|  |
| --- |
| 6 July 2017 |

|  |
| --- |
| Response form for the Consultation Paper on scrutiny and approval  |
|   |

|  |
| --- |
| Date: 6 July 2017 |

Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all responses received by 28 September 2017.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the form “Response form\_Consultation Paper on scrutiny and approval”, available on ESMA’s website alongside the present Consultation Paper ([www.esma.europa.eu](http://www.esma.europa.eu) 🡪 ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).
* Please do not remove tags of the type <ESMA\_QUESTION\_SAC\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_SAC\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_SAC\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution 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](http://www.esma.europa.eu) under the heading ‘Data protection’.

Who should read this Consultation Paper

This Consultation Paper may be of particular interest to investors, issuers, including issuers 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.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Assoication Nationale des Sociétés par Actions - ANSA |
| Activity | Choose an item. |
| Are you representing an association? | x |
| Country/Region | Frane  |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_SAC\_1>

ANSA (Association Nationale des Sociétés par Actions) is a **not for profit** membership association**,** which **represents the interests of French quoted and non-quoted joint-stock companies.**

<ESMA\_COMMENT\_SAC\_1>

1. : Do you agree with the criteria for determining whether a prospectus is complete (Article A(1))? Do you consider that additional completeness criteria are necessary?

<ESMA\_QUESTION\_SAC\_1>

We agree with the criteria proposed by ESMA to check the completeness of prospectuses. without prejudice to any omission of information in accordance with Article 18 of Regulation (EU) 2017/1129.  We don’t consider that additional criteria are necessary.

<ESMA\_QUESTION\_SAC\_1>

1. : Do you agree that NCAs should apply different criteria when assessing the comprehensibility of retail and wholesale prospectuses? If yes, do you agree with the criteria proposed in Article A(2)? Please make an alternative proposal if you do not agree with these criteria.

<ESMA\_QUESTION\_SAC\_2>

We agree with the criteria proposed by ESMA to check the comprehensibility of prospectuses

<ESMA\_QUESTION\_SAC\_2>

1. : Do you agree with the criteria for assessing the consistency of a prospectus proposed in Article A(3)? Do you consider that additional consistency criteria are necessary?

<ESMA\_QUESTION\_SAC\_3>

We agree with the proposed criteria for assessing the consistency of the prospectus in Article A(3) and the fact that they are not intended to be considered exhaustive, but rather indicative.

<ESMA\_QUESTION\_SAC\_3>

1. : In relation to scrutiny and review of the URD where ESMA proposes that only minimal changes be made to the generally applicable scrutiny criteria, do you consider there to be any further aspects where scrutiny and review of the URD need to differ from the general criteria?

<ESMA\_QUESTION\_SAC\_4>

No

<ESMA\_QUESTION\_SAC\_4>

1. : Do you agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice?

<ESMA\_QUESTION\_SAC\_5>

Yes

<ESMA\_QUESTION\_SAC\_5>

1. : In order to take a proportionate approach to scrutiny and review of prospectuses, do you agree that NCAs should only be required to scrutinise information which has not already been scrutinised/reviewed/approved, as proposed in Article B(2)?

<ESMA\_QUESTION\_SAC\_6>

Yes

<ESMA\_QUESTION\_SAC\_6>

1. : Do you believe that application of the proposed criteria will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

<ESMA\_QUESTION\_SAC\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SAC\_7>

1. : Do you have any further suggestions for harmonising the way in which NCAs scrutinise prospectuses? In your view, should ESMA propose more detailed or additional criteria for scrutiny/review in its technical advice?

<ESMA\_QUESTION\_SAC\_8>

We don’t consider that ESMA should propose more detailed or additional criteria in its technical advice. The best and most effective way to harmonise practices among NCAs is not necessarily through additional level 2 measures but rather using other tools ESMA possesses such as guidelines and recommendations addressed to NCAs and Peer Reviews.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SAC\_8>

1. : Has ESMA identified all the necessary amendments to the existing procedures for approval of the prospectus?

<ESMA\_QUESTION\_SAC\_9>

We disagree with the proposal to remove the option for NCAs to require that the final draft of the prospectus be submitted in a paper version should be removed, as scanned documents still cannot be submitted in searchable electronic format

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SAC\_9>

1. : Do you agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e)?

<ESMA\_QUESTION\_SAC\_10>

We agree with ESMA’s proposal to grant issuers the choice of whether to submit an appendix for approval at the same time as the URD is approved, bearing in mind that if no appendix is approved together with the URD, it will not be possible to passport the URD for an offer/admission of securities to retail investors.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SAC\_10>

1. : Do you agree with the procedures for approval of the URD?

<ESMA\_QUESTION\_SAC\_11>

As pointed out by ESMA, article 9(11) (a) of the new Prospectus Regulation states that one of the conditions for becoming a frequent issuer is that the issuer, when submitting a URD for approval or filing, provides written confirmation that it has filed and published all regulated information required under the TD and MAR. It is clear from Level 1 that this confirmation should be provided only when the URD is submitted for approval or filed. In any case, if a new regulated information has been made available between the time the draft prospectus was submitted and the time the final version is filed, it must be assumed that the issuer has complied with all its disclosure obligations. Asking him again to reconfirm in writing, when the final version of the prospectus is filed, that it is fully compliant with the Transmrency and Market abuse requirements, appears excessive. We therefore disagree with ESMA’s proposal that a new confirmation should be provided when the final version of the URD is submitted.

<ESMA\_QUESTION\_SAC\_11>

1. : Do you agree with the procedures for filing of the URD? Are there any further considerations which ESMA should take into account in this regard?

<ESMA\_QUESTION\_SAC\_12>

We disagree with the additional requirement laid down in article C(2)(h) of the Draft Technical Advice and according to which “*where a universal registration document is filed without prior approval, confirmation whether the universal registration document is being used to fulfil an obligation to publish an annual financial report required under Article 4 of Directive 2004/109/EC or a half-yearly financial report required under Article 5 of that Directive*” shall be submitted to the NCA.

Such requirement is not included in level 1 and according to the Regulation, issuers can include their annual and half-year financial reports in the URD to fulfil their obligations under the only conditions that they comply with the publication deadlines of the TD, make the URD available to the storage mechanism (OAM) and include in the URD a cross reference list and a responsibility statement pursuant to the provisions of the TD. Therefore additional conditions cannot be introduced at level 2. NCAs should organise themselves, when the Authority approving the prospectus is different from the Authority in charge of TD supervision, in order to fulfil their duties and without imposing additional burden on issuers.

Refer also to our response to question 11 regarding the statement of compliance with TD and MAR.

<ESMA\_QUESTION\_SAC\_12>

1. : Do you believe that any of the proposed procedures for approval and filing will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

<ESMA\_QUESTION\_SAC\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SAC\_13>

1. : Do you agree that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer? If no, please elaborate on how ESMA should further specify the conditions already established at Level 1.

<ESMA\_QUESTION\_SAC\_14>

Yes, we agree that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SAC\_14>

1. : Do you have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper?

<ESMA\_QUESTION\_SAC\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SAC\_15>