



European Securities and  
Markets Authority

## **PEER REVIEW ON PROSPECTUS APPROVAL PROCESS**

### **Peer Review Report**





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## Acronyms used

AG	Assessment Group
CESR	Committee of European Securities Regulators
EC	European Commission
FTE	Full Time Equivalent
IPO	Initial Public Offering
MAD	Market Abuse Directive 2003/6/EC
MiFID	Markets in Financial Instruments Directive
MS	Member State
NCA	National Competent Authority
PD	Prospectus Directive 2003/71/EC as amended
PR	Prospectus Regulation 809/2004/EC as amended
TD	Transparency Directive 2004/109/EC as amended

# 1. Introduction

1. The ESMA Work Programme 2015 set out that a peer review<sup>1</sup> would be carried out to assess the compliance with the Prospectus Directive (PD). This peer review provided an opportunity to assess how the single rulebook is supervised, including the assessment of national practices and the methodologies employed by National Competent Authorities (NCAs) in their scrutiny of prospectuses. The targeted review also aimed at identifying areas that could potentially benefit from greater supervisory convergence.
2. This peer review was conducted in accordance with Article 30 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation) and the revised Review Panel Methodology (ESMA/2013/1709).
3. In accordance with the Methodology, the peer review was carried out by an Assessment Group (AG), which reported its findings to the Board of Supervisors, for its approval, after having consulted the Supervisory Convergence Standing Committee (SCSC).
4. The peer review focused on the quality and consistency of the prospectus approval process of NCAs. In particular, the review focused on compliance with the provisions of the PD, notably Articles 5, 7, 8, 11, 12 and 13.
5. The objectives of this peer review were:
  - a) firstly, to assess the effectiveness of the application of the prospectus regime, the efficiency of the approval process<sup>2</sup> as well as the proportionality of the resource allocation<sup>3</sup> to prospectus scrutiny; and
  - b) secondly, to assess the nature and consistency of prospectus approval processes employed by NCAs, both internally and on a cross-NCA basis.
6. The peer review encompassed a targeted self-assessment questionnaire, which was completed by all NCAs, followed by on-site visits at six NCAs, including interaction with stakeholders subject to agreement of the NCAs that were visited. Furthermore, in connection with the on-site visits a desk-based analysis was performed involving the review of equity prospectuses and base prospectuses that were approved by the visited NCAs in the period under review.
7. The period under review was from January 2013 to December 2014.
8. The criteria from the mandate for the selection of the NCA candidates to be visited on-site were the following:
  - the number of prospectuses approved;
  - the percentage of prospectus approvals notified to host NCAs;

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<sup>1</sup> The previous peer review report on Prospectus was published in 2012 (ESMA/2012/300).

<sup>2</sup> The idea is to assess issues related to workflow of an NCA including timing of the different steps of the approval process, consider reasons for any differences in timing, number of rounds of comments, if such are revealed, quality of the process, etc. to provide a basis upon which the second objective can be assessed.

<sup>3</sup> The idea is to have an overview of the NCA organizational setup and consider the workflow and its steps in relation to the resource allocation to the staff dealing with the prospectus scrutiny and the quality of the approval process.

- the assessment of the responses to the self-assessment questionnaire (including but not limited to resources and approval times); and
- any input received from stakeholders.

As a result of the analysis and the detailed selection criteria (see Annex VII), the following six NCAs were selected to be visited:

1. Autoriteit Financiële Markten AFM (NL),
2. Autorité des Marchés Financiers, AMF (FR),
3. Central Bank of Ireland, CBol (IE),
4. Commission de Surveillance du Secteur Financier, CSSF (LU),
5. Finanstilsynet (NO) and
6. Komisji Nadzoru Finansowego, KNF (PL).

The on-site visits took place between June 2015 and November 2015 each lasting between two and three days, depending on whether there was stakeholder involvement (which was on a voluntary basis).

9. The visiting teams were composed of five persons:

- the Co-Ordinator Stephan Weinandy (BaFin, DE)
- the Rapporteur Jörg Willems (ESMA),
- the Expert Vicki Erfurt Larsen (ESMA)

and two of the following NCA members of the Assessment Group:

- Florence Priouret (AMF, FR),
- Ina O'Sullivan (CBol, IE),
- Yves Hansen (CSSF, LU),
- Gavin Richards (FCA, UK),
- Nikos Papadimos (HCMC, EL) or
- Adrienne László (MNB, HU).

The composition of the visiting teams for the on-site visits was made out of the AG, taking into account the need to avoid any conflicts of interest.

**Table 1 Country codes and acronyms of EU/EEA NCAs participating in the ESMA survey (in addition to those in table 2 below)**

AT	Finanzmarktaufsicht	FMA
BE	Financial Services and Markets Authority	FSMA
BG	Financial Supervision Commission	FSC
CY	Cyprus Securities and Exchanges Commission	CySEC
CZ	Czech National Bank	CNB
DE	Bundesanstalt für Finanzdienstleistung-	BaFin
DK	Finanstilsynet	Finanstilsynet
EE	Estonian Financial Supervision Authority	EFSA
EL	Hellenic Capital Market Commission	HCMC
ES	Comision Nacional del Mercado de Valores	CNMV
FI	Finanssivalvonta	FIN-FSA
HU	Magyar Nemzeti Bank[1]	MNB
HR	Hrvatska agencija za nadzor financijskih usluga	HANFA
IS	Financial Supervisory Authority	FME
IT	Commissione Nazionale per le Società e la	Consob
LI	Finanzmarktaufsicht	FMA
LT	Lietuvos bankas	LB
LV	Financial and Capital Markets Commission	FCCM
MT	Malta Financial Services Authority	MFSA
PT	Comissão do Mercado de Valores Mobiliários	CMVM
RO	Financial Supervisory Authority	FSA
SE	Finansinspektionen	Finansinspektionen
SI	Securities Market Agency	SMA
SK	National Bank of Slovakia	NBS
UK	Financial Conduct Authority	FCA

(1) The Hungarian Financial Supervisory Authority (HFSA) was merged into Magyar Nemzeti Bank (MNB) as of 1 October 2013.

**Table 2 Country codes and acronyms of on-site visited EU/EEA NCAs**

FR	Autorité des Marchés Financiers	AMF
IE	Central Bank of Ireland	CBol
LU	Commission de Surveillance du Secteur Financier	CSSF
NL	Autoriteit Financiële Markten	AFM
NO	Finanstilsynet	Finanstilsynet
PL	Polish Financial Supervision Authority	KNF

## 2. Executive Summary

10. This executive summary provides information on the findings related to the efficiency of the prospectus approval process, the appropriateness of resource allocation as well as the compliance with the PD requirements. These findings build both on the analysis of self-assessments submitted by the 31 National Competent Authorities (NCAs) who responded to a questionnaire, and on the assessment of six NCAs which have been reviewed through a desk-based analysis and targeted on-site visits. Stakeholders have also been involved in the margins of the on-site visits. All responses provided relate to the period under review, i.e. from January 2013 to December 2014, and should be read in that context.
11. As regards the appropriateness of resource allocation, the peer review shows that staff involved in the prospectus approval function at NCAs have the requisite knowledge to meet the requirements of the PD regime. Differing levels of efficiency were identified in terms of the internal approval process but these were not found to impinge on meeting the legal deadlines for approvals of prospectuses. Given the often seasonal nature of prospectus approval, particularly as regards programme updates, some concerns were expressed as regards the capabilities of some NCAs to handle high volumes of documents while maintaining rigorous scrutiny. The review also indicated a generally high level of adherence to the existing ESMA guidance including the good practices for prospectus scrutiny while at the same time uncovering scope for further convergence.
12. As regards the nature and consistency of prospectus approval processes put in place by NCAs, as well as their compliance with the PD requirements, the peer review highlighted areas that could be further harmonised, including the working capital statement, the capitalisation and indebtedness table, information on dilution resulting from offerings, all of which being considered as important information for investor protection in case of equity prospectuses, and risk factors in case of both equity and debt prospectuses. Recurrent concerns emerged as regards the (limited) comprehensibility of prospectuses and in particular base prospectuses. Factors which could be seen negatively impacting on comprehensibility included the overall length of the prospectus, the format of the summary, extensive risk factor and cover note disclosure, and the amount and manner in which information was incorporated by reference.

### 2.1 Main findings of the peer review

#### *Market structure & Organisational Set-up*

13. In terms of market structure, eight NCAs deal with 82% of the total volume of prospectuses approved within the NCAs, whereas three different market types dominate: 1) markets specialised in non-equity prospectuses, 2) markets with a particularly high volume of equity prospectuses and 3) markets with a rather balanced profile. Regarding investor audience, markets tend to be more and more wholesale dominated, as only very few NCAs have communicated a strong presence of retail investors. This is line with the general prevalence of non-equity markets, as non-equity markets tend to be wholesale dominated, while equity markets are more often based on a mixed or retail audience.

14. As regards the organisational set-up in terms of subject matter and responsibilities, almost all NCAs structure their prospectus group such that persons dealing with scrutiny and approval of prospectuses (readers) also deal with other PD tasks (e.g. policy, enforcement/sanctions, advertisements, etc.). Furthermore, in the majority of NCAs this staff is also responsible for tasks outside the remit of the PD, due to the variable workload linked to the approval of prospectuses. The level of experience of readers varied across NCAs however the majority had a balanced mix of senior readers (with over three years' experience) and more junior readers (less than three years' experience).
15. The peer review shows that NCAs' organisational set-up and supervisory methods largely depend on market structure, the size and volatility of the prospectus numbers, on whether or not the transaction in question is related to the national market and on the level of retail involvement.

#### *Risk-based approach and approval process*

16. Many NCAs apply risk based approaches to prospectus approval. This is true both in terms of involvement of staff (particularly as regards the four eyes principle) and as regards consultation of other departments or regulators, particularly those involved in the enforcement of financial information, which appears highly relevant for equity prospectuses. There would be merit in ESMA considering the variety of risk based approaches that NCAs apply to identify common supervisory priorities in the prospectus approval process and to have greater convergence as regards the establishment of risk based approaches.
17. Almost all NCAs have an escalation process in place, i.e. the reader will consult with persons having managerial responsibilities, depending on the significance of the issue.
18. This escalation process is in line with ESMA's approach to the four eyes principle, which allows flexibility to take e.g. the complexity of the prospectus under scrutiny into account. However, some NCAs have put in place a systematic full double scrutiny for each prospectus. This tends to be the case for most NCAs in case of equity prospectuses (IPOs in particular) and complex transactions, while lower resources are often dedicated to repeat issuance or the review of base prospectuses.
19. The review also identified divergent approaches by NCAs in the way that comments on draft prospectuses are provided to issuers. Both the standardisation of comment sheet templates and the provision of checklists for issuers to complete could enhance the efficiency of the approval process.
20. Lastly, practices among NCAs were found to diverge as regards the decision making process (i.e. the approval of the prospectus). In this regard, responsibilities in the NCAs range from the readers deciding themselves on the approval, e.g. in cases where two readers are systematically involved, to the decision being made by the board of directors in certain cases. These different approaches reflect to some extent different supervisory cultures and take also into account market structure specificities and liability assessments. Approval processes should always be streamlined to achieve efficient outcomes while preserving thorough and consistent analysis of prospectuses. There was no evidence at the six visited NCAs of detriment to the quality of the scrutiny in this regard; however, it may be beneficial for NCAs to reflect on their decision making processes in view of efficiency gains in the light of this report.



### *Timing of the approval process*

21. The peer review had a particular focus on approval times, from the submission of the first draft to the final approval. The review of responses to the questionnaire showed a broad and diverse range of approval times, across all types of prospectuses, with a number of outliers on both ends of the scale<sup>4</sup>. However, the on-site visits and analysis of randomly selected prospectuses showed that, rather than NCAs delaying the process, factors which have a direct effect on the approval time appear to largely fall outside NCAs' responsibilities and include the issuer's response time, the quality of their responses and the complexity of the issuer's circumstances including issues concerning the financial information.
22. Seven NCAs reported having shorter timeframes for the review process compared to the maximum timeframe of the PD, while others indicated applying shorter timeframes in practice without a formal policy. However substantial differences between NCAs emerged as regards whether issuers have to reply or not within set timeframes and whether the approval process can lapse. The source of the response deadlines varied, with some deadlines being self-imposed and others arising from national administrative laws. Further convergence in this area would be merited including the possible introduction of maximum response windows for issuers. Such measures may prevent long delays in responding to comments which can make the review process more challenging for readers scrutinising prospectuses.

### *Issues encountered in the approval process*

23. In terms of the content of prospectuses, the issue of their comprehensibility, particularly as regards base prospectuses, was a recurring concern. Under the current base prospectus regime comprehensibility can be impacted, especially in case of base prospectuses drawn up for multiple structured products or programmes relating to mixed types of products. However, given that such base prospectuses for structured products are possible under the PD and commonly used in certain jurisdictions, NCAs appeared to have difficulties challenging their lack of comprehensibility with issuers in the absence of any further guidance on requirements regarding the concept of comprehensibility. This type of prospectus is also difficult to deal with in the context of lengthy risk factor sections. While some NCAs indicated a stronger focus on comprehensibility in case of retail involvement, the peer review underlined the need for further guidance in this area.
24. NCAs raised a number of difficulties in relation to the new format of the summary as set out in Annex XXII of the PR, e.g. structural problems with the new strict format and difficulties for issuers to comply with the requirements. Issuers also sometimes struggle to include all information required by Annex XXII PR within the legal length limits for the summary. The review showed that the current strict requirements for summaries do not facilitate a short, comprehensible and targeted disclosure of the key information for investors.
25. The Prospectus Directive sets certain principles on advertisements that shall be complied with and gives NCAs the power to exercise control over the compliance of advertising activity. It

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<sup>4</sup> The figures reported by NCAs were sometimes calculated on the basis of a sample of documents approved in the period under review rather than taking into account all prospectus approvals.

was noted that some NCAs have a particular focus on the scrutiny of advertisements which could be beneficial as a complementary measure to bolster investor protection. However, the PD does not contain any detailed provisions on how such supervision by NCAs shall be exercised (cf. Article 15(6)).

26. It was evident from the review of prospectuses and on-site visits that NCAs interpret a number of legislative provisions differently. This was particularly the case as regards interpretation of what constitutes a profit forecast, how dilution is presented and consistency of approach as regards the capitalisation and indebtedness table. Differing approaches to the use of so called “product supplements” could also merit clarification to mitigate any possible regulatory arbitrage.

## **2.2 Recommendations for enhancing supervisory convergence**

27. Issues highlighted by the peer review cannot be all solved by legislation or guidance alone but will necessitate a nuanced approach, with some issues of a more technical nature being further clarified in legislation, with further elaboration of these concepts being developed through guidance at Level 3 and greater convergence of NCA practices.

28. The identification of legislative clarifications, rather than substantial legislative change, is in line with one of the objectives of this peer review, namely to feed into the re-cast of the PD and PR, to which ESMA already contributed with its response to the European Commission consultation on the review of the Prospectus Directive as of 13 May 2015 (2015/ESMA/857). The findings of this review, particularly in terms of the need for clarification in the area of product supplements and detailed requirements as regards responsibility for advertisements, are in line with advice provided by ESMA in its response to the Commission. Clear requirements on risk factors, ensuring that only material risks are presented and that the risk factors are presented in a comprehensible way, together with a clear definition of the term 'profit forecast', would be very much welcomed and could be further clarified through ESMA guidance.

29. Notwithstanding potential legislative changes, the review has clearly highlighted a number of areas where there is scope for ESMA to act to enhance the overall efficiency of the prospectus approval process and improve levels of investor protection.

30. Areas where further promotion of convergence could be usefully considered are the following:

- i. the concept of comprehensibility, in particular with regard to base prospectuses, risk factors and the amount and manner of information incorporated by reference especially in the case of retail involvement;
- ii. the application of specific disclosure requirements within the PR, e.g. in relation to working capital statement, information on capitalisation and indebtedness, information on dilution resulting from the offering, profit forecasts;
- iii. on how to improve disclosure on risk factors regarding very lengthy non-specific risk factor sections, mitigating risk factors etc. (being aware that this is also a topic discussed within PD 3, ESMA could be able to contribute to this effect as well);
- iv. dealing with requests for omission of information according to Article 8(2) of the PD.

31. In addition, and on a more procedural level, leveraging on good practices identified by this peer review, ESMA could foster convergence of practical supervision in order to:

- i. improve the efficiency of the approval process, e.g. providing standardised templates for comment sheets or providing checklists to be completed by the issuers;
- ii. address the volatility of prospectus approvals / management of peak times (e.g. having an extra pool of trained readers, using former prospectus staff);
- iii. clarify the four eyes principle, since certain applications of the four eyes principle may involve the risk that information is incomplete or not comprehensible, in particular where the only reader does not have a lot of experience.

## **2.3 Summary of NCA assessments in connection with the on-site visits**

Assessments of the visited NCAs have been undertaken as regards the efficiency of the prospectus approval process, the appropriateness of resource allocation as well as the compliance with the PD requirements.

### **NCAs listed in accordance to the sequence of the on-site visits**

#### **CBol / Ireland**

32. The CBol Prospectus Approval Team has in general the necessary knowledge to meet the requirements of the PD regime. Due to the mainly non-equity nature of the Irish financial market the Prospectus Approval Team has a strong experience with debt, asset backed and base prospectuses, while experience with equity prospectuses is more limited and only confined to few key persons of the team.
33. The Prospectus Approval Team has very efficient procedures, tools and practices in place which allows making good use of its confined resources and ensures a consistent prospectus review and approval process. While always complying with the legal timeframes, this efficiency was in particular evidenced by the short approval times in case of non-equity prospectuses. Furthermore, the CBol systematically applies the ESMA good practice relating to the four eyes principle for all prospectuses by always assigning two readers with the full scrutiny of the whole prospectus.
34. There is an active cooperation with the prudential supervisor in case of equity prospectuses of supervised entities. Furthermore, there is also regular interaction by the Prospectus Approval Team with other internal departments. However, due to confidentiality issues the formal sharing of files and information on prospectuses awaiting approval between the CBol and other authorities as well as across departments within the CBol is restricted.
35. As regards resources allocated to prospectus approval, there seemed to be a significant work-overload in the period under review when comparing the number of approvals and the staff capacity. Quick turnarounds in connection with the high work (over-) load may carry a systematic risk of failing to identify shortcomings in prospectuses with regard to completeness, comprehensibility and consistency.

## **CSSF / Luxembourg**

36. The Prospectus Approval Team has in general the necessary knowledge to meet the requirements of the PD regime and the CSSF appears to have a good database and further tools in place aiming at ensuring a consistent prospectus approval process. The Prospectus Approval Team meets the deadlines set by the legislation and facilitates in case of non-equity prospectuses comparatively shorter approval times without having a formal policy of reduced turnarounds, which reflect the efficient procedures in place.
37. In terms of resource allocation, the CSSF showed the second highest number of prospectuses reviewed per reader in the period under review. While there was no strong evidence suggesting that the resource allocation on prospectus scrutiny is inappropriate, the staff resources currently available do probably not allow much flexibility to scale up capacity in times of peak workload.
38. The CSSF follows a risk-based approach when scrutinising prospectuses that is in particular reflected in the way the ESMA good practice relating to the four eyes principle is applied. In practice the four eyes principle is always applied to equity prospectuses (including Initial Public Offerings (IPOs)) and complex files, while the more standard debt or base prospectuses (constituting the largest proportion of prospectuses submitted for approval to the CSSF) would generally be reviewed by one reader. In the latter cases the scrutiny is mainly dependant on the review by the one reader identifying and raising issues as the involvement of the managers is limited.
39. With regard to equity prospectuses there is an active collaboration with the Enforcement Division for additional checks of the financial information. Overall, the CSSF follows a policy according to which it checks on a regular basis whether other departments may have relevant information on issuers that are listed on a regulated market or supervised by the CSSF. This internal exchange is further facilitated by granting each other access to the relevant electronic files.

## **AFM / The Netherlands**

40. The Prospectus Approval Team has in general the necessary knowledge to meet the requirements of the PD regime. It meets the deadlines set by the legislation and appears to have appropriately efficient prospectus approval procedures in place. The AFM undertakes a risk-based approach to prospectus scrutiny, focusing on key review points which aim at identifying and analysing critical issues and making best use of its resources. Overall, the resources allocated to prospectus scrutiny appear appropriate and allow in particular for a scale up of staff capacity in times of peak workload. While the prospectuses were mainly compliant with the requirements of the PD, the AFM might consider strengthening its level of scrutiny in case of base prospectuses. For this type of prospectus, the AFM accepts a lesser standard on the comprehensibility of information in the prospectus which is appropriate for institutional investors rather than retail, while it puts considerable focus on advertisements which is an effective additional measure in terms of investor protection.

41. The AFM has adequate tools and procedures in place aimed at ensuring application of correct procedures and a consistent approval process. The Prospectus Approval Team seems to invest a lot of their resources in such checks. While positive, this also creates a potential risk that too many resources are removed from the actual scrutiny and the completeness checks which are largely left to one reader.
42. The Prospectus Approval Team actively co-operates with other units and departments within the AFM, aiming at making use of any relevant information the AFM may have in relation to an issuer or transaction. In particular, there is close collaboration between the Prospectus Approval Team and the Product Oversight Team as the AFM has a strong focus on checking product suitability as part of the review process, notwithstanding the fact that such check is based on Markets in Financial Instruments Directive (MiFID), while the objective of the PD is disclosure of complete and comprehensible information in the prospectus.
43. The AFM has implemented the four eyes principle by assigning a team which consists of at least one reader and one senior supervisor (transaction responsible) to each prospectus. Two readers are assigned to a prospectus in case of all IPOs and some high-risk profile transactions. In all other cases there is only one reader performing an in-depth scrutiny of the whole prospectus. The senior supervisor reviews, based on his/her professional judgement and the experience of the reader(s), certain parts of the prospectus. In case there is only one reader assigned, the senior supervisor would to some extent be dependent on the review by the reader to identify issues.

#### **Finanstilsynet / Norway**

44. Finanstilsynet follows a risk-based approach when scrutinising prospectuses which is in particular reflected in the way the ESMA good practice relating to the four eyes principle is applied. For IPOs and generally also for equity issuances of issuers listed on a regulated market a second reader and a financial expert are assigned with the scrutiny of certain defined parts of the prospectus, while in all other cases generally only one reader would be allocated. This approach to implement the four eyes principle appears to save resources compared to a stricter allocation of two readers performing a full review of the whole prospectus, but is putting much reliance on the first reader, being the only one scrutinising the prospectus or the only one doing a full review of the whole prospectus.
45. Finanstilsynet has a particular focus on the scrutiny of financial information in prospectuses which is also supported by its organisational structure and the close collaboration with the financial experts. Furthermore, emphasis is put on sharing of knowledge, both on an informal basis and by providing readers access to databases, guidance and checklists to assist ensuring a consistent approval process. While overall the Prospectus Approval Team has the necessary knowledge to meet the requirements of the PD, the readers were less experienced with regard to prospectuses relating to depositary receipts and base prospectuses due to the fact that there is almost no respective market in Norway.
46. With regard to the timing of the approval process the Prospectus Approval Team meets the deadlines either set by itself or by legislation and facilitates through its shorter turnaround times overall a comparatively swift approval process. The resources allocated to prospectus scrutiny appear appropriate; in particular, taking into account that capacity can be significantly scaled up in times of peak workload.

## **AMF / France**

47. The Prospectus Approval Team has in general the necessary knowledge to meet the requirements of the PD regime. The AMF has an organisational structure which enables prospectus readers to acquire extensive knowledge of a specific issuer by ensuring compliance with other European Directives rather than solely the PD. In addition, the regular involvement of other departments contributes to a high quality review of the prospectus with some checks seeming to go beyond the requirements of the PD.
48. Overall the resources allocated to the scrutiny of prospectuses appear appropriate and the prospectus procedures efficient. The Prospectus Approval Team meets the deadlines either set by itself or by the legislation. The comparatively short approval times are based to a large extent on the frequent use of tripartite prospectuses, as the AMF applies a fast-track procedure in case the registration document is filed prior to the other prospectus parts. In this regard it can be pointed out that the AMF is one of the few authorities to interpret the PD in a way that the registration document can be published prior to its approval. Such practice allows frequent issuers to comply, at the time of filing of such a document, also with their obligation under the Transparency Directive (TD) to publish an annual financial report which is part of such registration document. This approach presents some advantages for issuers, however, this type of registration document appears in terms of comprehensibility more suitable for professional investors given the amount of extra information it contains and the way the information is presented.
49. The AMF currently follows a risk-based approach by always assigning only one reader doing a full review of the whole prospectus, while a second reader (head of unit) performs a limited review of certain sections as considered appropriate. While the AMF is fully compliant with the ESMA good practice relating to the four eyes principle, it may consider reinforcing its policy by assigning, for certain situations, two readers doing a full review of the whole prospectus.
50. In addition to the review process of the prospectus, the AMF puts a strong focus on advertisements, particularly on retail targeted issuances, which is an effective additional measure of investor protection.

## **KNF / Poland**

51. KNF's resources at disposal to the scrutiny workload seem to be proportionate, sufficient and well allocated. In particular, the KNF allocates always two readers to the full scrutiny of the whole prospectus, thereby applying a strict four eyes principle on any prospectus.
52. Readers generally have the necessary knowledge and are very experienced in the scrutiny of equity prospectuses with a clear focus and detailed instructions on the scrutiny of certain sections of the prospectus relating to financial analysis, but have more limited experience with regards to some of the newer requirements in relation to debt base prospectuses. The KNF could consider a strategy to ensure that all readers are regularly updated on new legislative requirements and ESMA guidance with regards to less frequently used prospectus types. This could be further supported by discussing and informing about important issues and decisions also in regular meetings of the Prospectus Team.

53. In terms of efficiency, while always complying with the timeframes set by the PD, some of the processes in the prospectus scrutiny could be reassessed whether there is potential for further streamlining without endangering the quality of the prospectus scrutiny.

## **2.4 Stakeholder involvement during the onsite-visits**

54. Following the mandate, the AG also sought input from stakeholders, which was on a voluntary basis and therefore subject to approval by the visited NCAs. Four of the six onsite visited NCAs provided a list with stakeholders from which the AG chose three for each NCA, i.e. in total 12 stakeholders were interviewed during the onsite visits. The majority of the stakeholders were involved in the approval process as legal advisors or otherwise with either direct or indirect contact with their national NCA only or also cross border with different NCAs. There was little contact with issuers themselves as in the relevant jurisdictions the interaction with the NCA was primarily conducted by advisors or lawyers. All stakeholders appreciated the opportunity to share their experiences in the relationship to the NCAs. Overall, there was consensus among the stakeholders that further harmonised approaches would be beneficial and important in view of a level playing field, but also a need for ESMA to respect different approaches in different markets. As a possible tool in peer reviews, the AG considered interviews with stakeholders beneficial as these meetings complemented the picture of the supervisory processes as presented by the NCAs.

## **3. Findings from the on-site visits including desk-based analysis**

55. Taking into account certain information gathered from the responses to the questionnaire, findings from the on-site visits were two-fold:

- i. relating to certain practices of a structural, organisational or procedural nature applied by the NCAs when scrutinising prospectuses and
- ii. more technical and stemming from the desk-based analysis of prospectuses that were approved by the visited NCAs, relating to the interpretation of certain requirements of the PR.

56. In this regard the AG identified possible areas where ESMA could consider developing and providing further guidance to enhance supervisory convergence as well as areas that may benefit from further clarification in Level 1 or Level 2 legislation, since NCAs interpret or apply a number of legislation provisions differently. Some of these issues could be addressed at Level 1 or 2 and at Level 3 as well.

57. In this context it shall be emphasized that the AG is aware that certain of the issues that are identified below are/will probably be addressed in the coming Prospectus Regulation revising the PD. Nevertheless, it was considered important to highlight that in these cases there is a need for further regulation or clarification on a legislative level. This is also in line with the objective of this peer review to feed into the re-cast of the PD and PR, to which ESMA already contributed with its response to the European Commission consultation on the review of the Prospectus Directive as of 13 May 2015 (2015/ESMA/857).

## Structure & Organisation of Supervision

### 3.1 Resources

58. With regard to staff resources available in the NCAs, the number of readers in the NCAs on Full Time Equivalent (FTE) basis range from 0.5 to 30, reflecting to a large extent the broad range in the number of prospectuses scrutinised in the respective NCAs in the period under review (between 2 prospectuses and 1503 prospectuses). However, also in relation to the average ratio in respect to the total number of prospectuses per reader, the responses showed a quite diverse level of staffing in the NCAs, ranging from one prospectus per reader to almost 123 prospectuses per reader. In this regard there seems to be to some extent a correlation to the market structure in terms of equity versus non-equity prospectuses, as the two NCAs with the highest ratio of FTE to prospectus have markets with a clear dominance of non-equity prospectuses. This can be compared to NCAs in countries with a more mixed market structure or a dominance of equity prospectuses, which show generally lower ratios. As set out below to properly assess appropriate resources, it also needs to be taken into account how an NCA has implemented the four eyes principle as well as the experience of the readers. As such, it was not possible to make an overall assessment on appropriate resources but only a judgement on an individual basis.

### 3.2 Four eyes principle

59. The on-site visits revealed a quite substantial divergent implementation of the four eyes principle as established by the ESMA Good Practices<sup>5</sup> in the approval process. This goes back to the fact that the respective good practice allows for flexibility in the application of this principle based on criteria developed by NCAs as to how and when this principle is applied.

60. Some of the visited NCAs apply a strict four eyes principle by always allocating two readers for an in-depth scrutiny of the whole prospectus (either simultaneously or consecutive). Others implemented a more tiered or risk-based approach, according to which a strict four eyes principle in the above mentioned sense may only be applied in specific circumstances (e.g. in case of IPOs) or not at all. In the latter case only one person is required to scrutinise the whole prospectus while a second (superior) person checks only the comments raised by the first reader or reviews, if deemed necessary, certain parts of a prospectus.

61. However, all visited NCAs may involve even more than two persons in the review of at least certain sections of a prospectus where further expertise or knowledge is required (e.g. from financial or legal experts or from banking and insurance supervision in case of regulated issuers).

62. Depending on the criteria and process applied (together with the specific market structure in a Member State as regards equity or non-equity prospectuses), this could mean that in fact a

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<sup>5</sup> The Four Eyes Principle good practice requires that: The Competent Authority should have 'four eyes principle' in place to be used as appropriate and depending on, for example the nature of the structure, the type of securities, the type of issuer; If applicable the second person should review at least what is considered by the Competent Authority to be the more sensitive parts of the prospectus document; Depending on the circumstances it might be appropriate that the second person reviewing the prospectus has more experience in scrutinizing prospectus than the first reviewer.



larger part or all of the prospectuses approved by an NCA are only subject to full scrutiny of one reader. As a result, certain applications of the four eyes principle may involve the risk that information is incomplete or not comprehensible, in particular where the only reader does not have a lot of experience. In addition, as interpretations vary substantially between NCAs, the four eyes principle may benefit from further clarification by ESMA. Furthermore, the different applications should be taken into account when assessing and comparing the staff resources allocated to prospectuses in relation to the number of prospectuses scrutinised in an NCA.

### **3.3 Timeframes**

63. In relation to the average timing of approval processes and influences on such, first of all it should be observed that NCAs were only asked to provide information on the length of the overall process, starting from the first formal submission of a draft prospectus to the final approval, together with an indication of the average number of drafts received during such process. More granular information, e.g. in respect of the time the draft prospectus was with the NCA in contrast to the time the draft prospectus was with the issuer, was not required because such data would be very difficult to gather for NCAs for the entire period under review. Furthermore, the responses received from the NCAs showed quite diverse approval times across the different kind of prospectuses, which did not necessarily or always directly correlate to the indicated average number of drafts. It is difficult to assess the precise impact of factors which accelerated the review process or delayed it, notwithstanding there is broad consensus among NCAs that in general the quality and completeness of the submissions, as well as timeliness of the issuer's response, are major factors for the overall length of the approval process. The on-site visits and analysis of the specific individual prospectuses showed that NCAs did not unduly delay the review process.
64. There are substantial differences between NCAs, either self-imposed or arising from national administrative laws, whether issuers have to reply or not within set timeframes and in such a case whether proceedings lapse. Where there is a long response window, NCAs need to have a particular focus on information contained in the prospectus that is time-sensitive and of financial information subject to change. Long delays in responding to comments tend to make the review process more challenging for readers scrutinising prospectuses and with regard to ensuring consistency. NCAs may consider introducing maximum response windows for issuers.

### **3.4 Practices to address the volatility of prospectus approvals / management of peak times**

65. To some extent all visited NCAs faced the difficulty of dealing with quite volatile numbers of prospectus approvals over the year. This makes it challenging to ensure high quality scrutiny also in peak times. A number of different measures were noted to address this challenge:
- i. To increase resources in peak periods some NCAs have an additional pool of voluntary readers out of former prospectus experienced staff. This pool would provide prospectus scrutiny for several hours including weekends or, if possible or necessary, also on part- or fulltime basis. However, it has to be noted that such pool members would need some ongoing training to stay up to date with the prospectus regime and the NCA's policy in this

regard. Similarly, one NCA has an organisational structure where all the financial experts are also acquainted with prospectus scrutiny and thereby constitute additional resources.

- ii. Other measures to increase capacity included senior officers or managers of the prospectus group acting also as readers and reduction of other work performed by the prospectus readers where no or less strict deadlines apply.
- iii. Having measures in place to adapt capacity to volatile prospectus numbers could be considered a good practice.

### **3.5 Comment Sheets and Check lists**

66. Providing standardised templates for comment sheets which may also contain important information on procedures can help ensuring a smooth and consistent process. Choosing a tabular form where the issuer can respond next to the NCAs comments when indicating how a comment has been addressed can further facilitate the process also for the issuer. Furthermore, providing checklists for completion by issuers which besides the requirements of the PR may also refer to further guidance by ESMA or the NCA itself, in respect of certain disclosure requirements, is also considered beneficial in terms of efficiency.

### **3.6 Approach towards advertisements**

67. While Article 15 was not within the specific scope of this Peer Review, it was noted that some NCAs have a particular focus on the scrutiny of advertisements (e.g. by requiring that in case of retail involvement, or on request, advertisements shall be filed with the NCA, or by providing specific guidance) which could be beneficial as a complementary measure of investor protection. Article 15 of the Prospectus Directive sets certain principles on advertisements that shall be complied with and gives NCAs the power to exercise control over the compliance of advertising activity. However, the PD does not contain any detailed provisions on how such supervision by NCAs shall be exercised (cf. Article 15(6)). As a result, there are substantial differences between NCAs with regards to the scrutiny of advertisements. Given that the PD contains only very limited regulation in this regard, this area may benefit from further harmonisation in Level 1 and/or Level 2 legislation.

## **Findings from the desk-based analysis of prospectuses**

### **3.7 Comprehensibility**

68. Under Article 5 of the PD, the information in a prospectus shall be presented in an easily analysable and comprehensible manner. Furthermore, according to Article 2 (1) (q) of the PD approval means the positive outcome of the scrutiny of the completeness of the prospectus, including the consistency of the information given and its comprehensibility. However, there is no definition what constitutes comprehensibility and to date, ESMA has not published any further guidance or criteria on comprehensibility. Most NCAs noted and the desk-based anal-

ysis and on-site visits showed that ensuring comprehensibility of the information in the prospectus can be challenging, in particular where a base prospectus relates to multiple structured products. However, such base prospectuses are allowed under current PD rules. As such, further guidance from ESMA on the concept of comprehensibility (particularly for base prospectuses) would provide further clarity to NCAs and issuers.

### **3.8 Product Supplements**

69. Differences in practices were noted as to whether or when issuers can supplement a base prospectus in order to amend terms & conditions of securities or introduce new terms & conditions. To avoid regulatory arbitrage, guidance in this respect could be considered as well as further clarification at Level 1.

### **3.9 Profit Forecasts**

70. Given the broad definition of 'profit forecast' in Article 2.10 of the PR, further guidance on the interpretation would enhance a more uniform application.

### **3.10 Risk factors**

71. It was noted that the selection of key risks in the summary as well as the presentation of risks in the section 'Risk Factors' is an area where issues more often arise. Issuers have still a tendency to consider all risks as key risks and include them in the summary. However, this topic has already been addressed in ESMA Q&A No. 94. As a result, the AG does not consider that any further action by ESMA is necessary.

72. Separately, the section 'Risk Factors' is often very lengthy and includes also rather non-specific risks and information mitigating the risk factors to an extent that they are negated. NCAs would welcome further guidance to ensure that the prospectus contains a comprehensible description of the material risks.

### **3.11 Information on dilution**

73. The "share securities note schedule" requires disclosure of information on the immediate dilution resulting from the offer. For subscription offers to existing shareholder's information on the immediate dilution, in case they do not subscribe to the offer, shall also be provided (see e.g. Annex III, item 9.1 and 9.2 PR). The content of information as well as its format found in the reviewed prospectuses varied considerably, making this piece of information less comparable and comprehensible to investors and possibly also leaving doubt as to the completeness of the information provided in this regard. Notably, given that there is no explicit reference in the PR, most NCAs did not interpret this disclosure requirement against the background of the respective IOSCO standard: According to this standard the immediate dilution of the offer shall be 'computed as the difference between the offering price per share and the net book value

per share for the equivalent class of security, as of the latest balance sheet date<sup>6</sup>. In addition, there are differences whether additional analysis on dilution has to be provided for all different types of scenarios, for example in case of over-allotment. Further ESMA guidance in this regard would be beneficial.

### **3.12 Information on capitalisation and indebtedness**

74. According to the “share securities note schedule” a statement of capitalisation and indebtedness as of a date no earlier than 90 days prior to the date of the document is required to be disclosed in the prospectus (see e.g. Annex III, item 3.2. PR). ESMA provided guidance according to which inter alia information provided in the capitalisation statement should be derived from the last published financial information of the issuer. ESMA guidance also states that if any information is more than 90 days old and there has been a material change since the last published financial information, the issuer should provide additional information to update those figures. In addition, if any of the information is more than 90 days old, but there has not been a material change since the last published financial information, the issuer should include a statement to that effect (ESMA update of the Committee of European Securities Regulators (CESR) recommendations no. 127, ESMA/2013/319). The desk-based analysis revealed that these requirements were interpreted differently by NCAs and could benefit from further clarification.

### **3.13 Incorporation by reference**

75. The peer review showed that practices with regard to the amount of information as well as how information is incorporated by reference varied, given that the PD and PR do not set any specific limits in this regard and the requirement of a cross-reference list pursuant to Article 11 (2) PD appeared as such not to provide sufficient guidance how this shall be done. It was further noted that there were cases in which this was perceived as having a negative impact on the overall comprehensibility of the documentation. To ensure that information is incorporated by reference without affecting comprehensibility, developing ESMA guidance (e.g. with regard to possible formats how information shall be incorporated) could be considered.

### **3.14 Specialist issuers**

76. In accordance with Article 23.1 PR, ESMA provided guidance with regard to what additional information shall be included in a prospectus in case of issuers that qualify as 'scientific research based companies' (ESMA update of the CESR recommendations No. 134, ESMA/2013/319). The peer review showed that the scope of these provisions appears unclear as there is no uniform notion as to when issuers qualify as such companies. More precisely, it seems unclear whether only companies which are at the same time also start-up companies can be considered scientific research based companies within the meaning of the ESMA recommendations.

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<sup>6</sup> Part I, IX E. of the IOSCO 'INTERNATIONAL DISCLOSURE STANDARDS FOR CROSS-BORDER OFFERINGS AND INITIAL LISTINGS BY FOREIGN ISSUERS', September 1998,

### **3.15 Requests for omission of information**

77. Requests for omission of information in accordance with Article 8 (2) PD are also considered an area which could benefit from further investigation or analysis. Practices varied with some authorities apparently applying stricter requirements or receiving only very few of such requests, while others have a more established practice of receiving such requests and granting the omission of information in certain circumstances. Furthermore, there seemed to be different practices and uncertainty whether in certain situations (e.g. financial statements of newly incorporated issuers) a request for omission would be necessary or whether alternatively the disclosure requirement could be considered as not applicable. To date, there has not yet been any guidance provided by ESMA in this regard. ESMA could examine specific situations where requests for omissions are received and upon which conditions granted or denied.

### **3.16 Cover pages**

78. The AG noted very divergent practices with regard to cover pages of prospectuses (e.g. with regard to length, content, use of disclaimers, font size). More harmonisation could be achieved by further ESMA guidance in addition to ESMA Q&A No. 9.

### **3.17 Summary of the base prospectus and issue specific summary**

79. The desk-based analysis showed that NCAs in general complied with the new summary requirements. However, some different practices were noted with regard to the presentation of the summary of the base prospectus and issue specific summary, and more specifically whether a separate 'form of issue specific summary' could or should be presented next to the 'form of final terms'. There was also uncertainty with regard to what information shall be considered relevant to a specific issue and therefore included in the issue specific summary. While ESMA provided some guidance with regard to the individual summary (see ESMA Q&A No. 91 and No. 95), further guidance could be considered. In addition, there is a dispute of what is considered to be a cross-reference under Annex XXII point 6. For example, some NCAs do not allow a general statement according to which the key financial information shall be read in the context of the financial statements, while others allow or even require such a reference, as source information.

### **3.18 Base prospectus regime**

80. The desk-based analysis showed that NCAs in general comply with the new final terms requirements and adhere to the ABC categorisation. However, there are different practices and uncertainty with regards to any additional information that can be included in the form of final terms. The desk-based analysis showed that some NCAs accept that the form of final terms contains certain additional information which seems not allowed to be included in the final terms. For instance, NCAs stated that they may allow the inclusion of additional information

duplicating and repeating Category A - information where they consider it helpful for the investors. It was also questioned whether the very strict rules on the format of final terms are beneficial for investors in terms of comprehensibility of the information.

#### **4. Analysis of the responses to the Questionnaire on the Prospectus Approval Process**

81. An analysis of the responses to the Questionnaire on the Prospectus Approval Process is presented in the following paragraphs. The Questionnaire is set out in Annex I. The analysis follows the structure of the questionnaire which focused on three sections:

- i. Market structure in the Member States,
- ii. Organisational set-up of the NCAs and
- iii. Actual prospectus approval process.

##### **Market structure in the Member State**

82. The paragraphs below summarise responses to questions 1 and 2 relating to the general market structure in the NCAs including statistical data on prospectuses.

#### **4.1 Overview of the number of prospectuses approved and passported**

83. The NCAs were requested to provide detailed information on the number of prospectuses approved and the number of prospectuses passported from January 2013 to December 2014 according to different types of transactions. An overview of this for each NCA is set out in Annex II.

84. Responses showed that eight NCAs deal with a large number of prospectuses (DE, FR, IE, IT, LU, NO, SE, UK) with the remainder in comparison showing only a small number of prospectuses approved in the period under review. These eight NCAs represent 82% of the total volume of prospectuses approved and these eight markets can be broken down further into three broad categories:

- Markets specialised in non-equity prospectuses: IE and LU
- Markets with a particularly high volume of equity prospectuses: FR and UK
- Markets with a balanced profile: DE, IT, NO and SE.

85. With regards to IPOs approved in the period under review, four NCAs clearly stand out: FR (32 prospectuses), NO (35), PL (30) and UK (118).

86. In terms of number of base prospectuses approved in the period five NCAs clearly stand

out: DE (521), IE (440), IT (417), LU (656), UK (408).

87. When considering passporting the percentage of approved prospectuses that were notified to other Member State (MS) was comparatively higher in the following MS:

- AT (non-equity: 55 % of 107/equity: 7% of 80),
- DE, (non-equity: 75% of 640/equity: 38% of 141)
- FR (non-equity: 30% of 407/equity: 13% of 369),
- IE (non-equity: 21% of 1262/equity: 92 % of 12)
- LU (non-equity:50% of 1450/equity: 95% of 21),
- NL (non-equity: 28% of 171 /equity: 20% of 73).

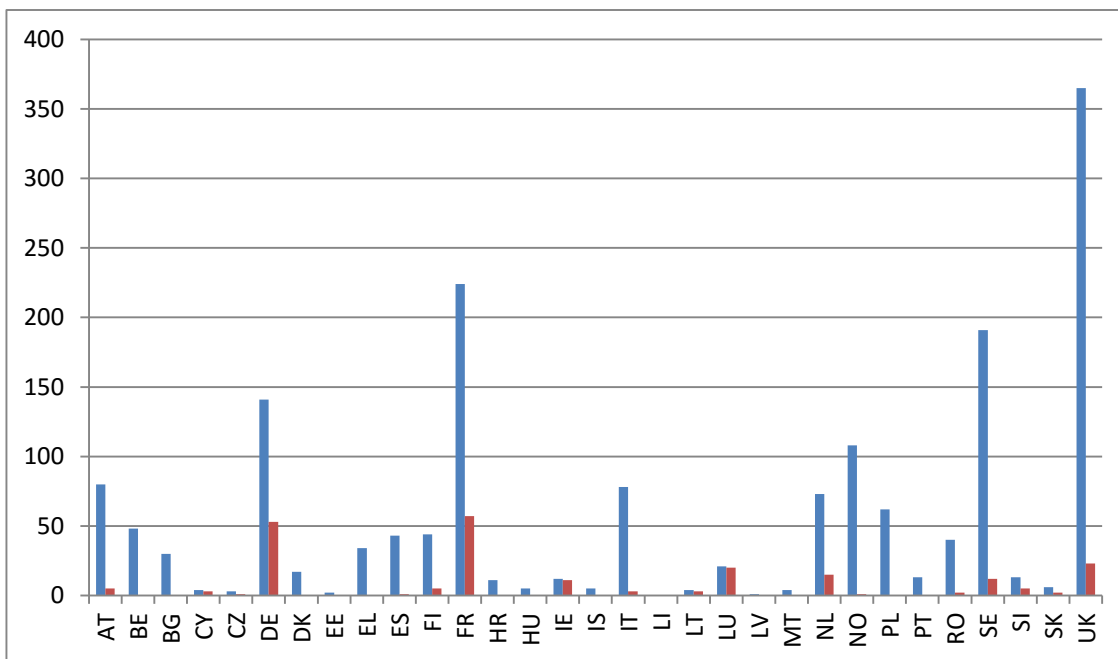
88. A relatively low percentage of approved prospectuses was passported by:

- SE (non-equity: 8% of 229 /equity: 5% of 191) and
- UK (non-equity: 14% of 560/equity: 5% of 365)

89. The following two charts show the rate of passported prospectuses compared to the total number of prospectuses approved by the respective NCAs, differentiating between equity and non-equity prospectuses.

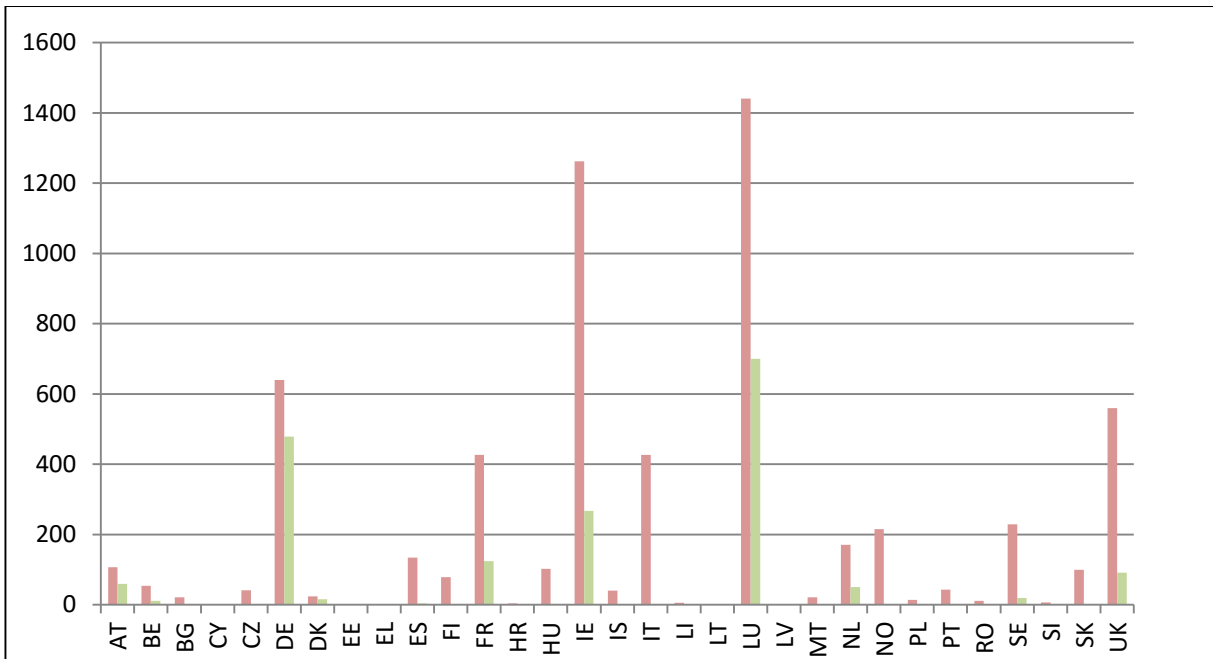
90. **Table 3 equity volume / passports**

The blue line represents the total number of prospectuses approved, while the red line shows the rate of passported prospectuses.



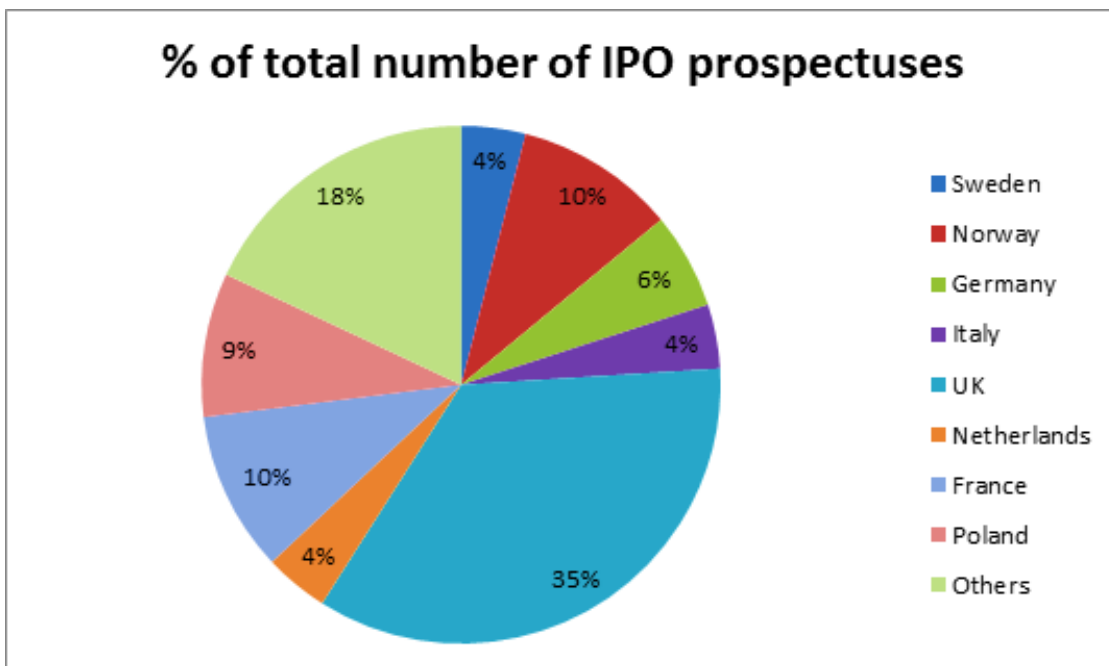
91. **Table 4 non-equity volume /passports**

The pink line represents the total number of prospectuses approved, while the green line shows the rate of passported prospectuses.



92. **Table 5** IPO prospectuses

The following chart provides an overview of the relative percentages of the total number of IPO prospectuses approved by the NCAs.





## **4.2 General observations regarding the market structure in the NCAs**

93. Given the nature of the more general questions (and responses) regarding the market structure in the Member States and specific factors having an effect on issuances, it is difficult to draw out particular outcomes. Therefore, a summary/analysis of the NCAs' individual responses is set out in Annex III.
94. However, it is possible to draw out some discrepancies in market structure and in investor audience from the responses on prospectus approvals.
95. Market structure/Type of security: figures of prospectuses approved in each type of security enable a breaking down of NCAs into two groups. The first group, 17 NCAs (CZ, DE, ES, FI, HU, IE, IS, IT, LI, LU, LV, MT, NL, NO, PT, SK, UK), has markets dominated by non-equity securities (84% of prospectuses approved are non-equity, on average), whilst the second group, 14 NCAs, (AT, BE, BG, CY, DK, EE, EL, FR, HR, LT, PL, SE, SI, RO) has strong markets in equity securities (67% of equity on average).
96. Investor audience: Some NCAs did not give precise answers to this question. Answers which were collected allow drawing out several groups of countries, according to different profiles. 14 NCAs indicate a predominance of wholesale or mixed investor audience, whereof eight NCAs (CZ, IE, IS, HR, HU, LT, NO, SI) for wholesale and six NCAs (EL, ES, FI, LI, NL, PT) for mixed investor audience. Only two NCAs (IT, PL) show dominance or a strong position of retail investors. Three NCAs (BG, FR, SE) broke down the investor audience depending on security type; these three displayed a preponderance of wholesale for bonds and a mixed investor audience for equity securities.
97. Four NCAs (HU, LT, SI, SK) indicated the importance of historical circumstances relating to their markets. The fall of the Soviet Union and the privatisations which followed encouraged the development of equity markets and IPOs in the 1990's, with a predominance of retail investors. Volatility, bankruptcies and crises which occurred afterwards instilled mistrust among retail investors, which led to the current predominance of wholesale prospectuses and the relative sluggishness of such markets to the present day.
98. Some NCAs underlined the repercussions of legislative factors, either with positive effects on their markets (IE) or with mitigated effects (HU).
99. Generally, four NCAs (CY, EL, ES, NL) put forward that the recent financial crisis harmed their markets' dynamism, with a smaller number of prospectuses approved over approximately the last 5 years.

## **Organisational set-up of the NCA/Decision making process with regard to prospectuses**

### **4.3 Staff Resources in NCAs**

100. The following paragraphs summarise responses to question 3 relating to staff resources in the review period 2013 and 2014. The NCAs provided detailed information on the number of

staff in the prospectus group on a full time equivalent (FTE)<sup>7</sup> basis. The NCAs were requested to further specify the total number of FTE staff in the prospectus group by the number of FTE readers (i.e. staff performing scrutiny and approval of prospectuses), the number of FTE dealing with other PD related tasks outside the approval process and the number of FTE staff within the prospectus group dealing with tasks outside the PD.

101. With regard to the prospectus approval process it was considered interesting whether staff scrutinising prospectuses are specialised and working in the PD area only or whether NCAs are organised in a way that prospectus readers are also responsible for supervisory functions outside the PD e.g. in the area of the Transparency Directive, Market Abuse Directive or financial information, which could possibly have an effect on the way prospectuses are scrutinised.

102. An overview of the numbers of FTE staff for the individual NCAs is set out in Annex IV.

#### **a) Number of total staff on a FTE basis in the prospectus group**

103. 18 NCAs (AT, BE, CY, CZ, DK, EE, EL, FI, HU, IS, SI, LI, LT, LV, MT, NO, SE, SK) have a total number of staff on a FTE basis in the prospectus group between 2 and 10.

104. 13 NCAs (BG, DE, ES, FR, HR, IE, IT, LU, NL, PL, PT, RO, UK) have a total number of staff on a FTE basis in the prospectus group between 11 and 72.

#### **b) Number of FTE staff performing scrutiny and approval of prospectuses (readers)**

105. 23 NCAs (AT, BE, BG, CY, CZ, DK, EE, EL, FI, HU, HR, IS, LI, LT, LV, MT, NO, PL, PT, RO, SE, SI, SK) have between 0.5 and 9 FTE readers performing scrutiny and approval of prospectuses.

106. Eight NCAs (DE, ES, FR, IE, IT, LU, NL, UK) have between 10 and 30 FTE readers performing scrutiny and approval of prospectuses

#### **c) Number of FTE staff dealing with other PD tasks outside the approval process (e.g. policy, enforcement/sanctions, advertisements, etc.)**

107. Only one NCA (SI) indicated having no FTE staff dealing with other PD tasks outside the approval process.

108. 15 NCAs (AT, BG, CY, CZ, EL, FI, HU, IS, LI, LT, LV, MT, NO, SK, UK) have between 0.1 and 2 FTE staff dealing with other PD tasks outside the approval process.

109. 15 NCAs (BE, DE, DK, EE, ES, FR, HR, IE, IT, LU, NL, PL, PT, RO, SE) have between 3 and 19 FTE staff dealing with other PD tasks outside the approval process.

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<sup>7</sup> One Full Time Equivalent (FTE) is equivalent to one employee working full-time in accordance with contractual obligations in an NCA (e.g. anywhere between 35 to 40 hours per week). For example, (based on a 40 hour working hour week) three employees working respectively 50 hours, 40 hours and 10 hours' amount to 100 hours per week. The FTE is 2.5 (100/40).

#### **d) Number of FTE staff dealing with tasks outside the PD**

- 110. Five NCAs (DE, EL, IE, HU, LU) have no FTE staff dealing with tasks outside the PD.
- 111. Eight NCAs (AT, FI, IS, LV, MT, NL, PL, SE) have between 0.4 and 2 FTE staff dealing with tasks outside the PD.
- 112. 18 NCAs (BE, BG, CY, CZ, DK, EE, ES, FR, HR, IT, LI, LT, NO, PT, RO, SI, SK, UK) have between 2.5 and 28 FTE staff dealing with tasks outside the PD.

#### **Whether the same persons dealing with tasks under b) also deal with tasks under c) and/or d)**

- 113. 26 NCAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SK) indicated that staff performs a mix of duties as the same persons dealing with tasks under b) also deal with tasks under c) and/or d).
- 114. Five NCAs (BG, IE, HU, SI, UK) revealed a strict split of tasks as the same persons dealing with tasks under b) do not also deal with tasks under c) and/or d).

#### **4.4 Experience of readers in the prospectus group**

- 115. The responses to question 4 on the prospectus related experience of the readers in the prospectus group are summarised in the following paragraphs. It should be noted that one part of the NCAs provided their responses on an FTE basis, while the other part provided numbers on basis of the real persons, so that the numbers indicated in the following do not necessarily add up to the respective total number of readers in the prospectus group above which is presented on FTE basis.
- 116. One NCA (SE) indicated that all their readers have up to three years of prospectus-related experience.
- 117. Eight NCAs (CY, EE, ES, HR, LT, LV, PL, SI) responded that all their readers possess more than three years of prospectus-related experience.
- 118. 22 NCAs (AT, BE, BG, CZ, DE, DK, IE, IS, IT, RO, EL, FI, FR, HU, LI, LU, MT, NL, NO, PT, SK, UK) have readers with a mixture of experience where some have less than three years and others more than 3 years of prospectus-related experience.
- 119. More specifically, two NCAs (PT, UK) indicated that more than 50% of their readers have less than three years of experience, while five NCAs (CZ, EL, LI, MT, NO) have an equal amount of experienced readers. In 11 NCAs between 50% and 75% of the readers have more than three years of experience (BE, BG, DE, FI, IE, IS, LU, HU, NL, RO, SK) and finally in four NCAs (AT, DK, FR, IT) more than 75% of the readers have more than three years of prospectus-related experience.
- 120. An overview of the indicated experience is set out in Annex IV.

## 4.5 General Workflow in the NCAs regarding prospectuses

121. The following paragraphs summarise the responses to question 5 relating to the workflow followed by NCAs when scrutinising and approving prospectuses, covering the period from the first contact with the draft prospectus or the issuer/advisor until the final approval of the prospectus.

### ***a. Engagement in consultation prior to first submission***

122. NCAs were requested to describe the situations and processes applied when engaging in consultation with issuers or advisors prior to the first formal submission of the draft prospectus.

123. All NCAs offer the possibility to the issuer/its advisors or any other relevant party to the transaction to engage in consultation prior to the first submission of the draft prospectus. Such consultation is usually initiated at the request of the issuer.

124. Consultation takes place either by way of e-mail, telephone or physical meeting(s). However, certain authorities only engage in consultation by way of one or two of the previously mentioned interactions. Meetings are often held in case of IPOs or complex issues.

125. Questions tackled during the consultation process often relate to financial information (e.g. pro-forma financial information, complex financial history).

126. Three NCAs (RO, SK, SI) indicated that they may check the draft prospectus in its entirety informally prior to its official submission.

### ***b. Allocation of prospectus documents within the prospectus group***

127. The NCAs were requested to provide information on the allocation process for prospectuses, specifying who decides on the allocation of prospectus documents between readers in the prospectus group and on what basis/criteria such decision is taken.

### **Allocation of prospectuses**

128. NCAs have for ease of comparison been grouped in high level categories taking into account the similarities of the person performing this task. For 27 NCAs (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, HR, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) the prospectus is allocated by a person having managerial responsibilities (e.g. head of team, head of section, head of division, head of department, deputy director).

129. For two NCAs (IS, FI) the prospectus group takes the decision (joint decision) to allocate prospectuses among readers. For one NCA (DK) one of the readers is in charge of allocating prospectuses and if needed in dialogue with the deputy director. For another NCA (IE) a system is in place to allocate non-equity prospectuses among readers on a rotational basis, subject to reallocation by the manager where necessary.

### **Criteria to allocate prospectuses**

130. 27 NCAs (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LI, LT, LU, MT, NL, NO, PL, PT, SE, SI, SK, UK) have a criterion or several criteria in place upon which to

allocate prospectuses. The most common criteria are the workload and the experience/qualifications of the reader. Other criteria may for instance be the complexity of the prospectus/operation, the type of security, the type of issuer and any experience of the reader with a prospectus of the same issuer that has been previously approved.

131. Five NCAs (DK, IS, LV, DK, RO) have not indicated a criterion for the allocation of prospectuses.

### **c. Specialisation of readers**

132. The NCAs were requested to provide information whether their readers are specialised in dealing with certain types of prospectuses, in particular with regard to the type of issuer, type of security or sections of the prospectus.

21 NCAs (AT, CY, CZ, DE, DK, EE, EL, ES, FI, LI, LU, HR, HU, IE, IS, LT, MT, NL, SE, SI, SK) indicated that readers are not specialised per se in dealing with certain types of prospectuses.

#### **Type of issuer**

133. 28 NCAs (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, LI, LU, LV, HR, HU, IE, IS, IT, LT, MT, NL, NO, PL, RO, SE, SI, SK, UK) do not allocate prospectuses according to the type of the issuer.

134. For three NCAs (BE, FR, PT), the prospectus is allocated to the person responsible for the supervision of the issuer under (an)other Directive(s) (e.g. TD, MAD (Market Abuse Directive) etc.). One of these NCAs (FR) specified that prospectuses are also allocated depending on the sector of activity (such as banks, insurance companies, investment companies, industry, services, REITS).

#### **Type of security**

135. In 27 NCAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, IE, IS, LI, LU, LT, LV, MT, NO, RO, SE, SI, NL, PL, SK), readers are not specialized according to the type of security.
136. For four NCAs (PT, IT, UK, FR), there are specific teams/divisions according to the type of security (e.g. equity, debt security, plain vanilla debt security, derivative security, ABS, fund, complex security).

#### **Sections of the prospectus**

137. For 24 NCAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, IE, IS, LI, LT, LU, MT, NL, PT, SE, SI, SK, UK) readers are not specialized according to different sections of the prospectus.
138. For seven NCAs (BG, FR, IT, LV, NO, PL, RO), there is a specialization according to different sections of the prospectus. The sections may for instance concern financial information or information relevant to a legal expert (e.g. terms & conditions, legal proceedings, material contracts).

**d. Procedures (Mechanisms) on issues emerging from scrutiny during the approval process**

139. NCAs were asked to describe the procedures (mechanisms) and methodology on how issues emerging from scrutiny during the approval process are resolved.

140. 28 NCAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, SE, SI, SK, UK) have an escalation process in place, i.e. the reader will consult with (a) person(s) having managerial responsibilities, depending on the significance of the issue. According to some of these authorities the reader may before consulting a superior, undertake some of the following actions:

- seek advice of other readers or the 2<sup>nd</sup> reader (in case two readers are assigned to the prospectus);
- consult internal knowledge tools;
- consult other departments within the NCA if such expertise is required (e.g. enforcement department, legal department).

141. 15 NCAs (AT, CZ, DE, EL, FI, FR, IT, LU, LV, LT, NL, NO, SE, SI, UK) indicated that the issue may/will be discussed during physical meetings of the Prospectus Group. Such meetings may involve the whole Prospectus Group or only the heads of the Prospectus Group. The reason both are mentioned is that certain NCAs noted that the heads would take part in such meetings and based on the comments it seemed that the presence of the heads at such meetings was considered to be an escalation process in itself. Such meetings may be held regularly (weekly basis, semi-monthly basis) or punctually when the issue arises (at the request of the reader).

142. Three NCAs (BG, HR, RO) have not referred to an escalation process as the issue seems to only be discussed and resolved among readers or colleagues from other departments.

**e. Process regarding a request for omission of information**

143. The NCAs were requested to provide information on how a request for omission of information in accordance with Article 8 (2) of the PD is assessed and which methodology is applied.

- Eight NCAs (ES, HR, HU, LI, LT, PT, RO, SI) have not received a request for the omission of information during the period under review. Four NCAs (BG, CZ, EE, FR) have not indicated who would analyse/approve the request. Therefore, the following information relates only to 19 NCAs.

**Assessment of the request for omission**

144. For those 19 NCAs (AT, BE, CY, DE, DK, EL, FI, IE, IS, IT, LU, LV, MT, NL, NO, PL, SE, SK, UK) readers/experts assess the reasons for the omission of information. For two NCAs (DE, NL) a person with legal background/legal expert is required to analyse the request or assist the reader in analysing the request.

### **Final decision as regards the request**

145. For nine NCAs (AT, DE, FI, NL, NO, PL, SE, SK, UK), the final decision will be taken or validated by a person having managerial responsibilities (e.g. head of team, head of unit, head of department), while for one of those NCAs (NL) it could also be a senior supervisory officer without management function. For seven NCAs (BE, CY, DK, EL, IT, LV, LU) the request must eventually be submitted to the board of directors of the NCA or a member of such board. For two NCAs (IE, MT) the request must be submitted to a specific committee (Omission committee or Listing Committee).
146. In one NCA (IS) only the readers consider the legitimacy and appropriateness of the request.

### ***f. Responsibility for the decision on approval of prospectuses within the NCAs***

147. The NCAs were required to provide information regarding who within the NCA is responsible to decide on the approval (or refusal) of prospectuses.
148. According to the responses received there is no clear majority/minority practice for this question. The responses have been grouped in high level categories with similar characteristics in order to ease comparison.
149. In four NCAs (DE, DK, SE, UK), only the readers are responsible for the approval of the prospectus. In DE, the head of unit may only be involved if there is a refusal of the prospectus. In DK, the deputy director may be involved if there are problems.
150. For six NCAs (AT, FI, IS, LI, LU, NO) the reader along with a person having managerial responsibilities (e.g. head of team/division/section/department/unit) are responsible for the approval of the prospectus.
151. For six NCAs (CZ, HU, IE, LT, NL, SK) only a person having managerial responsibilities (e.g. head(s) of team/department/unit/division) is responsible for the approval of the prospectus, while for one of those NCAs (NL) it could also be a senior supervisory officer without management function.
152. For one NCA (HU), the director of the Market Supervision Directorate is generally responsible. However, in case the prospectus relates to an issue of securities with a total consideration of more than 5 billion HUF (Hungarian Forint), the 'Deputy-Governor responsible for financial institutions supervision and consumer protection' is responsible for the decision (before 1 October, 2013 this was the responsibility of the President of the HFSA – see footnote 1 under Table 1 on page 6).
153. For 14 NCAs (BE, BG, CY, EE, EL, ES, FR, HR, IT, LV, PL, PT, RO, SI) the decision to approve the prospectus will eventually be submitted to the management board of the NCA or a member of such board.
154. For one NCA (MT), the final decision to approve or refuse a prospectus lies with the Listing Authority.

**g. Involvement of units/departments other than the prospectus approval unit**

155. The NCAs were requested to provide information on whether during the approval process other units or departments than the prospectus approval unit are involved and if any, of what nature such involvement is.

156. Eight NCAs (DK; EE, EL, HR, HU, LI, RO, SI,) always involve other departments.

157. 20 NCAs (AT, BE, CY, CZ, DE, ES, FI, FR, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, SE, UK) submit the prospectus, in specific cases, to other departments. Frequent circumstances where the prospectus is/may be submitted to other departments are the following:

- where specific expertise provided in other departments is required (e.g. legal expertise, financial expertise)
- where the issuer falls under the supervision of other departments (e.g. banking supervision)
- following a risk-based approach (e.g. complex financial history, pro forma financial information, IPOs)

For three NCAs (BG, IS, SK) no other department is involved.

**h. Cross-border cooperation for prospectus purposes**

158. On the question whether and under what circumstances NCAs seek cross-border cooperation with other NCAs for prospectus purposes (Article 22 (2) of the PD), the following responses were received:

- 20 NCAs (AT, CY, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LT, LU, NL, NO, PL, PT, RO, SE, UK) sought cross-border cooperation during the period under review. Circumstances where such cooperation was sought varied and included the following:
- transfer of approval of the prospectus;
- issues encountered prior to or following notification of the prospectus (passporting);
- shared competence for an issuer either due to e.g. issuers' view of who is the NCA responsible, seeking admission to trading of several types of securities which could result in different home competent authorities or due to difference of NCAs between directives;
- sanctions imposed by another authority/in another Member State,
- approach taken by another authority as regards the classification of a security (e.g. equity/non-equity, new type of security),
- complex / special issues that emerge during the review process.



159. Eight NCAs (BE, BG, EE, IS, HR, HU, LI, LV) indicated that they have not sought cross-border cooperation for the period under review.
160. Three NCAs (MT, SI, SK) did not indicate whether they sought cross border cooperation or not.

## **Actual prospectus approval/review process/timing**

### **4.6 Update of the peer review on the ESMA Good Practices in the approval process**

161. The paragraphs below summarise responses relating to whether NCAs have made any material changes that would affect their responses to the last peer review on the ESMA Good Practices in the approval process (Ref. ESMA/2012/300). If such changes had occurred, they were requested to indicate what the nature of such changes is.
162. The responses to questions E.6.A1-E.6.F4 show that on a very large scale NCAs have implemented respective mechanisms to efficiently and effectively fulfil the legal provisions of the regulation and accordingly comply with best practices. Summaries of the individual responses are set out below.

### **Data Base**

163. There has been no change as the majority of NCAs have an electronic database that is updated regularly.

### **Working Instructions**

164. All NCAs have working instructions concerning the scrutiny of prospectuses in place that are subject to a periodic review be it in predefined intervals or due to changes in e.g. legislation.

### **Knowledge Transfer**

165. Regular meetings for exchange of information take place in all NCAs, except BG and EE which both declare to have ad hoc meetings instead when needed. An exchange of information in written format for purposes of prospectus specific knowledge transfer is provided in every NCA either in form of minutes of meetings or via email to the readers circulating new principles to be taken into account.

### **Similar Comments**

166. All NCAs ensure that similar comments are raised in similar prospectuses either in written form because emails are circulated, the electronic files are adapted or in lieu of the four-eyes principle in place where heads of teams or departments see the prospectuses and inform the other readers accordingly.

## **Four eyes principle**

167. This is further ensured as all NCAs have a four eyes principle in place albeit through a variety of approaches, ranging from always assigning two readers with the scrutiny of the whole prospectus to risk-based approaches where two readers are only assigned according to defined criteria in certain situations and/or with regard to certain sections only.

## **Consistency Check**

168. All NCAs stated that they conduct a consistency check concerning information incorporated by reference with the other information given in the prospectus. However, HR noted that it has not yet approved prospectuses that include information incorporated by reference, but if this case would occur the respective NCA would conduct the respective consistency check.

169. All NCAs confirmed that the reader checks or asks the issuer, the offeror or the person asking for admission to trading on a regulated market whether the documents to which the reference is made have been approved by the Authority or filed in accordance with Art 11(1) of the PD. NL and LU pointed out that they interpret article 11 (1) of the PD in a manner whereby documents voluntarily filed simultaneously with the prospectus can be incorporated by reference. Furthermore, all NCAs declared that the reader checks there is a statement in the prospectus as to whether the non-incorporated parts (indicated N/A) are either not relevant for the investor or covered elsewhere in the prospectus in accordance with Article 28(4) of the Prospectus Regulation.

170. All NCAs declared that currently their reader checks whether all risks mentioned in other parts of the prospectus are described in the risk factor section. NL commented that a future change of practice will require following this approach only in case of "high risk" prospectuses.

## **Comprehensibility**

171. All NCAs noted that readers request that the technical/specialist words used in a prospectus document are clear by requiring definitions to be provided either throughout the prospectus document or via a glossary if necessary from the perspective of the investor. The majority of NCAs request that the prospectus contains a description of derivative securities and a clear explanation is given to help investors to understand how the value of the investment is affected by the value of the underlying instrument(s).

172. Finally, all NCAs declared that their readers check that the information related to different securities is structured so as to be easily understood. In any case all NCAs responded that the reader checks that duplication does not impair clarity and comprehensiveness of the prospectus document. All NCAs declare that the reader checks that the table of content is sufficiently precise and detailed in order to allow investors to find easily the information that they are looking for.

## **4.7 Assessment of the completeness of a prospectus**

173. The paragraphs below summarise responses to question E.7 relating to the way an NCA assesses the completeness of a prospectus. The NCAs were requested to provide information

about what kind of checks they perform aside from checking inclusion of the information provided by the annex items of the Prospectus Regulation, respective ESMA update of CESR recommendations and ESMA Questions & Answers. The reason for this is that previous collected data shows that all NCAs take into account the legislation and guidance set out by ESMA.

174. 25 NCAs (AT, BE, CY, DE, EE, EL, ES, FI, FR, HU, IS, IE, IT, LT, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) responded that they do take other additional information into account in order to assess the completeness of information in a prospectus. Some specifically quote Article 5 (1) of the PD as the legal basis for these additional checks. The Article sets out that the prospectus shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities and that this information shall be presented in an easily analysable and comprehensible form. Other NCAs also quoted provisions in national prospectus legislation as a legal basis. Additional information is usually requested on a case-by-case basis depending on the issuer and the securities in question.

175. As regards sources of information external to the NCAs most indicate that they take into account information which is publicly available to them. The following examples were mentioned:

- internet searches (CY, LU, NO, SI);
- company register searches (SI);
- search on REUTERS (NO);
- media sources, such as market announcement, press releases and/or newspaper articles (BE, CY, EL, FI, FR, IE, IS, LU, SE, PT, UK); and
- advertising materials (PT).

176. In relation to information that would be attainable within the authority NCAs reported that their PD review teams also liaise with other departments such as supervisory teams, particularly those dealing with prudential supervision or insurance or teams dealing with the TD (AT, BE, CY, FI, IT, NL<sup>8</sup>, NO, UK).

177. When it concerns the prospectus itself and information contained therein NCAs indicated checking and comparing information in a prospectus with information in other, previously approved prospectuses from the same issuer (EL, LU, MT, NL, UK).

178. Six NCAs (BG, CZ, DK, HR, LI, LV) advised that they do not take any additional information into account and mentioned that according to Article 3 of the Commission Regulation (European Commission (EC)) No 809/2004 the NCA shall not require that a prospectus contains information which is not included in the Annexes of said Regulation.

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<sup>8</sup> Checks relating to prudential supervision must be made with the De Nederlandsche Bank, which is a separate entity from the AFM.

## **4.8 Timing related to prospectus approval processes and influences on such**

179. The paragraphs below summarise responses to question E.8a to e relating to different aspects of the timing of prospectus approval processes and what might influence such timing. An overview of the specific turnaround times is set out in Annex V.

### **a. Average timing of approval processes**

180. NCAs provided extensive information with regard to the average timing of a prospectus approval process which was split in accordance with four different scenarios, i.e. in relation to approvals of equity IPOs prospectuses, other equity prospectuses, non-equity prospectuses and base prospectuses. Firstly, it should be noted that the information provided is either based on the full period under review or on the basis of representative samples where the calculation of more precise numbers was impracticable due to the number of prospectuses in the period under review. Secondly, time frames were set in accordance with the timeframes set out in the PD, i.e. periods of 10 or 20 days for an approval and cover the average time to complete an approval process from the first submission of the prospectus (i.e. complete enough for the NCA to review the full prospectus) to the act of approval. It does not include ad hoc pre-consultation on single disclosure elements. An overview of the indicated approval times (and the number of drafts) is set out in Annex V. Please note that the time frames in Annex V include both, the review time by NCAs and the response time by issuers.

#### **Equity IPO**

181. The responses show that for equity IPO prospectuses the majority of NCAs have applied between 20 to 60 working days to complete an approval process where seven NCAs (BE, CZ, EE, LT, NO, SE, SK) used up to 40 working days in 70% or more of the situations. One NCA (RO) always completed the approvals within 20 working days and two NCAs (FI, FR) complete over 2/3 of the approvals in the same period. A further four NCAs (BE, IT, NO, PL) completed 30% or less of the approvals within 20 working days. Five NCAs (BG, HU, NL, PL, UK) indicated using more than 60 working days in 50% or more of the situations where HU always applied more than 60 working days and PL indicated that 96,5% of the approvals would exceed this time frame.

#### **Other equity**

182. In relation to other equity prospectuses, the range of time used for approvals varied more over the entire indicated time periods. RO indicated approval always within 10 working days and IT in 36%, FI in 65% and FR in 50% of the cases. By contrast four NCAs (BG, CZ, HU, PL) used more than 60 working days for approval in 50% or more of the cases. A further six NCAs (AT, DE, DK, HR, NL, UK) applied the same time frame in approximately a quarter or a third of the situations.

#### **Non-equity**

183. Concerning non-equity prospectuses RO indicated approval always occurred within 10 working days, two NCAs (FI, FR) approved prospectuses within the same time frame in 50 % or more of the cases and five NCAs (BE, IE, LU, NO, SI) between 25%-50% of the cases.

Three NCAs (AT, BG, EL) used more than 60 working days to approve the prospectuses in 50% or more of the cases while IS and UK did so in 30% and 24% of the cases respectively.

### **Base prospectuses**

184. The information relating to base prospectuses has been provided with indication to two time periods, i.e. 2013 and 2014. The reason for this distinction is to assess whether there was a difference in approval times considering that 2013 was the first year with the full effect of the revised regime for base prospectuses and it was plausible that in 2014 approval times would decrease due to increased familiarity with the regime.
185. The responses did not confirm this hypothesis as seven NCAs (CZ, DK, ES, IE, HU, NO, PL) reported increases in the number of situations where they applied more than 60 working days in 2014 compared to 2013 and six NCAs (AT, BE, DE, IS, LU, UK) reported decreases. Similar differences appeared with regard to the amount of base prospectuses approved within the first 20 working days where eight NCAs (ES, HU, IE, LI, LT, NO, RO, UK) reported an decrease in percentage of approvals (i.e. increase in time needed) in 2014 compared to 2013 while six NCAs (DE, FI, FR, IT, PL, SE) remained at the same level but the split between 10 or 20 working days may have shifted. Only four NCAs (AT, BE, NL, LU) reported an increase in the percentage of prospectuses approved within 20 working days.
186. 10 NCAs (AT, CZ, DE, DK, HU, IT, MT, PL, PT, RO) indicated having used more than 30 working days in 50% or more of the cases in the course of 2014.

### **b. Average number of drafts received in total during a process**

187. The information received reflect the number of drafts an NCA has received on average during an approval process based on the two-year period under review which includes the first draft that is submitted for scrutiny (whether complete or lacking parts of information) and the last draft that is submitted for approval. Not all NCAs have approved prospectuses in the different categories in the period under review and are therefore not included in the below. An overview of the individual numbers of drafts used is set out in Annex V.
188. For equity IPO prospectuses the number of drafts received on average varies between two to nine drafts. Five NCAs (FI, IT, NO, PT, UK) receive on average more than seven drafts; 13 NCAs (AT, BE, CY, CZ, EE, ES, FR, IE, IS, LU, NL, RO, SE) receive five (CZ, EE, FR, IE, RO, SE) and seven (AT, BE, CY, ES, IS, LU, NL) between five and seven drafts and nine NCAs (BG, DE, DK, EL, HU, LT, MT, PL, SK) receive fewer than five drafts.
189. Generally, NCAs reported that they receive a lower number of drafts for other equity prospectuses than for IPOs. This is not the case for seven NCAs (BG, DK, EL, IE, LV, MK, SK) although the difference does not exceed one draft.
190. For non-equity prospectuses four NCAs (AT, IE, IS, UK) received more than five drafts. 13 NCAs (BE, CZ, EE, EL, ES, FI, HR, IT, LU, MT, NL, NO, PT) received between four and five drafts and 11 NCAs (BG, CY, DE, DK, FR, HU, PL, RO, SE, SI, SK) received less than four drafts.

191. In relation to base prospectuses NCAs have provided an average number based on the two-year period under review where the majority of NCAs (23) receive less than five drafts. Three NCAs (DK, IS, UK) received more than five drafts, 11 NCAs (AT, BE, CZ, IE, FI, IT, LU, MT, NL, NO, PT) between four and five drafts and 11 NCAs (DE, ES, FR, HU, LI, LT, LV, PL, RO, SE, SK) received less than four drafts on average.

### **c. Circumstances that may delay or speed up the turnaround between two specific drafts**

192. The following paragraphs summarise the responses concerning issues that could or would speed up and/or delay between drafts. Several of the issues listed as causes for delay of the process can on the other side also result in a speed up if handled or addressed effectively. Responses showed that this is the case concerning issuers' response time and cooperation with issuers' advisors and such have been addressed together.

#### **Cause of delays**

193. All NCAs acknowledged that there are circumstances that would delay the turnaround of not only the first draft but also of subsequent drafts. Overall the most common causes for delay (in order of commonality) are 1) issuers' response time to comments from the NCA (all NCAs); 2) the quality of the issuer's response (all NCAs, except UK); 3) the complexity of the issuer's circumstances including issues concerning the financial information as well as 4) complexity of security/product. Further details on the individual causes of delays addressed by the questionnaire are set out below.

194. In relation to the complexity of issuer's circumstances, three NCAs (BG, LT, LV) stated that this does not give reason for delays while the remaining NCAs confirm this could or was the case. The main circumstances connected to this element related to receiving prospectuses from new or unknown issuers; presence of significant financial commitments; issuer's engagement in merger/de-mergers; existence of complex company group structure or operations or issuers that were in financial distress. The complexity is usually mirrored by the existence of complex financial information, restatements of such, issues concerning the qualified working statement and pro forma financial information.

195. When addressing the complexity of the security/product six NCAs (BG, HU, LV, SE, SI, PL) note that this was not an issue causing delays in the turnarounds of drafts. The majority of NCAs therefore perceives this to potentially cause delays even if only on rare occasions, as stated by DK. Particular elements mentioned were the novelty or innovative nature of a product (EL, IT, RO); issuance of warrants (EL) and where a complex derivative is addressed to retail investors (IE, IT).

196. All NCAs cited issuer's response time to comments from the NCA as a cause or the primary cause for delays in the approval process. It should be noted that this is often linked to complexity of the circumstances of the issuer. However, additional elements were mentioned such as factors external to the drafting process itself e.g. accountants' report (ES, UK) and new or unexperienced issuers (EL, ES, IT, MT, NL). By contrast only the UK noted that if the issuer were to be quick in responding it would not speed up turnarounds.

197. Similar to above, all NCAs but UK indicated that the quality of issuer's responses is the most common cause of delays. UK noted that this fact would rather impact on the number of drafts submitted than delay the turnaround time. There were no comments as to whether high

quality of issuer's responses would speed up the process but it is plausible that such would also rather impact on the number of drafts submitted.

198. The NCAs response time when providing comments is not considered as a cause of delays by NCAs as there is a legal deadline of 10 or 20 working days for responding. NCAs noted that they either always aim to revert as soon as possible or, in the case of a minority of NCAs, never apply the maximum time frame allowed. If they do make use of the full time frame it is primarily due to substantial workloads, which are often caused by issues with the financial information. The eight NCAs who indicated that this would delay the process (CZ, EE, HR, IT, LT, LU, SK, UK) also mentioned that they do not use the maximum time allowed every time and always aim to reply as soon as possible. Substantial workload in the prospectus group is what causes the process to take more time in particular. Where there are self-imposed timeframes there is a risk that this will encourage issuers to make subsequent submissions.
199. Responses to whether cooperation with issuer's advisors (legal, financial, underwriters, etc.) would delay the process, revealed differences in practices among the NCAs as to whether issuers generally use advisors in the approval process or not. In certain jurisdictions this would be considered the normal procedure (e.g. for AT, FI, FR, LT, LU, UK). Nine NCAs (AT, DK, FR, HU, LI, LV, NO, SE, SI) noted that this would not cause delays while four NCAs (BG, FR, HU, UK) mentioned that this would also not result in a speeding up of the process. SI mentioned that there is no practice involving such cooperation. Finally, 14 NCAs (BE, CY, DE, EL, ES, HR, IE, IT, LI, LT, MT, NL, RO, PL) responded that this would usually increase the speed of turnaround.
200. NCAs mentioned further elements that would influence the turnaround times or number of drafts by delaying the process: fulfilment of listing requirements (ES); changes in the issuer's circumstances or plans during the approval process (CY, FI, PL); issues related to advertising material (PT); collection of signatures of the persons responsible for the contents of the prospectus (HR); quality of a prospectus on first submission (CY, SK, UK); number of page pulls (UK); internal consultation in the NCA (NL) and involvement of multiple jurisdictions (NL).

### **Speeding up the turnaround**

201. Responses indicated that generally situations that cause delays can vice versa also be reasons for a speed up of the process.
202. In relation to engaging in consultation with the NCA prior to submission of the first draft of the prospectus, two NCAs (BG, IE) mentioned that this would not speed up the turnaround whereas 16 NCAs (BE, CY, DE, EL, FR, HR, HU, IT, LI, LT, MT, NL, PL, RO, SK, UK) considered it could be a factor.
203. A specific aspect addressed was whether the use of tripartite prospectuses would result in a faster turnaround. Five NCAs (BE, EL, FR, IT, SK) confirmed this possibility, one NCA (CY) did not consider this a factor, while the remaining NCAs did not provide a response.
204. Lastly, IE and NL noted that an issuer can submit a suitable black-line document (marked up against a similar previously approved document) which could ease the revision process.

**d. NCAs subject to timeframes which are self-imposed or arising from national law requirements in respect of the review process**

205. Seven NCAs (FR, IE, IT, LI, MT, NO, UK) indicated having timeframes shorter than those of the PD and they are all self-imposed by practice subject to (FR) where the reduced timeframe is based on an enforceable ordinance. Three of the NCAs (FR, IT, LI) apply general criteria while the remaining (IE, MT, NO, UK) distinguish primarily based on the stage of submission (first drafts versus subsequent drafts) possibly combined with criteria based on type of securities.

206. LI generally comes back within 2/3 of the legislative timeframes, i.e. within 7 and 14 working days respectively. FR reduces the timeframe to five days if the issuer has previously filed a registration document with the NCA and IT sets out absolute deadlines of 40 and 70 working days, the latter applying to IPOs, within which the NCA must carry out the entire approval process. Only in exceptional circumstances may these be extended a further five working days.

207. MT provides comments within self-imposed time-limits of three days for the initial submission and two days for subsequent drafts when dealing with prospectuses targeting the wholesale market. IE has committed turnaround times for all prospectuses related to debt and asset backed securities which are submitted through a prospectus advisor as follows: Funds– new submission five days; debt – new submission three days; funds and debt redraft two days; all securities approval submission – same day. The UK has three sets of time frames depending on the type of securities: 1) for new issues of global depositary receipts (GDRs) and IPOs first submission ten days and second submission five days, 2) for further issues of equity shares by a listed or unlisted issuer, further issues of GDRs, ABS, convertible securities and supplements on equity prospectuses first submission five days and second submission three days; and 3) for plain vanilla debt securities, redemption linked securities, medium term note programmes, securities derivatives and supplements on non-equity prospectuses first submission four days and second submission two days.

208. NO has indicated having a reduced time-frame for the first submission of seven days but did not provide further information regarding the second or subsequent submissions. DK seems to have indicated that for first submissions the Authority would use up to ten days and for second or subsequent submissions five days.

**e. Timeframes imposed by the NCA or arising from national law requirements in respect of the issuer's window to come back with comments and a new draft**

209. Five NCAs (BG, CY, IT, PL, SK) have indicated having such windows. BG has indicated that the issuer or offeror has one month at maximum to revert; CY has an internal policy allowing the issuer 10 working days for prospectuses and 5 working days for supplements; PL states that the issuer or offeror has seven days and IT requires feedback within 10 or 20 working days respectively.

210. The UK does not have a response window per se but lapses the transaction if there is no activity for more than three months.



#### **4.9 Actions with regard to assessing comprehensibility, consistency and completeness in a base prospectus**

211. The paragraphs below summarise responses to question E.9 relating to the way NCAs assess base prospectuses, particularly how it is ensured that they comply with the requirements of being comprehensible, consistent and complete.

##### **a. Disclosure of ABC categories and checks of references to Final Terms or Form of Final Terms**

212. NCAs were firstly requested to set out how they ensure that the ABC categories of information are disclosed within the base prospectus and in the form of the final terms in accordance with Annex XXII and Article 2a of the Prospectus Regulation. 24 NCAs (AT, BE, CZ, DE, DK, ES, FI, FR, HU, IE, IS, IT, LI, LT, MT, NL, NO, RO, PL, PT, SE, SI, SK, UK) stated that they carry out a line-by-line analysis of the final terms. LU used this method only partially. LV provided no answer to this question. It is worth mentioning that five NCAs (BG, CY, EE, EL, HR) have not yet had any practice in approving base prospectuses and SI has only approved one base prospectus. Nevertheless, the majority of them opted for using line-by-line analysis when they would approve such.

213. 19 NCAs (AT, CZ, DE, DK, ES, FI, IE, IS, IT, LI, LT, LV, MT, NO, RO, PL, PT, SE, SK) advised that they have applied a review strategy whereby they checked all references to final terms and the form of final terms throughout the base prospectus and NCAs without experience indicated that they would also use this method. Almost all the NCAs that used line-by-line analysis, also checked all references to final terms. One NCA (HU) applied this method only on a case-by-case basis (base prospectuses identified for full checks via a random selection) and three NCAs (FR, LU, UK) check some but not all references. BE stated that they do not use this method.

214. NCAs were provided with the opportunity to provide additional remarks concerning their method for assessing the use of ABC categories. The majority with experience in this field (BE, CZ, DE, DK, ES, FI, HU, IS, IT, LI, LT, LV, MT, NO, PL, RO, SI, SK) made no further comments. NL indicated some on-going changes in its review strategy where the Authority expects to make a shift in their review strategy going from a general line-by-line analysis to focusing on information in the Final Terms that is considered to be both relevant from the perspective of the investor and is actually used by investors when making their investment decision. LU mentioned that the Authority requires any cross-reference list submitted by the issuer pursuant to Article 25(4) of the Prospectus Regulation to indicate the applicable information category (A, BA, B,C) for each annex item. Lastly some NCAs (AT, FR, IT, PT, SE) provided a more detailed explanation of their review methodology.

##### **b. Checking of information concerning options**

215. 26 NCAs (AT, BE, DE, CZ, DK, ES, FI, FR, HU, IE, IS, IT, LI, LU, LT, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) replied that they did check that Category B information that has been included in the Form of Final Terms corresponds to the respective options that have also been included in the base prospectus. Five NCAs (BG, CY, EE, EL, HR) drew attention to the fact that they did not yet have any practice in approving base prospectuses.

### **c. Practical issues encountered during approval process**

216. 15 NCAs (BE, CZ, DE, ES, FI, PT, FR, IE, IT, NL, LT, LU, SE, SK, UK) share the view that in cases of base prospectuses for structured products and for derivative products as well as base prospectuses referring to the issue of many types of securities the current system holds difficulties to present certain issues with an adequate level of clarity (e.g. pay-out structures, risk factors). Other NCAs (AT, DK, HU, IS, LV, LI, PL, RO) seemed not to have encountered any problems so far.
217. As a practice UK mentioned that it published a guidance note that outlined a number of key areas that issuers should consider in order to make a prospectus easily analysable and comprehensible to retail investors (e.g. how to navigate the prospectus, a clear explanation of how the return is calculated, etc.).

### **d. Requirements relating to description of securities**

218. 26 NCAs (AT, BE, CZ, DE, DK, ES, FI, FR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) request descriptions and clarifications of the securities, the mathematical formulas mentioned in the prospectuses and the value of the investment in order to assist investors in understanding the different elements and the value of the investment. According to four NCAs (ES, IE, SE, UK) this is considered to be even more important in the case of derivative and structured products and for retail investors. One NCA (CY) reported that it did not receive an application for approval of a base prospectus in the last five years. However, if such case was encountered it would request a clear explanation of technical terms and mathematical formulas included in the prospectus.
219. In this regard several practices have been mentioned by the NCAs. In case of certain complex products LU recommends while UK (in case of non-exempt public offers) and IT require examples to be inserted in the prospectus to better explain how the instrument works. In case such examples are included in the prospectus the issuer has to ensure that they feature both positive and negative scenarios. In the comments made to the prospectus NL sometimes refers to existing prospectuses where the description of the securities was reflected in a proper manner. NL does not share this type of examples on a market wide basis. FR noted that when dealing with complex products it chooses to focus on checking the advertisements rather than the prospectus in relation to examples.

## **4.10 Scrutiny of summaries**

220. The following paragraphs summarise the responses to question E.10 illustrating how NCAs perform the scrutiny of summaries. As this regime was revised following the amended PD the question was open-ended in order to allow NCAs to present comments on all issues they deemed to be relevant for a complete scrutiny.
221. All NCAs predominantly applied the relevant provisions of the legislation, particularly PD Article 5(2) and that of the PR Article 24 and Annex XXII. NCAs confirmed checking compliance with the rules set out in the above mentioned Articles and Annex. More specifically NCAs mentioned the maximum length of the summary; prohibition of cross-references to other parts of the prospectus; existence of relevant key information required by Annex XXII; use of clear, comprehensible and non-technical language; the presence of warnings described in Article

5(2) of the PD; adequate usage of the term 'non-applicable' and the explanation attached to it, etc... They also advised that they make sure that the summary meets the requirement of being consistent with other parts of the prospectus. Nine NCAs (AT, CY, EL, ES, IT, LU, PT, SE, SK) explicitly mentioned the application of the relevant Q&As set out by ESMA (specifically numbers 80, 82, 92, 93, 94 and 95)<sup>9</sup> and of agreed common approaches.

222. NO pointed out that they make a standard comment to issuers drawing their attention to the fact that the summary has to be updated when changes are made to the prospectus in the subsequent drafts.

#### **4.11 Practical issues encountered when applying the new format of the summary**

223. The paragraphs below summarise responses to question E.11 in relation to what practical issues NCAs have encountered with regard to the new format of the summary as set out in Annex XXII of the PR when submitting drafts.

224. Seven NCAs (BG, EE, HR, HU, LI, LV, NO) stated they have not encountered any practical issues with the introduction of the new format of the summary. All of the remaining NCAs gave answers to this question identifying one of the following two issues: they either touched on the problems they have encountered originating from the system introduced by Annex XXII of the PR itself or they mentioned cases when the issuers failed to comply with the new requirements when submitting drafts.

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<sup>9</sup> Ref. ESMA/2014/1279 – Questions & Answers, 22nd updated version – October 2014. Reference is made to the newest version of this document as the numbering remains identical.

## **Structural problems identified**

225. As to the structural problems nine NCAs mentioned issues arising due to the length of the summary (DE, EE, EL, ES, FI, FR, IS, LT, MT). On the one hand, the summary can only be regarded complete, if it contains all the information required by Annex XXII of the PR (including referring to the non-applicable parts and giving an explanation for not applying them) and on the other hand there are strict rules on the maximum length of the summary as well which could prevent the inclusion of all the previously stated information.
226. Several consequences were mentioned by NCAs: Summaries have become too long which impedes readability or comprehensibility (DE, FR, MT, NL) or are disproportionate to the prospectus as a whole (LT) and may not necessarily include the most relevant information only (FR). UK mentioned that UK market participants have pointed out that the summary in its present form does not fulfil the role of a summary and does not add anything to clarity or comprehensibility so that they see its added value in general as questionable. PL commented that sometimes in practice it is nothing more than a copy-paste version of some parts of the registration document(s) and the securities note(s). Both FR and NL declared that the summaries have become too technical in language which render them difficult for retail investors to understand. Based on research it has conducted, NL mentioned, that due to the reasons mentioned above neither professional nor retail investors read the summaries of either prospectuses or that of the individual issuances in case of a base prospectus.
227. A number of comments were presented in relation to more specific comments on sections or elements. SI responded that section 'C' should have a separate part for selling price of shares besides indicating their nominal value. SE questioned the role of Section 'E' in case a prospectus is drawn up for listing purposes only. BE indicated that there are cases when information, which is deemed to be important, cannot be matched with the relevant element and has to be placed within a different element. Moreover, some NCAs pointed out interpretation issues relating to elements C.4 and C.10 (PT); elements B.4.b, B.7 and B.8 (CY); and elements B.5., B.14. & B.16 (DE). Two NCAs (DE, IT) indicated difficulties due to the situation that Annex XXII does not contain any schedules for summaries related to proportionate disclosure prospectuses.
228. As to the summary of base prospectuses several drafting difficulties concerning comparison of securities were identified by NCAs (IE, IT, PT) such as drafting a summary for several products with application of different annexes (e.g. combination of plain vanilla debt securities/derivatives), presentation in the summary of the different pay-out schemes for more than one product as the presentation requirements for information on the different securities does not support comparison. SK considered the summary structure to be too strict and that more flexibility would be needed.

## **Detected non-compliances by issuers when submitting drafts**

229. Nine NCAs (AT, BE, DE, DK, IE, LU, NL PT, RO) also set out examples of issuers' non-compliance with the new requirements when submitting drafts. The most common errors detected are the following: elements of the summary contain information that is out of scope; headings do not reflect the content of the element; use of cross references; omission of otherwise applicable information; limits on length not taken into account; inaccurate presentation of

financial information; information on several issues not disclosed separately, but in a summarized way, so that the completeness requirement is not met; and omission of the indication 'non-applicable' or the explanation to be attached to it.

#### **4.12 National guidance published by NCAs**

230. The following paragraphs summarise responses to question E.12 whether NCAs have published any national guidance in relation to the prospectus regime. The aim of the question was to identify any guidance that an NCA has published in addition to guidance set out by ESMA. Therefore, comments referring to references or links to ESMA guidance have not been included below.

231. 19 NCAs (AT, BE, BG, DE, DK, ES, FI, FR, HU, IE, IS, IT, LU, MT, NL, NO, PL, SE, UK) have published national guidance in relation to their prospectus regimes. Guidance is provided in different formats, such as circulars, communications, frequently asked questions, guidance notes, handbooks, information on websites and positions. It may be binding or non-binding. Guidance is being provided on a multitude of different procedural and technical topics ranging from the review and approval processes to technical issues such as pro-forma financial information, profit estimates, complex financial history. The other twelve NCAs (CZ, CY, EE, EL, LV, HR, LI, LT, PT, RO, SI, SK) do not publish any national guidance.

#### **4.13 Further comments concerning scrutiny and approval of prospectuses**

232. NCAs were invited in question E.13 to raise issues that they believe had not been covered by the questionnaire but needed attention. 28 NCAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK) did not provide any further comments on the scrutiny and approval of prospectus.

233. HR reported issues related to collecting signatures of persons responsible for the prospectuses which often cause delays in submitting amendments to a prospectus.

234. DE, HR and PL pointed out difficulties for issuers to understand the prospectus regime due to the increasing level of legislative changes and additions and the increasing number of pieces of Level 3 guidance (Q&As and ESMA recommendations) which make it difficult to keep track of the frequent legislative changes.

235. FR also noted that the description of the most significant risk factors is an important issue and FR requests the issuer to provide precise information about its financial situation in case of distressed issuers where a working capital statement is not required.

#### **4.14 Withdrawal of prospectuses**

236. The paragraphs below summarise responses to question E.14 where NCAs have provided information about the number of and reasons for withdrawal of prospectuses during the approval process. Situations concern the issuer's voluntary stop to the process.

**Table 6**

The 22 NCAs below reported specific withdrawal numbers:

	equity	non-eq-uity	base	Total
AT	3	3		6
BG	3	1		4
CY	1			1
CZ	2			2
DE				61
DK				3
EL	1			1
ES	5	1	5	11
FI	5	1		6
FR				20*see para 230 below
HR				1
IE	4	*no figure available for non-equity		4
IT	9	20		29
LU	5	36	5	46
MT				1
NL				14
NO	6	6		12
PL				12
PT	1	1	1	3
RO	1			1
SE	10	1		11
UK	9	*19 other	*19 other	28

Eight NCAs (BE, EE, HU, SI, LI, LT, LV, SK) reported “0” withdrawals for the period under review.

237. Two NCAs (IE, FR) reported that they were not in a position to give a specific number of withdrawals. IE could not provide a specific figure on withdrawal for non-equity withdrawals as issuers may not necessarily inform them but a transaction simply does not progress or is put on hold. FR reports that while they do not have a specific database registering such information, around 20 prospectuses, mostly IPOs, are withdrawn or postponed each year.

238. Two NCAs (LU, NO) stated that they may cancel / ask the issuer to withdraw from the review and approval process where there is insufficient progress. DE noted that the process

may stop when there is no activity on the side of the issuer during four weeks. PL mentioned that it is possible for the issuer to put a prospectus on hold for up to three years without it constituting an actual withdrawal.

239. Several NCAs pointed out that it is not a legislative requirement for issuers to state the reason for withdrawal and reasons are not always communicated to NCAs by issuers. However, issuers may explain on a voluntary basis why they withdraw a particular transaction. Reasons for withdrawal are various and include non-compliance with the PD / PR requirements, national legislation, listing and admission to trading requirements or banking laws. Withdrawals may also be made due to change in market conditions or investor demand. Furthermore, it may be due to a change of mind of the issuer with regard to admission to trading on regulated markets or the preferred route of seeking finance. Finally, references were made to political instability (in particular to the situation in the Ukraine), availability of PD exemptions and language requirements.

#### **4.15 Refusal of approval by the NCA**

240. The following paragraphs summarise responses to question E.15. NCAs commented on the number of refusals they have made during the period under review and the most common reasons for the refusal(s). For clarification, “refusal” is considered to be a formal decision by the NCA that can be appealed. In this context a decision by the NCA to close a file regardless of the reason is not considered to be a formal refusal. Similarly, a choice to withdraw from the approval process is not considered to be a refusal of approval. In order to truly set out comments provided by NCAs, specific comments on closing of files or withdrawals have been included.

241. Half of the NCAs (AT, BE, CY, DK, EE, ES, FI, EL, IS, LV, HR, LI, LT, PL, SE, SK) stated that they did not refuse approval of any prospectuses in the period under review.

- BG refused the approval of nine prospectuses but did not provide further comments about the reasons.
- CZ refused the approval of two non-equity prospectuses due to collision with legal regulations of banking business.
- DE refused the approval of 12 prospectuses, mostly due to the failure of issuers to revert to the NCA within the requested timeframes.
- FR refused the approval of four prospectuses whereby three were due to non-compliance with regulatory requirements and one related to a prospectus for retail investors due to complexity and risk. In addition, FR pointed out that the Authority has delayed approval where financial statements contained qualifications which affected the quality of the information until the publication of new financial statements.
- HU refused the approval of three prospectuses due to non-compliance with regulatory requirements.

- IT reported one formal refusal of the approval of a prospectus, due to failure to respond to NCA's request for clarification.
- MT refused the approval of one prospectus due to non-compliance with regulatory requirements.
- NL refused the approval of 16 prospectuses due to non-compliance with prospectus law (requirements) or failure to revert within the requested timeframes.
- PT refused the approval of one prospectus due to non-compliance with legal and regulatory requirements.
- RO refused the approval of one prospectus due to non-compliance with national legislation.
- SI refused the approval of one prospectus due to misleading information and inability to respond to all of the NCA's information requests and clarifications.
- UK reported the refusal of one prospectus due to non-compliance with regulatory requirements.
- DE, IT and NL also pointed out that issuers may prefer to withdraw prospectuses themselves ahead of a potential refusal by the NCA.

242. Some NCAs (ES, FR, IE, NO) commented that rather than refusing the approval of a prospectus they request more detailed or additional information to be included and/or amendments to be made to the prospectus to ensure compliance with prospectus law or do not allow the specific issuance to retail investors (ES, FR). LU reported that where comments remain outstanding, they closed files (35 during 2013 and 2014).



## **Annex I: List of questions from the questionnaire on the Prospectus Approval Process**

### **Market structure in the Member State**

1. **Question:** Please provide an overview of the number of prospectuses approved and the number of prospectuses passported by your NCA from January 2013 to December 2014 according to different types of transaction including as a minimum the number of:
  - a. equity Initial Public Offering (IPO) (when the issuer applies for the first time for a public offer and simultaneously for the first time for an admission to trading on an EU regulated market) (include box for two options; total and passported)
  - b. other equity prospectuses (other than equity IPOs in a.)
  - c. non-equity prospectuses (other than base prospectuses (include box for two options; total and passported)
  - d. base prospectuses (include box for two options; total and passported)
  - e. [General comment box market structure:] Please provide any other information describing your market structure, especially on e.g. preference for or dominance of any particular product(s)/securities, typical investor audience(s) such as retail, wholesale or mixed).
2. **Question:** Is there any national legislation, historical circumstance(s) and/or other factors that have had or may have in future an effect on either issuances or other features of market structure in your country? (Examples could be preferential tax treatment, targeted and/or commercial strategies from your NCA, government or stock exchanges, political motivators, issuer scandals, lawsuits, geographical location, natural resources, etc.) If 'Yes', please indicate the relevant factor and explain the effect it caused/causes.

### **Organisational set-up of the NCA/Decision making process with regard to prospectuses**

3. **Question:** In your NCA, please indicate the total number of staff dealing with the PD (prospectus group<sup>10</sup>) in a. below and split the total number in accordance with the relevant tasks being dealt with by use of b. to d.:
  - a. number of total staff on a full time equivalent (FTE)<sup>11</sup> basis in the prospectus group
  - b. number of FTE staff performing scrutiny and approval of prospectuses (readers)

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<sup>10</sup> "Prospectus group" is meant to cover any organisational form/structure in an NCA dealing with the PD whether it is set up as a specific Unit, team, etc. or included in a Unit with a broader scope comprising task outside the PD.

<sup>11</sup> One Full Time Equivalent (FTE) is equivalent to one employee working full-time in accordance with contractual obligations in your NCA (e.g. anywhere between 35 to 40 hours per week). For example, (based on a 40 hour working hour week) three employees working respectively 50 hours, 40 hours and 10 hours amount to 100 hours per week. The FTE is 2.5 (100/40).

- c. number of FTE staff dealing with other PD tasks outside the approval process (e.g. policy, enforcement/sanctions, advertisements, etc.) Please specify FTE and type of task(s).
  - d. number of FTE staff dealing with tasks outside the PD (market abuse, transparency, financial reporting, etc.) Please specify FTE and type of task(s).
  - e. whether the same persons dealing with tasks under b) also deal with tasks under c) and/or d). (comment box)
4. **Question:** Please indicate how many years of prospectus-related experience the readers of your prospectus group have (e.g. work as reader/member of the prospectus group in the NCA, work in the private sector drafting prospectuses or advising on prospectuses e.g. from a legal or audit perspective, etc.)?
- a. number of readers with up to 3 years
  - b. number of readers with more than 3 years
5. **Question:** What is the general workflow in your NCA regarding prospectuses starting from the first contact with the prospectus or issuer/its advisors until the final/formal approval of the prospectus? Please include information on minimum the following:
- a. Does your NCA engage in consultation prior to first submission? Please describe the situations and process applied. (comment box)
  - b. Who decides on and what is the basis (criteria) for the allocation of prospectus documents to be reviewed between your readers? (comment box)
  - c. Are readers specialised (e.g. a dedicated team is set up or specific knowledge of reader(s) results in allocation of task) in dealing with certain types of prospectuses?
    - i. No
    - ii. Yes, according to type of issuer – please indicate which (e.g. extraction industry, bio-tech, etc.) (comment box)
    - iii. Yes, according to type of security – please indicate which (e.g. equity, debt, derivatives, etc.) (comment box)
    - iv. Yes, according to sections of the prospectus. Please indicate which section(s)
    - v. Yes, other (comment box) (comment box)
  - d. How are issues emerging from scrutiny during the approval process resolved (e.g. dealt with by the prospectus reader, consultation with colleagues, escalation process, etc.). Please describe the methodology (comment box)
  - e. What process does your NCA apply when assessing a request for omission of information in accordance with the PD article 8(2)? Please describe the methodology. (comment box)
  - f. Who is responsible with respect to the decision making process (approval) with regard to prospectuses (e.g. individual person/group of persons/committee/board)? (comment box)

- g. Is there any involvement of units/departments other than the prospectus approval unit during the approval process? If so, please clarify the nature of this involvement. (comment box)
- h. Under what circumstances does your authority seek cross-border cooperation for prospectus purposes within the EU and EEA with competent authorities of other Member States, see PD Article 22(2)?
- i. Other issues related to the organisational setup or workflow not covered by the above. (comment box)

### **C. Actual prospectus approval/review process/timing**

6. **Question: With a view to updating the peer review on the ESMA Good Practices in the approval process (see ESMA/2012/300) please indicate whether your NCA has made any material changes that would affect your responses provided to that peer review? Please indicate below and if yes, please provide updates to relevant questions/sections. (No change/Yes and comment box)**

#### **Similar comments**

- A1. Do you have a database?
- A2. Do you update the database?
- A3. Are there controls in place in relation to updating the database?
- A4. Do you have an internal working instruction containing considerations for prospectus scrutiny and instructions for the practice of scrutinizing prospectus documents?
- A5. Is the internal working instruction subject to periodic review?
- A6. Do you have regular meetings at which information is exchanged among readers about new decisions of principle concerning scrutinizing prospectuses?
- A7. Do you exchange information in written format among readers (e.g. minutes, emails) about new decisions of principle concerning scrutinizing prospectuses?
- A8. Are comments prepared by the reader reviewed by another person with a view of ensuring that similar comments are raised in similar prospectuses?

#### **Four eyes principle**

- B1. Do you have a four eyes principle approach in place?
- B2. Do you always apply the four eyes principle for the whole prospectus document?
- B3. If no to question 2, do you have criteria in place to decide when to apply the four eyes principle?

#### **Consistency of the Prospectus Document – please indicate whether:**

- D1. The reader considers the consistency of the information incorporated by reference with the other information given in the prospectus;
- D2. The reader checks or asks the issuer, the offeror or the person asking for admission to trading on a regulated market whether the documents to which the reference is made have been approved by the Authority or filed in accordance with Art 11(1) of the Prospectus Directive;
- D3. Where information incorporated in a prospectus makes reference to only parts of a document, the reader checks that it is stated in the prospectus that the non-incorporated parts are either not relevant for the investor or covered elsewhere in the prospectus in accordance with Art 28(4) of the PD Regulation;
- D4. The reader checks whether all risks mentioned in other parts of the prospectus are described in the risk factor section;

D5. Where risks mentioned in other parts of the prospectus are not described in the risk factor section, the reader makes sure that the persons responsible for the prospectus consider this risk factor as being non material.

### **Comprehensibility**

E1. Does the reader request that the technical/specialist words used in a prospectus document are clear, by requiring definitions to be provided either throughout the prospectus document or via a glossary if necessary from the perspective of the investor?

E2. Does the reader request that mathematical formulas included in the prospectus are clear, by requiring that a description of the mathematical formula is given in the prospectus if necessary?

E3. Does the reader request that the prospectus contains a description of derivative securities and a clear explanation is given to help investors to understand how the value of the investment is affected by the value of the underlying instrument(s)?

### **Structure of the Prospectus Document**

F1. Does the reader check that the information related to different securities is structured so as to be easily understood?

F2. Does the reader check that duplication does not impair clarity and comprehensiveness of the prospectus document?

F3. Does the reader check that the prospectus follows the format requirements of articles 25 and 26 of the Regulation?

F4. Does the reader check that the table of content is sufficiently precise and detailed in order to allow investors to find easily the information that they are looking for?

7. **Question: Does your NCA assess the completeness of a prospectus aside from checking inclusion of the information provided by the annex items of the Prospectus Regulation, respective ESMA update of the CESR recommendations and ESMA Questions & Answers? If yes, please describe how this is performed.**
8. **Question: Please indicate the average timing for a prospectus approval process in your NCA by specifying information on:**

- a. Average time from the first submission of the prospectus until the approval<sup>12</sup>
  - i. For equity IPOs<sup>13</sup>:
    - 1-20 working days – [ ] % of prospectuses
    - 21-40 working days – [ ] % of prospectuses
    - 41-60 working days – [ ] % of prospectuses

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<sup>12</sup> Information relating to questions 19 a. to b. should ideally be based on the full period under review but can be provided on basis of representative samples if the calculation of more precise numbers is impracticable due to the number of prospectuses in the period under review.

<sup>13</sup> A different interval of 20 days was elected here compared to the other types of prospectuses taking into account the legal deadline of 20 days in the PD.

More than 60 working days – [ ] % of prospectuses

ii. For other equity prospectuses:

1-10 working days – [ ] % of prospectuses

11-20 working days – [ ] % of prospectuses

21-30 working days – [ ] % of prospectuses

31-40 working days – [ ] % of prospectuses

41-50 working days – [ ] % of prospectuses

51-60 working days – [ ] % of prospectuses

More than 60 working days – [ ] % of prospectuses

iii. For non-equity prospectuses:

1-10 working days – [ ] % of prospectuses

11-20 working days – [ ] % of prospectuses

21-30 working days – [ ] % of prospectuses

31-40 working days – [ ] % of prospectuses

41-50 working days – [ ] % of prospectuses

51-60 working days – [ ] % of prospectuses

More than 60 working days – [ ] % of prospectuses

iv. For base prospectuses in 2013<sup>14</sup>:

1-10 working days – [ ] % of prospectuses

11-20 working days – [ ] % of prospectuses

21-30 working days – [ ] % of prospectuses

31-40 working days – [ ] % of prospectuses

41-50 working days – [ ] % of prospectuses

51-60 working days – [ ] % of prospectuses

More than 60 working days – [ ] % of prospectuses

v. For base prospectuses in 2014:

1-10 working days – [ ] % of prospectuses

11-20 working days – [ ] % of prospectuses

21-30 working days – [ ] % of prospectuses

31-40 working days – [ ] % of prospectuses

41-50 working days – [ ] % of prospectuses

51-60 working days – [ ] % of prospectuses

More than 60 working days – [ ] % of prospectuses

b. Average number of drafts received in total during a process<sup>15</sup>

i. For equity IPOs

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<sup>14</sup> Please provide numbers for both 2013 and 2014 for base prospectuses in order to assess whether the new regime of base prospectuses has resulted in changes to the timing of the approval process.

<sup>15</sup> See footnote no 8 above.

- ii. For other equity prospectuses
  - iii. For non-equity prospectuses
  - iv. For base prospectuses
- c. Circumstances that may delay or speed up the turnaround between two specific drafts (No/Yes + comment box for each below)
- i. Cause of delays
    - 1. Complexity of issuer's circumstances
    - 2. Complexity of the security/product
    - 3. Issuer's response time to comments from the NCA
    - 4. Quality of issuer's responses
    - 5. NCA's response time when providing comments, e.g. always using the maximum 10 days allowed.
    - 6. Issues emerging with the financial information
    - 7. Cooperation with issuer's advisors (legal, financial, underwriters, etc.)
    - 8. Other elements that would influence a. or b., please specify (comment box)
  - ii. Speed up the turnaround
    - 1. Engaging in consultation with the NCA prior to submission of first draft of the prospectus
    - 2. Issuer's response time to comments from the NCA
    - 3. Cooperation with issuer's advisors (legal, financial, underwriters, etc.)
    - 4. NCA's response time when providing comments
    - 5. Use of tripartite prospectuses
    - 6. Other elements that would influence a. or b., please specify (comment box)
- d. When reverting to the issuers with comments has your NCA any timeframes that are self-imposed or arising from national law requirements in respect of the review process? If yes, please specify such timeframes
- e. Has your NCA any timeframes that are self-imposed or arising from national law requirements in respect of the issuer's window to come back with comments and a new draft? If yes, please specify such timeframes

**9. Question: What does you NCA do with regard to assessing comprehensibility, consistency and completeness in a base prospectus? Please provide descriptions including information on:**

- a. How do you ensure that the ABC categories of information are disclosed within the base prospectus and the Form of final terms in accordance with Annex XX and Article 2a of the Prospectus Regulation?

- i. Line by line analysis of the Form of Final Terms
  - ii. Checking all references to Final Terms / Form of Final Terms throughout the Base Prospectus
  - iii. Other, please specify. (comment box)
- b. Do you check that category B information that has been included in the form of final terms corresponds to the respective options that have also been included in the base prospectus?
- c. What concrete practical issues have you encountered that would have impeded comprehensibility (e.g. number of products, structured products, etc.)?
- d. Do you request that the prospectus contains a certain kind of description of the securities, including clarity on mathematical formulas if necessary and a clear explanation is given to help the investors understand the value of the investment?

**10. Question: How does your NCA perform its scrutiny on summaries? (comment box)**

**11. Question: What practical issues have you encountered with regard to the new format of the summary as set out in Annex 22 of the Prospectus Regulation? (comment box)**

**12. Question: Does your NCA publish any national guidance in relation to the Prospectus regime? If yes, please indicate what the type of guidance is and its subject matter. (comment box)**

**13. Question: Is there anything further you wish to comment on concerning the scrutiny and approval of prospectuses that has not been covered by the questions above? (comment box)**

**14. Question: How many prospectuses were withdrawn during the approval process, meaning that the issuer voluntarily stopped the approval process? Please provide the types of prospectuses and examples of reasons in cases where they are available to you.**

**15. Question: How many prospectuses were refused to be approved by your authority with indication of the most common reasons for refusal?**



## Annex II: Overview of prospectuses dealt with in Member States

The below table shows how many prospectuses were approved, withdrawn and refused to approve during the period under review from January 2013 to December 2014 included.

A	B	C	D	E	F	G	H	I	J	K	L
NC A	IPO total	Other equity total	TOTAL Equity (B+C)	Non equity total	Base prospectus TOTAL	TOTAL non-equity+ base (E+F)	Withdrawn <sup>16</sup>	Refusal <sup>17</sup>	TOTAL equity, debt, refusal, withdrawn (D+G+H+I)	FTE readers	Average total prospectuses per reader over 2 years (J:K)
AT	2	78	80	24	83	107	6		193	6,2	31,1
BE	4	44	48	32	22	54	0		102	2,7	37,8
BG	5	25	30	21	0	21	4	9	64	9	7,1
CY	0	4	4	0	0	0	1		5	1,5	3,3
CZ	1	2	3	18	23	41	2	2	48	1,4	34,3
DE	21	120	141	119	521	640	61	12	854	29,9	28,6
DK	2	15	17	19	5	24	3		44	6	7,3
EE	0	2	2	0	0	0	0		2	2	1
EL	1	33	34	2	0	2	1		37	3	12,3
ES	6	43	49	63	71	134	11		194	15	12,9
FI	6	38	44	64	15	79	6		129	2,5	51,6
FR	32	192	224	269	158	427	20		671	23	29,2 <sup>18</sup>
HR	0	11	11	4	0	4	1		16	3	5,3
HU	2	3	5	74	28	102	0	3	110	3	36,7
IE	1	11	12	822	440	1262	4		1278	10,4	122,9
IS	5	0	5	30	10	40	0		45	2,5	18
IT	15	63	78	10	417	427	29	1	535	20	26,8
LI	0	0	0	0	6	6	0		6	3	2
LT	1	3	4	0	2	2	0		6	0,5	12
LU	6	15	21	785	656	1441	46		1508	16	94,3
LV	0	1	1	0	1	1	0	0	2	3	0,7
MT	2	2	4	18	3	21	1	1	27	3,37	8
NL	14	59	73	71	100	171	14	16	274	11	24,9

<sup>16</sup> „Column H shall cover all cases in which a request for approval of a prospectus was withdrawn by the issuer or the person who submitted the prospectus for approval. This includes any situation in which such person indicates after the first submission of a draft prospectus to the NCA that it does not wish to continue with the prospectus approval process but to stop it (and not only to suspend it for some time).

<sup>17</sup> NCAs with blank fields have no process in place to register withdrawals

<sup>18</sup> Taking into account also 125 prospectuses approved according to a national prospectus regime.

NO	35	73	108	212	3	215	12		335	9	37,2
PL	30	32	62	3	11	14	12		88	8,5	10,4
PT	3	10	13	32	11	43	3	1	60	5	12
RO	4	36	40	8	3	11	1	1	53	2	26,5
SE	14	177	191	110	119	229	11		431	5,7	75,6
SI	0	13	13	7	0	7	0	1	21	2	10,5
SK	1	5	6	96	4	100	0		106	1,6	66,3
UK	118	247	365	152	408	560	28	1	954	26	36,7

<sup>1</sup> Column H shall cover all cases in which a request for approval of a prospectus was withdrawn by the issuer or the person who submitted the prospectus for approval. This includes any situation in which such person indicates after the first submission of a draft prospectus to the NCA that it does not wish to continue with the prospectus approval process but to stop it (and not only to suspend it for some time).

<sup>2</sup> NCAs with blank fields have no process in place to register withdrawals

<sup>3</sup> Taking into account also 125 prospectuses approved according to a national prospectus regime.

### **Annex III: General observations regarding market structure in the Member States**

<b>AT</b>	From prospectus approval mainly debt securities	In Austria we observe that investors tend to savings instead of investing in equity. Therefore investment in more risk adverse non-equity securities are more likely		Equity transactions recently went up because of a better economic environment and banks' equity requirements.
<b>BE</b>	Mixed	-	-	
<b>BG</b>	Shares	Mixed		
<b>CY</b>	Preference for equity securities			Number of submitted prospectuses decreased because of the financial crisis in Cyprus in 2013.
<b>CZ</b>	Mainly bonds	Wholesale		
<b>DE</b>	Dominance of structured products			Approximately 4.5m final terms in the period
<b>DK</b>	Usually more equity securities, but now a predominance of non-equity			
<b>EE</b>	Only equity securities			
<b>EL</b>	Dominance of equity	Mixed		
<b>ES</b>	Mixed	Mixed, more and more wholesale (the traditional strong participation of retail investors in the primary market has dramatically decreased following, among other factors, the financial crisis)	financial institutions	Big fall in issuance - following the financial crisis, there are less financial institutions in Spain and the remaining banks are generally reducing their balance sheets due to new solvency rules.
<b>FI</b>	Mixed	Mixed		
<b>FR</b>	Equity	Mixed		There is a need to pay more attention to the small, mid-sized and middle tier issuers in terms of advice and technical assistance to enhance their financing.
	Bonds	Wholesale		
<b>HR</b>	Dominance of equity	Wholesale		Some offers used one of the exemption from the obligation to publish an offering prospectus according to Article 3 of the Prospectus Directive.

<b>HU</b>	Bonds	Mainly financial companies and the non-residents		Financing is historically served more by the credit sector, rather than by the capital market. Liquidity has been decreasing for a while. Companies with adequate size usually tend to finance themselves on other bond markets (typically in Luxembourg). According to the Civil Code, limited companies cannot be founded publicly and a public limited company cannot exist without being listed on the regulated market. This will clearly affect the capital market in Hungary (might increase the number of equity listings and diminish certain equity IPOs), while rearranging the company structure as well.
<b>IE</b>	Dominance of non-equity securities. Most of them using SPVs.		75% of equity prospectuses are by REITs	Tax advantage by using SPVs. Recent REIT legislation fosters equity securities. In addition to the above, Ireland is a common law jurisdiction within the EU and English-speaking. The CBI gives entities, which enter into an agreement with it, assurances in relation to short turnaround times for documents reviewed under the Prospectus Directive. The counter-parties to these agreements are listing agents/sponsors.
<b>IS</b>	Dominance of non-equity. Asset backed securities are very popular at the moment.	Pension funds		In Iceland there are capital controls in place which have an impact on the market. This has led to domestic demand being higher than it would be without the controls.
<b>IT</b>	Structured debt securities	Retail	Banks	
<b>LI</b>	Dominance of bonds	Mixed		No stock exchange or any other form of regulated or supervised market
<b>LU</b>	Predominance of non-equity (international bonds)			Low liquidity compared to the high number of listed securities. 26 251 bonds listed on the exchange as of 2014 with notably 18% are outside of the PD and are listed on the Euro MTF operated by the Luxembourg Stock Exchange.

<b>LT</b>	Dominance of shares	Wholesale		Independence 1990. Privatisations. Lots of individual shareholders. Volatility and crises. People became more risk adverse. As a result stock market is driven by non-resident investments.
<b>LV</b>	Dominance of bonds			
<b>MT</b>	Dominance of bonds	-	-	
<b>NL</b>	Mixed	Mixed		It appears that there have been fewer IPOs in the period of 2009-2013 due to market uncertainty.
<b>NO</b>	Mixed	Wholesale (including the government). Particularly limited retail involvement in bonds	Energy, shipping and sea-food sector	
<b>PL</b>	Dominance of shares	Mixed, strong position of retail investors		
<b>PT</b>	Majority of debt issuances	Mixed		
<b>RO</b>	Dominance of equity			Projects are carried out to stimulate stock market.
<b>SE</b>	Predominance of non-equity.	Wholesale (domination of large institutions: banks, pension funds, large companies)		Integrated with other Nordic countries
	Equity	However, active retail clients.		No transaction costs in the stock market for small investors combined with a high degree of financial and technical innovation. Many products are passported into Sweden by multinational banks. This could explain the high proportion of non-equity prospectuses.
<b>SI</b>	Mixed	More and more wholesale		The Slovenian financial sector is a traditionally bank-oriented sector. After numerous privatizations in the 90s, many individuals became shareholders. The number of shareholders then decreased due to takeovers, mergers or bankruptcies.
<b>SK</b>	Predominance of non-equity (mainly mortgage bonds)		Banks	Banks play dominant role. Only very small number of Slovak companies are financed directly through the capital market.

UK	Mixed		<p>A lot of companies based in the mineral and financial services sectors list their equity securities in the UK which we assume is probably based on the likelihood of achieving a higher valuation similar to the majority of tech companies preferring to list in the us.</p>	<p>The listing regime is the factor that has had most effect on type of issuance and market structure within the UK. European law allows NCAs to retain a domestic listing regime on top of the core of EU regulation and in the UK this is set out in the FCA Listing Rules. The UK listing regime is organised around the Official List, a register of approximately 20,000 securities issued by around 2,400 issuers. 'Premium listing' is only open to equity issuers (both UK and overseas). It has additional specific admission criteria, a requirement to appoint a sponsor to conduct due diligence, and obligations to seek shareholder approval for certain transactions. These obligations are over and above the minimum level of regulation we are required to impose by EU law. The UK listing regime, and in particular the premium listing regime, enjoys strong support, particularly from buy-side institutional investors (for example pension funds, insurance companies, fund managers) in the UK.</p>
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## **Annex IV: Number of staff divided according to tasks and years of experience**

The section and numbers of the questionnaire are included for ease of reference<sup>19</sup>.

<b>C. Please indicate the acronym of your NCA</b>	<b>D.3.a. Number of total staff on a full time equivalent (FTE) basis in the prospectus group</b>	<b>D.3.b. Number of FTE staff performing scrutiny and approval of prospectuses (readers)</b>	<b>D.3.c. Number of FTE staff dealing with other PD tasks outside the approval process (e.g. policy, enforcement/sanctions, advertisements, etc.)</b>	<b>D.3.d. Number of FTE staff dealing with tasks outside the PD (market abuse, transparency, financial reporting, etc.)</b>	<b>D.4.a. Number of readers with up to 3 years</b>	<b>D.4.b. Number of readers with more than 3 years</b>
AT	8.3	6.2	1.7	0.4	2	7
BE	8.8	2.7	3.6	2.5	3	9
BG	11	9	2	20	3	6
CY	6	1.5	0.7	3.7	0	1.5
CZ	6.1	1.4	1.6	3.1	2	2
DE	37.6	29.9	7.7	0	13	34
DK	6	6	6	5	1	5
EE	2	2	5	5	0	5
EL	4	3	1	0	2	2
ES	19	15	19	17	0	15
FI	4	2.5	1	0.5	1	3
FR	59	23	23	13	1	22
HU	3.4	2.8	0.6	0	2	4
HR	3	3	3	6	0	3
IE	15.4	10.4	5	0	4	6.4
IS	12	3	3	6	1	2
IT	30	20	5.5	4.5	3	18
LI	4	3	1	5	1	3
LT	8	0.5	0.1	8	0	4
LU	25.2	16	3	0	6	10
LV	3	1	0.5	0.5	0	3
MT	6.8	3.3	1	0.6	3	3
NL	14	11	3.3	2	5	6
NO	6	9	2	10	3	3
PT	19	5	5	9	11	8
RO	12	2	14	17	5	7
SE	8.7	5.7	3	0.5	7	0
SI	6	2	0	4	0	2
SK	5.8	1.6	1.4	2.8	1	2
UK	72	26	1	28	14	12

<sup>19</sup> Please note that for some NCAs the numbers do not add up to the total staff, which is due to the divergent organizational structures, allocation of tasks and different compositions of the prospectus group. Furthermore, it should be noted that some NCAs provided their responses regarding the experience of readers on basis of the real persons rather than on a FTE basis, so that the numbers may not add up to the respective indicated total number of FTE readers.

**Annex V: Average approval times and number of drafts during an approval process**

	E.8.a.i. For equity IPOs				
NCA	1-20 Working days (% of all prospectuses approved)	21-40 Working days (% of all prospectuses approved)	41-60 Working days (% of all prospectuses approved)	More than 60 working days (% of all prospectuses approved)	Average No. of drafts
AT	0	0	100	0	5.5
BE	25	75	0	0	5-6
BG	0	20	0	80	2
CY	0	0	100	0	6.5
CZ	0	100	0	0	5
DE	0	27.7	36.1	36	4.5
DK	0	0	100	0	4.5
EE	0	100	0	0	5
EL	0	0	100	0	4
ES	0	33.3	66.6	0	5.5
FI	67	33	0	0	9
FR	83	7	0	0	5
HU	0	0	0	100	3
HR	0	0	0	0	N/A
IE	0	0	100	0	5
IS	0	40	40	20	6.4
IT	30	40	30	0	8
LI	0	0	0	0	0
LT	0	100	0	0	4
LU	0	16.6	50	33.3	5.8
LV	0	0	0	0	0
MT	0	50	50	0	7
NL	0	14	36	50	5.5
NO	16	71	11	2	7
PL	3.5	0	0	96.5	4
PT	0	67	33	0	8
RO	100	0	0	0	5
SE	0	75	25	0	5
SI	0	0	0	0	0
SK	0	100	0	0	3.4
UK	0	10	26	64	7.3



E.8.a.ii. For other equity prospectuses								
NCA	1-10 Working days (% of all approved)	11-20 Working days (% of all approved )	21-30 Working days (% of all approved )	31-40 Working days (% of all approved )	41-50 Working days (% of all approved)	51-60 Working days (% of all approved )	More than 60 working days	Average no. Of drafts
AT	6.9	4.4	9.3	9.4	19.3	12.5	37.9	3.4
BE	11	33	13	16	7	9	11	4-5
BG	0	0	0	12	0	24	64	3
CY	0	25	25	50	0	0	0	6
CZ	0	0	0	0	50	0	50	4.5
DE	1.6	4	16.8	25.8	23.7	5.6	21.9	3.4
DK	0	13.3	13.3	13.	20	0	40	5.5
EE	0	0	100	0	0	0	0	4
EL	21	13	24	21	3	6	12	4
ES	16	23.2	11.6	16.2	11.6	11.6	9.3	5.4
FI	65	26	8	0	0	0	0	6
FR	50	34	12	2	1	1	0	2 or 3
HU	0	0	0	33.3	0	0	66.6	3
HR	0	0	18	27	9	9	36	5
IS	0	0	0	0	0	0	0	0
IT	36	19	17	14	5	2	7	7
LI	0	0	0	0	0	0	0	0
LT	0	70	30	0	0	0	0	3
LU	6.6	40	20	6.6	13.3	6.6	0.6	4.9
LV	0	100	0	0	0	0	0	1
MT	0	0	0	50	50	0	0	6
NL	5	15	19	21	7	5	28	5.2
NO	6	45	31	11	6	1	0	6
PL	0	0	3.1	0	9.3	6.2	81.2	3
PT	0	0	33	34	33	0	0	8
RO	100	0	0	0	0	0	0	2
SE	10	55	25	8	2	0	0	4
SI	8	69	8	15	0	0	0	3
SK	0	100	0	0	0	0	0	3.4
UK	0	8	24	17	17	9	25	5.5

E.8.a.iii For non-equity prospectuses								
NCA	1-10 Working days (% of all prospectuses approved)	11-20 Working days (% of all prospectuses approved)	21-30 Working days (% of all prospectuses approved)	31-40 Working days (% of all prospectuses approved)	41-50 Working days (% of all prospectuses approved)	51-60 Working days (% of all prospectuses approved)	More than 60 working days (% of all prospectuses approved)	Average no. Of drafts
AT	0	3.2	4.8	7.8	2.5	9.6	71.7	5.1
BE	26	20	23	3	19	3	6	4.5
BG	0	0	0	9.5	9.5	0	81	3
CY	0	50	50	0	0	0	0	3.5
CZ	0	11.1	11.1	33.3	27.8	0	16.7	5
DE	0.7	9.1	21.2	33.2	7.3	6.7	21.2	2.9
DK	0	47.4	15.7	5.3	215	5.2	5.2	3.5
EE	0	0	100	0	0	0	0	4
EL	0	0	0	0	50	0	50	4.5
ES	6.3	25.4	41.2	20.6	3.1	1.6	1.6	4.3
FI	51	44	5	0	0	0	0	4
FR	55	30	11	4	0	0	0	2
HU	2.7	6.7	25.6	24.3	318	6.7	2.7	2.3
HR	0	0	25	0	25	50	0	5
IE	45	35.1	3.5	5.5	3.5	3.8	3.5	3.3
IS	0	17	26	0	17	10	30	6.6
IT	17	17	50	0	0	0	16	5
LI	0	0	0	0	0	0	0	0
LT	0	0	0	0	0	0	0	0
LU	40.8	29.7	12.5	7.6	3.3	1.5	4.4	4.1
LV	0	0	0	0	0	0	0	0
MT	6.7	0	66.7	0	16.6	0	0	5
NL	20	30	22	7	6	4	11	4
NO	27	36	18	10	3	2	4	4
PL	0	0	0	100	0	0	0	3
PT	0	33	33	34	0	0	0	5
RO	100	0	0	0	0	0	0	2
SE	20	60	15	5	0	0	0	3
SI	29	29	42	0	0	0	0	2
SK	0	100	0	0	0	0	0	2
UK	2	9	17	21	13	14	24	5.4

E.8.a.iv. For base prospectuses in 2013								
NCA	1-10 working days (% of all approved)	11-20 working days (% of all approved)	21-30 working days (% of all approved)	31-40 working days (% of all approved)	41-50 working days (% of all approved)	51-60 working days (% of all approved)	More than 60 working days (% of all approved)	Average No. of drafts (2013=2014)
AT	0.4	3.3	3.2	13.9	15.4	3.2	60.5	4.6
BE	0	17	17	17	25	8	16	4-5
BG	0	0	0	0	0	0	0	0
CY	0	0	0	0	0	0	0	N/A
CZ	0	38.5	23,1	7,7	0	7,7	23.1	4.8
DE	2.6	16.3	27.7	19	13.3	5.3	15.5	2,7
DK	0	0	100	0	0	0	0	5,5
EE	0	0	0	0	0	0	0	N/A
EL	0	0	0	0	0	0	0	0
ES	20	48.5	14.3	2.8	5.7	5.7	2.8	3.5
FI	83	17	0	0	0	0	0	5
FR	26	49	13	4	1	6	1	3
HU	0	36	14	15	21	7	7	2
HR	0	0	0	0	0	0	0	N/A
IE	17.3	47.8	13	8.7	4.3	0	8.7	4.1
IS	0	0	40	0	0	0	60	6.3
IT	1	6	45	37	7	4	0	5
LI	0	66	34	00	00	00	00	1 - 2
LT	0	100	0	0	0	0	0	3
LU	4.7	45.6	20.9	11	7.4	3.8	6.2	4.8
LV	0	100	0	0	0	0	0	2
MT	0	0	100	0	0	0	0	5
NL	8	27	27	10	10	6	12	4,48
NO	0	100	0	0	0	0	0	5
PL	0	0	33.3	66.6	0	0	0	3
PT	0	0	33	34	33	0	0	4
RO	50	50	0	0	0	0	0	1
SE	10	65	20	5	0	0	0	3
SI	0	0	0	0	0	0	0	0
SK	0	0	100	0	0	0	0	4
UK	0	8	25	24	12	3	27	5.5

E.8.a.v. For base prospectuses in 2014								
NCA	1-10 working days	11-20 working days	21-30 working days	31-40 working days	41-50 working days	51-60 working days	More than 60 working days	Average No. of drafts (2013=2014)
AT	1.1	3.9	10.7	27	20.9	11.3	24.8	4.5
BE	12	25	38	0	25	0	0	4 to 5
BG	0	0	0	0	0	0	0	0
CY	0	0	0	0	0	0	0	N/A
CZ	0	10	10	20	0	0	60	4.8
DE	2.7	15.1	27.1	19.3	12	10.8	12.7	2,7
DK	0	0	0	0	25	50	25	5.5
EE	0	0	0	0	0	0	0	N/A
EL	0	0	0	0	0	0	0	0
ES	2.7	33.3	33.3	5.5	11.1	2.7	11.1	3.5
FI	57	43	0	0	0	0	0	5
FR	37	41	12	5	3	3	0	3
HR	0	0	0	0	0	0	0	N/A
HU	0	21	29	22	7	0	21	2
IE	33.3	25	4.1	12.5	4.1	0	20.8	4.17
IS	0	80	0	20	0	0	0	6.3
IT	0	8	26	48	16	2	0	5
LI	0	33	66	0	0	0	0	1 to 2
LT	0	0	100	0	0	0	0	2
LU	5	50.6	27.8	6.2	3.4	1.2	5.6	4.7
LV	0	100	0	0	0	0	0	2
MT	0	0	0	0	0	100	0	5
NL	8	35	31	4	4	4	4	4.4
NO	0	50	0	0	0	0	50	5
P L	0	0	25	12.5	37.5	0	25	3
PT	0	0	0	33	34	33	0	4
RO	0	0	0	0	0	100	0	1
SE	5	70	20	5	0	0	0	3
SI	0	0	0	0	0	0	0	0
SK	0	0	100	0	0	0	0	4
UK	0	12	29	20	10	6	13	5.5

## **Annex VI: Mandate for a peer review on prospectus approval process**

### **Background**

1. Since the coming into force of the amended Prospectus Directive (the “PD”) in 2012, the focus of ESMA’s work in the prospectus area has largely been on the development of the single rulebook, including the provision of technical advice and the development of draft technical standards.
2. From a supervisory convergence perspective, it is crucial that national competent authorities approach similar situations and similar disclosure requirements in the same manner. Ensuring a level playing field as regards the scrutiny of information included in prospectuses reduces the risk of regulatory arbitrage and facilitates greater investor reliance on the disclosure contained therein. A consistent approach across National Competent Authorities (“NCAs”) is crucial for the success and effective use of the passporting mechanism.
3. The ESMA Work Programme 2015 sets out that the Review Panel should conduct a peer review<sup>20</sup> to assess the compliance with the PD. This Peer Review provides an opportunity to assess how the single rulebook is supervised, including the assessment of national practices and the methodologies employed by NCAs in their scrutiny of prospectus. The targeted review will also aim at identifying areas that could potentially benefit from greater supervisory convergence.
4. In the meantime,
  - ESMA is seeking input from stakeholders through a consultation paper on prospectus related issues under Omnibus II Directive,
  - ESMA’s Investment and Reporting Division has launched a thematic convergence study on procedures relating to the scrutiny of financial information contained in prospectuses across NCAs to consider their effectiveness and degree of harmonisation.

Neither of these work streams should lead to overlap with the forthcoming peer review since:

- the draft RTS requested under the Omnibus II Directive<sup>21</sup> concentrates on the procedures for communication regarding the draft prospectus, incorporation by reference, publication of prospectuses and advertising. In particular, the scope of the RTS doesn’t cover the adjustment of time limits for prospectus approval;

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<sup>20</sup> The previous peer review report on Prospectus was published in 2012 (ESMA/2012/300).

<sup>21</sup> Directive 2014/51/EU

- the thematic convergence study is focused only on scrutiny of financial information in prospectuses and the review thereof under the PD.

## **Legal basis**

5. This Peer Review will be conducted in accordance with Article 30 Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation) and the revised Review Panel Methodology (ESMA/2013/1709).

## **Purpose**

6. The objectives of this peer review are twofold:

- firstly, to assess the efficiency of the approval process as well as the proportionality of the resource allocation to prospectus scrutiny; and
- secondly, to assess the nature and consistency of prospectus approval processes employed by NCAs, both internally and on a cross-NCA basis.

The review will also afford ESMA the possibility to gather data which could feed into the advice ESMA intends to provide to the European Commission (the “EC”) in the context of the future re-cast of the PD and Prospectus Regulation<sup>22</sup>.

## **Scope**

7. The peer review shall focus on the quality and consistency of the prospectus approval process of NCAs. In particular, the review will focus on compliance with the provisions of the Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, notably Articles 5, 7, 8, 11, 12 and 13, together with compliance with the Prospectus Regulation.

8. The review should be targeted and sequenced:

- at first stage, a short<sup>23</sup> and well-targeted self-assessment questionnaire should be developed by the Assessment Group and circulated to all NCAs focusing on market structure<sup>24</sup>,

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<sup>22</sup> Commission Regulation 809/2004

<sup>23</sup> 10 to 15 questions maximum will be asked.

<sup>24</sup> Market Structure should be understood in terms of type of market whether mostly bonds or shares are offered and/or traded, size and depth of the market, type of investors dealing.

organisational set-up, decision making process, and scrutiny process as regards prospectuses;

- at second stage, on the basis of criteria outlined below, in the region of six NCAs will be selected for the purposes of performing desk analysis and on-site visits. The desk analysis will consist of the review of prospectuses approved by the selected NCAs and an analysis of the quality and consistency of comments provided by them during the approval process. The desk review will be complemented by on-site visits.

9. The desk-based analysis shall consist of the review of a limited number of equity prospectuses and debt prospectuses (specifically base prospectuses). The equity prospectuses selected for review shall be prospectuses prepared in the context on an initial public offering.

10. Criteria for the selection of NCAs for the second stage will be:

- the number of prospectuses approved;
- the percentage of prospectus approvals notified to host Member States;
- the assessment of the responses to the self-assessment questionnaire (including but not limited to resources and approval times); and
- any input received from stakeholders (further outlined below).

### **Seeking input from stakeholders**

11. Depending on the outcome of the responses to the self-assessment questionnaire, as an interim stage, the Assessment Group may seek input from stakeholders' subject to the development and adoption of a standardised approach.

### **Review approach**

12. In accordance with the Review Panel Methodology, the peer review will be carried out by an Assessment Group. The Assessment Group will be composed of the following persons, with extensive knowledge and experience in the supervision of Prospectus, as well as in the conduct of reviews:

- Mrs. Adrienne László (MNB),
- Mrs. Elena Kalambokis (FMA),
- Mrs. Florence Priouret (AMF),
- Mr. Gavin Richards (FCA),
- Mrs. Ina O'Sullivan (CBol),

- Mr. Nikos Papadimos (HCMC),
- Mr. Yves Hansen (CSSF),
- Mrs. Vicki Erfurt-Larsen<sup>25</sup> (ESMA) alternatively with Mr. Ronan Dunne (ESMA).

13. The Assessment Group shall be co-ordinated by Stephan Weinandy, BaFin. Jorg Willems, from ESMA Legal, Cooperation and Convergence Unit will act as Rapporteur of the Assessment Group.

14. In line with the Review Panel methodology the Assessment Group will report its findings to the Board of Supervisors, for its approval, after having consulted the Review Panel.

### **Review Period**

15. The period under review spans from January 2013 to December 2014 included.

### **Methodology**

16. Some of the tools that can be used include, but are not limited to, interviews with NCAs' staff, access to supervisory files for the selected prospectuses and the demonstration of the work carried out. As far as the access to files is concerned, at least the following documents will be requested: the first draft prospectus received by the competent authority, documents (letters, emails, marked-up versions...) supporting the interaction with the firms (comments, questions and answers) as well as the final prospectus.

17. The obligations on professional secrecy as stipulated by Article 70 of the ESMA Regulation and subsequently by the ESMA Management Board Decision on Professional Secrecy and Confidentiality apply to all members of the Assessment Group, including non ESMA staff through their explicit consent to comply with those obligations. A confidentiality agreement signed by all members of the Assessment Group will be communicated to the NCAs' concerned.

18. The Peer Review shall be sequenced. The initial phase shall consist of a short self-assessment questionnaire to be addressed to all Competent Authorities.

19. Following an assessment of the replies to the questionnaire, any input received from stakeholders (if such has been solicited) and an analysis of the ESMA database on published prospectuses, a limited number of NCAs will be targeted for further examination. The Assessment

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<sup>25</sup> Mrs. Vicki Erfurt-Larsen participated as ESMA Expert



Group will select a mix of equity prospectuses and debt prospectuses (specifically base prospectuses) approved by each selected NCA. The NCAs in question will be requested to provide working documents, translated into English, detailing comments that were provided during the prospectus approval process.

20. Upon completion of the desk-based analysis of the prospectuses and supporting documentation, on-site visits will be arranged to the Competent Authorities in question in order to complement the findings from the questionnaire with the detailed information that will be needed to gain a thorough understanding of the supervisory practices applied, and for Competent Authorities to demonstrate their compliance. Meetings will be arranged between the Assessment Group members and the national experts in the field, including their management. Each on-site visit shall last for one to three days.
21. As a matter of principle, all Assessment Group members should commit to actively participate to the review, including through the on-site visits. To perform this review within the deadline and deliver the outcome at the latest by end of Q4 2015, the assessment team should be proportionate and staffed with some experts from the CFSC who will have to dedicate their working hours to this work stream, as well as ESMA staff involved.

### **Evidence**

22. Competent Authorities will be asked to support their replies to the questions (written or oral) with examples from their supervisory actions, practices and procedures, in the form of supervisory files, and samples and their supervisory handbooks, instruction manuals and similar. The evidence shall demonstrate their supervisory actions in relation to the application of the PD. The evidence will have to be provided in English if available. When an English version of the evidence is not available, the answer has - to the extent practicable - to describe the relevant evidence in English as stated by the ESMA Review Panel Methodology in paragraph 28.

### **Publication**

23. The Report resulting from the work shall be made public, unless the Board of Supervisors decides otherwise at the time of approving the report. The findings of the Assessment Group shall in any case be shared with the Board of Supervisors, after consultation of the Review Panel.

### **Time-line expected for the work**

<b><i>Task/Event</i></b>	<b><i>Dates (tentative)</i></b>
<i>Approval of the mandate by the Board of Supervisor</i>	<i>17 December 2014</i>
<i>Drafting of the questionnaire</i>	<i>Jan 2015</i>

<i>Questionnaire to be completed within four weeks</i>	<i>February 2015</i>
<i>Analysis of replies, begin drafting of report and preparation of visits, selection of the prospectus file</i>	<i>March/ Mid-April</i>
<i>Visits and analysis of the prospectus files</i>	<i>Mid-April / Mid-June</i>
<i>Progress report to the Board of Supervisors</i>	<i>24 June 2015</i>
<i>Finalisation of report</i>	<i>July/September</i>
<i>Accuracy checking with CAs bilaterally</i>	<i>September 2015</i>
<i>Finalisation of report following accuracy checks</i>	<i>October 2015</i>
<i>Consultation of the Report with the Review Panel</i>	<i>13 October 2015</i>
<i>Submission of Report to the Board of Supervisor</i>	<i>10 December 2015</i>

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**For information:**

The timeline indicated in the above mandate needed to be extended, due to the delay in translation works and re-scheduled onsite-visits 25 May 2016

## **Annex VII Description of individual selection criteria**

### 1. Number of prospectuses approved (including base prospectuses (BP) and IPOs)

In accordance with the mandate the total number of prospectuses approved during the review period has to be taken into account. The AG has selected NCAs representing both high, medium and low volumes in order to have a variation of markets (geographically speaking) and market structures, i.e. high on IPOs/equity, high on debt/ base prospectuses or a mix of both. If an NCA has no IPO or base prospectuses such has been excluded as there will be no actual prospectuses to review whereby the second part for the targeted peer review (scrutiny of comments to prospectuses) would not be able to be performed

### 2. Percentage of prospectuses passported (relative market impact)

No NCA passports all or a vast majority of prospectuses and certain markets with high numbers of approval of prospectuses passport few of them. The AG therefore considered it more appropriate to consider the relative market impact considering the percentage of prospectuses passported relative to the prospectuses approved. However, it was also considered desirable to identify one or more NCAs with little or no passporting activity if such was supported by a market structure of interest.

### 3. Staff resources

Generally lower resources at an NCA could be a potential issue that could influence the quality of prospectus approval. However, it is important to note that the AG did not consider that lower resources automatically indicates an inappropriate level of resource allocation nor quality of scrutiny as such must be considered in context of e.g. the type of market (non-equity, equity or mixed) in the jurisdiction along with the experience of readers and the volume of prospectuses for scrutiny.

### 4. Particular aspects from the outcome of the responses that have been taken into consideration are:

- Number of FTE in the prospectus group, particularly the number of FTE readers compared to the full number of prospectuses reviewed, i.e. total of prospectuses approved, refused and withdrawn;
- The average number of prospectuses read per FTE reader, i.e. high (over 70, medium (25-70) and low (below 25) and
- The number of refusals or withdrawals (as information on this aspect has not been considered in other peer reviews).

## 5. Approval times

This is an issue that has a direct impact on market participants submitting prospectuses for approval. It is also an area that has largely remained undocumented in early work in the prospectus area. While taking into account the general impression of such approval times in each NCA the AG also distinguished between IPO/equity and non-equity/base prospectuses to identify potential differences. The particular elements considered are:

- Comparatively long approval times, i.e. where in 50% of the cases the NCA spent more than 60 working days for IPOs and 30 working days for BP;
  - Comparatively short approval times, i.e. where prospectuses concerning IPOs were approved within 0-40 working days;
  - Number of drafts received on average compared to approval times, e.g. long approval times with relatively few drafts or short approval times with relatively many drafts;
  - Existence of fast track procedures or reduced turnaround times; and
  - Staff resources compared to number of prospectuses.
6. The AG had expected to consider information concerning pre-consultation or pre-vetting but such did not provide sufficient information to qualify as a selection criteria.
7. Application of a risk-based approach/adaptation of the level of scrutiny
8. Consideration has been given to previous work conducted in the prospectus area, particularly Part C of the 2010 report on the Prospectus Directive Selective Mapping (Ref. CESR/10-122) of 20 November 2010. Taking this into account the key elements being considered by NCAs when assessing how to proceed with a prospectus and therefore of interest are:

risk-based approach based on:

- target audience or
- the issuer has previously been of interest to the NCA

adaptation of scrutiny based on:

- issuer activity
- financial information
- type of security
- IPO or admission to trading

## 9. How NCAs apply the four eyes principle in practice/specialisation of people

Responses to the questionnaire have been assessed inter alia with information in the peer review of 2012. It has also been taken into consideration whether an NCA enlists specific

support with regard to financial information (IFRS, pro forma and complex financial information) from outside the team of readers as well as support concerning the TD and whether specific sections of the prospectus are read by specific staff based on experience/specialization. As such the further element taken into account under this criterion is the experience of the readers of a prospectus group. Based on responses it could be interesting to consider NCAs where the majority of readers all have more or less than three years of experience with the prospectus regime compared to those with a mixed pool of readers.

### **Information on Methodology followed for on-site visits**

12. As preparation for the on-site visits the assessment team selected prospectuses that were approved by the visited NCAs during the period under review to be reviewed by the respective visiting teams as part of a desk-based analysis ahead of each visit. To the extent available two prospectuses relating to IPOs and two base prospectuses relating to structured products were chosen, based on a random selection. The in-depth review of the prospectuses by the visiting teams encompassed the first and final draft for each of the selected prospectuses as well as any comment and response letters and further communication in this regard. A specific focus was given on certain areas as e.g. the summary, risk factors, compliance with the base prospectus regime, and the overall comprehensibility and consistency of the prospectuses.
13. Upon completion of the desk-based analysis of the prospectuses and supporting documentation, on-site visits were arranged with the NCAs in question in order to complement the findings from the questionnaire with the detailed information that was needed to gain a thorough understanding of the supervisory practices applied, and for NCAs to demonstrate their compliance.
14. Meetings were arranged between the AG members and the NCA's experts in the field, including management. Each on-site visit lasted between two and three days, depending on the stakeholder involvement, which was on a voluntary basis.
15. The six on-site visits were conducted between June 2015 and November 2015, each lasting for between two and three days, depending on whether interviews with stakeholders took place which were on voluntary basis.

## **Annex VIII Statement from visited National Competent Authorities**

- Statement of CBol

The Central Bank of Ireland concurs with the mandate for this Peer Review that consistent application of the disclosure requirements is crucial for establishing effective, and efficient, capital markets and welcomes reviews such as this as an important step in harmonising the application of the prospectus review regime across the Member States.

The Central Bank of Ireland would like to thank the Assessment Group for its helpful observations and critiques. As to the Assessment Group's findings pertaining to equity experience and workload, the Central Bank of Ireland has taken, and will continue to take, steps to increase experience levels generally and to ensure that staff levels are sufficient to mitigate key-person and other operational risks, and to maintain high standards with regard to completeness, comprehensibility and consistency of the prospectuses being reviewed and approved by the Central Bank of Ireland.

- Statement of AFM

The Netherlands Authority for the Financial Markets welcomes the initiative of ESMA for a Peer Review on prospectus review regimes across the EU. We fully support the need for a consistent application of uniform disclosure requirements as a condition for effective, and efficient, capital markets. We believe that a solid risk based approach to the prospectus review and approval process is essential, together with appropriate resource allocation. Following this peer review, we will evaluate our resource allocation in order to make it as efficient as possible.

The Netherlands Authority for the Financial Markets would like to thank ESMA's Assessment Group for its observations and suggestions. We are pleased that the on-site visit team had the opportunity to speak to Dutch stakeholders as well. We will continue to undertake the steps necessary to maintain high standards with respect to the prospectuses that are being reviewed and approved.