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| 15 December 2017 |

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| Response form for the Consultation Paper on draft RTS under the new Prospectus Regulation |
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| Date: 15 December 2017 |

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on draft RTS under the new Prospectus Regulation (ESMA31-62-802). 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 9 March 2018.

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 present response form.
* Please do not remove tags of the type <ESMA\_QUESTION\_PR\_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\_PR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_PR\_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 draft RTS 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 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 the Consultation Paper

The Consultation Paper may be of particular interest to investors, issuers, 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 (Regulation (EU) 2017/1129).

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Oesterreichische Kontrollbank AG |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Austria |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ PR\_1>

OeKB acts (inter alia) as central information and capital markets infrastructure provider in Austria. OeKB is Austria’s ISIN-, FISN-, CFI- and LEI-allocation provider. Furthermore, OeKB acts as issuer in international and domestic money and capital markets.

The comments made in this response relate to the section “Data and machine readability” and are underlined by the following general considerations: We strongly support market transparency both for the purposes of investors and supervisory authorities. Thus, we also welcome the scope of data collection as envisaged in the RTS Draft at hand. However, any additional burden for issuers – as mentioned in paragraph 105 of the CP – should be kept as low as possible. Therefore, by compiling data NCAs should primarily call on already existing national data resources rather than obliging issuers to perform part of this task. <ESMA\_COMMENT\_ PR\_1>

# Key financial information in the summary

1. : Do you agree that the KFI extracted from the issuer’s historical financial information should be sign-posted?

<ESMA\_QUESTION\_PR\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_1>

1. : Would you suggest the inclusion of specific templates for other types of issuer? Please specify and explain your reasoning.

<ESMA\_QUESTION\_PR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_2>

1. : Do you agree that cash flow from operations is the most useful measure of cash flow for non-financial entities issuing equity and that cash flow from financing activities and cash flow from investing activities are not so relevant for investors in equity securities?

<ESMA\_QUESTION\_PR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_3>

1. : Given the page limit for the summary please provide your views on which items of historical financial information would be most useful for retail investors.

<ESMA\_QUESTION\_PR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_4>

1. : Do you agree with the proposal to allow the use of footnotes to describe APMs or could this result in lengthy footnotes and complicated explanations?

<ESMA\_QUESTION\_PR\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_5>

1. : Do you agree that issuers should be given flexibility to present pro forma financial information as additional columns to the relevant tables or as a separate table? If not, should a format be mandated, bearing in mind the page limit for the summary as well as the requirement for the summary to be comprehensible?

<ESMA\_QUESTION\_PR\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_6>

1. : Do you agree that complex financial information in the summary should be presented according to its presentation in the prospectus? If not, please specify and provide alternative ways of presentation.

<ESMA\_QUESTION\_PR\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_7>

1. : Which financial measures are most useful for retail investors to determine the health of a credit institution? Do you consider that the CET1 is comprehensible for retail investors? Please specify.

<ESMA\_QUESTION\_PR\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_8>

1. : Do you agree that it should be mandatory for credit institutions to disclose SREP information in relation to Common Tier One Equity, the minimum prudential capital requirements, the Total Capital Ratio and the Leverage Ratio in the summary?

<ESMA\_QUESTION\_PR\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_9>

1. : Do you agree with the choice of measures for insurance companies?

<ESMA\_QUESTION\_PR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_10>

1. : Do you think it would be useful for retail investors to include a measure of historical performance for closed end funds in the summary?

<ESMA\_QUESTION\_PR\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_11>

1. : Do you think that investment companies which are subject to capital requirements should be required to include regulated capital ratios in their summary?

<ESMA\_QUESTION\_PR\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_12>

1. : Would the issuer, offeror or person asking for admission to trading incur costs if the proposed provisions are adopted? If so, please specify the nature of such costs, including quantifying them.

<ESMA\_QUESTION\_PR\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_13>

# Data and machine readability

1. : Do you believe that the data related to the amount raised should be made mandatory? Please explain your reasons.

<ESMA\_QUESTION\_PR\_14>

Yes, we believe that data related to the amount raised is crucial. Based on our experience as capital market infrastructure provider we can confirm that such data has been of great interest on the part of market participants and other stakeholders in the past. There are many reasons why the amount raised is of interest of the aforementioned such as sound market overviews, risk and markets assessments, optimization of investments as well as issuance decisions. Furthermore, data related to the final amount raised are a prerequisite for a sound analysis of trends to be published by ESMA in its report pursuant to Art 47 of the PR. However, publication of such data should be regarded as sufficient in aggregated form rather than on a single issuance basis. <ESMA\_QUESTION\_PR\_14>

1. : Do you agree with the data items that have been identified as necessary for the purpose of classification as well as to allow for the compilation of the annual report under Article 47 of the Prospectus Regulation? Would you like to propose any additional items or suggest items that should in your view be deleted? Please explain your reasons.

<ESMA\_QUESTION\_PR\_15>

Yes, in our function as ISIN-, FISN-, CFI- and LEI-allocation provider we consider necessary to use these internationally standardized and established codes which are easily machine readable and help to set up an efficient tool with high usability and comprehensive search functionality increasing the transparency in the market. As elaborated in question 14 we also suggest to collect data related to the amount raised. Furthermore, we believe that a more detailed classification of the “type of security” (i.e. specification of instruments) may be useful for the purposes of the ESMA report. The name of the issue may be of interest too. However, the items that have been identified by ESMA seem to be appropriate for the purposes of the PR (cf ESMA report). The document date should be mandatory as it is an important information helping investors to identify and search for documents. Other data to be considered are: ‘offer period’, ‘subscription period’ ‘duration from/to’. <ESMA\_QUESTION\_PR\_15>

1. : Do you agree with the ESMA proposal to maintain the current system in place whereby NCAs submit data to ESMA in XML format as the practical arrangement to ensure that such data is machine readable? Do you agree that, by keeping the data submission system unchanged, adaptation costs are minimised for the market at large?

<ESMA\_QUESTION\_PR\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_16>

1. : Do you agree that the proposed amendment to the technical advice on prospectus approval could contribute to provide clarity on the way data referred to in Annex VII are collected by NCAs?

<ESMA\_QUESTION\_PR\_17>

Yes, we agree. However, according to the proposed amendment (i.e. new “(2a)”) NCAs shall be entitled to require issuers to submit further data without any constraint. In order to avoid unnecessary burden for issuers and in line with paragraph 105 and 106 of the CP such request should only take place if the NCA does not have recourse to existing national laws providing a legal basis for the data compilation anyway. Therefore, the proposed amendment should be supplemented eg as follows: “*Unless national laws provide for a legal basis to compile data referred to in the table of Annex VII the competent authority may require … issuers …*” . By using existing data resources and systems further costs will be avoided. <ESMA\_QUESTION\_PR\_17>

1. : Do you have suggestions in relation to how the efficiency, accuracy and timeliness of the data compilation and submission process can be further improved? In your experience, is there any specific reporting format or standard that you would deem most appropriate in this context?

<ESMA\_QUESTION\_PR\_18>

According to the proposed amendment (i.e. new “(2a)”) data shall be submitted when submitting a draft prospectus to the competent authority for approval. In our point of view most of the data is not available or final at this time (e.g. ISIN, FISN, CFI, consideration raised) or should not be made public from the view of issuers. Therefore, data should be submitted just prior to the date of offer. As for information on the consideration raised a later stage of submission will be necessary. <ESMA\_QUESTION\_PR\_18>

# Advertisements

1. : Do you consider that an advertisement should contain at least a hyperlink to the website where it is published and where available and technically feasible additional information that would facilitate tracing the prospectus? Please provide examples of the additional information that you think would be helpful to include in the advertisement.

<ESMA\_QUESTION\_PR\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_19>

1. : Do you consider that the definition for complex securities set out in para 140 provides clarity to issuers and would be helpful in deciding when the comprehension alert referred to in Article 8(3)(b) of the PRIIPs Regulation should be included in an advertisement?

<ESMA\_QUESTION\_PR\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_20>

1. : Do you agree with the requirements suggested for Article 11 of the RTS? If not, please provide your reasoning.

<ESMA\_QUESTION\_PR\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_21>

1. : In particular, do you agree with the requirement to include warnings in advertisements? Do you consider that the suggested warnings are fit for purpose in terms of investor protection?

<ESMA\_QUESTION\_PR\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_22>

1. : Would the issuer, offeror or person asking for admission to trading incur costs if the aforementioned provisions are adopted? If so, please specify the nature of such costs, including whether they are one-off or ongoing and, quantify them.

<ESMA\_QUESTION\_PR\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_23>

# Supplements

1. : Do you agree that Article 2 of the First Commission Delegated Regulation should be carried over, in its entirety, to Level 2 under the new regime?

<ESMA\_QUESTION\_PR\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_24>

1. : Do you agree that the additional requirements identified from ESMA’s draft technical advice should also be included.

<ESMA\_QUESTION\_PR\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_25>

1. : Do you agree that the publication of audited financial statements by an issuer of retail debt or retail derivative securities should not trigger the requirement to publish a supplementary prospectus?

<ESMA\_QUESTION\_PR\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_26>

1. : Would the issuer, offeror or person asking for admission to trading incur costs if the aforementioned provisions are adopted? If so, please specify the nature of such costs, including quantifying them.

<ESMA\_QUESTION\_PR\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_27>

# Publication

1. : Do you agree that only Article 6(1)(c) and 6(3) of the Second Commission Delegated Regulation need to be carried over to Level 2 under the new regime?

<ESMA\_QUESTION\_PR\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_28>

1. : Do you agree that no other publication provisions of the new Prospectus Regulation need to be specified by way of RTS? If not, please identify the provisions which should be specified.

<ESMA\_QUESTION\_PR\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_29>

1. : Do you believe that the proposed publication provisions 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\_PR\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PR\_30>