

FESE response to the ESMA consultation on Market Abuse Regulation (MAR) Guidelines

29th April 2026, Brussels

Q1: Do you see merits in maintaining the legitimate interest currently described in point b of Guideline 1 (i.e possibility for the issuer to delay the disclosure of its financial situation, where an immediate publication may jeopardise the measures to reestablish its viability)? Please indicate the arguments supporting your answer.

No. This guideline text relates to recital 50 of MAR, which contains examples of situations where immediate disclosure is likely to prejudice the legitimate interests of the issuer. The recital text is clearly framed as protecting negotiations to ensure the issuer's financial viability, not allowing the issuer to withhold stand-alone inside information about its financial situation from investors.

However, the legitimate interest in point b may be misunderstood as allowing issuers to delay disclosure of adverse inside information about its financial situations broadly. Such information is usually very consequential to investors, and wrongful delays resulting from misinterpretations may therefore cause significant investor harm.

Since inside information about intermediate steps in negotiations designed to ensure the financial recovery of the issuer will not need to be disclosed from June 2026, the merit of maintaining this guidance is significantly reduced.

Q2: What is your view on the legitimate interest which are proposed to be added to the MAR Guidelines? When commenting on a specific legitimate interest, please report in your answer the title as given in the relevant subsection.

FESE would like to provide comments on the following legitimate interests proposed to be added:

- Order by a public authority to maintain confidentiality (example: order from a public authority on the grounds of public policy, public security and public health)

FESE considers that this example would benefit from further clarification as regards when such information is expected to be disclosed given the risk that issuers may interpret this ground for delaying disclosure too broadly. In many cases, a complete and correct assessment of the inside information can be enabled without disclosing all details relating to the counterparty or the transaction.

- Complete information and/or data on the event or circumstance the inside information to be disclosed refers to is not immediately available

FESE supports inclusion of this legitimate interest. For instance, it aligns well with the interpretation made by Nasdaq Stockholm's Disciplinary Committee in its decision on February 2, 2023 in case no 2023:02, Bilia AB (publ).

Q3: In addition to the case of parallel procurements of the same nature, are you aware of other instances where disclosure of sensitive commercial information may jeopardise an issuer's business opportunity, and should thus qualify as a legitimate interest for the delay?

N/A

Q4: In your view, which legitimate interests could be added to the MAR Guidelines for the purpose of the delay in the disclosure?

FESE notes the recent judgment of the Court of Justice in Case C-229/24 (Brännelius), which provides further clarification on the notion of 'publicity' under MAR. While the Guidelines focus on the conditions for delayed disclosure under Article 17 MAR, it would be helpful for ESMA to clarify, where appropriate, how the concepts of confidentiality and 'information made public' should be interpreted in light of this judgment. In particular, additional guidance on the interaction between effective market dissemination of information and the continued possibility to rely on delayed disclosure would enhance legal certainty for issuers and contribute to consistent supervisory practices across Member States.