

Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Section 10.1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **31 December 2024**.

All contributions should be submitted online under the relevant [consultation](#).

Publication of responses

All contributions received will be published following the close of the consultation unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

This Consultation Paper is of particular interest to investors, issuers (including those already admitted to trading on a regulated market or on a multilateral trading facility), offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the new Prospectus Regulation.

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1 References, definitions, acronyms

Accounting Directive	Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
Amending Regulation	Amending Regulation in this CP refers specifically to the amending regulation which will amend the PR under the Listing Act . Respondents should note that the 'Amending Regulation' is not yet published in the Official Journal of the European Union.
CDR on scrutiny and disclosure	Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004
CDR on metadata	Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301
Commission	The European Commission
CP	Consultation Paper
CP Annex	The Annex to this CP containing a marked-up version of the CDR on scrutiny and disclosure
CP Annex (clean)	A clean version of the CP Annex available via the following electronic link

Corporate Reporting CSRD	Sustainability Directive <u>or</u>	Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting
ESAP		The European Single Access Point
ESG		Environmental, social and governance
ESMA		European Securities and Markets Authority
ESMA's prospectus register		The register compiled on the basis of notifications from national competent authorities in accordance with Article 25 PR
ESMA's Briefing on scrutiny <u>or</u> Briefing	Supervisory on prospectus <u>or</u> Supervisory	ESMA Supervisory Briefing outlining internal guidance to NCAs regarding certain elements of the PD (ESMA31-61-111 10 April 2017)
EU Follow-on prospectus		The prospectus referred to in Article 14a of the Amending Regulation
EuGB(s)		European Green Bond(s)
EU Growth prospectus	issuance	The prospectus referred to in Article 15a of the Amending Regulation
EU Growth prospectus annexes	prospectus <u>or</u> prospectus annexes	The prospectus referred to in Article 15 of the PR and related disclosure annexes in CDR on scrutiny and disclosure
European Green Bond Regulation		Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds
IFRS		International Financial Reporting Standards
IPO		Initial public offer
ISIN		International Securities Identification Numbers
LEI		Legal Entity Identifier

Listing Act	In this CP, references to the Listing Act should be understood as references to the text published on 8 October 2024. Respondents should note that the 'Listing Act' is not yet published in the Official Journal of the European Union.
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
Market Abuse Regulation or MAR	Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
Markets in Crypto-Assets Regulation	Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937
Markets in Financial Instruments Directive II or MiFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
Markets in Financial Instruments Regulation or MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
MTF	Multilateral trading facility
NCA	National competent authorities
Peer Review Report	ESMA's Peer review report dated 21 July 2022 (ESMA42-111-7170) – Peer review of the scrutiny and approval procedures of prospectuses by competent authorities
Omnibus Regulation	Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 amending certain Regulations as regards the establishment and functioning of the European single access point
Prospectus Regulation or PR	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, and repealing Directive 2003/71/EC
Prospectus Working Group <u>or</u> PWG	ESMA's Prospectus Working Group (as referred to in the Issuer Standing Committee's terms of reference (ref ESMA32-65-391))
RD	Registration Document
SPACs	Special purpose acquisition companies
Sustainable Finance Disclosure Regulation <u>or</u> SFDR	Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector
Taxonomy Regulation	Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088
TFEU	Treaty on the Functioning of the European Union
The Statement on sustainability disclosure in prospectuses <u>or</u> the 'Statement'	ESMA's Public Statement on Sustainability disclosure in prospectuses dated 11 July 2023 (ESMA32-1399193447-441)
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 and amending Directive 2001/34/EC
URD	Universal Registration Document

2 Executive Summary

Reasons for publication

In December 2022, the Commission adopted a legislative proposal to simplify the listing requirements to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on companies that seek a listing or want to remain listed on a trading venue. The package comprised a regulation amending the PR, MAR, MiFIR and a directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new directive on multiple vote share structures.

A compromise was approved by the Council on 14 February 2024 and voted by the European Parliament in first reading in plenary session on 24 April 2024 respectively. On 8 October 2024, the Council adopted the Listing Act. As the legal texts will enter into force 20 days after its publication in the Official Journal of the European Union, and because some provisions have a deferred entry into application from 15 to 18 months after such date, the Commission expects that the bulk of the provisions of the Listing Act should enter into application in July 2026. The Listing Act requires the Commission to adopt delegated acts in a number of areas within 18 months of its entry into force.

On 6 June 2024, ESMA received a request for technical advice from the Commission on a range of topics, and in relation to the Prospectus Regulation, on the following points:

- i) the content and format of the full prospectus, including a building block of additional information to be included in prospectuses for non-equity securities offered to the public or admitted to trading on a regulated market that are advertised as taking into account ESG factors or pursuing ESG objectives; and
- ii) the criteria for the scrutiny and the procedures for the approval of the prospectus, including proposed amendments to Commission Delegated Regulation 2019/980¹ or 'CDR on scrutiny and disclosure'.

Additionally, ESMA is consulting on proposed changes to Commission Delegated Regulation 2019/979² or 'CDR on metadata' concerning the update of the data for the classification of prospectuses. These changes are necessary for the proper implementation of the PR as amended by the Amending Regulation due to the introduction of new types of prospectus types. The update will also make other improvements to data collection, to reflect the coming into force of the EuGB Regulation and to streamline submission of information in scope of the Prospectus Regulation to ESAP.

Contents

This Consultation Paper presents a draft version of ESMA's technical advice.

Section 2 addresses the background and mandate for ESMA's work. This section provides a brief overview of the mandate, which is discussed in more depth in the sections focussing on the advice to the Commission. The section sets out the principles that the European Commission has asked ESMA to take into account when developing the technical advice.

Section 3 sets out ESMA's advice on the standardised format and standardised sequence of the prospectus, the base prospectus and final terms. The proposed disclosure is based on the existing disclosure requirements in CDR on scrutiny and disclosure.

Section 4 contains ESMA's advice to the Commission on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives.

Section 5 provides ESMA's advice on the content of the URD.

Section 6 concerns ESMA's advice on the criteria for the scrutiny of the completeness, comprehensibility and consistency of the information contained in prospectuses. More specifically, this advice focuses on the application of additional criteria during the scrutiny of prospectuses in accordance with Article 40 of the CDR on scrutiny and disclosure.

Section 7 relates to ESMA's advice on the procedures for the approval of prospectuses. More precisely, this advice concerns the deadlines applied by competent authorities during the scrutiny and approval process.

Finally, Section 8 pertains to the update of the reporting requirements in the CDR on metadata. This update is necessary to reflect the changes introduced by the Amending Regulation into ESMA's prospectus register.

When considering this Consultation Paper, respondents will note references to the '[CP Annex](#)' and '[CP Annex \(clean\)](#)'. The former is a marked-up version of the CDR on scrutiny and disclosure which outlines ESMA's proposals (see Section 4.2 for important commentary on that document), while the latter is simply a clean version of the CP Annex to facilitate reading. Both are published separate to this CP to prevent significantly increasing the size of this document.

Moreover, it is important to note that updates to cross-references in the CP Annex are limited to operative provisions in the draft CDR on scrutiny and disclosure. Cross-referencing in the disclosure annexes of the draft CDR on scrutiny and disclosure will only be completed for the final advice when the final proposals become clearer. Respondents may already want

¹ Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004.

² Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301.

to take note, however, that the volume of cross-referencing changes may be substantial in the final advice.

Next Steps

When finalising its technical advice to the European Commission, ESMA will consider all feedback received in relation to this Consultation Paper by 31 December 2024. A Final Report containing a summary of all consultation responses and a final version of ESMA's technical advice and the CDR on metadata is expected to be delivered to the European Commission and published on ESMA's website in Q2 2025.

3 Introduction

3.1 Background

1. In December 2022, the Commission adopted a legislative proposal to simplify the listing requirements to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on companies that seek a listing or want to remain listed on a trading venue. The package comprised a regulation amending the PR, MAR, MiFIR and a directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new directive on multiple vote share structures.
2. A compromise was approved by the Council on 14 February 2024 and voted by the European Parliament in first reading in plenary session on 24 April 2024 respectively. On 8 October 2024, the Council adopted the Listing Act. As the legal texts will enter into force 20 days after its publication in the Official Journal of the European Union, and because some provisions have a deferred entry into application from 15 to 18 months after such date, the Commission expects that the bulk of the provisions of the Listing Act should enter into application in July 2026. Several provisions included in the Listing Act will require the adoption of Level 2 measures. These will consist of technical standards drafted by ESMA and delegated acts adopted by the Commission in accordance with Article 290 of the TFEU.

3.2 Mandate

3. On 6 June 2024, ESMA received a formal request from the Commission to provide technical advice on certain delegated acts to supplement specific provisions of the PR, MAR and MiFID II included in the Listing Act. ESMA is currently working on responding to this call for advice by publishing several consultation papers, each of which focus on the advice in relation to one of these pieces of legislation.
4. This consultation paper focuses solely on ESMA's advice relating to the delegated acts supplementing the PR. The deadline for this technical advice is 30 April 2025.
5. This technical advice focuses on the following topics:
 - a. Proposing necessary amendments to CDR on scrutiny and disclosure, in order to determine the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents. This advice should reflect the amendments to Article 6 and 13 PR, as well as those to the format and content of prospectuses introduced in Annex I to III of the PR.

- b. The introduction of a building block containing disclosure requirements for non-equity securities offered to the public or admitted to trading on a regulated market that are advertised as taking into account ESG factors or pursuing ESG objectives. This advice is intended to assist the Commission in reflecting Article 13(1)(g) PR in the annexes included in CDR on scrutiny and disclosure³.
 - c. The content of URDs in order to support the Commission with its mandate in Article 13(2) PR, including any necessary amendments to CDR on scrutiny and disclosure.
 - d. The circumstances in which a competent authority can apply additional criteria during the scrutiny of a prospectus or require additional information to be included in a prospectus (Article 20(11)(a) and (b) PR) and the circumstances under which an NCA is allowed, where deemed necessary for investor protection, to require information in addition to that which is required for drawing up a prospectus, an EU Follow-on prospectus or an EU Growth issuance prospectus, including the type of additional information disclosed under the additional criteria.
 - e. the maximum overall timeframe within which the scrutiny of the prospectus is to be finalised and a decision reached by the competent authority on whether that prospectus is approved, or the approval is refused and the review process terminated, and the conditions for possible derogations from that timeframe (considering possible additional scrutiny criteria, the timeline for NCAs to respond to issuers and the average number of iterations between issuers and NCAs on the same application for approval of a prospectus).
6. The Commission has asked ESMA to take the following principles into account when developing its technical advice:
- a. **Internal market:** the need to ensure the proper functioning of the internal market, in particular with regards to financial markets, and to ensure a high level of investor protection.
 - b. **Proportionality:** the technical advice should not go beyond what is necessary to achieve the objectives of the Amending Regulation and of the amending Directive. A competitive regulatory framework is not about deregulation, but about better regulation, taking into account the need to be mindful of rationalisation and avoid undue regulatory burden on companies.

³ Although this topic was included as part of the Commission's request for advice for proposal to amend CDR on scrutiny and disclosure in order to determine regarding the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs; ESMA has included this building block as a separate chapter of this consultation paper due to the importance of the topic.

In recent years, the Commission committed to reducing the reporting burden by 25% as indicated in its Communication on Long-term Competitiveness⁴. When developing draft technical standards, and technical advice for delegated acts and guidelines, ESMA should contribute to this objective by seeking, within the limits of the mandate under Level 1 legal acts, to decrease the administrative burden for reporting entities. It should be simple and avoid creating divergent practices by national competent authorities.

- c. **Comprehensibility:** ESMA should provide comprehensive advice on all subject matters covered by the mandate in an easily understandable language.
- d. **Coherence:** the advice should be coherent with the wider regulatory framework of the Union.
- e. **Consultation:** ESMA is invited to consult market participants (e.g., sell-side, buy-side, intermediaries, exchanges) openly and transparently and provide a feedback statement justifying its choices vis-à-vis the main arguments raised. ESMA's advice should consider the different opinions expressed by market participants.
- f. **Evidence:** ESMA should justify its advice by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each. The results of this assessment should be submitted with the advice to the Commission.

3.3 Update of the CDR on metadata

- 7. In addition to the technical advice to the Commission, ESMA is also consulting on updating of metadata required to be submitted with documents uploaded to ESMA's Prospectus Register, in accordance with Articles 11 and 12 of the CDR on metadata and set out in Annex VII of the same CDR.
- 8. The data requirements are being updated to ensure the coherence of the ESMA Prospectus Register with the Amending Regulation in relation to the new types of documents introduced under the Amending Regulation (namely the EU Follow-on prospectus and the EU Growth issuance prospectus) as well as reflecting the coming into force of the European Green Bond Regulation and of the European Single Access Point (ESAP) Regulation. In addition, ESMA takes the opportunity to make some small modifications to improve the quality of the data collected, while also ensuring proportionality of the reporting requirements.

⁴ COM(2023) 168 final: https://commission.europa.eu/system/files/2023-03/Communication_Long-term-competitiveness.pdf.

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

4.1 Scope and focus

9. Section 3.1 of the Commission's request for advice invites ESMA to provide technical advice on the content and format of the full prospectus, by proposing the necessary amendments to the CDR on scrutiny and disclosure in order to determine the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents.
10. When providing this advice, ESMA has been asked to take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Articles 6, 13(1) and Annexes I, II and III, all relevant recitals of the Amending Regulation and all relevant provisions and annexes of the CDR on scrutiny and disclosure. In particular, ESMA should:
 - a. streamline the content of the prospectus taking as reference the level of disclosures of the current EU Growth prospectus (i.e., the level of disclosure of the prospectus should be equivalent to, or at least not higher than, the level of disclosure of the EU Growth prospectus). ESMA should take into account the different scope, considering that the full prospectus can also be used for an admission to trading on a regulated market;
 - b. ensure that the disclosures set out in a prospectus for shares allow issuers to comply with the page size limit of 300 pages in accordance with Article 6(4) and 6(5) PR as amended by the Amending Regulation;
 - c. align the content of the prospectus for retail non-equity securities to a level of disclosures that is equivalent to the lighter schedules of the prospectus for wholesale non-equity securities, except for the summary and the section on the offer that only apply to retail non-equity securities;
 - d. define the standardised format and standardised sequence of the prospectus, in line with the provisions and recitals of the Amending Regulation, ensuring the right balance between harmonisation and flexibility (especially for prospectuses drawn up as separate documents, including base prospectuses);
 - e. assess whether any annexes of CDR on scrutiny and disclosure need to be deleted or reviewed, and whether new annexes need to be added, taking into account all types of issuers and securities.

11. Moreover, in its request for advice, the Commission states that, in order to prevent greenwashing and provide investors with the necessary material environmental, social and governance (ESG) information, where relevant, the amendments to Article 13 require the Commission to consider, in the development of a delegated act:
- a. whether the issuer of equity securities is required to provide sustainability reporting, together with the related assurance opinion in accordance with the Accounting Directive – as amended by the Corporate Sustainability Reporting Directive (CSRD) – and the Transparency Directive.

4.2 General considerations

12. This section of the Commission’s request for advice was understood to be broad in scope and requiring a holistic assessment of prospectus content and format requirements. ESMA’s proposals were therefore made after analysing the PR and CDR on scrutiny and disclosure overall and considering factors such as (i) the precise wording of recitals and amendments in the Amending Regulation (ii) the balance between alleviation and investor protection as well as (iii) the feasibility and smooth functioning of the prospectus regulatory sphere.
13. After taking all these matters into consideration, several recommendations were made leading to a considerable amount of mark-up in the following document or ‘[CP Annex](#)’. The CP Annex replicates the CDR on scrutiny and disclosure and is marked-up **with additions or deletion which constitute ESMA’s proposals in response to this section of the Commission’s request for advice**. This method of communicating ESMA’s proposals was considered to be the most efficient owing to the size of the CDR on scrutiny and disclosure and the heterogenous parts impacted by the Commission’s request for advice. Respondents **must** therefore be mindful that the CP Annex **is an integral part of this consultation paper** and **must** be considered when providing feedback to this section. To facilitate respondents’ analysis, a clean copy of the CP Annex is also provided and is referred to in this document as ‘CP Annex (clean)’.
14. It is important to emphasise that ESMA’s recommendations, in response to this section of the Commission’s request for advice, mostly concern the ‘standard’ equity and non-equity registration document and securities note annexes⁵. Moreover, many of them are based on precise interpretations of the recitals and provisions in the Amending Regulation or instructions in the Commission’s request for advice.

4.3 ESMA Recommendations

15. ESMA’s recommendations reorganise the ‘standard’ equity and non-equity disclosure annexes⁶ and impact both format and content. The approach taken is mostly based on

⁵ Annexes 1, 6, 7, 11, 14 and 15 in CDR on scrutiny and disclosure.

⁶ Annexes 1, 6, 7, 11, 14 and 15 in CDR on scrutiny and disclosure.

a literal interpretation of the Amending Regulation and request for advice and has resulted in the following main changes:

- a. The 'standard' equity and non-equity disclosure annexes follow the sequence dictated in Annexes I, II and III of the Amending Regulation – see Section 4.4 below to understand why this sequence was not extended to other annexes.
- b. The disclosure proposed in the 'standard' equity and non-equity annexes:
 - i. is generally pared down to the level required by the present EU Growth prospectus annexes⁷ but occasionally goes further in relation to non-equity - see also Section 4.4 below for more information.
 - ii. aims to align certain disclosure requirements with what is stipulated in the Amending Regulation. For example, the period which financial information should cover in the 'standard' equity registration document is reduced from three years to two.

16. Furthermore, as ESMA noted that the request for advice references whether '*the issuer of equity securities is required to provide sustainability reporting, together with the related assurance opinion in accordance with the Accounting Directive – as amended by the CSRD – and the Transparency Directive*', ESMA assessed if additional entity-level sustainability requirements should be proposed in the 'standard' equity RD. In ESMA's view, since Part III of Annex II of the Amending Regulation already sets clear and complete requirements⁸, no further proposals were made. In fact, the wording⁹ from Part III of Annex II of the Amending Regulation is now copied in the CDR on scrutiny and disclosure so that all relevant requirements are available in one place. As a further matter, while this aspect of the Commission's request for advice only focuses on entity-level requirements for equity issuers, a proposal is included in the 'standard' non-equity RD to give non-equity issuers the option to provide their sustainability information, via electronic link, to the extent available. More commentary on this is provided under **Sustainability information** in Section 4.4 below.

17. Overall, these recommendations are varied and try to address the diverse elements of the Commission's request for advice both directly and indirectly¹⁰.

⁷ Annexes 24 to 27 CDR on scrutiny and disclosure.

⁸ Here ESMA is referring to: Part III, Management report, including sustainability reporting (equity securities only) which states '*The purpose of this section is to either incorporate by reference or include the information set out in the management reports and consolidated management reports as referred to in Article 4 of Directive 2004/109/EC, where applicable, and in Chapters 5 and 6 of Directive 2013/34/EU, for the periods covered by the historical financial information including, where applicable, the sustainability reporting*'.

⁹ Idem.

¹⁰ An illustration being the changes to the 'standard' equity annexes which (i) directly respond to what is dictated or instructed in the Amending Regulation or the Commission's request for advice and (ii) which may indirectly facilitate more comparable IPO prospectuses that may keep within a 300-page limit.

4.4 Additional considerations

18. Making recommendations which balance the precise wording of recitals and provisions in the Amending Regulation and the instructions in the Commission's request for advice was challenging. In some cases, it appeared format incompatibilities may arise and in others there were concerns about content. ESMA describes some of the issues below and encourages respondents to take them into consideration when providing their feedback.

Format

19. The Amending Regulation appears to require a strict and standardised sequence of information for prospectuses and base prospectuses in line with Annexes I, II and III therein, with certain exceptions. ESMA has followed that sequence for the 'standard' equity and non-equity annexes but did not apply it to other annexes in the CDR on scrutiny and disclosure which may be used to prepare a prospectus or base prospectus. That is because this strict sequencing seems more appropriate for a subset of transactions. In particular, certain annexes in the CDR on scrutiny and disclosure do not easily lend themselves to being arranged in that order and it is unclear if that order works well considering the diverse transactions which a prospectus or base prospectus may cover.

20. Notably, Annexes I, II and III of the Amending Regulation seem inspired by the EU Growth Prospectus format. That format is arguably more suited to transactions such as IPOs or 'plain vanilla' non-equity issues. In those cases, a strict sequence based on Annexes I, II and III of the Amending Regulation may work well, but it is not clear if such literal sequencing is feasible for (i) a base prospectus that caters for multiple non-equity securities with building blocks or (ii) a prospectus prepared using the third country sovereign¹¹ registration document. This is why ESMA's proposals are limited to the 'standard' equity and non-equity annexes.

21. These format considerations do, however, depend on how strictly the Amending Regulation should be interpreted. ESMA therefore strongly encourages respondents to state how they read the Amending Regulation, as very literal interpretations might become a source of tension when preparing prospectuses. Moreover, to illustrate another example of how strict interpretation could create issues, one could now question if the location of risk factors in a prospectus will be dictated by Annexes II and III of the Amending Regulation or Articles 24 and 25¹² of the CDR on scrutiny and disclosure. In a general sense, Articles 24 and 25¹³ of the CDR on scrutiny and

¹¹ More specifically: Non-equity securities issued by third countries and their regional and local authorities.

¹² Articles 22 and 23 in the CP Annex (clean) or CP Annex.

¹³ Idem.

disclosure stipulate format requirements of a different nature¹⁴ to Annexes II and III of the Amending Regulation, but they might overlap regarding the location of risk factors.

22. ESMA has tried to make changes to Articles 24 and 25¹⁵ of the CDR on scrutiny and disclosure¹⁶ which, on one hand, try to cater as best possible to the standardisation depicted in the Amending Regulation and the Commission request for advice, while at the same time considering the potential need for pragmatism. Comments on these changes are very much encouraged.
23. Respondents may also note, when reading the changes to Articles 24 and 25¹⁷ of the CDR on scrutiny and disclosure, that a reference to a short cover note is included. The intention is merely to ensure that cover notes describing the subject matter of a prospectus are placed prominently at the beginning of the document and are not placed underneath pages of warnings or regulatory statements. Respondents are asked to consider whether that is appropriate and to state if this will create issues.

Content

24. **Financial information:** The Amending Regulation reduces the period for which financial information should cover from three financial years to two in the case of the 'standard' equity registration document and from the latest two financial years to the last financial year in the case of the 'standard' non-equity registration document. Regarding non-equity in particular, noting that the CDR on scrutiny and disclosure contains several financial information requirements that refer to months in a numerical sense (e.g., 18 months), ESMA wishes to emphasise that, for practical purposes, it is important that:
- a. this reference to 'last financial year' in the Amending Regulation is not understood based on a calendar year or in months. Notably, because a prospectus prepared in Q1 2025 may only be able to include complete audited annual financial information from 2023. Accordingly, ESMA tried to avoid making changes to items such as *Age of Financial information*¹⁸ in the 'standard' non-equity annex which would create associated issues.
25. Moreover, while the focus of this work is the CDR on scrutiny and disclosure, it should also be noted that the CDR on metadata may need to be updated with respect to key financial information in the summary. This is because the reduced time periods for financial information dictated by the Amending Regulation may also need to be considered when applying those requirements in the CDR on metadata.

¹⁴ Here ESMA is referring to the fact that Annexes I, II and III of the Amending Regulation appear to focus on the sequence of sections within a disclosure annex whereas Articles 24 and 25 CDR on scrutiny and disclosure cover the prospectus more broadly, e.g., referring to table of contents.

¹⁵ Articles 22 and 23 in the CP Annex (clean) or CP Annex.

¹⁶ Which concern format of the prospectus and base prospectus respectively.

¹⁷ Articles 22 and 23 in the CP Annex (clean) or CP Annex.

¹⁸ This item on *Age of Financial Information* stipulates: 'The balance sheet of the last year of audited financial information may not be older than 18 months from the date of the registration document'.

26. **Sustainability information:** With regard to non-equity, while ESMA recognises that entity-level sustainability information requirements were not referred to in the request for advice, ESMA has included a proposal in the 'standard' non-equity registration document which is not intended to be a hard requirement. Rather, it is merely to facilitate non-equity issuers who wish to provide entity-level sustainability information. The proposal states that such information should be provided with a disclaimer that the information on the website does not form part of the prospectus, unless that information is incorporated by reference into the prospectus, and respondents are kindly invited to share their thoughts on this suggestion.

Non-equity annexes

27. The proposed non-equity annexes try to (i) use the wholesale disclosure framework as the basis for forthcoming non-equity prospectuses (ii) but also draw on the existing EU Growth non-equity annexes as an upper limit. They also try to consider (a) the instruction to take retail into account and (b) the sequencing of information according to Annexes II and III in the Amending Regulation.

28. While ESMA understands the general ambition to streamline, standardise, maintain, or reduce disclosure, as appropriate, trying to fulfil these various goals under a single disclosure framework may create issues. Notably because the retail, EU Growth and wholesale regimes have their own specificities, offer and admission requirements are carefully calibrated across the various annexes, and the sequencing according to Annexes II and III in the Amending Regulation may not work depending on how strictly it is expected to be applied - see also the format discussion above.

29. With that said, the issues appear more significant regarding the creation of a single non-equity securities note as opposed to a single registration document. That is because similarities across issuer information requirements better facilitate consolidation, whereas the various securities notes are challenging in that they perform different roles. For instance, the wholesale non-equity securities note places greater emphasis on admission details while the EU Growth non-equity securities note focuses more on offers.

30. Nevertheless, both with respect to a potential future non-equity registration document and securities note, ESMA has on a best-efforts basis proposed a single framework which tries to consider all elements in the Amending Regulation and the Commission's request for advice. Respondents are strongly encouraged to think about all factors when providing responses to this consultation. In ESMA's view, there may be practical reasons to maintain the status quo on securities notes, but the recommendations in the CP Annex try to illustrate what a compromise between wholesale and EU Growth annexes might look like.

Other

31. ESMA's recommendations treat the EU Growth prospectus disclosure threshold as the upper limit in relation to the 'standard' equity and non-equity registration documents

and securities notes. However, there are a few instances where disclosures go beyond what features in those frameworks. For example, in the equity registration document, items such as whether management members were previously declared bankrupt were inserted, and an item requesting information on whether multiple voting shares feature as part of the share capital are proposed. Respondents are asked to consider whether they think these should or can be included, but should note that either investor protection concerns, or the fact that features such as multiple voting shares are oncoming, support why they were included.

32. Moreover, respondents will note that both in the proposed equity and non-equity registration documents a cash flow statement requirement is included for situations in which audited financial information is prepared according to national accounting standards. This again goes beyond what was expected in equivalent EU Growth prospectus items, but because cash flow statements may provide useful information for prospective investors about how an issuer manages cash, these items were included for the purpose of the consultation. Feedback on this point is greatly encouraged.

Question 1 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 25¹⁹ CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

Question 2 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?

Question 3 Do you agree with ESMA's sustainability-related assessment in relation to the 'standard' equity registration document? If not, please explain why?

Question 4 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?

Question 5 What are your views in relation to potential implications of the proposed single non-equity disclosure framework?

Question 6 Do you have any other concerns about the disclosure items as proposed? If so, please explain.

¹⁹ Articles 22 and 23 of the CP Annex (clean) or CP Annex.

Question 7 In your view, will these proposals add or reduce costs? Please explain your answer.

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

5.1 Scope and focus

33. Section 3.1 of the Commission's request for advice asks ESMA to develop a building block of additional information to be included in the prospectus for non-equity securities offered to the public or admitted to trading on a regulated market that are advertised as considering ESG factors or pursuing ESG objectives. The Commission asks ESMA to:
- a. ensure the right balance between the need to prevent greenwashing and avoid creating a burdensome schedule (i.e., disclosures should be light touch and proportionate to the sustainability-related claim made);
 - b. avoid overlaps or inconsistencies with the requirements laid down in other EU sustainable finance-related legislation, such as the European Green Bond Regulation, the Taxonomy Regulation, the Sustainable Finance Disclosure Regulation and the Corporate Sustainability Reporting Directive. Furthermore, the technical advice should not deviate from the overarching burden reduction objective of the Listing Act and avoid merely replicating disclosure requirements set out in sustainable finance-related legislation that go beyond what is strictly necessary for a prospectus to allow taking an informed investment decision;
 - c. ensure the consistency and usability of the required information for other market players themselves subject to sustainable finance-related requirements, notably distributors (i.e., consistency with the sustainability preferences definition under MiFID II);
 - d. ensure that the new schedule does not implicitly make standards, templates or disclosures that are voluntary under other sustainable finance-related legislation (e.g., disclosures under the European Green Bond Regulation) mandatory in the prospectus and take into account standards or principles developed by the industry and widely used;
 - e. ensure that green bonds issued in accordance with the European Green Bond Regulation can be offered to the public or admitted to trading on a regulated market also via a base prospectus, by making the appropriate amendments to CDR on scrutiny and disclosure; and
 - f. cater for all types of non-equity securities subject to the PR and making ESG-related claims, without focussing only on green or ESG-related bonds.

5.2 General considerations

34. After taking the parameters of the Commission’s request for advice into consideration, ESMA has chosen to take its Statement on sustainability disclosure in prospectuses²⁰ as a starting point for its advice. Although the Statement was only published relatively recently, feedback from stakeholders has generally been positive. In fact, the Statement has appeared to create a more uniform level of disclosure in prospectuses and consolidate good practices.
35. Taking all of this into account, ESMA considers that the Statement provides a good basis for ‘light touch’ and ‘proportionate’ disclosure requirements that cover all types of non-equity securities, as requested by the Commission.
36. In a few cases, ESMA’s proposal goes beyond the requirements in the Statement. These requirements are described in further detail in the sections, “Introduction of new disclosure requirements” and “Adherence to a specific standard or legislative framework” below. ESMA believes that this additional disclosure does not go significantly beyond what was required in the Statement and is consistent with NCAs’ current expectations of the minimum disclosure required to satisfy the ‘necessary information’ test in Article 6(1) PR. Taking this into account, ESMA also expects the disclosure to be in line with the market’s expectations.
37. ESMA’s proposal for the specific disclosure requirements for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives is included in Section 10.4 of this consultation paper in Annex 21. This annex is a so-called ‘building block’ and is intended to be used in combination with the other applicable annexes for non-equity securities. For example, Annex 21 could be applied together with Annexes 6 (RD for non-equity securities), 14 (securities note for non-equity securities) and Annex 17 (Securities giving rise to payment or delivery obligations linked to an underlying asset) of CDR on scrutiny and disclosure.
38. Several of the requirements in Annex 21 relate specifically to sustainability-linked bonds and so-called ‘use of proceeds’ bonds. ESMA is proposing definitions for both types of bonds to help ensure legal certainty. These definitions are set out in the proposal below and are based on the definitions used in the Statement. ESMA proposes to introduce a different definition of ‘sustainability-linked’ bonds than included in point (6) of Article 2 of the European Green Bond Regulation, because that definition only focuses on environmental sustainability objectives. Instead, ESMA is proposing the broader definition of ‘sustainability-linked’ non-equity securities covering environmental, social and/or governance sustainability objectives.
39. For the avoidance of doubt, ESMA notes that Annex 21 is also intended for use in relation to prospectuses concerning EuGBs, since these securities are a type of ‘use

²⁰ ESMA32-1399193447-441.

of proceeds' bond. Similarly, Annex 21 applies to prospectuses relating to use of proceeds bonds or sustainability-linked bonds in cases where the issuer has chosen to use the templates for voluntary pre-issuance disclosures referred to in Article 20 of the European Green Bond Regulation.

40. ESMA has considered exclusively relying on the pre-issuance disclosure for European Green Bonds and voluntary pre-issuance disclosures in an effort to try to alleviate the burden on issuers. However, ESMA considers that prospectuses relating to these types of securities are not exempted from the 'necessary information test' in Article 6(1) PR, so that it is important to have a complete overview of the necessary information. Furthermore, practices relating to EuGBs and the voluntary disclosure templates have yet to develop so that it is unclear how the disclosure in the EuGB factsheet and the voluntary templates will interact with the necessary disclosure in prospectuses. For example, the EuGB factsheet does not appear to include any disclosure on risk factors that would satisfy that prospectus requirement.
41. Nevertheless, ESMA wants to promote the use of the EuGB label and the voluntary disclosure templates by trying to minimise the additional regulatory burden associated with publishing a prospectus. ESMA proposes to do this by avoiding any overlap between the pre-issuance disclosure relating to EuGBs / the voluntary templates vis-à-vis the disclosure in prospectuses. In that regard, ESMA notes that Article 13(1a) PR²¹ requires (i) the *incorporation by reference*²² of the relevant information from the EuGB factsheet in prospectuses relating to EuGBs; and (ii) the *inclusion* of the relevant optional disclosures from the voluntary templates set out in the European Green Bond Regulation. These disclosures can therefore be used to satisfy the disclosure requirements in Annex 21. This should reduce the regulatory burden on issuers of these products and help to avoid the duplication of information.
42. Additionally, ESMA proposes to use the mandate in Article 19(4) PR to develop draft regulatory technical standards to update the list of documents that can be incorporated by reference in Article 19(1) PR to include the voluntary pre-issuance disclosures. This will allow issuers to incorporate (parts of) these documents into the prospectus by reference, which should provide further alleviation for them.
43. ESMA will continue to monitor prospectuses relating to EuGBs and prospectuses incorporating the voluntary templates to identify any issues. In particular, ESMA is considering whether it would be prudent to drop (certain) disclosure requirements included in Annex 21 if they already are covered by EuGB factsheets or by the templates for voluntary pre-issuance²³.

²¹ As introduced to the PR via the Amending Regulation.

²² As permitted pursuant to Article 14(3) of the European Green Bond Regulation, together with Articles 13(1a)(a) and 19(1) PR.

²³ Of course, NCAs will still need to ensure that the prospectuses meet the requirements for approval, including the completeness, the consistency and the comprehensibility of the information in each prospectus.

Proposal to amend CDR on scrutiny and disclosure:

Article 1

[...]

(f) ‘sustainability-linked non-equity securities’ means non-equity securities for which the financial and/or structural characteristics are conditional on whether the issuer achieves predefined ESG objectives, including bonds defined in point (6) of Article 2 of Regulation (EU) 2023/2631.

(g) ‘use of proceeds bond’ means non-equity securities whose proceeds are applied to finance or re-finance green and/or social projects or activities.

Article 21a

1. For non-equity securities offered to the public or admitted to trading on a regulated market that are advertised as taking into account ESG factors or pursuing ESG objectives, including securities for which the issuer uses the templates for voluntary pre-issuance disclosure, as referred to in Regulation (EU) 2023/2631, the securities notes shall also contain the additional information referred to in Annex 21.
2. European Green Bonds, as referred to in Regulation (EU) 2023/263, qualify as use of proceeds bonds within the meaning of Article 1 (g).

The specific disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives are included in Annex 21 of Section 10.4 of this advice.

Question 8 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.

Question 9 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?

Question 10 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 the European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate regulatory burden.

Question 11 Should Annex 21 be disapplied in relation to prospectuses relating to EuGBs²⁴ and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

Question 12 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.

5.3 Introduction of new Disclosure Requirements

44. ESMA is including some disclosure requirements that were not included in the Statement, because of concerns that there was insufficient legal basis under the PR to include them at that time. For example, in its Statement, ESMA *recommended* that issuers disclose whether they intend to provide post-issuance information, instead of including an actual *requirement* to disclose whether they intend to provide post-issuance information.
45. In this advice, ESMA proposes to require such information in item 6.3, because it is critical that investors know if post-issuance information will be published and, if so, where to find it.

5.4 Adherence to a Specific Standard or Legislative Framework

46. ESMA has also carried over the requirement from the Statement for issuers to include the basis for any statements concerning their sustainability profile or that of the securities they issue, which is included in item 2.3 of Annex 21. As an example of how this could be done, the Statement provides that the issuer can indicate whether they adhere to a specific market standard, label or taxonomy. However, ESMA is concerned that some issuers are stating that they ‘partially’ adhere to or are ‘partially’ aligned with a specific standard or legislative framework, such as the ICMA’s Green Bond Principles or a legislative framework such as the EU’s Taxonomy or a taxonomy other than the EU Taxonomy. Such statements may confuse investors because it is unclear what it means to ‘partially’ adhere to or be partially aligned with a standard and could lead to greenwashing. ESMA is also concerned that, even when claims of full compliance with a given market standard or taxonomy are made, investors would be misled if such

²⁴ With the exception of Item 1 of Annex 21 in prospectus relating to EuGBs, which would still need to apply because EuGB factsheets do not include risk factors.

compliance is not ultimately significant in explaining the ESG features of the non-equity security or its ESG objectives.

47. To address these concerns, ESMA recommends adding item 2.1 of Annex 21, which states that, if the non-equity securities are advertised as complying with, aligned with, eligible under or otherwise adhering with the EU Taxonomy, with a specific market standard or as having ESG features; the prospectus must unequivocally state how the criteria in Article 3 of the Taxonomy Regulation or the criteria in the third country taxonomy, specific market standard or label are met and that they are significant in relation to the ESG features or objective of the non-equity securities.
48. However, issuers who cannot provide this statement can still provide information to help investors understand the ESG factors taken into account by the securities and/or the ESG objectives pursued by the securities when providing the disclosure required under item 2.2 of Annex 21, i.e. “a clear and comprehensive explanation to help investors understand the ESG factors taken into account by the securities and or ESG objectives pursued by the securities”. For example, the issuer could explain the extent to which the assets/investments are eligible under a third country taxonomy or the EU Taxonomy.
49. ESMA considers such disclosures important for investor protection, since (as mentioned in the Progress Report on Greenwashing) a source of greenwashing concerns is the potential disconnect between climate disclosures of issuers and their actual conduct. In particular, unclear or insufficient ambition may lead to greenwashing concerns in relation to use of proceeds bonds and sustainability-linked non-equity securities²⁵.

Question 13 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.

Question 14 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?

Question 15 Do you agree with the ‘Category A’, ‘Category B’ and ‘Category C’²⁶ 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.

²⁵ The Progress Report on Greenwashing mentions in paragraph 91 that: “Issues related to unclear or insufficient ambition may affect both UoP sustainable bonds (with projects seen as insufficiently ambitious) and SLBs (target that do not cover the main impacts of the issuer or related to non-material ESG aspects, “easy to achieve” or “business as usual” targets, ambition below the efforts expected from the sector in which the issuer operates).” (Ref.: ESMA30-1668416927-2498 | 31 May 2023).

²⁶ ‘Category A’, ‘Category B’ and ‘Category C’ information are referred to in the current Article 26 CDR on scrutiny and disclosure or are referred to in Article 24 in the CP Annex (clean) or CP Annex.

5.5 Interactions with the SFDR

50. Paragraphs 49 - 51 of the ESA's Opinion on the review of Sustainable Finance Disclosure Regulation²⁷ explains that there are structured products that currently fall outside the scope of the SFDR, while having similar characteristics to products falling within the scope of the SFDR. For example, the Opinion explains that structured products taking the legal form of a formula fund falling under the SFDR can be equivalent to a structured non-equity security falling outside the scope of the SFDR. The Opinion states similar disclosure should be provided when two types of financial products have similar features. Therefore, ESMA recommends that the Commission consider aligning the requirements for such products under the PR and the SFDR in the future.
51. Nevertheless, ESMA currently does not consider it appropriate to align the disclosure requirements under the PR with the SFDR due to the current plans to revise the SFDR. Therefore, ESMA's advice for the disclosure requirements for non-equity securities advertised as having an ESG component or pursuing an ESG objective does not align the disclosure required under the PR with the SFDR.

Question 16 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.

5.6 Consistency and usability of the disclosure information for distributors

52. In relation to the consistency and usability of the disclosure information for distributors and the definition of sustainability preferences under MiFID II, ESMA is currently carrying out a Common Supervisory Action (CSA) together with NCAs on MiFID II sustainability topics that, inter alia, will be an opportunity to collect evidence on how firms manage/categorise investment products with ESG features that are outside the scope of SFDR (for example, shares, bonds, certificates, structured products). ESMA will use this information when developing any future advice to the Commission in the context of the definition of sustainability preferences. Therefore, it is too early to provide advice on the consistency/alignment between ESG disclosures for non-equity securities and sustainability preferences.

²⁷ Joint ESAs Opinion on the assessment of the Sustainable Finance Disclosure Regulation (SFDR), JC 2024 06, 18 June 2024.

5.7 Use of the base prospectuses for European Green Bonds

53. Article 13(1a)(a) PR²⁸ requires the incorporation by reference of the relevant information from an EuGB factsheet into prospectuses relating to EuGBs. Under the current provisions in CDR on scrutiny and disclosure, it will be necessary to incorporate the relevant EuGB factsheet(s) by reference either at (i) the time the base prospectus is approved or (ii) via a supplement to the base prospectus. This limitation arises as it is not possible to incorporate documents by reference into final terms containing so-called 'Category A' or 'Category B' information because of the restrictions in Article 26 CDR²⁹ on scrutiny and disclosure.
54. As the EuGB market has yet to develop, ESMA is concerned that the requirement to incorporate the relevant information from the EuGB factsheet may make it difficult for issuers to use their base prospectuses for the issuance of EuGBs, which could negatively impact the willingness to issue them.
55. To address this situation, ESMA proposes to amend Article 26 CDR³⁰ on scrutiny and disclosure to classify the disclosure in EuGB factsheets as Category C information so that they can be incorporated by reference into final terms. Similarly, ESMA proposes to classify the information in the templates for voluntary pre-issuance disclosures as 'Category C' information to ensure that no issues arise in relation to the use of base prospectuses for issuers using the templates. This approach is illustrated in the amendment to include a new paragraph 4a in Article 26³¹ set out below.
56. However, ESMA emphasises that it is generally not in favour of incorporating documents by reference into base prospectuses via final terms because this increases the risk that changes are made to the disclosure included in the base prospectus without the review by an NCA (as the incorporation of information in the final terms happens after the approval of the prospectus). With this in mind, ESMA emphasises in all other cases, supplements are necessary to amend an approved base prospectus. As such, this practice is limited to EuGB factsheets and the templates for voluntary pre-issuance disclosures. In order to mitigate this risk, ESMA proposes to collect metadata from final terms relating to EuGBs to simplify their supervision. Please see paragraph 91 of this consultation paper in that regard. ESMA also takes comfort in the regulated nature of EuGB factsheets, which are subject to specific disclosure requirements as set out in Annex I of the European Green Bond Regulation.

²⁸ As introduced into the PR via the Amending Regulation.

²⁹ Article 24 in the CP Annex (clean) or CP Annex.

³⁰ *Idem*.

³¹ Article 24 in the CP Annex (clean) or CP Annex.

Proposal to amend CDR on Scrutiny and Disclosure:

Article 26³²

[...]

4a. The information included in a European Green Bond factsheet referred to in Article 10 of Regulation (EU) 2023/2631 and in the templates for voluntary pre-issuance disclosure referred to in Article 20 of Regulation (EU) 2023/2631 shall be considered 'Category C' information for the purposes of this article.

Question 17 Do you support ESMA's proposal to amend Article 26³³ 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.

Question 18 Do you think that allowing 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 will impose any significant costs or burden on issuers? Please explain your answer.

³² Article 24 in the CP Annex (clean) or CP Annex.

³³ Idem.

6 Draft technical advice on the content of the URD

6.1 Scope and focus

57. Section 3.2 of the Commission's request for advice invites ESMA to provide technical advice in order to determine the content of the URD, by proposing the necessary amendments to CDR on scrutiny and disclosure, considering that:

- a. the URD is a multipurpose document, which can be used for an offer or admission to trading of either equity or non-equity securities.
- b. the URD can only be used, in accordance with Article 9(1) of the PR, by an issuer whose securities are admitted to trading on a regulated market or an MTF. Therefore, a URD is used in the context of secondary issuances, and it should be considered whether it could benefit from alleviations compared to the registration document for equity securities of the full prospectus; however, possible alleviations to the URD should be balanced, taking into account the multipurpose nature of the URD and the scope of the document as clarified in recital 39 of the PR, whereby the URD should act as a source of reference on the issuer, supplying investors and analysts with the minimum information needed to make an informed judgement on the company's business, financial position, earnings and prospects, governance and shareholding.

6.2 General considerations and ESMA's recommendation

58. ESMA notes that a URD can serve multiple purposes, and that prospectuses of which a URD is a constituent part are exempt under the Amending Regulation from format and sequence requirements, page size requirements, such as the 300-page limit for share prospectuses, as well as template, layout, font size and style requirements.

59. Based on those general considerations, the request for advice, and an assessment of the PR, ESMA proposes limited changes to the URD annex itself. Moreover, ESMA notes the URD is mostly impacted by the proposals made in response to the request for advice under Section 4.1, namely, the content alleviations to the 'standard' equity registration document which will also affect URDs. As such, it appears no further proposals are necessary.

60. Furthermore, while it is acknowledged that the URD is described in the request for advice as a multiple-purpose document that could be extended for use in non-equity transactions, recital 39 of the PR appears to suggest the URD is solely for equity transactions. Accordingly, ESMA does not make any non-equity related proposals for URDs.

Question 19 Do you agree with ESMA's assessment regarding changes to the URD annex?

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

7.1 Scope and focus

61. Section 3.4 of the Commission's request for advice invites ESMA to provide technical advice on the criteria for the scrutiny of the completeness, comprehensibility and consistency of the information contained in prospectuses by proposing amendments to the CDR on scrutiny and disclosure. This advice will focus on:

- a. the circumstances under which a competent authority is allowed to use additional criteria for the scrutiny of the prospectus, where deemed necessary for investor protection; and
- b. the circumstances under which a competent authority is allowed, where deemed necessary for investor protection, to require additional information over and above that which is required under Articles 6, 13, 14a and 15a PR for drawing up a prospectus, an EU Follow-on prospectus or an EU Growth issuance prospectus, including the type of additional information that may be required to be disclosed under the additional criteria as referred to in point a.

62. Furthermore, the Commission asks ESMA to take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Article 20 of PR and all relevant recitals of the Amending Regulation and all relevant provisions and Annexes of CDR on scrutiny and disclosure. ESMA is also being asked to consider the outcome of the peer review on the scrutiny and approval procedures of prospectuses as set out in the Peer Review Report and, where necessary, to update the contents of the report concerning the additional scrutiny criteria that NCAs apply for investor protection reasons and the type of additional information that they may require.

7.2 General considerations

63. ESMA understands that the Commission's request for advice concerns its mandate in Article 20(11) PR³⁴ to develop delegated acts specifying 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.

³⁴ As amended by the Amending Regulation.

This mandate has been included in the PR to address the convergence issues identified in the Peer Review Report.

64. In particular, section 6.3.4 of the Peer Review Report identifies NCAs' different approaches to the application of additional criteria under Article 40 CDR on scrutiny and disclosure, which allows NCAs to apply criteria in addition to those laid down in Articles 36, 37 and 38 for the purposes of scrutinising the completeness, comprehensibility and consistency of the information in the draft prospectus, where deemed necessary for investor protection.
65. The Peer Review Report states that two-thirds of NCAs reported that they did not apply additional criteria for the scrutiny of the information contained in prospectuses, while ten NCAs responded that they applied such criteria. Furthermore, it appears that NCAs have different understandings of what constitutes additional criteria, which led the peer review committee to conclude that there is a lack of legal clarity about what constitutes 'additional criteria'.
66. ESMA has updated the findings of the Peer Review Report concerning NCAs' approach to the application of additional criteria when scrutinising prospectuses. Many NCAs have reported that there are no material changes to their approach to additional criteria. However, other NCAs have reported changing their approach to the application of additional criteria due to the discussions in ESMA's Prospectus Working Group. Often these changes do not impact the actions taken by NCAs but reconsider the legal basis for taking actions such as requesting additional information. For the update to the Peer Review Report, please see Annex III.
67. ESMA's Prospectus Working Group discussed NCAs' different approaches in more detail and identified the following situations in which one or more NCAs consider that they apply additional criteria:
 - a. Requesting additional documentation from an issuer. For example, underlying transaction documentation, corporate resolutions, articles of association, advertisements, etc.
 - b. Applying disclosure requirements from other annexes that would not normally apply to the type of securities covered by the prospectus. For example, an NCA might require additional disclosure normally applicable to equity prospectuses to a prospectus relating to 'hybrid' securities or developing additional disclosure requirements for a new type of security.
 - c. Applying completely new disclosure requirements in relation to a new type of product or transaction. For example, requiring additional disclosure for prospectuses relating to crypto-assets or SPACs.
 - d. Following ESMA's Supervisory Briefing on prospectus scrutiny. For example, if an NCA checks the information internally available within an NCA or works together with their colleagues in another department.

- e. Reviewing an issuer's historical financial information for compliance with IFRS.

7.3 ESMA's recommendation

68. According to these discussions, the situations in points b. and c. of paragraph 68 above concern the application of 'additional criteria', while the other situations do not. However, since both situations concern deviating from the prescribed annexes in Articles 2 – 21a CDR on scrutiny and disclosure, ESMA considers that this issue can be best addressed by deleting Article 40 CDR on scrutiny and disclosure and including a new Article 21b to CDR on scrutiny and disclosure, which, in line with Articles 6(1), 14a(2) and 15a(2)PR allows NCAs to:

- a. apply disclosure requirements from other annexes that would not normally apply to the type of the securities covered by the prospectus based on Articles 2 – 21a CDR on scrutiny and disclosure; and

69. require additional disclosure in relation to a new type of product, transaction or issuer that is insufficiently covered by existing annexes to CDR on scrutiny and disclosure. Applying

Such a provision connects more closely with the content of the prospectus included in Chapter II of CDR on scrutiny and disclosure as opposed to the scrutiny and approval of the prospectus and review of the URD in Chapter V.

70. To better illustrate the criteria set out in a. above, an example would be a prospectus relating to non-equity securities with denominations of EUR 1,000. Normally, Annexes 6 and 14 to CDR on scrutiny and disclosure would apply. However, the securities in question have some of the characteristics of equity securities, which materially affects the risk profile of the securities. To address this issue, the NCA responsible for scrutinising the prospectus requests that the issuer disclose information about its capital resources and its share capital, as required under section 8 and section 19 of Annex 1 to CDR on scrutiny and disclosure.

71. The criteria allowing NCAs to apply completely new disclosure requirements in relation to a new type of product or transaction is intended to cover unexpected situations that do not (entirely) fit within the disclosure requirements set out in the existing annexes to CDR on scrutiny and disclosure. The intention is to create a provision similar to Article 23(2) and (3) of Commission Regulation (EC) No 809/2004 concerning "Adaptations to the minimum information given in prospectuses and base prospectuses". Examples of securities where NCAs have taken this approach include SPACs and crypto-assets.

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ESMA proposal for a new Article 21b CDR on scrutiny and disclosure

Article 21b

Circumstances leading to the disclosure of additional information

1. By way of derogation from Articles 2 to 21a, where a prospectus, registration document or securities note concerns securities that share features of securities that are comparable to, but not the same as securities covered in the annexes to this delegated regulation, the competent authority shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information items from another registration document, securities note annex or additional information annex shall be included in the prospectus to comply with Article 6(1), 14a(2) or 15a(2) of the Prospectus Regulation.
2. By way of derogation from Articles 2 to 21a, where a prospectus concerns a type of securities, transaction or issuer that is not covered by the annexes to this delegated regulation, the competent authority shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information shall be included in the prospectus to comply with Article 6(1), 14a(2) or 15a(2) of the Prospectus Regulation.

7.4 Additional considerations

72. ESMA emphasises that NCAs are allowed to require additional information in prospectuses if such information is necessary to satisfy the ‘necessary information’ test in Article 6(1), 14a(2) and 15a(2) PR. Article 21b is simply intended to further NCA powers in this regard. Notably, Article 32 PR already empowers NCAs to take the types of actions set out in paragraph 68 above, so Article 40 CDR on scrutiny and disclosure is arguably superfluous. For example, Article 32(1)(a) PR states that NCAs shall have the power “... to require issuers, offerors or persons asking for admission to trading on a regulated market to include in the prospectus supplementary information, where necessary for investor protection”. Therefore, stakeholders should not interpret the deletion of Article 40 to have any impact on NCAs’ supervisory powers.
73. ESMA recommends keeping flexibility in this area and does not recommend limiting NCAs’ powers, because it may be appropriate to request documentation from an issuer, to work together with colleagues in another department (as suggested in the Supervisory Briefing), to check the legality of an issuance or to review an issuer’s historical financial information for compliance with IFRS in the interests of investor protection and depending on the facts in a specific case. Otherwise, there is a danger that NCAs’ supervision will not satisfy investors’ expectations for maintaining fair and transparent capital markets.

74. Nevertheless, ESMA believes that further convergence is necessary in this area. This convergence is best achieved through the discussion of supervisory cases within ESMA to preserve NCA flexibility. If issues arise that need to be addressed, these could be included in ESMA's Supervisory Briefing or ESMA could recommend that the Commission make further changes to CDR on scrutiny and disclosure in its report to the Commission referred to in Article 48(2)(g) PR³⁵.

7.5 Administrative burden and additional costs

75. ESMA does not expect the deletion of Article 40 CDR on scrutiny and disclosure nor the inclusion of Article 21a in CDR on scrutiny and disclosure to lead to significant additional costs or administrative burdens, because it expects that Article 21b will not be applied by NCAs while scrutinising most prospectuses. Furthermore, Article 21b requires NCAs to consult with the issuer, the offeror or the person asking for admission to trading on a regulated market. This should help to ensure that any additional disclosure requirements imposed strike the right balance between the burdens and costs imposed on issuers and investor protection.

7.6 Requiring additional information over and above that which is required under Articles 6, 13, 14a and 15a PR

76. Without prejudice to the specific situations foreseen by the delegated acts, ESMA considers 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. Any such requirement for additional disclosure would by definition not be necessary for investor protection since the disclosure would not qualify as necessary information which is material to an investor for making an informed assessment of the issuer and the securities.

77. An NCA may make comments asking for information. This is a normal part of the scrutiny process in which the NCA comments on the disclosure in the prospectus to understand why an issuer has chosen to present the information in a particular way or why certain disclosure is not included in the prospectus. However, in such cases, the NCA would not require that the disclosure is included in the prospectus where it is not deemed material in the context of Articles 6, 13, 14a, and 15a PR. For the avoidance of doubt, ESMA notes that NCAs may generally require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents pursuant to Article 32(1)(b) PR. Furthermore, Article 32(1)(c) PR allows NCAs to require auditors and managers of the issuer, offeror or person asking for admission to trading on a regulated market, as well as financial intermediaries commissioned to carry out the offer of securities to the public or ask for admission to trading on a regulated market,

³⁵ As amended by the Amending Regulation.

to provide information. These powers are necessary for the proper supervision of the capital markets, especially in cases where there is possible fraud or illegal offerings of securities.

Question 20 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.

Question 21 Do you agree with ESMA that the deletion of Article 40 CDR on scrutiny and disclosure and the inclusion of Article 21b in CDR on scrutiny and disclosure should not lead to additional administrative burden or costs for stakeholders? If not, please quantify the costs as much as possible.

Question 22 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.

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

8.1 Scope and focus

78. In connection with the Commission's mandate in Article 20(11) PR³⁶, Section 3.4 of the Commission's request for advice invites ESMA to provide technical advice on the criteria for the approval of the prospectus by proposing amendments to CDR on scrutiny and disclosure. This advice will focus on the maximum overall timeframe within which the scrutiny of the prospectus shall be finalised, and a decision reached by the competent authority on whether that prospectus is approved or whether the approval is refused and the review process terminated, and on the conditions for possible derogations from this timeframe.
79. Furthermore, the Commission asks ESMA to consider all relevant provisions of the PR as amended by the Amending Regulation, in particular Article 20 of PR and all relevant recitals of the Amending Regulation and all relevant provisions and annexes of CDR on scrutiny and disclosure. ESMA is also asked to consider the outcome of the peer review on the scrutiny and approval procedures of prospectuses and, where necessary, to update the contents of the report in relation to:
- a. the national specificities of the scrutiny process and the time taken by each NCA for notifying the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision regarding the approval or rejection of the prospectus. This should also include the cases where the rejection is because the prospectus does not meet the standards of completeness, consistency and comprehensibility and changes or supplementary information, and the deadlines that NCAs give to the issuer, the offeror or the person asking for admission to trading on a regulated market to provide additional information or documents in such cases;
 - b. for each NCA, the average number of iterations between the issuer, offeror or person asking for admission to trading and the NCAs within the same application of approval, taking into account the type of securities, the type of issuances (e.g., IPO or secondary issuances) and of prospectus (e.g., full prospectus or alleviated prospectus types); and
 - c. the circumstances and timelines under which NCAs refuse the approval of a prospectus and terminate the review. In cases where an NCA has not made a decision on the prospectus within the specified timelines, ESMA should also provide the number of cases and the reasons for the failure to take a decision.

³⁶ As amended by the Amending Regulation.

8.2 Findings of the 2022 Prospectus Peer Review Report

80. The Commission's request for advice on NCAs' approval procedures has a clear connection with the findings in the Peer Review Report, which invites the Commission to consider aligning the timelines for the refusal of prospectuses at an EU level to ensure a level playing field across the various NCAs³⁷. The Final report also asks the Commission to consider whether it would be useful to provide further guidance about the situations in which it is appropriate to refuse the approval of a prospectus.
81. Based on the findings included in the Peer Review Report, fourteen NCAs³⁸ require drafts to be filed within specific timeframes³⁹. Following expiry of such timeframes, the prospectus application can either be considered or declared expired or suspended. Such timeframes vary significantly between NCAs and range from five working days to three months. The timeframes may be subject to possible extension upon request and NCAs may issue reminders. Where based on internal procedures, some NCAs may set specific timeframes individually for each application depending on the specific comments or prospectus type. If a resubmission is not filed within the relevant timeframe, eight NCAs either ask the issuer to withdraw the prospectus application or refuse the approval of the prospectus.
82. Other NCAs set deadlines for the total length of the review process. Paragraph 212 of the Peer Review Report states that HU has set national timelines in cases in which the NCA asks the issuer for additional information, while SK requires that prospectuses are approved within 30 days after the receipt of a complete application for approval. SE applies a 90-day deadline to the overall length of the review period⁴⁰. This deadline may be extended on a case-by-case basis. While it is not published, SE considers that their 90-day approval deadline is well known to the market. Where the issuer is not able to address the NCA's comments within that deadline, they would normally withdraw the application from the review process to ensure that the information in the prospectus remains up to date.
83. At the time the Peer Review Report was published⁴¹, IT explained that in accordance with national rules a specific timeframe applies to the overall length of the scrutiny process⁴². This timeframe is calculated once the prospectus application is deemed complete.

This rule was under consultation and was repealed to achieve a better harmonisation with the European legislation on prospectus with reference to the national deadlines and timeframes. Currently, only the deadlines laid down in Article 20 PR apply.

³⁷ P. 41.

³⁸ AT, BG, CY, CZ, DE, EL, HR, IT, LU, NL, NO, SE, SI and SK.

³⁹ Paragraphs 411 – 413.

⁴⁰ Paragraph 216.

⁴¹ Paragraph 212.

⁴² In IT, a deadline of 30 working days was applied in the case of prospectuses submitted by frequent issuers in accordance with Art. 20(6) PR, 40 working days for secondary issuance prospectuses and 60 working days for IPO prospectuses.

84. ESMA has updated the findings of the Peer Review Report in relation to NCAs' application to deadlines in the process of scrutinising and approving prospectuses. Based on NCAs' responses, it does not appear that there have been material changes in this area. For the update to the Peer Review Report, please see section 10.3.

8.3 ESMA's recommendation

85. Considering the findings from the 2022 Peer Review Report, ESMA believes that two measures harmonising timeframes during the scrutiny and approval process could help to improve predictability for issuers and ensure smooth scrutiny and approval processes across the EU by keeping the deadlines simple and avoiding complicated administrative procedures. Furthermore, such harmonisation can help to address situations in which the timeframes applied in some Member States may be too short, which can have a negative effect on issuers' ability to access the capital markets.

86. The first of these measures is to include a provision in CDR on scrutiny and disclosure stating NCAs and Member States may not impose deadlines of less than 10 working days for issuers to respond to their comments during the review of prospectuses, registration documents and supplements. After this deadline has passed, NCAs may refuse approval of the prospectus. This measure is relatively straight-forward and does not seek to impose further restrictions on the deadlines set by NCAs during the process of scrutiny and approval, because the deadlines to respond to NCA comments appear to work relatively well based on the findings of the Peer Review Report and ESMA would prefer to avoid creating new administrative procedures that may complicate the approval process.

87. The second measure is to limit the total period for the scrutiny and approval of prospectuses to 120 working days from the filing of the initial application for approval. If the total review period exceeds this period, NCAs would cease the scrutiny of the prospectus and refuse approval. Therefore, ESMA proposes to allow NCAs to extend this period once for 90 working days. The only requirement to use this exemption for the issuer to notify the relevant NCA. Of course, this is without prejudice to NCAs refusing the approval of the prospectus.

88. By granting a relatively long period of time to have a prospectus approved and only allowing a single extension by a simple notification, ESMA hopes to keep this process straightforward and to avoid time-consuming procedures for the sake of both issuers and NCAs.

89. Finally, ESMA proposes to include a safeguard to avoid the case in which an NCA is pressured to approve a draft prospectus without a reasonable period for its review. Such safeguard would take the form of a "pens-down" period within the 10 working days preceding both the 120 working day deadline and the 210 working day extended deadline, which would prevent the issuer from submitting any changes or supplementary information to the competent authority.

8.4 Conditions for possible derogations

In relation to the Commission's request for advice on conditions for possible derogations from these timeframes, ESMA notes that it is difficult to come up with an exhaustive list of conditions due to the unpredictable nature of the market. This is the reason that ESMA proposes to have NCAs automatically grant extensions upon receipt of a notification from the issuer. This approach also has the benefit of avoiding an overly legalistic approach and discussions about whether the conditions for an extension have actually been met. In any event, issuers can always submit a new application for approval if they are unable to meet the deadlines, which will allow NCAs to re-familiarise themselves with the relevant prospectuses.

ESMA legislative proposals

Article 36

Deadlines for issuers

1. After a competent authority informs an issuer, offeror or person asking for admission to trading on a regulated market that a draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval or where changes or supplementary information are needed, if the competent authority imposes a deadline for the submission of an updated draft prospectus, it shall provide at least 10 working days for such submission. After the deadline has passed, the competent authority may refuse approval of the prospectus. Competent authorities are not required to set any deadlines for the submission of an updated draft prospectus.
2. Any deadlines relating to the scrutiny and approval of prospectuses included in national law by Member States or included in competent authorities' procedures shall not conflict with the first paragraph.
3. A decision to approve or refuse approval of the prospectus must be taken within 120 working days of the receipt of the initial application for approval of a draft prospectus. If the scrutiny of a prospectus exceeds this time period, competent authorities shall cease reviewing the prospectus and refuse approval of the prospectus.
4. The deadline set out in the third paragraph can be extended once upon the written notification by the issuer for a period of 90 working days.
5. An issuer, offeror or person asking for admission to trading on a regulated market shall not submit any changes or supplementary information to the draft prospectus

preceding the last ten working days of the deadlines mentioned in paragraphs 3 and 4.

6. Where a prospectus consists of separate documents, the period referred to in paragraph 3 shall begin upon receipt of the initial application for approval of the draft securities note.
7. This article shall not apply to a universal registration document that is drawn up in accordance with Article 9 of Regulation (EU) 2017/1129.

Question 23 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? If not, please indicate what changes could be made to improve ESMA's advice in this area.

Question 24 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

90. The proposed update to the CDR on metadata aims to update the data required to be submitted alongside documents filed with ESMA's prospectus register (i.e., the storage mechanism referred to in paragraph 6 of Article 21 PR), in accordance with Articles 11 and 12 CDR on metadata and set out in Annex VII of CDR on metadata. The data requirements are being updated to take into account the new types of documents introduced under the Amending Regulation (namely the EU Follow-on prospectus and the EU Growth issuance prospectus) as well as reflecting the coming into force of the European Green Bond Regulation and of the ESAP. ESMA is also taking this opportunity to fix some minor issues identified with the existing Regulation.
91. With regards to the EU Green Bond Regulation, ESMA is proposing that, when a prospectus or final terms relating to an EuGB is submitted to the prospectus register, that prospectus or final terms should be accompanied by metadata indicating whether it is an EuGB, whether it is a bond marketed as environmentally sustainable or a sustainability-linked bond using the voluntary disclosures in Article 20 and 21 of the European Green Bond Regulation, or if it is a securitisation bond designated as an EuGB. It should be noted in this regard that this provision would not be creating an obligation on issuers to file the voluntary disclosures under Article 20 and 21 of the European Green Bond Regulation with NCAs.
92. ESMA is taking this opportunity to streamline the data collection relating to prospectuses and related documentation introduced under ESAP. Since all documents collected under the existing prospectus register are also in the scope of ESAP⁴³, ESMA proposes that NCAs fulfil their obligation to make those documents "accessible to ESAP" by submitting them to the existing prospectus register. Furthermore, ESMA proposes that prospectus-related documents which should be transmitted to ESAP but are not currently in scope of the prospectus register (for example, "exemption documents" or "final offer price and amount of securities") are also submitted via the same procedure and infrastructure to the prospectus register, i.e., ESMA will transfer those documents to ESAP without need for NCAs to resubmit them via an additional process / infrastructure. This approach avoids double reporting and ensures that all prospectus-related documents are subject to the same process and requirements.
93. The specific combination of metadata which will be required to accompany each prospectus-related document (out of the full list of possible metadata included in the draft RTS) will be specified in further guidance.
94. With regards to the new fields relating to the Final Offer (28/29/30/31), it should be noted that Article 21(a) of the Prospectus Regulation (introduced by the ESAP Omnibus) created a requirement for issuers to submit to Collection Bodies (in this case, NCAs) documents made public in accordance with Article 17(2) of the PR. NCAs shall

⁴³ Currently under development, see Consultation Document [JC 2023 78 CP on ITS on ESAP tasks of collection bodies and ESAP functionalities.pdf \(europa.eu\)](#)

thereafter make these documents available to ESAP. The proposed RTS would introduce 4 new metadata fields (28/29/30/31) which would only need to be provided when such a document is submitted by issuers to NCAs and thereafter provided to ESAP. Furthermore, with regards to the new proposed field 5 “venue of first admission to trading”, it should be highlighted that this metadata is proposed because in the context of MIFIR there are currently no clear-cut rules to define the venue of first admission to trading in cases where a financial instrument is admitted in parallel to two regulated markets. This information is however necessary when the determination of the most relevant market as defined by Article 16 of CDR 2017/590 relies on the criterion of first admission to trading on a trading venue. By adding this field, issuers would be responsible for reporting in which trading venue an instrument is first admitted rather than leaving this decision to the trading venue. Feedback from issuers would be useful to identify any difficulties with this proposal.

95. In light of the obligations stemming from the ESMA Omnibus Regulation, it is important to note that all documents in the scope of ESAP will need to be accompanied by the metadata specified in Article 21a of the PR by issuers when submitting information to the relevant NCA.

96. Finally, in light of the obligation for ESMA to include statistics about the exemption documents under Article 1(4)(da) and (db) and Article 1(5)(ba) of the Amending Regulation in its annual report mandated by Article 47 PR, ESMA is proposing that those exemption documents are also sent to ESMA via the prospectus register. Furthermore, when doing so, NCAs should accompany them with metadata indicating the LEI and the ISIN of the instrument, other than the national identifier⁴⁴ (this will be specified in further guidance). In this regard, it is important to highlight that the Amending Regulation has created an obligation for issuers to file those exemption documents with NCAs.

97. ESMA’s detailed legislative proposal is included in Section 10.5.

Question 25 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.

Question 26 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.

Question 27 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)? Please explain why.

⁴⁴ Please note that this level of detail does not appear in the draft RTS but would be later specified in Level 3.

Question 28 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.

Question 29. 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.

10 Annex

10.1 Summary of questions

- 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 25⁴⁵ CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.
- 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?
- Q3:** Do you agree with ESMA's sustainability-related assessment in relation to the 'standard' equity registration document? If not, please explain why?
- 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?
- Q5:** What are your views in relation potential implications of the proposed single non-equity disclosure framework?
- Q6:** Do you have any other concerns about the disclosure items as proposed? If so, please explain.
- Q7:** In your view, will these proposals add or reduce costs? Please explain your answer.
- 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.
- 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?
- 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

⁴⁵ Articles 22 and 23 in the CP Annex (clean) and CP Annex.

Regulation? Please explain your answer and provide any additional proposals to alleviate the regulatory burden.

- 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.**
- 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.**
- 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.**
- 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?**
- Q15: Do you agree with the 'Category A', 'Category B' and 'Category C'⁴⁶ 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.**
- 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.**
- 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.**
- 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.**
- Q19: Do you agree with ESMA's assessment regarding changes to the URD annex?**

⁴⁶ Category A', 'Category B' and 'Category C' information are referred to in the current Article 26 CDR on scrutiny and disclosure.

- 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.
- 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.
- 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.
- 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.
- 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.

10.2 European Commission mandate to provide technical advice on the implementation of the amendments to Prospectus Regulation in the context of the Listing Act

Annex 10.2 only refers to the Prospectus Regulation components of the mandate. Namely, items 3.1 – 3.6 of the mandate.

10.2.1 Content and format of the full prospectus

The reform of the PR amends the rules on the full prospectus for an offer of securities to the public or an admission to trading on a regulated market, to make the prospectus cheaper and less burdensome for issuers and more suitable for investors to take an informed investment decision.

The amendments set out in Articles 6 and 13, as well as in Annexes I to III of PR are twofold: (i) they aim to streamline the full prospectus by aligning its content to the lighter EU Growth prospectus; (ii) they aim to make prospectuses more comparable for investors across the EU by introducing a standardised format and sequence (together with a page limit of 300 pages for share prospectuses). The above-mentioned points are further clarified in recitals 17⁴⁷, 24⁴⁸, and 25⁴⁹ of the Amending Regulation.

Furthermore, in order to prevent greenwashing and provide investors with the necessary material environmental, social and governance (ESG) information, where relevant, the amendments to Article 13 requires the Commission to consider, in the development of a delegated act:

- whether the issuer of equity securities is required to provide sustainability reporting, together with the related assurance opinion in accordance with the Accounting Directive – as amended by the Corporate Sustainability Reporting Directive (CSRD) – and the Transparency Directive; and
- whether non-equity securities offered to the public or admitted to trading on a regulated market are advertised as taking into account ESG factors or pursuing ESG objectives.

⁴⁷ Recital (17) highlights that the standardised format and the standardised sequence of the information to be disclosed in a prospectus should be set out irrespective of whether a prospectus, or a base prospectus, is drawn up as a single document or is composed of separate documents (with a carve-out for the information included in a universal registration document, which is exempted from that requirement). Such standardised sequence of the prospectus is set out in the revised Annexes I, II and III to PR, which are the basis for the Commission to amend any delegated acts.

⁴⁸ Recital (24) explains that, to facilitate IPOs of private companies on EU public markets and, in general, to reduce unnecessary costs and burdens for companies that offer securities to the public or seek admission to trading on a regulated market, the prospectus for both equity and non-equity securities should be significantly streamlined, while maintaining high level of investor protection.

⁴⁹ Recital (25) clarifies that while being too prescriptive for SMEs, the level of disclosure in the EU Growth Prospectus would be fit for purpose for companies seeking admission to trading on a regulated market. In that regard, the revised Annexes I, II and III to PR were aligned to the level of disclosure of the EU Growth prospectus, by taking as reference the related Annexes laid down in CDR on scrutiny and disclosure.

The above-mentioned point is further clarified in recital 26⁵⁰ of the Amending Regulation.

In light of the above, the Commission invites ESMA to provide technical advice, by proposing the necessary amendments to CDR on scrutiny and disclosure, in order to determine the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents.

ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Articles 6, 13(1) and Annexes I, II and III, all relevant recitals of the Amending Regulation and all relevant provisions and Annexes of CDR on scrutiny and disclosure. In particular, ESMA should:

- streamline the content of the prospectus taking as reference the level of disclosures of the current EU Growth prospectus (i.e., the level of disclosure of the prospectus should be equivalent to, or at least not higher than, the level of disclosure of the EU Growth prospectus). ESMA should take into account the different scope, considering that the full prospectus can also be used for an admission to trading on a regulated market;
- ensure that the disclosures set out in a prospectus for shares allow issuers to comply with the page size limit of 300 pages in accordance with Articles 6(4) and 6(5) PR as amended by the Amending Regulation;
- align the content of the prospectus for retail non-equity securities to a level of disclosures that is equivalent to the lighter schedules of the prospectus for wholesale non-equity securities, except for the summary and the section on the offer that only apply to retail non-equity securities;
- define the standardised format and standardised sequence of the prospectus, in line with the provisions and recitals of the Amending Regulation, ensuring the right balance between harmonisation and flexibility (especially for prospectuses drawn up as separate documents, including base prospectuses);
- set out a building block of additional information to be included in the prospectus for nonequity securities offered to the public or admitted to trading on a regulated market that are advertised as taking into account ESG factors or pursuing ESG objectives.

⁵⁰ Recital (26) highlights the growing importance of sustainability considerations in investment decisions and the necessity, to prevent greenwashing, to establish the ESG-related information to be provided, where relevant, in the prospectus for equity or non-equity securities. The recital also stresses the importance to avoid overlaps with the requirement laid down in other EU sustainable finance-related legislation. In that regard, companies that offer to the public or seek the admission to trading of equity securities on a regulated market should incorporate by reference in the prospectus, for the periods covered by the historical financial information, the management and consolidated management reports, which include the sustainability reporting, as required by the Accounting Directive. Moreover, the Commission should be empowered to set out schedules specifying the ESG-related information to be included in prospectuses for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives.

ESMA should in particular:

- ensure the right balance between the need to prevent greenwashing and avoid creating a burdensome schedule (i.e., disclosures should be light touch and proportionate to the sustainability-related claim made);
 - avoid overlaps or inconsistencies with the requirements laid down in other EU sustainable finance-related legislation, such as the European Green Bond Regulation, Taxonomy Regulation, the Sustainable Finance Disclosure Regulation and the Corporate Sustainability Reporting Directive. Furthermore, the technical advice should not deviate from the overarching burden reduction objective of the Listing Act and avoid merely replicating disclosure requirements set out in sustainable finance-related legislation that go beyond what is strictly necessary for a prospectus to allow taking an informed investment decision;
 - ensure the consistency and usability of the required information for other market players themselves subject to sustainable finance-related requirements, notably distributors (i.e., consistency with the sustainability preferences parameters under MiFID II);
 - ensure that the new schedule does not implicitly make standards, templates or disclosures that are voluntary under other sustainable finance-related legislation (e.g., disclosures under the European Green Bond Regulation) mandatory in the prospectus and take into account standards or principles developed by the industry and widely used;
 - ensure that green bonds issued in accordance with the European Green Bond Regulation can be offered to the public or admitted to trading on a regulated market also via a base prospectus, by making the appropriate amendments to CDR on scrutiny and disclosure;
 - cater for all types of non-equity securities subject to the PR and making ESG-related claims, without focussing only on green or ESG-related bonds.
- Assess whether any annexes of CDR on scrutiny and disclosure need to be deleted or reviewed, and whether new annexes need to be added, taking into account all types of issuers and securities.

10.2.2 Content of the universal registration document

The reform of the PR amends the rules on the URD, by granting an issuer who has had a URD approved for one financial year – instead of two consecutive financial years as under the current PR regime – the status of frequent issuer and be able to file all subsequent URDs, and any amendments thereto, without prior approval. As explained in recital 23, such alleviation does not affect investor protection, as a URD and any amendments thereto cannot be used as the constituent part of a prospectus without being approved by the relevant NCA. Furthermore, an NCA is allowed to review a URD which has been filed with it on an ex-post basis whenever considered necessary and, where appropriate, request amendments. As the URD is a document which can serve multiple purposes, including to disclose the financial information required under the Transparency Directive, a prospectus including a URD is exempted from the requirements of the standardised format and sequence, the page size limit of 300 pages for shares as well as the template and the layout including the font size and style requirements.

In light of the above, and in accordance with Article 13(2) of the PR, the Commission invites ESMA to provide its technical advice in order to determine the content of the URD, by proposing the necessary amendments to CDR on scrutiny and disclosure, taking into account that:

- the URD is a multipurpose document, which can be used for an offer or admission to trading of either equity or non-equity securities;
- the URD can only be used, in accordance with Article 9(1) of the PR, by an issuer whose securities are admitted to trading on a regulated market or an MTF. Therefore, a URD is used in the context of secondary issuances, and it should be considered whether it could benefit from alleviations compared to the registration document for equity securities of the full prospectus; however, possible alleviations to the URD should be balanced, taking into account the multipurpose nature of the URD and the scope of the document as clarified in recital 39 of the PR, whereby the URD should act as a source of reference on the issuer, supplying investors and analysts with the minimum information needed to make an informed judgement on the company's business, financial position, earnings and prospects, governance and shareholding.

10.2.3 EU Follow-on prospectus and EU Growth issuance prospectus

The reform of the PR introduces two new short-form prospectuses:

- the EU Follow-on prospectus, for secondary issuances by companies listed on a regulated market or an SME growth market, takes as model the expired regime of the EU Recovery prospectus, is subject to a standardised format and sequence and a 50 page-size limit for shares.
- The EU Growth issuance prospectus, for SMEs, companies listed or to be listed on SME growth markets and for small unlisted public offers of securities up to € 50 million, takes as model admission documents of SME growth markets and the EU Recovery

prospectus, is subject to a standardised format and sequence and a 75 page-size limit for shares.

The standardised format and content of those new prospectus were originally included in the annexes of the Commission proposal. While in the interinstitutional negotiations, the co-legislators retained the main features of the Commission proposal, they required the Commission to further specify in delegated acts (rather than directly in annexes of the Prospectus Regulation as in the Commission proposal) the content and the standardised format and sequence of the EU Follow-on prospectus and of the EU Growth issuance prospectus. While not asking for a technical advice on these standards, reflecting established practice from previous prospectus reforms, FISMA, before launching the consultation on the Better Regulation portal for stakeholders' feedback, intends to share the draft delegated acts with ESMA to gather an ex-post advice.

10.2.4 Scrutiny and approval of the prospectus

The reform of the prospectus regime aims to promote supervisory convergence through the harmonisation of the rules for the scrutiny and approval of the prospectus by competent authorities across the Union. Article 20(11) of the PR empowers the Commission to adopt delegated acts to supplement the PR by specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and on the procedures for the approval of the prospectus. ESMA is invited to provide its technical advice on the criteria for the scrutiny and the procedures for the approval of the prospectus, by proposing the necessary amendments to CDR on scrutiny and disclosure, taking into account all of the following:

- the circumstances under which a competent authority is allowed to use additional criteria for the scrutiny of the prospectus, where necessary for investor protection;
- the circumstances under which an NCA is allowed, where deemed necessary for investor protection, to require information in addition to that which is required for drawing up a prospectus, an EU Follow-on prospectus or an EU Growth issuance prospectus, including the type of any additional information disclosed under the additional criteria referred to in the previous point;
- the maximum overall timeframe within which the scrutiny of the prospectus is to be finalised and a decision reached by the competent authority on whether that prospectus is approved, or the approval is refused and the review process terminated, and the conditions for possible derogations from that timeframe (considering possible additional scrutiny criteria, the timeline for NCAs to respond to issuers and the average number of iterations between issuers and NCAs on the same application for approval).

The above-mentioned points are further clarified in recitals 44⁵¹, 45⁵², 46⁵³ and 47⁵⁴ of the Amending Regulation.

ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Article 20 of PR and all relevant recitals of the Amending Regulation and all relevant provisions and Annexes of CDR on scrutiny and disclosure. Furthermore, ESMA should consider the outcome of ESMA's peer review of the scrutiny and approval procedures of prospectuses by competent authorities as set out in the Peer Review Report, to be updated where relevant, and take into account all of the following:

- national specificities of the scrutiny process and the time taken by each NCA for notifying the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision regarding the approval or rejection of the prospectus. This should also include the cases where the rejection is due because the prospectus does not meet the standards of completeness, consistency and comprehensibility and changes or supplementary information, and the deadlines that NCAs give to the issuer, the offeror or the person asking for admission to trading on a regulated market to provide additional information or documents in such cases;
- for each NCA, the average number of iterations between the issuer, offeror or person asking for admission to trading and the NCA within the same application of approval, taking into account the type of securities, the type of issuances (e.g., IPO or secondary issuances) and of prospectus (e.g., full prospectus or alleviated prospectus types);
- circumstances and timelines under which NCAs refuse the approval of a prospectus and terminate the review. In cases where an NCA has not made a decision on the prospectus within the specified timelines, ESMA should also provide the number of cases and the reasons for the failure to take a decision;
- additional scrutiny criteria that NCAs apply for investor protection reasons and the type of additional information that they may require.

⁵¹ Recital (44) states that allowing competent authorities to apply additional criteria for the scrutiny and approval of prospectuses where necessary for investor protection has material differences in the way competent authorities apply those additional scrutiny criteria.

⁵² Recital (45) clarifies that in order to foster convergence and harmonisation of prospectus supervisory activity by competent authorities, it is appropriate to specify the circumstances under which a competent authority may use additional criteria and the type of additional information that competent authorities may require to be disclosed in addition to the information that is required for drawing up a prospectus.

⁵³ Recital (46) states that competent authorities have to respect a clear deadline for their scrutiny in order to ensure that issuers are timely informed of the result of the scrutiny of their prospectus. Competent authorities should also notify to the issuer the reason for a failure to take a decision on the prospectus within the set time limits.

⁵⁴ Recital (47) requires a set maximum timeframe for finalising the scrutiny procedure and for the competent authority's decision on the prospectus. As the duration of the scrutiny procedure is also depending on factors outside the control of the competent authority, the timeframe should be the maximum duration of the procedure overall, covering activities from both the person applying for approval of a prospectus and the competent authority. The specification of the conditions for possible derogations for the set timeframe is also necessary.

10.2.5 Cooperation arrangements with 3rd country

The Amending Regulation empowers the Commission (Article 30(4) PR) to adopt delegated acts to determine the minimum content of the cooperation arrangements between NCAs (or ESMA upon the request of at least one NCA) and supervisory authorities of third countries concerning all of the following:

- the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under the PR;
- the template document to be used for such cooperation arrangements.

The Commission invites ESMA to provide its technical advice on the minimum content of the above-mentioned cooperation arrangements. ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Articles 28, 29 and 30 of PR and all relevant recitals of the Amending Regulation

10.2.6 Commission reports to the European Parliament and to the Council on civil liability of the prospectus

Pursuant to the amended Article 48(2a) of the PR, the Commission is required to submit a report by 31 December 2025⁵⁵ analysing the issue of civil liability for the information given in a prospectus, assessing whether further harmonisation of the prospectus civil liability in the Union could be warranted and, if relevant, proposing amendments to the liability provisions set out in Article 11 of PR. In light of the above, the Commission invites ESMA to provide technical advice on the civil liability of the prospectus, which should include an assessment and recommendations on whether further harmonisation should be considered.

ESMA should take into account all relevant provisions of the PR, in particular Articles 11 and 48(2a), all relevant recitals of the Amending Regulation, the report on civil liability of the prospectus that ESMA published in 2013 (ESMA/2013/619⁵⁶). Finally, ESMA should compare the civil liability provisions set out in Article 11 of the PR with the civil liability set out in the Markets in Crypto-Assets Regulation⁵⁷ and the need for possible alignment with or departure from those provisions and provisions for prospectus civil liability.

⁵⁵ Recital 60 of the Amending Regulation clarifies that the requirement for the Commission to perform such assessment within the above-mentioned timeline is linked to the need of ensuring that the CMU gathers momentum and reflects market realities as soon as possible after they occur.

⁵⁶ https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-619_report_liability_regimes_under_the_prospectus_directive_published_on_website.pdf

⁵⁷ Regulation (EU) 2023/1114 of the European Parliament and of the Council.

10.3 Follow-up to the 2022 Peer Review Report

10.3.1 Introduction

In the Commission's request to ESMA for technical advice on the implementation of the amendments to the Prospectus Regulation, Market Abuse Regulation and Markets in Financial Instruments Directive II in the context of the Listing Act, ESMA has been invited to provide its technical advice on the criteria for the scrutiny and the procedures for the approval of prospectuses, by proposing the amendments to CDR on scrutiny and disclosure.

In connection with this work, the Commission asks ESMA to consider the outcome of ESMA's 2022 prospectus peer review as set out in the Peer Review Report, to be updated where relevant, and considering all of the following:

- national specificities of the scrutiny process and the time taken by each NCA for notifying the issuer, the offeror or the person asking for admission to trading on a regulated market of its choice regarding the approval or rejection of the prospectus. This should also include the cases where the rejection is due because the prospectus does not meet the standards of completeness, consistency and comprehensibility and changes or supplementary information, and the deadlines that NCAs give to the issuer, the offeror or the person asking for admission to trading on a regulated market to provide additional information or documents in such cases;
- for each NCA, the average number of iterations between the issuer, offeror or person asking for admission to trading and the NCA within the same of application of procedure, taking into account the type of securities, the type of issuances (e.g., IPO or secondary issuances) and of the prospectus (e.g., full prospectus or alleviated prospectus types);
- circumstances and timelines under which NCAs refuse the approval of a prospectus and terminate the review. In cases where an NCA has not made a decision on the prospectus within the specified timelines, ESMA should also provide the number of cases and the reasons for the failure to take a decision;
- additional scrutiny criteria that NCAs apply for investor protection reasons and the type of additional information that they may require.

In light of the above, ESMA has requested that NCAs review specific sections of the Peer Review Report concerning both additional criteria and the scrutiny and approval process of a prospectus. NCAs were asked to identify any material changes in their processes and describe the impact of these changes. If there have been no material changes since the Peer Review Report, NCAs were also asked to confirm this.

The questionnaire below was distributed to 30 NCAs, 27 EU Member States and to the members of the European Economic Area – Iceland, Liechtenstein, and Norway.

Section in the 2022 Peer Review Report	Topic
	Please outline any significant material changes in the NCA's processes and describe the impact of these changes on the following:
6.3.4	Additional criteria
6.3.5	Average timing of approval and monitoring of deadlines
6.3.5.1	Self-imposed or national timeframes
6.5.3.2	Timeframes that apply to issuers
6.5.3.3	Monitoring of compliance with deadlines
7.1	Approval and notification of prospectuses
7.2	Withdrawal and refusal of prospectuses
Paragraphs 110 – 112 ⁵⁸	Please indicate (i) how often and (ii) for what reasons your NCA has significantly deviated from the average number of drafts set out in [...] the Peer Review Report.

10.3.2 Additional Criteria for Prospectus Scrutiny and Approval

Section 6.3.4 of ESMA's Peer Review Report identifies NCAs' different approaches to the application of additional criteria under Article 40 CDR on scrutiny and disclosure, which allows NCAs to apply criteria – in addition to those laid down in Articles 36, 37 and 38 – to scrutinise the information in the draft prospectus, where deemed necessary for investor protection⁵⁹.

The Peer Review Report states that two-thirds of NCAs reported that they did not apply additional criteria for the scrutiny of the completeness, comprehensibility and consistency of

⁵⁸ In the Peer Review Report, paragraphs 110 through 112 discuss "the number of draft prospectuses submitted to NCAs before approval".

⁵⁹ As regards the application of additional criteria pursuant to Article 40 CDR 2019/980, the Final Report noted that NCAs have a different understanding of what constitutes additional criteria. There appears to be divergence in application as some NCAs view certain practices as additional criteria and others do not. See section 6.3.4 of the Final Report concerning 'additional criteria'.

the information contained in prospectuses. Ten NCAs responded that they applied such criteria⁶⁰.

Since the publication of the Peer Review Report:

- 23 NCAs (BE, BU, CZ, DE, DK, EE, FI, FR, GR, HU, HR, IE, IS, LT, LV, LU, MT, NO, PT, RO, SI, SK and SE) confirm that there are no significant material changes concerning the use of ‘additional criteria’ for the scrutiny of a prospectus.
- In its initial reply, CY indicated that it applies additional criteria for the scrutiny of information contained in prospectuses. However, following the (internal) discussions and conclusions reached in ESMA’s Prospectus Working Group concerning what exactly constitutes ‘additional criteria’, CY now clarifies that its internal procedures are fully aligned with the requirements of Articles 36-38 of CDR on scrutiny and disclosure and Article 32 of the Prospectus Regulation. Consequently, CY does not apply any additional criteria beyond those mandated by these provisions.
- In its initial reply, LI stated that the NCA has never applied additional criteria. However, LI mentioned that it is theoretically possible that this option could be used on a case-by-case basis. However, this is no longer the case and LI will publish a Q&A on this topic in the near future.
- In the Peer Review Report, NL indicated that it applies additional criteria. However, following the publication of the Peer Review Report, NL reassessed its definition of ‘additional criteria’. In recent years, additional criteria have been applied in cases involving non-equity securities with equity-like features, issuers with structures similar to closed-end funds (where the securities involved were bonds rather than equity), and in instances involving new types of issuers, such as SPACs.
- IT indicated that it applied additional criteria in the Peer Review Report⁶¹. However, following the outcome of the discussion in the PWG as regards what constitutes ‘additional criteria’, IT reassessed its understanding of this term. IT’s current understanding is that Article 40 CDR on scrutiny and disclosure is only relevant when adjustments to the minimum information provided in prospectuses are required due to (i) the introduction of new types of securities or transactions not already covered by the Annexes of CDR on scrutiny and disclosure or (ii) securities which share features of different types of securities covered by annexes not directly applicable to the former. Based on these (internal) developments, IT has clarified that it has not applied additional criteria. Furthermore, IT has also revised its Guidelines relating to the prospectus⁶² to clarify that its scrutiny of prospectuses complies with the provisions contained in CDR on metadata and CDR on scrutiny and disclosure as well as with the recommendations and good practices set out in the Peer Review Report. The section

⁶⁰ See paragraph 201 of the Final Report.

⁶¹ See paragraph 201 of the Peer Review Report.

⁶² Communication No. 7/2020 from the CONSOB. See f31c08c4-0b84-a9fd-fe67-d4de50f7bb72 (consob.it).

related to “additional criteria” was removed from these guidelines. Moreover, IT has integrated the ESMA update of the Supervisory Briefing on Prospectus Supervision (20 March 2024) into its internal procedures.

- For higher-risk prospectuses, IT considers the available information and any relevant exchanges with other supervisory authorities. Internal information sharing typically occurs with respect to, IPO prospectuses, capital increases, and non-equity securities targeting retail investors. Requests for specialist support are made, when necessary, particularly for complex securities or when detailed analysis is required⁶³.
- Both AT and ES highlight that no material changes have occurred since the publication of the Final Report. However, ES has conducted an extensive review of the documentation required under national regulations, resulting in a reduction in the number of documents now requested from issuers. These measures are already in place but were introduced after the Peer Review Report. Meanwhile, AT reaffirmed its position on “additional criteria” and defines them as criteria that go beyond Articles 36, 37 and 38 of CDR on scrutiny and disclosure concerning the scrutiny of the completeness, comprehensibility, and consistency of a prospectus.
- Further, AT applies additional criteria, particularly in the scrutiny of completeness. While generally aligning with CDR on metadata and CDR on scrutiny and disclosure, AT may request disclosure of specific sections from particular annexes for hybrid or country-specific instruments. In certain cases where investor protection is a concern, AT may require the disclosure of information from other sources, such as internal prudential supervision departments⁶⁴ or media reports, to enhance or supplement the mandated disclosures. In terms of comprehensibility, similar additional criteria may apply if a prospectus only briefly mentions critical information, prompting the NCA to request more detailed disclosure. However, for consistency, AT has not identified any additional criteria beyond those listed in Article 38.

10.3.3 Average timing of approval and monitoring of deadlines

- Section 6.3.5 of the 2022 Peer Review Report evaluated whether NCAs monitor compliance with (i) the deadlines set out in Article 20(2), (3) and (4) PR; (ii) their turnaround times during each round of review of a prospectus; (iii) the total time for the review of a prospectus. The assessment was conducted in the context of the PR requirements concerning timeframes that apply to the NCA when providing issuers with comments.

⁶³ For example, in cases where companies are selected for financial information review under ESMA’s Guidelines on the Enforcement of Financial Information (GLES) (ref 2013/1013), support from other units may be sought to ensure the completeness, comprehensibility, and consistency of financial disclosures in the prospectus.

⁶⁴ Examples of specific information from other prudential supervision departments within the AT FMA include (i) disclosure related to shortfalls on the MREL rate; (ii) potential discrepancies in financial information based on preliminary findings from the financial reporting enforcement department; and (iii) specific risk factors or trends within an industry, such as a rising NPL ratio in commercial real estate financing.

- All countries but two (IT, EE) reported no significant material changes compared to the responses provided in ESMA's Peer Review Report.
- Since August 2022, IT's approval process has incorporated the ability for the issuer to state the desired date of approval on its application of approval, following the repeal of self-imposed national deadlines and timeframes from the CONSOB Issuers' Regulation. CONSOB has published, on its website, new timelines relating to the approval procedures for non-equity prospectuses⁶⁵.
- IT's average approval time for "tripartite" non-equity securities prospectuses has been reduced to 15-20 working days, down from the previous 31-60 working days. The new timelines and the ability for issuers to specify their preferred approval date have also shortened the average approval time for secondary issuance prospectuses⁶⁶. These are now typically approved in 11-20 working days, with 5% of such prospectuses being approved in 1-10 working days.
- In February 2024, CONSOB's Board authorised the Head of the department to approve prospectuses relating to non-equity securities. This change is part of a broader initiative to facilitate access to the Italian capital markets for non-equity securities issuers. On 26 July 2024, CONSOB launched a public consultation on a proposal to delegate the approval of non-equity prospectuses and related supplements from the Board to the Heads of the relevant Departments, thereby further streamlining the authorisation process. The deadline for comments was 24 September 2024.
- EE has approved new internal prospectus rules and procedures (since 8 April 2024), which stipulate that the decision on the approval or non-approval of a prospectus must be made by the second business day after the final version is submitted. Otherwise, there have been no material changes to the information set out in the Final Report.
- PL notes that there have not been significant changes since 2022, but a key point of clarification is that under Polish administrative law, the issuer can suspend the prospectus verification process for up to 3 years. During this suspension, the KNF takes no action, and this period is not counted in the procedure's total duration. If the issuer does not request to resume the procedure, it is automatically terminated by KNF, but this termination is not considered a rejection of the prospectus.

⁶⁵ Please refer to CONSOB's website for a full and complete overview of the new timeframes for non-equity prospectuses. See [Timeframes for the scrutiny and approval of non-equity prospectuses - CONSOB AND ITS ACTIVITIES - CONSOB](#).

Contrary to non-equity prospectuses, there have been no material changes in the scrutiny and approval process for IPO prospectuses in Italy since the Final Report. The process continues to adhere to the legal timeframes outlined in Article 20 of the Prospectus Regulation.

⁶⁶ IT notes that the desired date of approval is often moved forward by the issuers as a result of market volatility. In general, deteriorating market conditions seem to have negatively impacted IPO prospectus approvals since the publication of the Final Report. See paragraphs 58-70 of this Annex.

10.3.4 Self-imposed or national timeframes

- A majority of NCAs (BE, BG, CY, CZ, DE, DK, EE, FI, FR, GR, HU, HR, IS, IE, LI, LU, LV, LT, MT, NL, NO, PL, PT, RO, SI, SK, SE) state that there have been no material changes since the publication of the Final Report. However:
- IT clarifies that it adopts a flexible approach in the review process regarding issuers' turnaround times, also considering the preferred approval timelines indicated by the issuer in the new electronic format for approval requests.
- AT clarifies that, upon reconsideration, the previous response in the Final Report was not entirely accurate. It operates under a self-imposed timeframe where it generally provides feedback to the issuer within 10 days and allows a maximum of another 10 days for the submission of a revised draft. This second timeframe is not mandated by national law but is established by the FMA itself.
- Meanwhile DE states that, generally speaking, there has been no change in its supervisory practices, except that since mid-2023, DE has implemented a strategy to expedite IPO proceedings. Depending on the specific case, BaFin generally accepts timetables consisting of three rounds of review with durations of 13, 10, and 5 days.
- ES operates under a self-imposed national timeframe of three working days for providing comments on Final Terms. Following a legislative change, however, the CNMV no longer verifies the Final Terms for the admission to trading of non-equity instruments. This responsibility has been transferred to the Regulated Markets Governing Body. Final Terms are now filed in real-time with the CNMV.

10.3.5 Timeframes that apply to issuers

- Only one NCA (LT) reported a significant material change. That is, in paragraph 217 of the Peer Review Report, it states that:

“LT reported not imposing a specific deadline on the issuer’s turnaround and indicated that they have a practice of setting a deadline in their comment letters to the issuer”.

In response to ESMA's request to update information in the Peer Review Report, LT reports that this practice has only been used a few times by LT before the publication of the Peer Review Report, but setting a deadline is not mandated by any specific rules or regulations. Moreover, LT has rarely employed this approach.

- If LT does not receive the amended draft prospectus within a reasonable period or if the issuer is unable or unwilling to address the supervisory authority's comments or provide the requested information/documents, the NCA may: (a) offer the issuer the option to withdraw the prospectus or (b) decide to refuse approval of the prospectus for not meeting the requirements laid out in the PR.

- LT is currently also in the process of amending the Bank of Lithuania's Prospectus Scrutiny and Approval Process document. To enhance the efficiency of the prospectus approval process, the Bank of Lithuania intends to incorporate best practices, including setting a deadline for the submission of draft prospectuses.

10.3.6 Monitoring of compliance with deadlines

- Section 6.3.5.3 of the Peer Review Report describes how NCAs monitor compliance with relevant deadlines. Since the publication of the abovementioned report, no NCA has significantly changed its (supervisory) practices.
- In the Peer Review Report, 15 NCAs (AT, BE, EE, ES, FI, FR, IE, IS, IT, LI, LT, NL, NO, SE, SI) reported that compliance with relevant deadlines is monitored by the readers themselves. LI clarifies that the IT system is only part of the solution; the reader needs to monitor [the process] and remains ultimately responsible⁶⁷.
- In SE, deadlines are put in manually but with the option, in the prospectus systems, to calculate deadlines automatically, minimising the risk of human errors.

10.3.7 Approval and notification of prospectuses

- Section 7.1 of the Peer Review Report assessed NCA's processes relating to the approval of prospectuses focussing on several criteria⁶⁸. 21 NCAs (BG, CZ, DE, DK, EE, FR, GR, HU, HR, IS, IE, LI, LU, MT, NL, NO, PL, PT, RO, SI and SE) reported no significant changes since the Peer Review Report.
- In BE, the President or Vice-President of the FSMA holds the authority to convene the Board's meetings, whether in person or via written approval procedures, and to approve the agenda for these meetings. The President has authorised prospectus reviewers to utilise the Board's written approval procedure regularly. Consequently, once the issuer has addressed all of the FSMA's comments, formal approval can typically be completed either on the same day or within 1-2 days, either during the Board's regular physical meetings or through a written procedure.

⁶⁷ This view is shared by many NCAs, who consider readers and managers to be ultimately responsible (see page 62 of the Final Report).

⁶⁸ See page 87 of the Final Report, which outlines the following criteria:

- a) a prospectus should only be approved once it fully satisfies Article 6(1) PR, all other relevant provisions of the PR, and all comments raised by the NCA have been resolved to its satisfaction.
- b) NCAs are expected to have an efficient process for approving the prospectus, ensuring there are no unreasonable time delays;
- c) NCAs should have effective measures in place to ensure that the person(s) responsible for approval can confirm that the review is consistent with the relevant legal requirements in the PR and CDR 2019/980;
- d) the signing-off of the approval by the NCA should be an efficient process once all comments have been addressed, as matters of substance and materiality should have been resolved during the scrutiny process; and
- e) there should be no delay in notifying the issuer that the prospectus is complete and that all comments have been addressed, allowing the issuer to proceed with the next steps in the transaction.

- In the Peer Review Report, CY reported that it will not take longer than five days to approve a prospectus as its Board convenes every week⁶⁹. Since the publication of the peer review, CY has taken significant steps to minimise the number of working days it takes to approve a prospectus, reducing it from 3 to 5 days to 1 or 2 days. This has been achieved by coordinating with the issuers as regards their indicative timetable with the relevant deadlines, which is used to organise the review process; and convening a Board meeting when necessary for the approval of the prospectus.
- Similarly, SK now approves prospectuses within one working day, subject to the issuer having addressed all the NCA's comments.
- In FI, approval of the prospectus is granted now by the reader in coordination with the Head of Division (previously the Head of Department)⁷⁰.
- LV has also made changes to its internal processes. The prospectus is no longer approved by the Board (Supervisory Committee) but instead, it is approved by the Directors of the responsible departments.
- Changes in the process ensure that there is more time for prospectus review, meaning the time for final approval has decreased significantly, currently, only taking between 1 and 2 working days. Moreover, LV has also waived the requirement to submit additional documents (e.g., minutes of Board meetings authorising the issuance of securities).
- LT is revising its procedure for prospectus approval⁷¹. The Board has approved amendments that delegate the approval function to the Director of the Financial Market Supervision Department. In complex or "unusual" cases, the Director may refer the prospectus to the Financial Market Supervision Committee for approval. This Committee is composed of three directors: the Director of the Financial Market Supervision Department, the Director of the Legal Department, and the Director of Supervision of Credit Institutions. The final adoption of this resolution was scheduled for August 2024. Delegating the prospectus approval function reduces the approval time from 3-4 days to 1-2 days, fulfilling the recommendations made in the Peer Review Report⁷².
- Significant changes have also been made in IT to allow for a faster approval process of prospectuses (without jeopardising the thoroughness of the scrutiny process)⁷³. The

⁶⁹ See paragraph 366 of the Final Report.

⁷⁰ See paragraph 409 of the Final Report.

⁷¹ See paragraph 358 of the Final Report.

⁷² See paragraphs 363, 378, and 389(b) of the Peer Review Report. Moreover, the Bank of Lithuania also points out that the changes in the prospectus when the final version has been submitted for approval (paragraph 392 of the Final Report) are very rare and usually non-material.

⁷³ Paragraph 378 of the Final Report details how some NCAs, including CONSOB, take three days or more to have the prospectus approved by either their Board (BE, CY, EE, HR, IT, LV, MT, RO, SI), a member of senior management (SK) or an executive committee (LT). Hence it was recommended that these NCAs assess whether their processes can be organised more efficiently, without jeopardising the thoroughness of the scrutiny process.

approval procedure for equity securities prospectuses now involves several steps⁷⁴. Initially, the relevant department submits a preliminary report (which may contain information about the issuer, the securities, the transaction and details of the initial review process) to CONSOB's Board. Following this, a final report is prepared at the end of the review, which includes a proposal for decision and an approval letter. This final report is delivered to the Board within one working day after receiving the latest draft of the prospectus, which should address all CONSOB's comments and be considered final by the issuer. A review of the final report happens within one working day of its receipt and, if approved by the Board, the General Director signs the approval letter that same day.

⁷⁴ As mentioned earlier, for non-equity securities prospectuses, CONSOB's Board decided in February 2024 to delegate the final approval authority to the Head of the relevant Department for prospectuses related to offers or admission to trading on a regulated market. To implement this decision, the competent CONSOB units are currently drafting a new regulation, which will be submitted for public consultation. The process to finalise and implement this regulation is anticipated to be completed by the end of 2024.

10.3.8 Withdrawal and refusal of prospectuses

- Section 7.2 of the Peer Review Report assessed whether each NCA has clear criteria, policies and procedures in place in relation to the refusal to approve a prospectus due to the failure to satisfy the ‘necessary information test’ in Article 6(1) PR. Additionally, it was assessed whether NCAs have recorded the instances in which issuers have withdrawn requests for approval of prospectuses and asked NCAs to provide information about the possible reasons for the withdrawal of prospectuses⁷⁵.
- 23 NCAs (BE, BG, CY, CZ, DK, EE, HU, HR, FR, DE, GR, IS, IE, LI, LU, MT, NL, NO, PL, PT, RO, SI and SE) reported no material changes since the Final Report.
- Since the publication of the Peer Review Report in 2022, AT has experienced withdrawals of the request for approval for all the reasons mentioned in paragraph 404 of the Peer Review Report⁷⁶.
- DE reports no significant material changes but notes that during the period from 1 January 2023 to 30 June 2024, there have been 55 withdrawals (including supplements) and 1 refusal. Similarly, in 2024, in PT, its NCA had a request for an IPO prospectus approval which was withdrawn due to market conditions.
- In LT, since the publication of the Peer Review Report, there has been only one case in which the issuer withdrew the application for approval of the prospectus after the Bank of Lithuania suspected that the issuer's borrowing arrangements for issuing bonds were contrary to Lithuanian law.

10.3.9 The number of draft prospectuses submitted to NCAs before approval

- The Final Report requested data from NCAs about the number of drafts of different prospectus formats that were submitted to NCAs before approval. Based on this information, the average number of drafts of IPO prospectuses, other types of equity prospectuses which are not drawn up as an EU Growth prospectus or under the simplified disclosure regime for secondary issuances, non-equity prospectuses which are not drawn up as an EU Growth prospectus or under the simplified disclosure regime for secondary issuances, EU Growth prospectuses, and prospectuses drawn up using the simplified regime for secondary issuances were calculated.

⁷⁵ Information on withdrawals is important because in practice it may be more likely that issuers decide to withdraw their request for approval than to have the approval of a prospectus refused.

⁷⁶ In paragraph 404 of the Peer Review Report, several NCAs communicated [...] that they considered the following reasons for withdrawals to be particularly relevant:

- a) the issuer decided not to proceed with the offer/issue due to market circumstances;
- b) an issuer's inability to satisfy the requirements in the PR or an NCA's comments;
- c) the closing of a market window; and
- d) a change in circumstances of the issue and/or its funding needs.

- In this update to the Peer Review Report, ESMA wished to know from NCAs (i) how often and (ii) for what reasons an NCA has significantly deviated from the average number of drafts as detailed in paragraphs 110 through 112 of the Final Report.
- A majority of NCAs (BE, BG, CY, CZ, DE, EE, HU, HR, FI, FR, GR, IS, IT, LI, LV, LU, PL, PT, RO, ES and SE) reported no significant material changes to the number of drafts of different prospectus formats that were submitted to them before approval.
- Since the Peer Review Report, there has been only one instance where an approval period extended beyond 1.5 years in AT. Following several draft submissions, the FMA took the opportunity to reject the application due to a missed deadline for improvements. In a typical scenario, the FMA would remind the issuer of the deadline. However, due to challenging communication with the issuer in this case, it did not do so. Consequently, the issuer submitted a new application⁷⁷.
- DE, on the other hand, experienced a significant deviation from the average number of drafts set out in the Peer Review Report whenever 6 or more drafts were submitted before the approval of the prospectus. During the period from 1 January 2023 to 30 June 2024, only a few cases with a significant deviation occurred (10 for non-equity and less than 4 in each other category). In most of these cases, issuers submitted 6 or 7 drafts.
- The deviations generally stemmed from several factors: the issuer did not have professional advisors drafting the prospectus; the issuer needed to address concerns related to investor protection or compliance with EU sanctions against Russia; the structure of the offer was revised due to changing market conditions; or the prospectus relates to a transaction involving an exceptional offering, a complex securities structure, or an intricate business model.
- IE notes that since providing data on the number of drafts submitted prior to approval, it has revised its turnaround times as of 31 March 2022. These updated turnaround times are detailed in the Peer Review Report⁷⁸. Its NCA has observed a decrease in the number of iterations required for a prospectus document. The extension of its turnaround times has allowed for more time to review the initial submission, leading to a higher number of comments being identified during the initial review rather than in subsequent submissions. This adjustment has consequently reduced the number of draft submissions needed before reaching the approval stage.
- Concerning prospectuses for secondary issuances, IT notes a reduction in the average number of drafts (from 5.15 to 4).

⁷⁷ AT notes that its NCA may impose new approval fees in similar cases, which it deemed reasonable given that its fees are relatively low, and the approval process requires significantly more recourses than usual.

⁷⁸ See paragraphs 110, 111 and 112 of the Peer Review Report.

- LT approves only a limited number of prospectuses each year, primarily base prospectuses for bond issues. The number of review rounds for these prospectuses is generally in line with the EU average, typically 3-4 rounds⁷⁹. Common comments usually arise from uncertainties related to the issuer's activities, the securities placement process, risk disclosures, and financial information.
- In NL, in cases where the number of drafts significantly exceeded the average (approximately 8 rounds or more), the transactions were either paused due to market conditions or encountered issues during the scrutiny process with the issuer. In some instances, delays were attributed to the issuer's side. NL notes that, although it does not have precise figures, it estimates that roughly 10% of its prospectuses involve a number of drafts well above the average. This includes all types of prospectuses listed in Table 1 in the Final Report⁸⁰.
- In NO, deviations from the average number of drafts, as shown in Table 1, happen occasionally⁸¹. This predominantly occurs with IPO prospectuses, where additional drafts are often required. However, it can also happen in other cases, such as when the initial drafts are of poor quality, necessitating more revisions. On the contrary, there are also instances where fewer drafts are needed than indicated in Table 1. This typically occurs when an issuer has recently had a prospectus approved or when issuers have base prospectuses that are reviewed annually.
- SK has revised its internal approach to prospectus approvals. Consultations prior to submission are now limited to specific issues that issuers wish to discuss with the National Bank of Slovakia (NBS). Additionally, the NBS conducts its scrutiny only after receiving an official request for prospectus approval. This change has led to a reduction in the number of draft rounds, bringing it closer to the EU/EEA average.
- In SI, there has also been a frequent deviation from the average number of drafts outlined in paragraphs 110-112 of the Peer Review Report. The primary reason for the lower number of drafts is that, in Slovenia, most public offerings involve "simpler" securities (e.g., shares and bonds), which are often well-prepared by the time they are first submitted to the NCA. Consequently, the NCA typically receives only one draft during the scrutiny process. After the initial draft submission, the NCA issues a corrective decision, and the subsequent version of the prospectus, which is already signed by the issuer, is usually the final version.
- Since the Peer Review Report, SE states that, although it has not made any changes that affect the number of drafts, it is challenging to quantify how often the number of drafts deviates significantly from the average. Over the past two years, some issuers

⁷⁹ As a general observation, a more extended review process is anticipated when there are concerns about possible non-compliance with legislative requirements. Since the Final Report, the Bank of Lithuania has incurred three cases where "additional" measures were taken. Measures included, for example, convening meetings with issuers, requesting further information, and involving relevant specialists from other departments.

⁸⁰ See Table 1, paragraph 110 of the Final Report.

⁸¹ Ibid.

have faced difficulties in attracting capital due to worsened market conditions. This has sometimes led to certain terms, such as those related to guarantors, being set unusually late in the process, which can increase the number of drafts toward the end of the process. Moreover, the experience level of issuers and their advisors also significantly impacts the number of drafts required⁸². Additionally, more drafts may be needed for complex base prospectuses, particularly when an issuer is seeking approval for the first time. However, such cases represent a very small percentage of the total number of approved prospectuses, at least in Sweden.

⁸² Other NCAs, such as LT, also observe that when prospectuses are prepared by new issuers or when they are prepared by individuals without ‘a lot of experience’, the scrutiny process usually involves more rounds of review. Conversely, when specialists in relevant fields prepare prospectuses and other (legal) documents, the quality is generally higher, ensuring compliance with regulatory content requirements “faster”.

10.4 Revised CDR on scrutiny and disclosure

The [CP Annex](#) is marked-up with additions and/or deletions which constitute ESMA's recommendations.

The [CP Annex \(clean\)](#) is a clean version of the CP Annex provided to assist respondents when reading the recommendations.

10.5 Revised CDR on metadata

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

amending the regulatory technical standards laid down in Commission Delegated Regulation 2019/979 as regards machine-readable data for the classification of prospectuses and prospectus related documents

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, and repealing Directive 2003/71/EC (1), and in particular Articles 7(13), 21(12), 21(13), 22(9), 23(7), 25(7) and 34(2) thereof,

Whereas:

- 1) Regulation EU xxxx/xx (the Listing Act) introduces new types of prospectuses: the EU Growth issuance and the EU follow-on prospectus. These prospectuses should be submitted to ESMA in the storage mechanism known as Prospectus Register pursuant to Article 21, paragraph 6 of Regulation (EU) 2017/1129. Consequently, the list of machine-readable data that national competent authorities (NCAs) should provide to the European Securities and Markets Authority (ESMA) needs to be updated to include these new prospectuses.
- 2) Article 14 of Regulation (EU) 2023/2631 requires issuers to publish a prospectus pursuant to Regulation (EU) 2019/1129 to use the designation EuGB. In addition, such prospectuses should be included in the Prospectus Register. The Register should then be used to facilitate supervision of the requirements for issuers of such bonds. It could also be used to maintain oversight over the application of the relevant requirements. It is therefore appropriate to require NCAs to provide ESMA with machine-readable data indicating which securities qualify as EU Green Bonds, as bonds marketed as

environmentally sustainable or sustainability-linked bonds or as securitisation bonds designated as EuGB.

- 3) The Listing Act introduces a requirement for issuers to file with competent authorities the exemption documents referred to in Article 1(4), first subparagraph, points (da) and (db), and in Article 1(5), first subparagraph, point (ba). It also introduces a requirement for ESMA to include in its yearly report prepared pursuant to Article 47 an analysis and statistics of the extent to which such exemptions are used throughout the Union. Since those statistics should be based on documents made public through the mechanism referred to in Article 21(6), it is relevant that competent authorities provide those documents to ESMA via the mechanism referred to in Article 21(6) and accompany it with the relevant metadata in order for ESMA to be able to carry out its duties.
- 4) It is appropriate that a metadata is required to classify prospectuses on the basis of the venue of first admission to trading. This would enable a straightforward identification of the most relevant market as defined by Article 16 of Commission Delegated Regulation 2017/590 when such determination relies on the criterion of first admission to trading on a trading venue.
- 5) Article 21a of Regulation (EU) 2017/1129 requires competent authorities to build to the extent possible on the mechanisms implemented for the purposes of Article 25(6) of Regulation (EU) 2017/1129 for making the information referred to in paragraph 1 of Article 21a of Regulation (EU) 2017/1129 accessible on ESAP. To minimise the compliance burden on competent authorities and issuers, the obligation to make information accessible on ESAP pursuant to Article 21a of Regulation (EU) 2017/1129 could be deemed fulfilled when such information is made available to ESMA pursuant to Article 21 paragraph 5 second subparagraph of Regulation (EU) 2017/1129. This is notwithstanding the requirements of Commission Implementing Regulation xx/xxx [*ITS on certain tasks of ESAP collection bodies*], in particular Article 5 thereof.
- 6) To streamline the process and minimise burden for issuers and competent authorities, competent authorities may provide ESMA with the type of documents which are in scope of ESAP pursuant to Article 21a of Regulation (EU) 2017/1129 but that are not currently in scope of the Prospectus Register. These include exemption documents pursuant to Article 1(4)(f) and (g), exemption documents pursuant to Article 1(5) first subparagraph points (e) and (f) and final offer price and amount of securities under Article 17(2) of Regulation (EU) 2017/1129. For that reason, Commission Delegated Regulation 2019/979 should be amended to include these document types. Additional fields for final offer price and final offer volume should be added to assist the classification of the latter document in the Prospectus Register and in ESAP. This is to ensure that all information that needs to be available to ESAP pursuant to Regulation (EU) 2017/1129 is sent only once with ESMA. No additional type of information should be included to reflect the fact that all Universal Registration Documents pursuant to Article 9(4) of Regulation (EU) 2017/1129 should be made available to ESAP other than those included in tripartite prospectuses. This is because a field is already available and could be used for that purpose.

- 7) In order to minimise the burden on competent authorities and on issuers, it should be possible to only perform one single update to the mechanism referred to in Article 21(6). Therefore the date of application of this Regulation should be aligned with the date of application of the requirements under Article 21a of Regulation (EU) 2017/1129.
- 8) Other changes to the existing machine-readable data should be included to address some minor issues identified. These are: the addition of document type “translation of appendix” to field 5; the introduction of a new field for “consideration offered currency” (because in certain cases the consideration offered and the nominal amount are in different currencies); and the amendment of the list of “type of offer/admission” to cater for cases not already in the system.
- 9) Delegated Regulation 2019/979 should therefore be amended accordingly.
- 10) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- 11) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation 2019/979

Delegated Regulation 2019/979 is amended as follows:

- (1) In Chapter 3, the following Article is added

‘Article 11a

Accessibility of information on ESAP

Notwithstanding the requirements of Commission Implementing Regulation xx/xxx [ITS on certain tasks of ESAP collection bodies], competent authorities may fulfil their obligation to make information referred to in Article 1(4) points (f) and (g), Article 1(5) first subparagraph, points (e) and (f), Articles 8(5), 9(4), 10(2), 17(2), 21(1), 21(9) and 23(1) of Regulation (EU) 2017/1129 accessible on ESAP by providing ESMA with an electronic copy of such information and with the relevant data necessary for its classification in the storage mechanism referred to in Article 21 paragraph 6 of Regulation (EU) 2017/1129 in accordance with the tables set out in Annex VII to this Regulation.

Article 11b

Competent authorities shall provide ESMA with an electronic copy of the documents referred to in Article 1(4)(da), Article 1(4)(db) and Article 1(5)(ba) of Regulation (EU) 2017/1129 for its classification by ESMA in the storage mechanism referred to in Article 21 paragraph 6 of Regulation (EU) 2017/1129.'

(2) Table 1 of Annex VII is replaced by Table 1 in Annex I to this Regulation

(3) Table 2 of Annex VII is replaced by Table 2 in Annex I to this Regulation

Article 3

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall apply from 10 July 2026.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Annex I

Table 1

New number	Field	Content to be reported	Format and Standard to be used for reporting
1.	National identifier	Unique identifier of the uploaded record, assigned by the sending NCA	{ALPHANUM-50}

2.	Related national identifier	Unique identifier of the record to which the uploaded record relates, assigned by the sending NCA Not reported in case the related national identifier is not applicable	{ALPHANUM-50}
3.	Sending Member State	Country code of the Member State which approved the uploaded record or with which the uploaded record was filed	{COUNTRYCODE_2}
4.	Receiving Member State(s)	Country code of the Member State(s) to which uploaded record is to be notified or communicated When multiple Member States shall be communicated, field 4 shall be reported as many times as necessary	{COUNTRYCODE_2}
5.	Venue of first admission to trading	First regulated market on which the instrument is admitted to trading.	Market identifier as defined in ISO 10383
6.	Document type	The type of uploaded document(s)	Choice from list of predefined fields: — 'BPFT' — Base prospectus with final terms — 'BPWO' — Base prospectus without final terms — 'STDA' — Standalone prospectus — 'REGN' — Registration document — 'URGN' — Universal registration document

			<ul style="list-style-type: none"> — ‘SECN’ — Securities note — ‘FTWS’ — Final terms, including the summary of the individual issue annexed to them — ‘SMRY’ — Summary — ‘SUPP’ — Supplement — ‘SUMT’ — Translation of summary — ‘APPT’ — Translation of appendix — ‘COAP’ — Certificate of Approval — ‘AMND’ — Amendment — ‘EXMP’ — Exemption document under Article 1(4)(da), Article 1(4)(db), Article 1(5)(ba), Article 1(4)(g), Article 1(5)(f) Article 1(4)(f) or Article 1(5)(e) PR -FOPA – Final offer price and amount of securities under Article 17(2) PR <p>When multiple documents shall be communicated, field [5] shall be reported as many times as necessary to describe each document composing the record</p>
7.	Exemption category	Reason for the exemption Multiple categories may be selected	<ul style="list-style-type: none"> — ‘EDPR’ — Exemption document under Article 1(4)(da), Article 1(4)(db) or

			<p>Article 1(5)(ba) PR [fungible securities]</p> <p>— ‘EDMD’— Exemption document under Article 1(4)(g) or Article 1(5)(f) PR [merger or division]</p> <p>— ‘EDTK’— Exemption document under Article 1(4)(f) or Article 1(5)(e) PR [takeover]</p>
8.	Structure type	The format chosen for the prospectus	<p>Choice from list of predefined fields:</p> <p>— ‘SNGL’ — Single document prospectus</p> <p>— ‘SPWS’ — Prospectus consisting of separate documents with summary</p> <p>— ‘SPWO’ — Prospectus consisting of separate documents without summary</p>
9.	Approval or filing date	The date on which the uploaded record was approved or filed	{DATEFORMAT}
10.	Language	The EU language in which the uploaded record is drafted	{LANGUAGE}
11.	Offeror standardised name	<p>Name and surname of the offeror in case the offeror is a natural person</p> <p>When multiple offerors shall be communicated, field [9] shall be reported as many times as necessary</p>	{ALPHANUM-280}

12.	Guarantor standardised name	Name and surname of the guarantor in case the guarantor is a natural person When multiple guarantors shall be communicated, field [10] shall be reported as many times as necessary	{ALPHANUM-280}
13.	Issuer LEI	Legal Entity Identifier of the issuer When multiple issuers shall be communicated, field [11] shall be reported as many times as necessary	{LEI}
14.	Offeror LEI	Legal Entity Identifier of the offeror When multiple offerors shall be communicated, field [12] shall be reported as many times as necessary	{LEI}
15.	Guarantor LEI	Legal Entity Identifier of the guarantor When multiple guarantors shall be communicated, field [13] shall be reported as many times as necessary	{LEI}
16.	Offeror residency	Offeror's residency in case the offeror is a natural person When multiple offerors shall be communicated, field [14] shall be reported as many times as necessary	{COUNTRYCODE_2}
17.	Guarantor residency	Guarantor's residency in case the guarantor is a natural person When multiple guarantors shall be communicated, field [15] shall be reported as many times as necessary	{COUNTRYCODE_2}

18.	FISN	Financial Instrument Short Name of the security This field should be repeated for each ISIN	{FISN}
19.	ISIN	International Securities Identification Number	{ISIN}
20.	CFI	Classification of Financial Instrument code This field should be repeated for each ISIN	{CFI_CODE}
21.	Issuance currency	Code representing the currency in which the nominal or notional value is denominated This field should be repeated for each ISIN	{CURRENCYCODE_3}
22.	Denomination per unit	Nominal value or notional value per unit in the issuance currency This field should be repeated for each ISIN Field applicable to securities with defined denomination	{DECIMAL-18/5}
23.	Identifier or name of the underlying	ISIN code of the underlying security/index or name of the underlying security/index if an ISIN does not exist When basket of securities, to be identified accordingly Field applicable to securities with defined underlying. This field should be repeated for each ISIN of such securities	For unique underlying: For multiple underlyings (more than one): 'BSKT'
24.	Maturity or expiry date	Date of maturity or expiry date of the security, when applicable This field should be repeated for each ISIN Field applicable to securities with defined maturity	{DATEFORMAT} For perpetual debt securities field 22 should be populated with the value 9999-12-31.

25.	Volume offered	Number of securities offered Field applicable only to equity This field should be repeated for each applicable ISIN	{INTEGER-18} Either as single value, range of values, maximum
26.	Price offered	Price per security offered, in monetary value. The currency of the price is the issuance currency Field applicable only to equity This field should be repeated for each applicable ISIN	{DECIMAL-18/5} Either as single value, range of values, maximum 'PNDG' in case the price offered is not available but pending 'NOAP' in case the price offered is not applicable
27.	Consideration offered	Total amount offered, in monetary value of the consideration offered currency. This field should be repeated for each ISIN	{DECIMAL-18/5} Either as single value, range of values, maximum 'PNDG' in case the consideration offered is not available but pending 'NOAP' in case the consideration offered is not applicable
28.	Consideration offered currency	Code representing the currency of the consideration offered This field should be repeated for each ISIN.	{CURRENCYCODE_3}
29.	Final offer price	Price per security offered, in monetary value. Field applicable only to equity Field applicable only to final offers. This field should be repeated for each applicable ISIN	{DECIMAL-18/5} Single value

30.	Final offer price currency	The currency of the final offer . Field applicable only to equity	{CURRENCYCODE_3}
31.	Final offer volume	Number of securities offered Field applicable only to final offers. This field should be repeated for each applicable ISIN	{INTEGER-18} Single value
32.	Final offer consideration	Total amount offered, in monetary value of the consideration offered currency. This field should be repeated for each ISIN	{DECIMAL-18/5} Either as single value
33.	Type of security	Classification of categories of equity and non-equity securities This field should be repeated for each ISIN	Choice from list of predefined fields: Equity — 'SHRS': Share — 'UCEF': Unit or share in closed end funds — 'CVTS': Convertible security — '►M1 DPRS ◀': Depository receipt — 'OTHR': Other equity Debt: — 'DWLD': Debt with denomination per unit of at least EUR 100 000 — 'DWHD': Debt with denomination per unit of less than EUR 100 000

			<p>— ‘DLRM’: Debt with denomination per unit of less than EUR 100 000 traded on a regulated market to which only qualified investors have access to. ‘ABSE’: ABS</p> <p>‘DERV’: Derivative security</p>
34.	Type of offer/admission	<p>Taxonomy according to PR and MiFID/MIFIR</p> <p>This field should be repeated for each ISIN</p>	<p>Choice from list of predefined fields:</p> <p>— ‘IOWA’: Initial offer without admission to trading on a regulated market</p> <p>- ‘IORM’: Initial offer with admission to trading on a regulated market</p> <p>- ‘SOWA’: secondary offer without admission to trading on a regulated market</p> <p>— ‘IRMT’: Initial admission to trading on regulated market</p> <p>— ‘IPTM’: Initial admission to trading on regulated market from previously being traded on MTF</p> <p>— ‘IMTF’: Initial admission to trading on MTF with offer to the public</p> <p>- ‘SOOA’: Secondary offer with admission to trading on a regulated market</p> <p>— ‘SIWO’: Secondary issuance on <u>a regulated market</u> without an offer to the public</p>

			- 'SIOP': Secondary issuance on an MTF with an offering to the public
35.	Characteristics of the trading venue where the security is initially admitted to trading	Taxonomy according to PR and MiFID/MIFIR This field should be repeated for each ISIN	Choice from list of predefined fields: — 'RMKT': RM open to all investors — 'RMQI': RM, or segment thereof, limited to qualified investors — 'MSGM': MTF which is a SME growth market — 'MLTF': MTF which is not a SME growth market
36.	Disclosure regime	The annex number in accordance with which the prospectus is drafted under the Commission Delegated Regulation (EU) [2019/980] When multiple annexes shall be communicated, field 32 shall be reported as many times as necessary	{INTEGER-2} From 1 to [50]
37.	EU Growth issuance prospectus	Reason based on which an EU Growth issuance prospectus has been used	Choice from list of predefined fields: — 'S15A': SME under PR Article 15a(1)(a) — 'I15B': Issuer other than SME under PR Article 15a(1)(b) — 'I15C': Issuer other than SME under PR Article 15a(1)(c) — 'O15D': Offeror of securities under PR Article 15a(1)(d)

38.	EU follow-on prospectus	Reason why an EU follow-on prospectus has been used	Choice from list of predefined fields: —‘I14A’: issuers under PR Article 14a(1)(a) —‘I14B’: issuers under PR Article 14a(1)(b) —‘I14C’: issuers under PR Article 14a(1)(c) —‘O14D’: offerors of securities under PR Article 14a(1)(d)
39.	EuGB flag	Flag indicating whether the security qualifies as EuGB, is a bond marketed as environmentally sustainable or a sustainability-linked bond. This field should be repeated for each ISIN	—EuGB: security qualifying as EuGB pursuant to Article 3 of Regulation (EU) 2023/2631 —ESSL: bonds marketed as environmentally sustainable or sustainability-linked bonds within the scope of the voluntary disclosures of Article 20 and 21 of Regulation (EU) 2023/2631 —SEGB: securitisation bond designated as EuGB pursuant to Article 16 of Regulation (EU) 2023/2631 In case of EuGB or SEGB: {LEI} of the external reviewer

Table 2

Symbol	Data Type	Definition
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field

{CFI_CODE}	6 characters	CFI code, as defined in ISO 10962
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alfa-2 country code
{DATEFORMAT}	Dates in the following format: YYYY-MM-DD Dates shall be reported in UTC	ISO 8601 date format
{LANGUAGE}	2 letter code	ISO 639-1
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{FISN}	35 alphanumerical characters with the following structure	FISN code, as defined in ISO 18774
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DECIMAL-n/m}	Decimal number of up to n digit in total, of which up to m digits can be fraction digits	Numerical field Decimal separator is '.' (full stop) Values are rounded and not truncated
{INTEGER-n}	Integer number of up to n digits in total	Numerical field
{INDEX}	4 alphabetic characters	'EONA' — EONIA 'EONS' — EONIA SWAP 'ESTR' - €STR 'EURI' — EURIBOR 'EUUS' — EURODOLLAR 'EUCH' — EuroSwiss 'GCFR' — GCF REPO 'ISDA' — ISDAFIX 'LIBI' — LIBID

		<p>'LIBO' — LIBOR</p> <p>'MAAA' — Muni AAA</p> <p>'PFAN' — Pfandbriefe</p> <p>'TIBO' — TIBOR</p> <p>'STBO' — STIBOR</p> <p>'BBSW' — BBSW</p> <p>'JIBA' — JIBAR</p> <p>'BUBO' — BUBOR</p> <p>'CDOR' — CDOR</p> <p>'CIBO' — CIBOR</p> <p>'MOSP' — MOSPRIM</p> <p>'NIBO' — NIBOR</p> <p>'PRBO' — PRIBOR</p> <p>'TLBO' — TELBOR</p> <p>'WIBO' — WIBOR</p> <p>'TREA' — Treasury</p> <p>'SWAP' — SWAP</p> <p>'FUSW' — Future SWA</p> <p>'EFFR' — Effective Federal Funds Rate</p> <p>'OBFR' — Overnight Bank Funding Rate</p> <p>'CZNA' — CZEONIA</p> <p>[Code to be defined] — TONA</p>
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