AssoNEXT's Response to the ESMA Consultation Paper on Draft Technical Advice Concerning the Prospectus Regulation and Updating the CDR on Metadata

We hereby submit our position 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 Article 40 of Commission Delegated Regulation (EU) 2019/980 (hereinafter referred to as "CRD"); it was ambiguous and interpreted inconsistently by NCAs, as highlighted in the 2022 Peer Review.

The proposed Article 21b requires the provision of information from other annexes when the prospectus concerns securities comparable to (but not the same as) those covered in the annexes or additional information when the prospectus involves securities not covered by the annexes. In both cases, this provision mandates prior consultation with the issuer/offeror.

We agree with Article 21b and appreciate the inclusion of issuer/offeror consultation in requests for additional information. This approach appears to restrict circumstances that warrant additional information requests, thereby limiting NCAs' discretion.

However, Article 32.1b) of the Prospectus Regulation, which grants NCAs general authority to require issuers, offerors, or applicants for regulated market trading to include supplementary information for investor protection, remains unchanged. This flexibility may result in lengthier approval processes.

Given that the new regulation aims for maximum harmonisation of EU prospectuses, we suggest limiting NCAs' ability to request additional information to the scenarios outlined in the new Article 21b. This would ensure that issuers benefit from greater predictability and clarity regarding required disclosures, aligning with the harmonisation objective by reducing the risk of inconsistent demands across Member States. This would exclude further information requirements beyond those specified in Level 2, providing issuers with greater clarity on prospectus content and expediting the approval process. Unrestricted NCA discretion could disrupt harmonisation, potentially forcing issuers to include unnecessary information, increasing liability exposure (e.g., for forward-looking statements).

To avoid excessive burdens, NCAs' requests for additional prospectus information should be minimized within the framework of the new legislation, considering: (a) costs efficiency for issuers where overly detailed requests impose significant legal, administrative, and financial burdens, including higher advisory fees and delays in accessing capital markets; (b) a standardized framework reduces uncertainty, lowering compliance costs and streamlining processes will enhance predictability; (c) legal certainty and consistency would be improved. Broad NCA discretion could lead to fragmented requirements across Member States, undermining the Listing Act's aim of a unified market; (d) investor protection sufficiency: the Prospectus Regulation already ensures investors receive pertinent information. Excessive requests may overload investors with immaterial data, reducing clarity; (e) timely fundraising is essential, indeed additional information requests could delay approvals, particularly critical for IPOS and SMEs .

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 granted to NCAs under Article 32 of the Prospectus Regulation, the report required by the Commission on whether scrutiny and approval procedures ensure proper supervisory convergence across the Union is vital.

The report should assess whether the new Article 21b effectively limits NCA discretion and ensures 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 beyond that 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.

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.

The deadlines proposed in Article 36 (120 working days for CA approval or refusal, extendable by 90 working days) are excessive and incompatible with market timing. By comparison, approval processes in jurisdictions like the US and the UK often take significantly less time, typically ranging from 30 to 60 working days, depending on the complexity of the prospectus. Aligning EU deadlines with these practices could improve competitiveness and ensure issuers can meet market opportunities efficiently. A process potentially spanning 210 working days is unrealistic and would harm process predictability. These deadlines appear to cater to worst-case scenarios; a reverse approach is needed.

Issuers require clarity. We propose that NCAs agree an indicative approval timeline with issuers at the outset, a practice already adopted by some NCAs, which should be incorporated into Level 2 at least within the recitals of the Delegated Regulation.

Streamlining and harmonising prospectuses should shorten approval processes. This could be achieved by standardizing documentation requirements across Member States, adopting digital submission and review systems, and ensuring that NCAs adhere to a unified framework for prospectus scrutiny. These measures would reduce redundancy, enhance efficiency, and provide issuers with a clearer roadmap for compliance. A more appropriate timeframe is essential for the reform's success, ensuring: (a) timely access to capital markets and reduced uncertainty. Predictable timelines improve planning efficiency for offerings and related activities.; (b) market opportunity capture, issuers often rely on specific conditions, and approval delays can cause lost opportunities or higher costs; (c) lower transaction costs. Uncertainty and delays inflate costs, including legal fees and updates to financial disclosures; (d) a defined timetable facilitates informed decision-making and market efficiency.

Deadlines must be reconsidered and shortened. Suggested revisions include:

Article 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 **60** ~~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 **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.

The Annexes proposed by ESMA are too broad compared to the Annexes included in the Regulation 2024/2089 and we warmly suggest reviewing them to avoid unnecessary inclusion of additional information and considering the goal of the Listing Act to strongly streamline prospctuses.

ESMA Annexes includes exhaustive and detailed requirements across numerous sections, (such as historical financial data, interim financial statements, KPIs, related-party transactions, and sustainability disclosures in Annex 1). Some of these might exceed what is practically necessary for the specific purpose of a prospectus, making it unnecessarily burdensome for the issuer.

Providing excessive detail (e.g., granular breakdowns of financial trends, exhaustive legal and arbitration disclosures) can overwhelm investors and obscure the critical information they need to make informed decisions. COM Annexes approach, by contrast, focuses on thematic summaries that are more digestible.

ESMA Annexes requires disclosure of immaterial details, such as potential conflicts of interest or all related-party transactions, which may not always have a significant impact on investor decision-making.

The COM Annexes outlines information that is directly relevant to investors, focusing on essential areas like risk factors, financial strategy, and terms of the offer. ESMA Annexes, with its broader focus, includes areas that might not serve the immediate purpose of the disclosure document and could deviate from the core intent. Limiting ESMA Annexes and aligning with COM Annexes streamlined structure would ensure efficient and focused disclosure. This approach saves time and resources for the issuer while maintaining compliance with regulatory standards.

The expansive requirements in ESMA Annexes significantly increase the workload for issuers. This adds compliance costs and administrative overhead, which might not yield proportional benefits to stakeholders. Requiring overly detailed disclosures might deter issuers from accessing public markets, particularly for SMEs.

ESMA Annexes should prioritize material disclosures that impact investor decisions, such as essential financial data, key risk factors, and the issuer's strategy. Redundant sections, such as those on governance, shareholder arrangements, and detailed sustainability measures, should be streamlined as much as possible. A more concise ESMA Annexes would better serve both issuers and investors by focusing on clarity and relevance, ensuring the document is more accessible and impactful.

In conclusion, ESMA Annexes seems still based on the current Annexes included in Reg. 2017/1129 providing a too robust framework, its breadth should be curtailed to align with the more focused approach of the new COM Annexes. This ensures that disclosures remain relevant, manageable, and cost-effective while avoiding unnecessary complexity.

Milan, 20 December 2024