of MAR and MIFIR in terms of data reporting requirements

Finally, we would like to raise a last consideration regarding the need to align MiFIR and MAR in terms of data reporting requirements. Currently, both Article 4 of MAR and Article 27 of MiFIR require trading venues to report reference data related to financial instruments. However, the requirements currently differ in a number of important respects such as the starting point for reporting (application for trading in MAR vs. admittance to trading/actual trading in MiFIR), reporting frequency (end-of-day under MiFIR vs. application for trading and end of trading under MAR).

In order to ensure consistency in the reporting of reference data, both sets of requirements should be aligned. This point is in line with the German position paper on the necessary amendments and revisions to secondary market provisions in MiFID II/R4. We believe that this concern could be properly addressed already under the current MiFIR Review.

2.3. MiFID II (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments)

The Directive on Markets in Financial Instruments (MiFID II – Directive 2014/65/EU) is one of the pillars of the EU regulation of financial markets. It promotes financial markets that are fair, transparent, efficient and integrated.

However, some stakeholders believe that there is room for targeted adjustments to this directive in order to ease and accommodate listing rules for EU entities. This is particularly true for the SMEs, according to the HLF, the TESG and ESMA's report on the functioning of the regime for SME growth markets that all bring up specific points within MiFID II that could be modified in order to incentivise listing. In some cases, the ESMA's and stakeholder's suggestions were aimed at clarifying certain provisions within MiFID II while in others they sought to increase SMEs' visibility and attractiveness towards investors.

2.3.1. Registration of a segment of an MTF as SME growth market

ESMA in their Q&A provided a clarification setting out the conditions under which an operator of an MTF may register a segment of the MTF as SME growth market: "the operator of an MTF can apply for a segment of the MTF to be registered as an SME growth market when the requirements and criteria set out in Article 33 of MiFID II and Articles 77 and 78 of the Commission Delegated Regulation 2017/565 are met in respect of that segment". This clarification has proven useful to market participants based on feedback the ESMA received and has incentivised some MTFs to seek registration as SME growth markets only for a market segment and not for the entire MTF.

ESMA suggested that similar clarification in MiFID II level 1 would be beneficial as it could bring legal certainty and increase the number of registered SME growth markets.

Question 72. Would you see merit in including in MiFID II Level 1 the conditions under which an operator of an MTF may register a segment of the MTF as SME growth market?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 72: *(2000 character(s) maximum)*

FESE Members have had different experiences in terms of registering their SME GMs. While some Members faced little difficulties, others indicated that it was a quite protracted process and that understanding of certain requirements was difficult, for instance regarding the possibility to classify certain segments of an MTF as an SME GM, resulting in different interpretations and difficulties in implementation. Our suggestion to facilitate registration would be to have a simplified process in place in cases where the entity applying for authorisation to register an SME GM is already operating a Regulated Market and/or an MTF. In those cases, a notification process to the competent authority should be sufficient.

2.3.2. Dual listing

Article 33(7) of MiFID sets out provisions for dual listing and potential obligations for issuers. It has been argued that Article 33(7) is being interpreted by the NCAs in a way that company seeking a dual listing can do so only through a third party and not by themselves. Moreover, ESMA in its report on the SME growth market proposed to amend MIFID II to specify that if an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on any other trading venue (as opposed to only on another SME growth market as Article 33(7) of MiFID currently states). This can be done only where the issuer has been informed and has not objected, and complies with any further regulatory requirement compulsory on the second trading venue.

Question 73. Do you believe that Article 33(7) of MiFID II would benefit from further clarification in level 1 to ensure an interpretation whereby the issuers themselves can request a dual listing?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 73: *(2000 character(s) maximum)*

Yes, we agree that this should be specified. FESE supports recommendation 2.G from the TESG Report to provide legal clarity on the issue of dual listing by amending Article 33(7) of MiFID II to make it explicit that issuers admitted to trading on a GM may on their own request demand to be admitted to trading on another GM.

Question 73.1 Do you believe that Article 33(7) should clarify that, where the issuers themselves request a dual listing, they shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the second SME growth market?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 73.1: *(2000 character(s) maximum)*

Yes, we agree that this should be specified. FESE supports recommendation 2.G from the TESG Report to provide legal clarity on the issue of dual listing by amending Article 33(7) of MiFID II to make it explicit that issuers admitted to trading on a GM may on their own request demand to be admitted to trading on another GM.

Question 74. Do you believe that, subject to the conditions set out in Article 33(7) of MiFID II, financial instruments of an issuer, admitted to trading on an SME growth market, could be traded on another venue (and not necessarily only on another SME growth market)?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 74: *(2000 character(s) maximum)*

We are not in favour of such a development which would lead to fragmenting the liquidity of small and mid-caps across multiple platforms.

2.3.3. Equity Research coverage for SMEs

Public markets for SMEs need to be supported by a healthy ecosystem (i.e. a network of brokers, equity analysts, credit rating agencies, investors specialised in SMEs) that can bring small firms seeking a listing to the market and support them after the IPO. The absence or limited existence of those local ecosystems that can cater to SMEs' specific needs impedes the functioning and deepening of public markets and reduces the willingness of SMEs to seek a listing. Equity research is of particular importance for SMEs given that they have lower visibility than large cap firms and information is more opaque and scarce.

Today, equity research is produced by brokers on an un-sponsored (independent) as well as sponsored basis (company pays for the research), by independent research houses, and to a lesser extent also in house by fund managers. SMEs are, however, often not covered at all by research analysts as there is not enough market interest to justify the additional cost for the broker.

The capital markets recovery package has introduced a targeted exemption to allow investment firms to bundle research and execution costs when it comes to research on companies whose market capitalisation did not exceed Euro 1 billion for the period of 36 months preceding the provision of the research. This change is intended to increase research coverage for such issuers, and in particular for SMEs, thereby improving their access to capital market finance.

Question 75. Do you consider that the alleviation to the research regime introduced with the capital markets recovery package has effectively helped (or will help) to support SMEs' access to the capital markets?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 75: *(2000 character(s) maximum)*

FESE very much welcomed the proposed MiFID Delegated Act on SME Research. We share the Commission's expectation that exempting SMEs from the unbundling rule may result in an increase in research coverage for those companies. Moreover, we agree with the SME definition as those companies that do not exceed a market capitalisation threshold of EUR 1 billion over 12 months. However, feedback from the market indicates that it is still premature to draw conclusions on the effectiveness of the Recovery Package in this respect.

Question 76. Would you see merit in alleviating the MiFID II regime on research even further?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 76: *(2000 character(s) maximum)*

Since the application of MiFID II and its provision on the unbundling of research, a growing number of SMEs are paying independent research providers to produce research and are taking the initiative in approaching investors directly. Such sponsored research can be useful and should be retained, provided potential conflicts of interests are disclosed. We nonetheless recognise that this avenue may be limited by budget constraints. Some Exchanges have launched programs sponsoring and enhancing SME research. The first results are encouraging and suggest that it can create additional liquidity for listed SMEs.

Given that the above-mentioned research channels need to be complemented, FESE considers that authorising the bundling of SME research with other services is likely to increase production and distribution of research reports and may have a significant effect on the liquidity of SMEs.

In addition, access to equity research on SMEs could be further improved by:

- Launching a Pan-European program to cover the costs of research coverage.
- Establish user-friendly platforms for analysts to share their reports on.

In particular, FESE believes that this last point could well fit within the ESAP proposal. SME research reports can provide added value to the overall information reported to the ESAP in the SME context. It has the potential to incentivise the provision of equity research as providers would gain visibility.

Question 76.1 Please indicate whether you consider that written material other than the one currently falling under the minor non-monetary benefits regime could be added to that list.

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 76.1: *(2000 character(s) maximum)*

Question 76.2 Please indicate whether you consider that FICC (fixed income, currencies and commodities) research and research provided by independent research providers should be exempted from the unbundling regime introduced by MiFID II.

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 76.2: *(2000 character(s) maximum)*

Question 76.3 Please indicate whether you have any further concrete proposal, explaining your reasoning: *(4000 character(s) maximum)*

Since the application of MiFID II and its provision on the unbundling of research, a growing number of SMEs are paying independent research providers to produce research and are taking the initiative in approaching investors directly. Such sponsored research can be useful and should be retained, provided potential conflicts of interests are disclosed. We nonetheless recognise that this avenue may be limited by budget constraints. Some Exchanges have launched programs sponsoring and enhancing SME research. The first results are encouraging and suggest that it can create additional liquidity for listed SMEs. Given that the above-mentioned research channels need to be complemented, FESE considers that authorising the bundling of SME research with other services is likely to increase production and distribution of research reports and may have a significant effect on the liquidity of SMEs. In addition, access to equity research on SMEs could be further improved by: • Launching a Pan-European program to cover the costs of research coverage. • Establish user-friendly platforms for analysts to share their reports on. In particular, FESE believes that this last point could well fit within the ESAP proposal. SME research reports can provide added value to the overall information reported to the ESAP in the SME context. It has the potential to incentivise the provision of equity research as providers would gain visibility.

Question 77. As an investor, what type(s) of research do you find useful for your investment decisions?

	Useful	Not useful	Don't know - No opinion - Not applicable
Independent research	☐	☐	☐
Venue- sponsored research	☐	☐	☐
Issuer- sponsored research	☐	☐	☐
Other	☐	☐	☐

Please specify to what other type(s) of research you refer in your answer to question 77: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 77: *(2000 character(s) maximum)*

Question 78. How could the following types of research be supported through legislative and non-legislative measures?

	Legislative measures	Non-legislative measures
Independent research	☐	☐
Venue-sponsored research	☐	☐
Issuer-sponsored research	☐	☐
Other (please specify)	☐	☐

Please specify to what other type(s) of research you refer in your answer to question 78: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 78: *(2000 character(s) maximum)*

Question 79. In order to make the issuer-sponsored research more reliable and hence more attractive for investors, would you see merit in introducing rules on conflict of interest between the issuer and the research analyst?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 79: *(2000 character(s) maximum)*

Question 80. What should be done, in your opinion, to support more funding for SMEs research? *(4000 character(s) maximum)*

We believe that equity research is a necessary tool to increase SMEs' visibility and should therefore be promoted. The European Regional Development Fund (ERDF) – and possibly European Bank for Reconstruction and Development (EBRD) funds – can efficiently support both independent and sponsored SME research (recommendation 7.B from the TESG Report). Moreover, the Commission should consider enabling Member States to support SMEs by amending Article 24(2) of the General Block Exemption Regulation (GBER) to clarify that aid for scouting costs can be extended to support SME investment research in unlisted SMEs.

2.3.4. Other

Question 81. Would you have any other suggestions on possible improvements to the current rules laid down in MiFID II to facilitate listing while assuring high standards of investor protection? Please explain your reasoning: *(4000 character(s) maximum)*

2.4. Other possible areas for improvement

2.4.1. Transparency Directive (Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market)

Transparency of publicly traded companies' activities is essential for the proper functioning of capital markets. Investors need reliable and timely information about the business performance and assets of the companies they invest in and about their ownership.

The Transparency Directive (Directive 2004/109/EC) requires issuers of securities traded on EU regulated markets to make their activities transparent, by regularly publishing certain information. The information to be published includes

i. yearly and half-yearly financial reports
ii. major changes in the holding of voting rights
iii. ad hoc inside information which could affect the price of securities

This information must be released in a manner that benefits all investors equally across the EU.

The Transparency Directive was amended in 2013 by Directive 2013/50/EU to reduce the administrative burdens on smaller issuers, particularly by abolishing the requirement to publish quarterly financial reports, and make the transparency system more efficient, in particular as regards the publication of information on voting rights held through derivatives.

The Commission has recently adopted a harmonised electronic format for annual financial reports developed by ESMA (the European Single Electronic Format, ESEF). The ESEF has been applicable since 1 January 2021, except for 23 Member States who opted for a 1-year postponement. It makes reporting easier and facilitates accessibility, analysis and comparability of reports.

The Commission published in April 2021 a fitness check report accompanying the Commission report to the European Parliament and the Council on – inter alia – the operation of the 2013 amendment to the Transparency Directive. These reports indicate an overall good effectiveness of the corporate reporting framework, while highlighting areas for potential improvement, for instance in relation to supervision and enforcement.

Question 82. Do you consider that there is potential to simplify the Transparency Directive's rules on disclosures of annual and half-yearly financial reports and on the ongoing transparency requirements for major changes in the holders of voting rights, keeping in mind the need to facilitate accessibility, analysis and comparability of issuers' information and to maintain a high level of investor protection on these markets?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Question 82.1 Please explain which changes would you propose as well as your reasoning: *(2000 character(s) maximum)*

Question 83. Would you have any other suggestion to improve the current rules laid down in the Transparency Directive? *(4000 character(s) maximum)*

We suggest that clarity should be provided on Article 24(4)(d) regarding competent authorities suspending trading in securities for a maximum of 10 days at a time. Currently, this can lead to suspensions having to be renewed every 10 days which seems an unnecessary and onerous procedure and is of no real value to the market. Therefore, we would suggest instead that the suspension is maintained (without re-occurring renewals) until the competent authority is satisfied that it should be lifted.

2.4.2. Special Purpose Acquisition Companies (SPACs)

In the course of the COVID-19 pandemic, the capital markets saw a surge of SPACs listings. If this SPACs' phenomenon was much stronger in the US, some EU markets also saw the rise of the listing of these particular vehicles. The fact that privately held operating companies were seeking a reverse merger to access public markets by means of a listed shell company such as SPAC appeared for some as a sign that the traditional IPO process was in need of reform. However, after a promising trend during the first half of 2021, the second half of 2021 showed that SPACs IPOs were already losing some steam, at least on the EU markets, in favour of more traditional IPOs. Some argue that SPACs may play a useful role, in particular for start-ups and scale-ups when the economic situation is less flourishing and getting access to public markets become more difficult for those companies. Nonetheless SPAC IPOs present weaknesses and risks that investors, in particular the retail ones, should be aware of. Indeed, if SPACs' offers in the EU are mainly addressed to professional investors, SPACs' shares may be available for purchase by retail investors on the secondary markets. In that respect, in July 2021, ESMA published the statement "SPACs: prospectus disclosure and investor protection considerations" (ESMA32-384-5209) to promote coordinated action by EU regulators on the scrutiny of prospectus disclosures relating to SPACs and provide guidance to manufacturers and distributors of SPAC shares and warrants about MiFID II product governance provisions. The purpose of this consultation is to get your view as to the appropriateness of the current listing regime when considering an IPO via a SPAC.

Question 84. Do you believe that SPACs are an effective and efficient alternative to traditional IPOs that could facilitate more listings on public markets in the EU?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 84: *(2000 character(s) maximum)*

The re-emergence of SPACs is beneficial for EU public markets as they are attractive vehicles typically embedding investor protection features. SPACs allow retail investors to participate early in acquisition projects, traditionally limited to institutional investors, thereby democratising these types of operations using capital markets. A SPAC's success is based on its ability to acquire quality businesses. It is considered ideal for the acquisition of a single business entity which can then list in the capital

market where it has a strong customer base. The emergence of SPACs on EU capital markets has led to an increase in company listings.

In the absence of SPACs listings in the EU, there is a risk that non-EU SPACs listed in third country capital markets would have the purchasing power to target and buy growing non-listed EU companies. In this case, the targeted EU companies would be listed in the non-EU capital market where the SPAC is located. It is therefore important for the EU to support the SPAC listing process in its capital markets.

SPACs comply with the EU legal framework on investor protection when listing across jurisdictions (for Regulated Markets these include e.g. the Prospectus Regulation and Transparency Directive) and respect the different national regulatory frameworks on corporate and stock law.

Question 85. What would you see as being detrimental to the SPACs development in the EU?

Please explain your reasoning: *(4000 character(s) maximum)*

It may be worth considering alleviating certain legal requirements at the national level which could negatively impact the possible set-ups and designs of European SPACs. In particular, the negative tax treatment of the merger between a SPAC and the acquired company may be a big obstacle in certain national legislation (for example in Spain).

Question 85.1 What could be done in terms of policies to contain risks for investors while encouraging the efficient and safe development of SPACs' activity in the EU? Please explain your reasoning: *(4000 character(s) maximum)*

SPACs are tools that provide start-ups with more flexibility to enter the market, when some of the rules, e.g. on track record, would not permit this. At the same time, applicable rules must ensure investor access to the usual due diligence and information via a prospectus as in ordinary IPOs.

Question 86. Do you believe that investing in SPACs, via an IPO or on the secondary market, should be reserved to professional investors only?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 86: *(2000 character(s) maximum)*

Question 87. In the case of investments in SPACs (whether on the primary or the secondary markets), would you see the need to reinforce some safeguards and/or to further harmonise the disclosure regime in the EU?

	Yes, even if an investment is open	Yes, for an investment open to	No	Don't know - No opinion - Not applicable

	to professional investors only	both professional and retail investors		
Reinforce safeguards	☐	☐	☒	☐
Harmonise the disclosure regime	☐	☐	☐	☐

Please explain the reasoning of your answer to question 87 and list additional safeguards, if any, you may find relevant: *(4000 character(s) maximum)*

Question 88. As part of the SPAC's IPO process, it is common practice for SPACs to issue warrants subscribed by the sponsors and/or the initial shareholders, which can subsequently have significant dilutive effects for the shareholders post IPO. Do you believe measures should be put in place to ensure that post IPO shareholders get a clear information about the dilutive effects of those warrants and that the dilutive effect of those warrants remains limited?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 88: *(2000 character(s) maximum)*

Question 89. Do you see the need for a clear framework for the deposit and management of the securities and proceeds held in escrow by a SPAC?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 89: *(2000 character(s) maximum)*

Question 90. Some recent SPACs IPOs have relied on the sustainability-related characteristics of the contemplated target companies. Do you believe that SPACs putting forward sustainability as a selling point should be subject to specific/different disclosures and/or standards in this regard?

☐ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 90: *(2000 character(s) maximum)*

Question 91. Do you have any other proposal on how to improve the current listing regime when considering an IPO via a SPAC?

Please explain your reasoning: *(4000 character(s) maximum)*

2.4.3. Listing Directive (Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities)

The Listing Directive (Directive 2001/34/EC) concerns securities for which admission to official listing is requested and those admitted, irrespective of the legal nature of their issuer. The Listing Directive aims to coordinate the rules with regard to

i. admitting securities to official stock-exchange listing
ii. the information to be published on those securities in order to provide equivalent protection for investors at EU level.

The Prospectus Directive and the Transparency Directive further consolidated rules harmonising the conditions for the provision of information regarding requests for the admission of securities to official stock-exchange listing and the information on securities admitted to trading. Therefore, those directives amended the Listing Directive removing overlapping requirements (i.e. deleting Articles 3, 4, 20 to 41, 65 to 104 and 108 of the Listing Directive). Furthermore, MiFID replaced the notion of 'admission to the official listing' with 'admission to trading on a regulated market'.

The Listing Directive is a minimum harmonisation directive. It allows EU Member States to put in place additional requirements for admission of securities to official listing, provided that

i. such additional conditions apply to all issuers
ii. and they have been published before the application for admission of such securities

Question 92. Do you consider that the Listing Directive, in its current form, achieves its objectives and does not need to be amended?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 92: *(2000 character(s) maximum)*

In general, we believe the Listing Directive is achieving its objectives as it allows market operators to obtain additional comforts as appropriate for applications to

its official list. The concept of "official listing" is an important aspect of public markets that needs to be maintained. Issuers may seek admission of their securities to official listing, without being traded.

While the Listing Directive has been amended over the years and some of its functions have been transferred to or replaced by other regimes, in particular the Prospectus Regulation, the Transparency Directive, and MiFID II, there are still important elements that we consider crucial and should be retained. As pointed out in the FESE "non-paper" (here), the regime governing admission to the official listing (Title II Listing Directive) is fundamentally different from these other regimes. The national regime transposing the Listing Directive provides certain flexibility that, for example, the 'admission to trading' regime under MiFID II does not provide. In particular, (i) the role as legal basis of the listing rules of exchanges, (ii) market acceptance of the Listing Directive's regime, (iii) the ease of dual-listing, and (iv) implications for investment mandates and taxation, still apply.

Although it is acknowledged that the application of the Listing Directive varies across European markets, it is extremely important in those markets where it is applied. Currently, there is clarity in the market for investors regarding the separation of the Listing Regime from the Prospectus Regime and other EU securities legislation and this ensures there is an additional quality check over the issuers, thereby safeguarding market integrity.

However, we would also see the need for certain amendments of the text to focus on the above-mentioned topics, while leaving out outdated provisions that are already in other regulatory regimes as mentioned.

Question 92.1 Do you believe that the Listing Directive should be:

☐ Repealed

☒ Amended as a Directive

☐ Amended and transformed in a Regulation

☐ Incorporated in another piece of legislation

☐ Don't know / no opinion / not applicable

Please specify into what other piece of legislation the Listing Directive should be incorporated: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 92.1: *(2000 character(s) maximum)*

The Listing Regime is considered a high-calibre and quality regulatory standard. We believe that the complete repeal of this Directive would not be in line with the objectives of the Capital Markets Union to enhance capital markets and improve access to finance for businesses. From a market perspective, there is demand among issuers for a technical listing. Plus, the EU needs to remain competitive amidst the UK's overhaul of its national regime.

The Listing Directive is particularly important in those jurisdictions that apply it as the legal and legislative basis for 'listing' securities on their markets. Although it may seem like a simple tidy up exercise, we have significant concerns that its

possible repeal, or its transformation into a Regulation, would lead to unforeseen unintended consequences that could be damaging for EU markets and investors.

There are several significant implications arising from a potential repeal. The Listing Directive focuses on suitability for listing (i.e. conditions that must be satisfied before 'listing' being approved), so the focus is very different to the Prospectus Regulation which relates to disclosure.

At the same time, while FESE recognises the importance of the Listing Directive, it also recognises that, in certain cases, it can be improved by adopting a more streamlined European approach. Amending the Listing Directive should focus on some key topics, such as lowering the free float threshold or removing its geographical limitation to the EU / EEA, as well as the threshold for expected market capitalisation.

Therefore, we would support preserving the sections mentioned in Q92 (most of the currently applicable articles) to maintain the established regulatory framework while, at the same time, having the opportunity to adopt a more streamlined and up to date European approach on key topics mentioned above (especially concerning the free float threshold – see also our response to Q96.3).

2.4.3.1. Definitions

Question 93. Do you consider that the definitions laid down in Article 1 of the Listing Directive are outdated?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Question 93.1 What changes would you propose?

Please explain the reasoning of your answer to question 93: *(2000 character(s) maximum)*

2.4.3.2. Listing conditions

Question 94. Do you consider that the broad flexibility that the Listing Directive leaves to Member States and competent authorities on the application of the rules for the admission to the official listing of shares and debt securities is appropriate in light of local market conditions?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 94: *(2000 character(s) maximum)*

We believe that such flexibility is indeed appropriate. Member States and competent authorities for listing are at the core of local markets and the flexibility allowed by the Listing Directive permits these authorities to act in the best interest of local markets, addressing local nuances.

However, as mentioned in Q92.1, we would advocate for a more streamlined European approach, amending the Directive with respect to some key issues. This is important in particular in lowering the free float threshold requirement.

Specific conditions for the admission of shares

Chapter II of Title III of the Listing Directive sets out specific rules for the admission to the official listing of shares of companies. However, a rather broad discretion is given to Member States or competent authorities to deviate from those rules to take into account specific local market conditions. The Listing Directive sets out, among others, rules on the foreseeable market capitalisation of the shares to be admitted to the official listing, (Article 43), on the publication or filing of the company's annual accounts (Article 44), on the free transferability of the shares (Article 46), on the minimum free float (Article 48) and on shares of third country companies (Article 51).

Question 95.1 Regarding the following requirements for the admission of shares to the official listing, would you consider them still relevant?

	not relevant	rather not relevant	neutral	rather relevant	very relevant	don't know - no opinion - not applicable
a) **Expected market capitalisation**: The foreseeable market capitalisation of the shares for which admission to official listing is sought or, if this cannot be assessed, the company's capital and reserves, including profit or loss, from the last financial year, must be at least one million euro (Article 43(1)).	☐	☐	☐	☐	☒	☐
b) **Disclosure pre-IPO:** A company must have published or filed its annual accounts in accordance with national law for the three financial years preceding the application for official listing. (…) (Article 44).	☐	☐	☐	☐	☒	☐
c) **Free float:** A sufficient number of	☐	☐	☐	☐	☒	☐

shares shall be deemed to have been distributed either when the shares in respect of which application for admission has been made are in the hands of the public to the extent of a least 25 % of the subscribed capital represented by the class of shares concerned or when, in view of the large number of shares of the same class and the extent of their distribution to the public, the market will operate properly with a lower percentage. (Article 48(5)).						

Please explain the reasoning of your answer to question 95.1: *(2000 character(s) maximum)*

- It remains important for an issuer to have a minimum market capitalisation. While the directive indicates a minimum of EUR 1 million, competent authorities have the discretion to introduce an increased amount. If the directive were to be updated, we believe that a minimum market capitalisation of EUR 5 million would be appropriate.
- We believe it is relevant for a company to have published three years of financial reports, as this allows investors on regulated markets sufficient information to assess the past performance of the company.
- It is relevant to have a minimum threshold for shares in public hands, as this ensures the smooth operation of the market. However, if the directive is to be amended, we would suggest flexibility in this area and would propose a minimum threshold of 10%, with discretion for competent authorities as per the current directive.

Question 95.2 Regarding the foreseeable market capitalisation referred to on question 95.1 a), would you consider a different threshold?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 95.2: *(2000 character(s) maximum)*

While the directive indicates a minimum of EUR 1 million (which does not prevent companies from listing their shares), competent authorities have the discretion to introduce an increased amount. If the directive were to be updated, we believe

that a minimum market capitalisation of EUR 5 million would be appropriate. A further increase of this threshold could be an obstacle.

Question 95.3 Do you consider that the minimum number of years of publication or filing of annual accounts referred to on question 95.1 b) is adequate?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 95.3: *(2000 character(s) maximum)*

We consider a period of three years before the filing of an application for admission sufficient since the period illustrated is longer than the Prospectus Regulation requires. Therefore, potential investors can not only rely on the published Prospectus but can also look into the annual accounts, which are not part of the Prospectus.

The free float is the portion of a company's issued share capital that is in the hands of public investors, as opposed to company officers, directors, or shareholders that hold controlling interests. These are the shares that are deemed to be freely available for trading. The recommendation of 25% free float set out in Article 48 dates back to 2001. It allows the Member States' discretion in setting the percentage of the shares that would be needed to be floated at the time of listing. According to information received from stakeholders, the percentages in EU-27 vary from 5% to 45%.

Question 96.1 In your opinion is free float a good measure to ensure liquidity?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.1: *(2000 character(s) maximum)*

It is relevant to have a minimum threshold for shares in public hands with flexibility, as this ensures the smooth operation of the market, and the flexibility addresses local market nuances. However, the requirement of 25% free float alone does not ensure liquidity. On the one hand, the resulting percentage depends on the number of shares to be admitted and, on the other hand, liquidity is supported by other parameters such as the publicity as well as the index and the investor composition. Hence, we do not believe that the free float alone should be considered to ensure liquidity.

Question 96.2 In your opinion, could a minimum free float requirement be a barrier to listing?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.2: *(2000 character(s) maximum)*

In general, we do not believe that a minimum free float is a barrier to entry on public markets, if it is set at an appropriate level. The current threshold of 25% together with the geographical restriction to the EU/EEA is difficult to achieve, especially with the United Kingdom's exit from the EU.

Question 96.3 In your opinion, is the recommended threshold set at 25% appropriate?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Please specify whether the recommended threshold should be higher or lower than 25%:

☐ Higher

☒ Lower

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 96.3: *(2000 character(s) maximum)*

Since the free float requirement aims at ensuring the proper operations of the markets, a lower threshold than 25% is still able to meet the goal. We would recommend lowering the threshold to a minimum of 10% or removing its geographical limitation to the EU / EEA.

Question 96.4 In your opinion, is it necessary to maintain the national discretion to depart from the recommended threshold for free float?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.4: *(2000 character(s) maximum)*

We are of the view that this provision should continue to allow sufficient flexibility so that an appropriate minimum free float threshold can be determined for each local market, as in many cases it is necessary to have some level of threshold to ensure liquidity on regulated markets.

Question 97. Are there other provisions relating to the admission of shares, set out in Title III, Chapter II of the Listing Directive, that you would propose to change?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Question 97.1 Please specify which other provisions relating to the admission of shares you would propose to change, explaining your reasoning: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 97: *(2000 character(s) maximum)*

We believe that the provisions as set out in Chapter II of Title III remain appropriate, noting our earlier comments on free float and minimum market capitalisation.

Specific conditions for the admission of debt securities

Chapter III of Title III of the Listing Directive sets out specific conditions for the admission to the official listing of debt securities issued by an undertaking. In particular, the Listing Directive sets out rules on the free transferability of the debt securities (Article 54), the minimum amount of the loan (Article 58), convertible or exchangeable debentures and debentures with warrants (Article 59). As for shares, the Listing Directive leaves wide discretion to Member States or competent authorities to deviate from those rules in light of specific local market conditions. Finally, Articles 60 to 63 set out rules relating to sovereign debt securities.

Question 98. Do you consider the provisions relating to the admission to official listing of debt securities issued by an undertaking, set out in Title III, Chapter III and IV of the Listing Directive (e.g. amount of the loan, rules on convertible or exchangeable debentures, rules on sovereign debt), adequate?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please specify which changes you would propose to the provisions relating to the admission to official listing of debt securities issued by an undertaking: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 98: *(2000 character(s) maximum)*

We believe that the provisions as set out in Chapter II of Title III remain appropriate as there is sufficient flexibility within the directive to allow competent authorities to address local nuances. We strongly support retaining those provisions as they are in the current text, in case the Directive is amended.

2.4.3.3. Competent authorities

Question 99. Would you propose any changes relating to the provisions on competent authorities and cooperation between Member States, laid down in Title VI of the Listing Directive?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 99: *(4000 character(s) maximum)*

We believe that the provisions as set out in Title VI remain appropriate and should be maintained as they are, in case the Directive is amended.

2.4.3.4. Other

Question 100. Would you have any other suggestions on possible improvements to the current rules laid down in the Listing Directive? *(4000 character(s) maximum)*

If the directive was to be amended, a clause could be included that protects competent authorities for listing or any employee thereof from liability for non-compliance with or contravention of any obligation imposed by the Directive, provided they have acted in good faith.

2.4.4. Shares with multiple voting rights

Loss of control is widely cited by unlisted companies as the most important reason for staying private. Equity-raising very often generates a tension between existing owners, who rarely want to cede control of their business, and new investors who want to have control over their investment. This tension affects in particular family-owned companies but also the founders of tech, science and other high-growth companies who are often interested in preserving their ability to influence the strategic direction of the company after going public.

In order to encourage companies to list without owners having to relinquish control of their companies, multiple voting right shares have been used in a number of EU countries and have been highlighted as an efficient control-enhancing mechanism.

It is however worth noting that currently only some Member States allow for multiple voting rights. Amongst Member States that do allow multiple voting right share structures there are divergences as to the maximum allowed voting rights ratio.

Whilst multiple voting rights allow founders to keep control over their business, they may also make it easier for owners to extract private benefits to the detriment of investors, for instance by engaging in related-party transactions. The trade-off associated with multiple voting rights has led some countries to allow these types of shares provided that they include a sunset clause i.e. after a certain period, the shares with additional voting rights become regular shares. This safeguard aims at making sure that founders do not have indefinite control over their companies.

Both the HLF as well as the TESG stated that multiple voting right shares are a key ingredient for improving the attractiveness and competitiveness of European public market ecosystems and that allowing them across the whole EU would/could facilitate the transition of companies from private to public markets.

Question 101. Do you believe that, where allowed, the use of shares with multiple voting rights has effectively encouraged more firms to seek a listing on public markets?

☒ Yes

☐ No

☐ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 101 and substantiate with evidence where possible: *(2000 character(s) maximum)*

FESE supports the introduction of an option into EU law for issuers to adopt multiple voting rights structures, such as dual-class shares. We also note that the CMU HLF expressed support for such an option: "Companies should have a choice to opt for dual-class shares with variable voting rights when going public […] to the extent it does not disincentivise investors from investing in companies" as well as the Commission's TESG on SMEs in its report (recommendation 4 in the Report). We would suggest opting for a permanent (i.e. not a sandbox) general framework at the EU level to ensure that all Member States include such option. However, the detailed framework design should rather be done at the national level to adapt to the local ecosystem and needs of local investors.

Question 102.1 In your opinion, what impact do shares with multiple voting rights have on the attractiveness of a company for investors?

☐ Negative impact

☐ Slightly negative impact

☐ Neutral

☐ Slightly positive impact

☒ Positive impact

☐ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 102.1: *(2000 character(s) maximum)*

Question 102.2 When shares with multiple voting rights are allowed, do you believe limits to the voting rights attached to a single share improve the attractiveness of the company to investors?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 102.2: *(2000 character(s) maximum)*

Yes, FESE agrees. Although, voting rights should be retained to a certain extent so that a certain level of influence is ensured. A key characteristic of a shareholder is its co-ownership position. This permits the shareholder to influence strategic developments by making use of its voting rights. If this right is omitted entirely, the initial idea of being even a small part of a public company would be scooped out.

Question 102.3 Please indicate what ratio you consider acceptable to overcome potential drawbacks associated with shares with multiple voting rights:

☐ 2:1

☐ 10:1

☐ 20:1

☐ Other

☒ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 102.3: *(2000 character(s) maximum)*

FESE believes that voting rights should be retained to a certain extent so that a certain level of influence is ensured. However, we do not see the need to establish a ratio at the EU level. The difference in voting rights is, in our view, a different framework depending on the respective geographical market, based on the history and tradition of local financial ecosystems. Members states should, instead, set this ratio in national legislation.

Question 103. Do you believe that the inclusion of sunset clauses (i.e. clauses that eliminate higher voting rights after a designated period of time) have proved useful in striking a proper balance between founders' and investors' interests?

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

Please illustrate the reasoning of your answer to question 103, namely in terms of advantages and disadvantages: *(2000 character(s) maximum)*

Question 104. Would you see merit in stipulating in EU law that issuers across the EU may be able to list on any EU trading venues following the multiple voting rights structure?

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please illustrate the reasoning of your answer to question 104, namely in terms of advantages and disadvantages: *(2000 character(s) maximum)*

We also note that the CMU HLF expressed support for such an option: "Companies should have a choice to opt for dual-class shares with variable voting rights when going public […] to the extent it does not disincentivise investors from investing in companies" as well as the Commission's TESG on SMEs in its report (recommendation 4 in the Report). We would suggest opting for a permanent (i.e. not a sandbox) general framework at the EU level to ensure that all Member States

include such option. However, the detailed framework design should rather be done at the national level to adapt to the local ecosystem and needs of local investors.

Question 105. Do you have any other suggestion on how to make listing more attractive from the standpoint of companies' founders? *(4000 character(s) maximum)*

2.4.5. Corporate Governance standards for companies listed on SME growth markets

Good corporate governance and transparency are deemed essential for the success of any company and in particular to those seeking access to capital markets. When issuers are governed according to principles of good corporate governance, they will find it easier to tap capital markets and attract investors. As issuers listed on SME growth markets do not need to comply with the Shareholder Rights Directive (2007/36/EC, as amended) or Transparency Directive (2004/109/EC, as amended), some market participants see merit in setting minimum corporate governance requirements applicable to these issuers in order to reassure investors. Institutional investors in particular may fear reputational risk when investing in companies listed on SME growth markets and find them not sufficiently attractive.

Question 106. Would you see merit in introducing minimum corporate governance requirements for companies listed on SME growth market with the aim of making them more attractive for investors?

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 106: *(2000 character(s) maximum)*

Overall, corporate governance and company law is best dealt with in the form of recommendations towards the Member States, to avoid a one-size-fits-all approach that would not reflect the wide diversity of corporations and practices. Especially in the SME sphere.

Question 107. If you see merit, which of the following option(s) would be most suitable for a possible initiative on corporate governance?

☐ SME growth market operators should require in their own rulebook that issuers comply with corporate governance requirements tailored to local conditions.

☒ SME growth market operators should recommend in in their own rulebook that issuers comply with corporate governance requirements tailored to local conditions.

☐ EU legislation should set out corporate governance principles for issuers listed on SME growth markets while allowing Member States and/or market operators' flexibility in how to implement the principles.

☐ Corporate governance requirements for companies listed on SME growth markets should be fully harmonised at EU level.

☐ Other

☐ Don't know / no opinion / not relevant

Please specify to what other option(s) you refer in your answer to question 107: *(2000 character(s) maximum)*

Please explain the reasoning of your answers to question 107, notably on the advantages and disadvantages of the preferred option: *(2000 character(s) maximum)*

Overall, corporate governance and company law is best dealt with in the form of recommendations towards the Member States, to avoid a one-size-fits-all approach that would not reflect the wide diversity of corporations and practices. Especially in the SME sphere. Exchanges should also retain some flexibility to apply rules suited to local market conditions.

Question 108.1 If you see merit, please indicate the corporate governance requirements that would be the most needed and would have the most impact to increase the attractiveness of issuers listed on SME growth markets:

	no impact	almost no impact	some positive impact	significant positive impact	very significant positive impact	Don't know - No opinion - Not applicable
Requirement to report related party transactions (i.e. issuers would have to publicly announce material transactions with related parties at the time of the conclusion of such transaction and to adopt an internal procedure to assess and manage these transactions in order to protect the interests of the company)	☐	☐	☐	☒	☐	☐
Additional disclosure duties regarding the acquisition/ disposal of voting rights as required by the Transparency Directive for major shareholdings in	☐	☐	☐	☒	☐	☐

companies with shares traded on Regulated Markets						
Obligation to appoint an investor relations manager	☐	☐	☒	☐	☐	☐
Introduction of minimum requirements for the delisting of shares: Supermajority approval (e.g. 75% or 90% of shareholders attending the meeting) for shareholders resolutions which directly or indirectly lead to the issuer's delisting (including merger or similar transactions)	☐	☐	☐	☒	☐	☐
Introduction of minimum requirements for the delisting of shares: Sell-out rights assigned to minority shareholders if the company is delisted or if one shareholder owns more than 90% or 95% of the share capital.	☐	☐	☐	☒	☐	☐
Appointment of at least one independent director (independence should be understood according to para. 13.1. of Commission's recommendation 2005/162/EC)	☐	☐	☐	☐	☒	☐
Other	☐	☐	☐	☐	☐	☐

Please specify to what other requirement(s) you refer in your answer to question 108.1: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 108.1: *(4000 character(s) maximum)*

Question 108.2 In your opinion, what would be the impact on the costs of listing and staying listed if the following corporate governance requirements were introduced for issuers listed on SME growth markets:

	no impact	almost no impact	some positive impact	significant positive impact	very significant positive impact	Don't know - No opinion - Not applicable
Requirement to report related party transactions (i.e. issuers would have to publicly announce material transactions with related parties at the time of the conclusion of such transaction and to adopt an internal procedure to assess and manage these transactions in order to protect the interests of the company)	☐	☒	☐	☐	☐	☐
Additional disclosure duties regarding the acquisition/ disposal of voting rights as required by the Transparency Directive for major shareholdings in companies with shares traded on Regulated Markets	☐	☒	☐	☐	☐	☐
Obligation to appoint an investor relations manager	☐	☐	☐	☒	☐	☐
Introduction of minimum requirements for the delisting of shares: Supermajority approval (e.g.	☐	☐	☒	☐	☐	☐

75% or 90% of shareholders attending the meeting) for shareholders resolutions which directly or indirectly lead to the issuer's delisting (including merger or similar transactions)						
Introduction of minimum requirements for the delisting of shares: Sell-out rights assigned to minority shareholders if the company is delisted or if one shareholder owns more than 90% or 95% of the share capital.	☐	☐	☒	☐	☐	☐
Appointment of at least one independent director (independence should be understood according to para. 13.1. of Commission's recommendation 2005/162/EC)	☐	☐	☐	☒	☐	☐
Other	☐	☐	☐	☐	☐	☐

Please specify to what other requirement(s) you refer in your answer to question 108.2: *(2000 character(s) maximum)*

Please explain the reasoning of your answer to question 108.2, and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs): *(4000 character(s) maximum)*

Question 109. Do you have any other suggestion on how to make issuers listed on SME Growth Markets more attractive to investors? *(4000 character(s) maximum)*

2.4.6. Gold-plating by NCAs and/or Member States

Question 110. Are you aware of any cases of gold-plating by NCAs or Member States in relation to EU rules applicable both to companies going through a listing process and to companies already listed on EU public markets? Please note that for the purposes of this consultation gold-plating should be understood as encompassing all measures imposed by NCAs and/or Member States that go beyond what is required at EU level (i.e. it does no relate to existing national discretions and options in EU legislation).

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please provide details and explain the reasoning of your answer to question 110: *(2000 character(s) maximum)*

In enhancing the functioning of a Capital Markets Union, promoting supervisory convergence will be essential. FESE, therefore, suggests for the EU institutions to make, where appropriate and proportionate, greater use of Regulations as opposed to Directives when drafting new legislation, with the ultimate goal of having a Single Rulebook.

In seeking greater supervisory convergence, efforts should focus on those areas with cross-border characteristics. Enforcing supervisory convergence should mean ensuring that legislation is implemented as intended by the legislator to establish a level playing field. The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards high-levels of EU regulatory harmonisation, underpinning cross-border business and competition.

3. Additional information

Beyond these proposals for targeted regulatory changes, we believe that it is essential to encourage effective supervision that strikes the right balance between protecting investors and giving flexibility to issuers. In this regard, we believe that the European Commission should put in place a systematic "competitiveness test" to focus, before introducing new rules, on whether such new rules will weaken or strengthen European companies overall. We wish to stress vigilance concerning undesirable consequences/side effects.

We would also support the introduction of a competitiveness objective in the mandate of national competent authorities and the European Securities and Markets Authority (ESMA). This would reiterate that it is in our collective interest that the European Union benefits from strong, unified, and competitive capital markets supported by European champions. Furthermore, we believe that effective supervision requires strong supervisory convergence among national regulators. Such initiatives would help reduce market fragmentation and are indispensable for the development of an effective Capital Markets Union.