

FESE non-paper on the proposed repeal of the Listing Directive

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Introduction

The European Commission's Work Programme for 2019 sets out that the 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stock exchange listing and on information to be published on those securities (Listing Directive) is envisaged to be repealed. This proposal is concerning to FESE as it has significant implications for the legislative framework underpinning a number of FESE Members' markets for listed securities.

This non-paper explains the significant issues that would arise from a repeal of the Listing Directive and the negative implications it would have for European markets.

Background

Securities may be listed and / or admitted to trading. The **Listing Directive** is the legislation underpinning the Listing Regime in European markets. It consolidates the measures concerning the conditions for admission of securities to official stock exchange listing and the ongoing financial information that listed companies must make available to investors.

MiFID recognises the 'admission to the official stock exchange listing' that has then been retained in the revised Directive 2014/65/EU (MiFID II). While listing is always made upon request of the issuer and involves various obligations for initial listing and for maintaining a listing, admission to trading is granted either upon request of an issuer/participant or the trading venue itself can decide to admit the security on to its market. In such cases, where the trading venue decides to admit the security, issuer consent is not necessary and no issuer obligations arise.

Furthermore, the **Prospectus Regulation** ((EU) 2017/1129), which came into force on 20 July 2017 following a review of the Prospectus Directive (2003/71/EC), clarifies the requirements to be published when securities are to be admitted to a Regulated Market or offered to the public, so the focus is on disclosure requirements, and therefore it differs to the Listing Directive which focuses on suitability for listing.

Lastly, the **Transparency Directive** issued in 2004 and revised in 2013 (2013/50/EU) aims to ensure transparency of information for investors through a regular flow of disclosure of periodic and on-going regulated information and the dissemination of such information to the public. Regulated information consists of financial reports, information on major holdings of voting rights and information disclosed pursuant to the Market Abuse Directive (2003/6/EC).

These four pieces of legislation all have distinct objectives and contribute to safeguarding market integrity and enhancing investor protection in different ways. Instead of the proposed repeal, we believe it would be worthwhile for the Commission to make clear how they all fit together given their importance in the securities legislative framework.

Implications of a repeal of the Listing Directive

As indicated above, the Listing Directive sets out the framework for the competent authority for listing. For example, Euronext Dublin is the Competent Authority for Listing (CAL) under

the Listing Directive in Ireland. This means it is responsible for the Listing Regime in Ireland that covers two of its markets, the Main Securities Market (a regulated market which lists equities, ETFs, funds and debt securities) and the Global Exchange Market (an MTF which lists ETFS, funds and wholesale debt securities); so the Directive is extremely important for the Dublin market. Similarly, Euronext Amsterdam is CAL in the Netherlands where the benefits of listing is an important aspect for the market.

The Commission's Work Programme states that most of the requirements of the Listing Directive are now covered by the Transparency Directive and the Prospectus Regulation so it is no longer necessary. FESE does not share this view and is very concerned with any suggested repeal, particularly given that there does not appear to have been any kind of impact analysis undertaken to assess the consequences of such a proposed repeal. Although it is acknowledged that application of the Listing Directive varies across European markets, it is extremely important in those markets where it is applied.

There are a number of significant implications arising from a potential repeal of the Listing Directive. The Listing Directive focuses on suitability for listing (i.e. conditions that must be satisfied prior to 'listing' being approved), so the focus is very different to the Prospectus Regulation which relates to disclosure. There have been cases where a prospectus technically meets the disclosure requirements under the Prospectus Directive, but there are certain suitability issues evident with respect to the issuer which would compromise investor protection. These requests for listings can be rejected under the Listing Directive. For example, there might be instances where an issuer fulfils the requirements regarding the financial information under the Prospectus Regulation whereas the publication of the annual accounts in accordance with national law for the three financial years preceding the application for the listing has not taken place (Art. 41 Listing Directive). 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.**

Furthermore, **the Listing Regime is accepted by the market to be robust and enhances investor protection,** and is consistent with the IOSCO principles. Implementing the repeal of this Directive would significantly risk disrupting this regime unnecessarily.

In European markets that encompass a listing regime, **if the repeal is enacted, it will result in the removal of the legislative basis for exchanges' Listing Rules.** The CAL status allows exchanges to develop listing rules, including conditions for listing and continuing obligations that are appropriate for the issuers and securities seeking admission to listing. It enables exchanges to revise the listing rules on a timely basis so that they adequately keep pace with market developments and deliver to our investor protection objective.

This is particularly pertinent for Ireland given that the Dublin Equity Listing Rules mirror those in the UK to ensure ease of access for companies that wish to dual-list on both markets. As the Listing Directive predefines a (minimum) legal basis for listings within the EU, with regard to dual-listings, it is helpful for each CAL to know that the requirements at the other stock exchange derive from the same Directive. If the approach is radically changed, and any proposed repeal would mean a significant divergence between the two regimes, **it could have many unforeseen consequences. This is particularly important in light of Brexit** and hence important that any proposed review does not occur until there is certainty in this regard.

In addition, one of the **key drivers for issuers to list debt securities is that the listing enables investors to avail of a withholding tax exemption for the UK Inland Revenue.** The

majority of key investors in bonds are located in the UK and rely on this exemption. Post Brexit, repeal of the Listing Directive and the benefits which accrue from it for investors, may precipitate a misalignment between international markets operating from the UK and those operating from the remaining EU countries. Such a move is likely to make operation of debt markets from the EU less attractive and operation of such markets from the UK more attractive which would not be a desirable outcome in the aftermath of Brexit.

There are a number of other important considerations that are likely to be impacted as they may be directly tied to whether a security is officially listed:

- **Investment mandates** often specify the requirements for a security to be listed in order for the investor to hold them,
- **Tax provisions** may be applied on the basis of a ‘listing’, e.g. in Ireland certain Revenue exemptions relate to listing.

Repeal of the Listing Directive could create legal uncertainty for many market participants including issuers and investors. Indeed, in the Netherlands, a lot of importance is placed on the value of a listing by market participants, in particular the buy-side.

Required Solution

The Listing Regime is considered a high-calibre and quality regulatory standard. In our view, there is **no strong rationale or regulatory basis for changing this approach** as no issues have arisen that would merit such a change. We believe the proposed repeal would not be in line with the objectives of Capital Markets Union to enhance capital markets and improve access to finance for businesses.

Furthermore, at a time when EU securities markets are **facing unprecedented challenges and uncertainty with Brexit**, making such a fundamental change to the securities framework could be extremely risky and **result in unforeseen consequences that could very negatively impact European capital markets unnecessarily**.

As mentioned above, although not relied upon in all EU markets, the Listing Directive is particularly important in those jurisdictions that apply it as the legislative basis for ‘listing’ securities on their markets. Whereas on the face of it the proposed repeal of the Listing Directive may seem like a simple tidy up exercise, we have significant concerns that it would lead to unforeseen consequences that could be damaging for EU markets and investors operating within these markets.

In order to address these significant concerns arising from the proposed repeal of the Listing Directive, FESE strongly argues that **the Commission should reverse its decision and allow the Directive to remain in place**, thereby ensuring there is no negative disruption to the well-functioning EU Listing Regime established in European markets.

The Federation of European Securities Exchanges (FESE) represents 35 exchanges in equities, bonds, derivatives and commodities through 19 Full Members from 30 countries, as well as 1 Affiliate Member and 1 Observer Member.

At the end of January 2019, FESE members had 8,648 companies listed on their markets, of which 13% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe’s capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,341 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission’s objective of creating a Capital Markets Union.