FESE response to the ESMA consultation on technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

Brussels, 20th December 2024

4. Draft technical advice on the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms

Q1: What are your views in relation to format and sequencing? Do you agree with ESMA's approach to limit changes to the 'standard' equity and non-equity annexes? And do you have any concerns relating to a potential tension between Annexes II and III in the Amending Regulation and Articles 24 and 25 CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

Regarding the format and sequencing, FESE believes that the objective should be to ensure that the standardisation and harmonisation efforts from Level 1 are properly reflected in Level 2. It is essential that for standard equity prospectuses, further standardisation is achieved to realise consistency and easier comparability for investors. In addition, it is crucial that substantial deviations in local markets, driven by different NCA approaches, do not materialise.

We agree with ESMA's approach to limit changes to the 'standard' equity and non-equity annexes. We would consider these measures as low-hanging fruits that can significantly support the harmonisation process. For the more complex non-equity structures, the current framework of building blocks works well. As such, we do not see a need to make material changes to this framework.

Regarding the proposed changes in the CDR, we are unsure about the purpose of introducing a cover note as it is not clear what it is trying to achieve. We believe it could result in differing approaches taken and too much detail may end up being included. This would run contrary to the aim of trying to standardise and simplify the approach. Therefore, FESE does not think it is necessary to include the cover note.

Q2: Do you have specific comments about the reduced time periods which financial information should cover which need to be considered as part of this work?

In relation to the proposal for equity to reduce the financial information time period from 3 years to 2 years, this seems a reasonable approach and reduces the burden for issuers.

Regarding the proposal for non-equity instruments to reduce the time period from 2 years to 1 year, while FESE agrees this will reduce the burden on issuers, there is some concern about the adequacy of this short time frame for making meaningful comparisons. We have not encountered significant issues with the current requirement, which suggests that the existing approach is generally effective.

Q3: Do you agree with ESMA's sustainability-related assessment in relation to the 'standard' equity registration document? If not, please explain why?

Yes, FESE believes that ESMA's approach seems reasonable.

Q4: With respect to sustainability aspects, do respondents have concerns about the proposal which offers non-equity issuers who fall under the Accounting Directive or Transparency Directive an option to provide an electronic link to their relevant sustainability information?

FESE supports this proposal as long as it remains optional for issuers and does not become a burdensome mandatory requirement.

Q5: What are you views in relation potential implications of the proposed single non-equity disclosure framework?

Overall, FESE does not have strong views regarding the proposed new framework as it does not seem to be making any fundamental changes to the requirements. Instead, these are being moved around somewhat. It is essential that where both retail and wholesale requirements are included in the same Annex, the existing carve-outs are included for wholesale and that there is no risk that the retail disclosure requirements end up applying to all issuances. Regarding the Securities Note Annex, this appears to capture a significantly expanded scope, and it is not fully clear what it is trying to achieve, which may cause some confusion. FESE believes it may be better to have two distinct Annexes covering the Securities Note, distinguishing between retail and wholesale to make the framework clearer.

Q6: Do you have any other concerns about the disclosure items as proposed? If so, please explain.

In general, FESE believes that ESMA has taken the right approach and strikes a good balance in terms of ensuring sufficient disclosure while not overly burdening issuers. However, with regards to annex 6 item, 5.4.1, the objective of including this disclosure is unclear. An issuer could publish a wide range of KPIs both operational and financial. The additional disclosure could be restrictive for issuers and provide too much non-relevant disclosure for investors.

Q7: In your view, will these proposals add or reduce costs? Please explain your answer.

In FESE's view, any proposal that aims at streamlining and standardising prospectus practices will reduce costs for all stakeholders involved in the preparation of prospectus documents.

5. Draft technical advice on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives

Q8: Do you agree with ESMA's approach to the disclosure requirements for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives? Please explain your answer and provide any suggestions for amendments.

FESE agrees with ESMA's approach as it makes sense to formalise the Statement. However, it is important to ensure a level playing field so that NCAs take the same approach.

In relation to items 3.1.1 and 4.1.1 of Annex 21, FESE believes it would make more sense to include these items in section 1, Risk Factors. This would be in line with disclosure items in other annexes.

Q9: Do you agree with the definitions proposed for 'use of proceeds bonds' and 'sustainability-linked non-equity securities'? If not, what changes to the definition would you suggest?

Yes, we agree with these definitions and believe these should already be well understood in the market.

Q10: Do you agree with ESMA's approach to dealing with (i) prospectuses relating to EuGBs and ii) prospectuses from issuers who have opted to use the templates for voluntary pre-issuance disclosures, as referred to in European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate the regulatory burden.

Yes, FESE agrees.

We would also like to raise a point on the subjection of EuGB issuers to the Prospectus Regulation (PR) and its liability regime. Once again, we believe it is worth reminding that the risk that this legislative option will undermine the attractiveness of the EU GBS is high, seeing that it introduces a *de facto* mandatory regime, whereas it would have been essential to keep the EU GBS voluntary and propose measures to incentivise its uptake among issuers for the standard to succeed and be adopted globally (as initially recommended to the Commission by the High-Level Expert Group and the Technical Expert Group on Sustainable Finance).

Although we understand that the proposed solution aims at providing for long-term credible investor protection and the avoidance of inconsistent or potentially misleading information, it may be too stringent to allow for a real EuGB market to even develop. Furthermore, it will distance itself from (successful) market-led standards which have been widely used by issuers worldwide. At a time when the benefits of streamlining and harmonising existing regulation are being discussed (this CP is an example of this), particularly regarding sustainable finance frameworks, this should be a point for further reflection.

Q11: Should Annex 21 be disapplied in relation to prospectuses relating to European Green Bonds and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

Yes, FESE agrees.

Q12: Are the proposed disclosure requirements in Annex 21 proportionate? If not, please (i) identify disclosure requirements that could be alleviated and (ii) provide a (quantitative) description of the costs of compliance.

Overall, FESE believes ESMA's approach is proportionate, but the requirements regarding unequivocal statements may be seen as more challenging. In addition, it may be worth re-considering whether the risk factor disclosure could be reduced.

Q13: Do you agree with the proposal to require disclosure about whether post-issuance shall be provided and the scope of this disclosure in items 6.3 and 6.4 of Annex 21? If not, what changes would you propose? Please explain your answer.

Yes, FESE believes ESMA's approach is reasonable.

Q14: Do you agree with ESMA's proposal in item 2.1 of Annex 21 concerning unequivocal statements about how the criteria or standard are met and that they are significant in relation to the ESG features or objectives of the security?

FESE assessed that ESMA's proposal in this respect may be challenging and burdensome for issuers. There is a risk that requirements for unequivocal statements will lead to divergences in the approaches taken across member states. It is paramount that the industry has consistency in reviews and comments on this key annex.

Q15: Do you agree with the 'Category A', 'Category B' and 'Category C' classification of the items included in Annex 21, in particular in relation to items 2.1, 2.2 and 2.3? Please provide any suggestions for alternative categorisations and explain your answer.

FESE has not identified any major issues with the proposed approach.

Q16: Do you agree with ESMA's approach to disclosure for structured products with a sustainability component? Please explain your answer and include any suggestions to improve the approach.

FESE believes the approach seems proportionate and in line with other requirements.

Q17: Do you support ESMA's proposal to amend Article 26 CDR on scrutiny and disclosure to facilitate the incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms? Please explain your answer and provide any alternative proposals.

Yes, FESE agrees with ESMA's proposal as it seems to simplify the overall approach.

Q18: Do you think that allowing incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms will impose any significant costs or burden on issuers? Please explain your answer.

No, FESE does not believe that allowing incorporation by reference will impose significant costs or burdensome requirements.

6. Draft technical advice on the content of the URD

Q19: Do you agree with ESMA's assessment regarding changes to the URD annex?

Yes, FESE generally supports this assessment.

7. Draft technical advice on the criteria for the scrutiny of the completeness, comprehensibility and consistency of information contained in prospectuses

Q20: Do you agree with ESMA's proposal to delete Article 40 CDR on scrutiny and disclosure and introduce Article 21b into CDR on scrutiny and disclosure? Please explain your answer and present any alternative proposals.

Yes, FESE agrees with the proposal to delete Article 40 and introduce Article 21b. It is essential that more is done to ensure supervisory convergence so that entities are treated in a fair and consistent manner. Article 21b seeks to limit the circumstances where NCAs can require additional criteria or additional information so to avoid seeking extra information beyond the harmonised requirements of the PR. However, para (2) still seems

quite broad and we believe there is a risk it could lead to divergences in interpretation and practice.

FESE strongly suggests that this is monitored very carefully and while ESMA refers to peer reviews that will support this approach, we suggest a specific requirement should be introduced for NCAs. FESE believes it is appropriate that when an NCA avails of this Article and requires additional information, they should have to notify ESMA with the relevant details including the rationale for seeking the additional information. This would expedite the process of ensuring convergence as ESMA will be equipped with real-time information on how this is being utilised. In our view, this will help ensure NCAs only use this when it is absolutely required and should result in a much more harmonised approach.

Q21: Do you expect the deletion of Article 40 CDR on scrutiny and disclosure and/or the inclusion of Article 21b in CDR on scrutiny and disclosure to lead to additional administrative burden or costs for stakeholders? If so, please quantify the costs as much as possible.

Q22: Do you agree with ESMA's assessment that there are no circumstances in which an NCA should require additional information in a prospectus over and above that which is required under Articles 6, 13, 14a and 15a PR within the context of the scrutiny and approval of a prospectus? Please explain your answer.

In FESE Members' experience, it is in fact common practice for some NCAs to require information on an ad hoc basis from companies that go beyond the usual remit of the Prospectus Regulation.

Whilst we recognise that NCA may make comments and ask for information pursuant to Art.32(1)(b) of PR, it is also imperative to transpose the objectives of the Level 1 agreed text. As mentioned before, these are standardisation and harmonisation of prospectus practices. In particular, NCAs requiring information that is not included in the PR is a clear example of diverging practices that should come to an end with the Listing Act. The issue at hand is, indeed, NCAs applying different policies based on the same EU legal text.

FESE recommends that ESMA proposes a predetermined list of documents and information, which are already included in the PR annexes and delegated acts, that NCAs may ask issuers pursuant to Art.32(1)(b) of PR.

8. Draft technical advice on the procedures for the approval of prospectuses

Q23: Do you agree with ESMA's approach to further harmonising the deadlines in NCAs' approval processes, i.e. trying to keep the deadlines as simple as possible and avoiding complicated administrative procedures? In your answer, please indicate what changes could be made to improve ESMA's advice in this area.

In line with our previous comments, FESE believes that it is important for ESMA to harmonise the deadline in NCA's approval processes as much as possible. However, this should not come to the detriment of certain jurisdictions where procedures are already being dealt with much faster. As such, ESMA should not propose a common denominator but rather a higher goal. For this reason, FESE finds that the proposal to limit the total period for the scrutiny and approval of prospectuses to 120 working days is too long. FESE proposes 90 working days at maximum, as we understand this is also the standard practice in the US.

Q24: Do you believe ESMA's proposal will impose additional costs and/or burdens for issuers? Please explain your answer and provide an indication of the related costs.

9. Update of the CDR on metadata

Q25: Do you agree with ESMA's proposal to amend CDR on metadata to account for the new types of prospectuses stemming from the Amending Regulation? Please explain your answer and present any alternative proposals.

Q26: Do you agree that ESMA requires metadata to identify which securities qualify as EuGB (field 39 of draft Annex to CDR on metadata)? If not, why not? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

Q27: Do you agree with ESMA's proposal to streamline the process of submitting information that will need to be submitted by NCAs to ESAP via the Prospectus Register (Article 11a of the draft RTS amending CDR on metadata)? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

Q28: With regards to field 5, is it always possible to determine a single venue 'of first admission' in case of simultaneous admission on two or more venues? Please explain why.

Q29: Do you agree with the other changes proposed on the list of metadata which are proposed in Table 1 of Annex I of the draft CDR on metadata? Do you think these changes will create an unreasonable additional burden on issuers? Please explain why.