

Rome, 18th December 2024

ASSONIME's Answer to ESMA Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

We hereby enclose the answers to questions 20-24 of the Consultation Paper.

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.

We agree with the proposed deletion of art. 40 Commission Delegated Regulation EU 2019/980; it was vague and was interpreted in different ways by the NCAs, as reported in the Peer Review dated 2022.

The proposed art. 21b requires to provide information of other annexes where the prospectus concerns securities which are comparable (but not the same) as securities covered in the annexes or additional information where the prospectus concerns securities not covered by the annexes; in both cases the provision requires a previous consultation with the issuer/offoror.

We agree with art. 21b, and we appreciate the involvement/consultation of the issuer/offoror in the request of additional information; it seems limiting the circumstances leading to the request of additional information and therefore limiting discretion of the NCAs.

Notwithstanding the above, the provision in art. 32.1b) of the Prospectus Regulation, which foresees the general power of the CA 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, is still unchanged, and leaving flexibility to the NCAs, may give rise to longer approval process.

As art.21b does not say that for securities, transactions or issuers covered by the Annexes, NCAs should not ask for additional information, we suggest adding a new paragraph that would read:

“Except in the circumstances described in paragraphs 1 and 2, the competent authority shall not require additional information”.

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.

Considering the extensive powers to CAs ensured by art. 32 of PR, we think that the Report required to the Commission on whether the scrutiny and approval procedures of competent authorities ensure proper level of supervisory convergence throughout the Union and remain appropriate considering their objectives¹ is of paramount importance.

We believe that the above-mentioned Report should carefully check whether the discretion of the NCAs will be limited in practice by new art. 21b and if there will be true convergence.

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.

Yes, we agree but it is not clear the interaction with the general provision of art. 32 of Prospectus Regulation above mentioned ensuring the general power to the NCA to ask for supplementary information to be included in the prospectus, where necessary for investor protection.

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.

We fear that the deadlines proposed in art. 36 (120 working days for the CA to approve or refuse the approval and the possible extension of 90 working days) are too long and may hamper the predictability of the process; it seems that these long terms have been fixed considering the worst scenario while we think that the approach should be reversed.

¹ See art. 48 of Prospectus Regulation.

These deadlines could be used differently in the MSs, also considering the existence of still different approval processes, as reported in the Peer Review which could lead to the loss of the market windows.

This could also lead to a race to the bottom approach both for issuers (incentivized to present incomplete prospectuses) and for NCAs, therefore crystallising the maximum timeframe at the issuers' expenses.

Moreover, the proposed timeframes could also impact the periodic financial information which should be updated continuously during a so long period of time.

We therefore would suggest reconsidering the above-mentioned deadlines shortening the time limits as suggested below (bold characters are added):

Art. 36

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 **in writing**, if the competent authority imposes a deadline for the submission of an updated draft prospectus, it shall provide **at least within maximum** 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 **40** ~~420~~ 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 **10** ~~90~~ working days.

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.

We think that ESMA's proposal could impose additional burdens on issuers in different Member States for the reasons above mentioned.