



European Securities and
Markets Authority

Peer review of the scrutiny and approval procedures of prospectuses by competent authorities

Peer review report



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1 Terms and Acronyms, Prospectus Terminology

1.1 Terms and Acronyms

| Acronyms and legislative references | |
|--|---|
| 3Cs | Standards of completeness, comprehensibility and consistency necessary for the approval of a prospectus |
| ABS | Asset Backed Securities |
| AIF | Alternative Investment Fund |
| AIFMD | Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 |
| BoS | Board of Supervisors |
| CDR CDR 2019/980 | Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market |
| CMU | Capital Markets Union |
| DMS | Document Management System |
| EBA | European Banking Authority |
| ECB | European Central Bank |
| EEA | European Economic Area |
| EIOPA | European Insurance and Occupational Pensions Authority |
| ESMA | European Securities and Markets Authority |
| FinDAG | Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht, German Act establishing the Federal Financial Supervisory Authority |
| FREP | Financial Reporting Enforcement Panel |
| Methodology | ESMA Peer Review Methodology: Document that sets out the methods and tools to conduct peer reviews of NCAs (ESMA42-111-4966 28 May 2020) |
| ESMAR | Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC |
| EU | European Union |
| EUR | Euros |
| Guidelines | Guidelines on Risk Factors under the Prospectus Regulation (ESMA31-62-1293 1/10/2019) |
| IFRS | International Financial Reporting Standards |

| Acronyms and legislative references | |
|--|--|
| IMD | Insurance Mediation Directive |
| IPO | Initial Public Offer |
| ISIN | International Securities Identification Number |
| MAR | Market Abuse Regulation - Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC |
| MiFID | Markets in Financial Instruments Directive - Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC |
| MiFIR | Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 |
| MoU | Memorandum of Understanding |
| MS | Member State |
| MTF | Multilateral trading facility |
| N/A | Not applicable |
| NCA | National Competent Authority |
| OFR | Operating and Financial Review |
| PG | Prospectus Group |
| PR | Prospectus Regulation - Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC |
| PRC | Peer Review Committee |
| RD | Registration Document |
| RPAs | Recognised Prospectus Advisors |
| SME | Small and medium-sized enterprise |
| SPAC | Special purpose acquisition company |
| Supervisory Briefing | ESMA Supervisory Briefing outlining internal guidance to NCAs regarding certain elements of the PD (ESMA31-61-111 / 10 April 2017) |
| TD | Transparency Directive – Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC |
| URD | Universal Registration Document |

Country codes and acronyms of NCAs participating in the peer review (the NCAs who were subject to the onsite program are highlighted in bold)

| Country Code | Country | Competent Authority | Acronym |
|--------------|----------------|--|----------------|
| AT | Austria | Finanzmarktaufsicht | FMA |
| BE | Belgium | Financial Services and Markets Authority | FSMA |
| BG | Bulgaria | Комисията за финансов надзор | FSC |
| CY | Cyprus | Επιτροπή Κεφαλαιαγοράς Κύπρου | CySEC |
| CZ | Czech Republic | Česká národní banka | CNB |
| DE | Germany | Bundesanstalt für Finanzdienstleistungsaufsicht | BaFin |
| DK | Denmark | Finanstilsynet | Finanstilsynet |
| EE | Estonia | Finantsinspektsioon | FSA |
| EL | Greece | Ελληνική Επιτροπή Κεφαλαιαγοράς | HCMC |
| ES | Spain | Comisión Nacional del Mercado de Valores | CNMV |
| FI | Finland | Finanssivalvonta | FSA |
| FR | France | Autorité des Marchés Financiers | AMF |
| HR | Croatia | Hrvatska Agencija za Nadzor Financijskih Usluga | HANFA |
| HU | Hungary | Magyar Nemzeti Bank | MNB |
| IE | Ireland | Central Bank of Ireland | CBol |
| IS | Iceland | Seðlabanki | CBI |
| IT | Italy | Commissione Nazionale per le Società e la Borsa | CONSOB |
| LI | Liechtenstein | Finanzmarktaufsicht | FMA |
| LT | Lithuania | Lietuvos Bankas | LB |

| Country Code | Country | Competent Authority | Acronym |
|---------------------|-------------------|--|----------------|
| LU | Luxembourg | Commission de Surveillance du Secteur Financier | CSSF |
| LV | Latvia | Finanšu un kapitāla tirgus komisija | FKTK |
| MT | Malta | Malta Financial Services Authority | MFSA |
| NL | Netherlands | Autoriteit Financiële Markten | AFM |
| NO | Norway | Finanstilsynet | Finanstilsynet |
| PL | Poland | Komisja Nadzoru Finansowego | KNF |
| PT | Portugal | Comissão do Mercado de Valores Mobiliários | CMVM |
| RO | Romania | Autoritatea de Supraveghere Financiară | ASF |
| SE | Sweden | Finansinspektionen | SFSA |
| SI | Slovenia | Agencija za trg vrednostnih papirjev | ATVP |
| SK | Slovakia | Národná Banka Slovenska | NBS |

1.2 Prospectus Terminology

1. This section of the report provides additional background about the terminology used in prospectus supervision to help readers better understand the content of the report.
2. A prospectus is a document that contains the necessary information which is material to an investor for making an informed investment decision.¹ Prospectuses are normally composed of three parts:
 - a. A summary containing the key information that investors need to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered or admitted to trading on a regulated market,
 - b. A registration document (RD) containing information about the issuer², and
 - c. A securities note containing information about the securities and any offering to the public.
3. These three documents are often published together in a single document, which is referred to as a 'standalone prospectus' throughout this report. Alternatively, these documents can be published as a prospectus composed of separate documents, in which case it is referred to as a 'tripartite prospectus'. However, some prospectuses do not contain a summary if they concern non-equity securities, such as bonds or structured products, that will only be traded on (a segment of) a regulated market that is only accessible by qualified investors or the securities have a denomination per unit of at least EUR 100 000. In such cases, standalone prospectuses will only consist of a registration document and securities note.

Prospectus formats

4. The Prospectus Regulation (PR) also contains different prospectus formats that are intended to the issuance of securities by certain types of issuers for various policy reasons. The first of these formats is the base prospectus, which is intended to facilitate issuers that issue non-equity securities in a continuous, repeated manner or as part of an offering programme. Base prospectuses contain the disclosure expected in a prospectus, but instead of relating to the issuance of specific non-equity securities, a base prospectus allows an issuer to use a single prospectus to offer different non-equity securities to the public or to list them on a regulated market using a single prospectus. While a base prospectus contains general information about the types of non-equity securities it covers, an issuer completes the information about a specific issuance of securities in a document referred to as final terms, which contain information about the

¹ More specifically, Article 6(1) PR states, "... a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of:

- a) the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor;
- b) the rights attaching to the securities; and
- c) the reasons for the issuance and its impact on the issuer.

That information may vary depending on any of the following:

- a) the nature of the issuer;
- b) the type of securities;
- c) the circumstances of the issuer;
- d) where relevant, whether or not the non-equity securities have a denomination per unit of at least EUR 100 000 or are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in the securities."

² See Article 7(1) PR.

specific issuance of securities that cannot be determined at the time of the approval of the base prospectus, such as the issuance price, the ISIN number, the denomination, maturity date, any coupon, exercise date, exercise price and the redemption price. After the information about the securities has been completed, the final terms are filed with the NCA that approved the base prospectus and are not approved by that NCA. Base prospectuses also do not include a summary since the specific details about the securities are unknown at the time of its approval. Instead, the issuer files the summary concerning the specific issuance of securities with the final terms.

5. There is also a specific format of RD, referred to as a universal registration document (URD). While 'normal' RDs can be drawn up using the disclosure requirements for non-equity securities, URDs must be drawn up using the disclosure requirements for equity securities, which provide investors with significantly more disclosure. The URD format also allows issuers to combine their registration document with their annual financial reporting to provide investors with a single annual document containing the most important information about an issuer. To incentivise the use of URDs, issuers can be granted the status of 'frequent issuer' that entitles them to a faster review process.³
6. The PR introduced the EU Growth prospectus format as a proportionate regime to provide more cost-efficient access to the capital markets for smaller issuers⁴. The EU Growth prospectus is intended to be easier to draw up with a standardised format using simple language and includes a specific summary format. Additionally, the disclosure requirements are meant to be more calibrated towards SMEs than other prospectus formats.
7. The simplified disclosure regime for secondary issuances was also introduced by the PR and is intended to reduce the administrative burdens associated with drawing up prospectuses for issuers who are already listed on a regulated market or SME Growth market for at least 18 months.⁵ The significantly reduced disclosure requirements included in this format are predicated on the disclosure that these issuers are already required to publish under the Transparency Directive (TD) and the Market Abuse Regulation (MAR).
8. The EU Recovery prospectus is a format similar to the simplified disclosure regime for secondary issuances, but it is intended to recapitalise after the shocks of the COVID-19 pandemic in the period between 31 March 2021 and 31 December 2022. Like the

³ URDs entitle issuers to five day review periods under Article 20(6) PR, instead of the normal 10 days set out in Article 20(2) and (4) PR.

⁴ Article 15(1) PR allows the use of an EU Growth prospectus (a) if the issuer is an SME; (b) by issuers, other than SMEs, whose securities are traded or are to be traded on an SME Growth market, provided that those issuers had an average market capitalisation of less than EUR 500 000 000 on the basis of end-year quotes for the previous three calendar years; (c) issuers, other than those referred to in points (a) and (b), where the offer of securities to the public is of a total consideration in the Union that does not exceed EUR 20 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499; and (d) offerors of securities issued by issuers referred to in points (a) and (b).

⁵ Article 14(1) PR allows for the simplified disclosure regime for secondary issuances in the case of an offer of securities to the public or of an admission to trading of securities on a regulated market: (a) issuers whose securities have been admitted to trading on a regulated market or an SME Growth market continuously for at least the last 18 months and who issue securities fungible with existing securities which have been previously issued; (b) without prejudice to Article 1(5), issuers whose equity securities have been admitted to trading on a regulated market or an SME Growth market continuously for at least the last 18 months and who issue non-equity securities or securities giving access to equity securities fungible with the existing equity securities of the issuer already admitted to trading; (c) offerors of securities admitted to trading on a regulated market or an SME Growth market continuously for at least the last 18 months; and (d) issuers whose securities have been offered to the public and admitted to trading on an SME Growth market continuously for at least two years, and who have fully complied with reporting and disclosure obligations throughout the period of being admitted to trading, and who seek admission to trading on a regulated market of securities fungible with existing securities which have been previously issued.

simplified disclosure regime, the alleviations in EU Recovery prospectuses are predicated on listed issuers' ongoing disclosure requirements under the TD and MAR and can be used by issuers whose securities have been listed for more than 18 months on a regulated market or an SME Growth market.⁶ However, the format for EU Recovery prospectuses contains more alleviations than the simplified regime for secondary issuances and is restricted to a maximum length of 30 pages (not including the summary).

Other terminology

9. This report also refers to documents incorporated by reference into prospectuses, which are separate documents that have been previously published or are being simultaneously published with the prospectus and are considered to legally form part of the prospectus. For example, many issuers incorporate their annual historical financial information by reference into prospectuses. Therefore, this information forms part of the prospectuses and it needs to be considered when determining the length of a prospectus and also an issuer's liability. Article 19 PR contains specific rules relating to the incorporation by reference of documents into prospectuses, including the fact that issuers must include hyperlinks to any documents incorporated by reference in prospectuses.

⁶ Article 14a(1) PR states that the following persons may choose to draw up an EU Recovery prospectus in the case of an offer of shares to the public or of an admission to trading of shares on a regulated market: (a) issuers whose shares have been admitted to trading on a regulated market continuously for at least the last 18 months and who issue shares fungible with existing shares which have been previously issued; (b) issuers whose shares have already been traded on an SME Growth market continuously for at least the last 18 months, provided that a prospectus has been published for the offer of those shares, and who issue shares fungible with existing shares which have been previously issued; (c) offerors of shares admitted to trading on a regulated market or an SME Growth market continuously for at least the last 18 months. An important limitation of the format is that issuers may only draw up an EU Recovery prospectus if the number of shares intended to be offered represents, together with the number of shares already offered via an EU Recovery prospectus over a period of 12 months, more than 150 % of the number of shares already admitted to trading on a regulated market or an SME Growth market on the date of approval of the EU Recovery prospectus.

2 Executive summary

10. The Prospectus Regulation (PR) forms an essential step and building block towards ensuring the Capital Markets Union (CMU) as set out in the 'Action Plan on Building a Capital Markets Union', because it promotes supervisory convergence in the scrutiny and approval of prospectuses by further harmonising and clarifying areas of divergence. In order to help achieve this objective, the PR importantly introduced several new types of prospectuses, such as the EU Growth prospectus and the simplified disclosure regime for secondary issuances. These formats are intended to facilitate the process of accessing the capital markets and to reduce the administrative burden on issuers thereby helping to further build a healthy, dynamic and vibrant European Capital Markets Union.
11. Article 20(13) of the PR requires ESMA to organise at least one peer review of the scrutiny and approval procedures of competent authorities, including notifications of approval between competent authorities. The peer review shall also assess the impact of different approaches with regards to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union. The report on the peer review shall be published by 21 July 2022 and shall take into account the opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010⁷.
12. In view of the above, the Board of Supervisors decided through ESMA's 2021 Annual Work Programme to launch a peer review on National Competent Authorities' (NCAs) scrutiny and approval of prospectuses.
13. The peer review was carried out based on the Peer Review Methodology⁸ (the Methodology) by an ad hoc Peer Review Committee (PRC). The peer review mandate was approved by the Board of Supervisors in July 2021.

Assessment areas

14. The peer review covered five assessment areas as relevant to the prospectus scrutiny and approval processes: (i) the scrutiny of prospectuses having regard to their completeness, comprehensibility and consistency under Articles 35 to 45 of CDR 2019/980; (ii) the approval process by NCAs of prospectuses, including the notification of approvals by competent authorities pursuant to Article 25 of the PR; (iii) NCAs' application of ESMA's Guidelines 1-5, 7 and 11 on risk factors; (iv) the adequacy of NCA resources to carry out the scrutiny and approval of prospectuses; (v) the independence and the liability regime of the NCA in relation to the supervision of prospectuses. The impact of different approaches by NCAs on issuers' ability to raise capital in the Union and the corresponding impact on investor protection is assessed as part of the five areas identified above.

Jurisdictions covered

15. The peer review covered all EEA jurisdictions through questionnaires. Onsite visits were carried out to six jurisdictions [DE, FR, IT, IS, LU and SE] selected based on one or more of the following objective criteria: (i) the type of prospectuses approved by the

⁷ ESMA's founding Regulation.

⁸ ESMA Peer Review Methodology ([ESMA42-111-4966](#) | 28 May 2020).

NCA, (ii) trends regarding the number of approvals of prospectuses by the NCA, (iii) the number of notifications of prospectus approvals made by the NCA, (iv) the number of prospectuses approved by the NCA and (v) whether the NCA has so far never received an onsite visit in the context of a peer review. A summary of findings for each of those onsite visited jurisdictions is provided at the end of this executive summary.

Overall findings

16. On a number of areas covered by the mandate, the peer review shows a wide variety of approaches taken by NCAs. Some of these divergences may impact issuers' ability to raise capital.
17. In particular, this report identifies the following approaches taken by NCAs that may impact issuers' ability to raise capital: (i) communication with issuers, (ii) flexibility of approval procedures, (iii) expertise of NCA staff, (iv) NCA attitude towards liability. Additionally, this report identifies several areas where there are material differences between NCAs, such as the deadlines imposed by NCAs for issuers to respond to comments, NCAs' procedures for the approval of prospectuses and the additional criteria that NCAs apply to prospectuses under their scrutiny. Although these differences may appear minor at first glance, their accumulation may result in it being easier to have a prospectus approved at some NCAs than at others.
18. Additional findings relevant in considering issuers' ability to raise capital relate to: (i) the number of draft prospectuses submitted to NCAs i.e. how many iterations take place before a prospectus is deemed as meeting the PR requirements for approval where alleviated regimes do not necessarily appear to reduce the number of necessary drafts; (ii) the length of prospectuses, which is found to vary between Member States for different types of prospectuses; and (iii) the length and number of risk factors in prospectuses for which significant variations are equally observed. With respect to the length of prospectuses, ESMA may want to consider undertaking additional work in this area in order to identify possible reasons for the differences in the length of prospectuses between Member States. It is noteworthy that prospectuses are shorter in SE, a Member State where there is a large volume of approvals.

NCAs' scrutiny of prospectuses having regard to their completeness, comprehensibility and consistency under Articles 35 to 45 of CDR 2019/980

19. The PRC assessed a variety of aspects pertaining to NCAs' scrutiny of prospectuses having regard to their completeness, comprehensibility and consistency under Articles 35 to 45 of CDR 2019/980.
20. NCAs generally apply **the four-eye principle** in a satisfactory manner on most categories of prospectuses, albeit in various ways, with scrutiny reinforcement for heightened risk prospectuses. SE is an outlier however as prospectuses are generally reviewed by one single reader with, as a safeguard among other measures, comments discussed twice a week with the whole Prospectus Group (PG). Whilst this approach appears workable with SE's current level of resources and number of prospectuses, the PRC is concerned that it is already stretched and recommends that SE consider alternative models. Therefore, the PRC does not recommend this model to other NCAs. In addition, FI, IE, NO and SK allocate a single reader to scrutinise low-risk non-equity prospectuses. The PRC considers this does not satisfy the four-eye principle. Similarly, BE, ES, FI, NO and SE assign a single reader to scrutinise low-risk supplements, which the PRC has determined also does not satisfy the four-eye principle. In this respect,

the PRC invites ESMA to consider the application of the four-eye principle in relation to prospectuses and supplements to ensure a more convergent approach in the scrutiny of these documents. As part of this assessment, ESMA should consider how NCAs can adopt a risk-based approach to prospectus scrutiny, including under what circumstances (if any) it is appropriate to have a single reader scrutinise a prospectus or supplement. A good practice in respect of the four-eye principle consists in having additional readers scrutinise prospectuses in relation to higher risk prospectuses such as a) IPOs, b) in case of new types of products, c) where complicated legal questions may be anticipated, d) where transaction parties have been subject to enforcement actions or which were reluctant to comply with comments in the past, and e) where one of the readers is less experienced in relation to the type of prospectus to be reviewed.

21. **Prior to formal application**, NCAs generally engage with issuers, although to varying degrees, with the exception of BG which is invited to adopt this practice. The PRC also notes that SK reviews the prospectus before its formal submission to the NCA, a practice that is likely related to the national interpretation of the PR deadlines which the authority deems to be short. Given that most other NCAs do not find it necessary to review the entire prospectus before its formal submission, the PRC invites SK to consider the purpose and usefulness of this practice and if needed consider amending national law provisions to ensure that scrutiny of prospectuses is carried out within the legal perimeter of the PR. As regards the 'pre-filing process' followed by IT the PRC supports the review that is under way and considers that it should be revisited to differentiate it from the formal scrutiny and approval process envisaged in the PR.
22. As regards the application of **additional criteria** pursuant to Article 40 CDR 2019/980, the PRC observes that NCAs have a different understanding of what constitutes additional criteria. There appears to be divergence in application as some NCAs view certain practices as additional criteria and others do not, with IT the only authority who published guidance on the application of additional criteria. With this in mind, the notion of the term 'criteria' should be further clarified to promote consistent implementation by NCAs. The European Commission is invited to consider this matter and provide guidance, with the technical assistance of ESMA, if needed.
23. With respect to **average timing of approval and monitoring of deadlines**, half of the NCAs do not have pre-specified timeframes other than the deadlines set out in the PR. However, most of these NCAs strive to return comments within a shorter deadline sometimes or regularly. The remaining NCAs either have shorter timeframes arising from national rules or as self-imposed or agree an indicative timeline with the issuer at the beginning of the scrutiny process. Further divergence on the length of self-imposed or national deadlines was also observed, including on overall timelines for the length of the scrutiny process. In addition, a small majority of NCAs imposes timeframes on the issuers' turnaround times either stemming from national rules or imposed by the NCA. Divergences regarding timeframes would to an extent be related to PG staffing and availability of relevant expertise at the NCA, but also to the evolution and expertise of the local ecosystem and the type and volume of prospectuses approved by NCAs. Overall though, NCAs have very rarely missed the deadlines imposed by the PR.
24. The PRC considers that there is merit in the Commission examining how to ensure a common approach regarding issuers' turnaround times. Notwithstanding this, the PRC

advises IT⁹ to revisit the national deadlines that apply to the scrutiny process and introduce some flexibility as regards their length. Moreover, IT and SI are invited to examine whether the national deadlines that apply to the issuer are overly short and adjust them as needed.

25. In general, several NCAs **communicate with issuers** about, inter alia, their desired timelines so that these issuers can plan their offering of securities¹⁰. This helps to ensure that issuers can access the market in a timely matter. Even if NCAs generally communicate well with issuers, the PRC believes it is important to emphasise this factor to encourage appropriate communication between NCAs and issuers. Nevertheless, the PRC notes that a handful of NCAs could improve their practices in order to facilitate interaction with issuers [BG, LI, LT, PL].
26. Ensuring **consistency of review and of comments** within an NCA is key to ensure a level-playing field and investor protection. Depending on the size of the PG and how the PG is structured, NCAs have different approaches to information sharing that could achieve the same regulatory outcome. Generally, the various practices followed by NCAs ensure sufficient consistency in the review of prospectuses and comments raised. The PRC considers that maintaining a database with (standard) comments, material decisions and other relevant information is a good practice. Readers should be provided with easy access to previous comments, standard comments and other relevant information, for example through setting up in the document management system of the NCA an advanced search function.
27. The vast majority of NCAs **involve other teams and supervisory authorities** in prospectus scrutiny. Nevertheless, there are different approaches as regards the specialists involved, the nature of their involvement and the actual checks performed, ranging from one NCA appearing to not sharing information at all [SK] to broad involvement of other teams and supervisory authorities [IT]. IT is invited to change its practices in this respect to ensure their efficiency and SK is invited to revisit their approach and involve relevant experts in prospectus scrutiny. ESMA is also invited to consider this matter further as part of its supervisory convergence work in order to promote a consistent approach between NCAs. Moreover, HU is invited to consider whether the use of four auditing firms with which the NCA has an MoU is in line with the PR regulatory framework. HU is also invited to further develop inhouse financial expertise to ensure that external advice is sought only in exceptional circumstances.
28. Most NCAs engage product governance specialists in prospectus scrutiny with differing degrees of involvement. Those NCAs which do not cooperate with product governance specialists are advised to consider doing so [BG, DK, FR, IS, LV, LT, RO, SE, SK]. Even though prospectus approval, assessment of MiFID II suitability requirements and product intervention are distinct procedures carried out under different legal texts, the PRC finds that this cooperation is a good practice. This ensures that certain information in the prospectus is reviewed by product governance specialists and also it may proactively prevent the public offer of products that are not suitable for retail investors and the approval of a prospectus relating to securities that may be subject to a product

⁹ The national deadlines in IT were under public consultation with a view to being repealed. However, as during the period under review the national deadlines were still in place, a recommendation is addressed to IT to revisit the national deadlines that are applied to the scrutiny process and the issuer.

¹⁰ See section 6.3.6 of this report for a discussion of contact between NCAs and issuers.

intervention procedure after approval of the prospectus. This is in the interest of investor protection and will also save time and effort for NCAs.

29. In relation to **escalation of issues** that emerge during the scrutiny process, the majority of NCAs have such escalation mechanisms in place and those NCAs which do not [BG, IS, LV, RO] are invited to update their internal process with an appropriate escalation procedure that will allow them to address material concerns in a timely manner.
30. The PRC positively notes that almost all NCAs have **published guidance for issuers and their advisors** regarding the scrutiny and approval process in accordance with Article 20(7) PR, even if the scope of the published guidance varies amongst NCAs. In this respect, BG is invited to publish such guidance to clarify the relevant operational procedures and technical requirements.
31. NCAs generally review compliance of the prospectus with the **plain language and comprehensibility** requirement. They do so by applying different checks. The PRC notes that it appears difficult for NCAs to consistently enforce the plain language requirement in practice given the absence of guidance at EU level on the notion of plain language. To assist NCAs in ensuring such compliance and promote a convergent approach of this rule, ESMA is invited to develop guidance in the area of comprehensibility, including plain language requirements distinguishing between prospectuses addressed to qualified investors and prospectuses for higher risk and complex products that are addressed to retail investors where more stringent checks would be expected. As a starting point such work could be based on examples of comments raised by NCAs and other public recommendations on this topic by national authorities. In this respect, the PRC notes that focusing the scrutiny of prospectuses on complex language, legal, technical or industry specific terms, formulas, acronyms when reviewing prospectuses addressed to retail investors is good practice. Additionally, the PRC recommends that the European Commission undertakes a behavioural study to look at the use of prospectuses and their comprehensibility as regards retail investors. The outcome of the study would provide a good basis to further improve the regulatory framework and ensure consistency of comprehensibility checks by NCAs,
32. As regards the **scrutiny of prospectus summaries**, the development of guidance at ESMA level would be useful to clarify the use of easily readable font size in the summary and the information to be disclosed in the description of the key risks in the summary. In the absence of guidance in relation to font size, the PRC invites NCAs to challenge the use of small font size in prospectus summaries on the basis of Article 6 (2) PR and Article 37(1) (d) of CDR 2019/980. Additionally, as prospectus summaries are key for prospectuses addressed to retail investors, the PRC recommends that the European Commission carries out a behavioural study to look at whether and how retail investors use the prospectus summary in order to make concrete improvements to the summary regime.
33. Similarly, in relation to summaries of base prospectuses which are not subject to ex-ante review or approval and in view of certain practices amongst NCAs, ESMA is invited to undertake work for the development of common approaches for the controls on these summaries. Nevertheless, NCAs should consider including in their processes random ex post checks of issue specific summaries. Moreover, LV and MT are invited to revisit the ex-ante review of issue specific summaries which seems to go beyond the PR requirements given that the final terms to which these summaries are annexed in accordance to Article 8(5) PR are not subject to ex ante review.

34. NCAs overall follow ESMA's Supervisory Briefing with regards to **omission of information** and the treatment of disclosure items marked as N/A. In this context however, ESMA is invited to consider addressing the treatment of historical financial information of issuers that will be incorporated around the date of prospectus approval when updating ESMA's Supervisory Briefing. Additionally, the PRC invites BG and EE to consider aligning their internal process and guidance with the Supervisory Briefing.
35. NCAs generally have in place electronic systems for the storage and management of the **documentation of the scrutiny process** that are proportionate to their prospectus activity.

NCAs' approval process, including the notification of approvals by Competent Authorities pursuant to Article 25 of the PR

36. The PRC assessed NCAs' processes related to the approvals, withdrawals and refusals of prospectuses.
37. As regards the **approval process** of prospectuses, NCAs generally meet the assessment criteria concerning the approval of prospectuses. The PRC notes that there are differences in relation to who is responsible for the approval of prospectuses at NCAs. In that regard, NCAs with lower numbers of prospectus approvals generally tend to require approval by the Board or special committee. On the contrary, NCAs with higher numbers of prospectus approval numbers generally tend to delegate responsibility or assign responsibility for approval to either the readers, a person holding managerial responsibility or a combination thereof.
38. The PRC considers that there is a danger that Board approval may unnecessarily elongate the approval process in some cases. Therefore, the PRC is of the view that NCAs should have mechanisms and procedures in place that allow for timely and efficient consultation of the Board. For instance, Board approval could be sought in relation to high profile / high risk transactions such as IPOs or new, complex products. At the same time, these NCAs may consider whether delegating the responsibility of approving certain low risk prospectuses would improve the approval process. The PRC considers that this peer review provides an opportunity for all NCAs and, in particular, NCAs not fully meeting expectations to take a careful look at the approval procedures adopted by other NCAs. This would allow them to seek points of improvement taking into account their internal organisation and level of prospectus activity in order to increase efficiency in this area, where necessary. The PRC notes that a speedy approval process should not be to the detriment of the quality of the prospectus review and appreciates that delays in the scrutiny and approval process may be due to the issuer not responding in a timely manner. However, it appears that in some cases procedural changes may bring about efficiency gains that would further facilitate issuers' access to capital markets.
39. Furthermore, NCAs taking more than one or two working days for the approval of prospectuses may consider reviewing their procedures to see if they can be organised in a more efficient manner (without jeopardising the thoroughness of the scrutiny process). The PRC believes that, from the point in time where the issuer has addressed all comments from the NCA, formal approval should be able to be completed under an efficient approval process within 1-2 days, except in exceptional circumstances. Therefore, the eleven NCAs taking more than 1 or 2 working days for the approval of prospectuses [BE, CY, EE, HR, IT, LT, LV, MT, RO, SI and SK] should review their procedures to see if they can be made more efficient. HU should specifically amend its

procedures concerning the approval of prospectuses concerning transactions of 5 billion HUF (EUR 12.7 million) or more in order to make them more efficient considering that it typically takes 2-6 days to approve such prospectuses.

40. Furthermore, the six NCAs [BG, EL, HR, LV, RO, SI] where the Board has never challenged the readers' recommendation during the review period to approve the prospectus may wish to consider reviewing their approval procedures to look for points of improvement and consider whether Board approval is appropriate in all cases.
41. Where prospectuses are approved by readers, having sufficient safeguards to ensure that management is able to monitor and control the approval process is a good practice. In addition, management being informed in advance of any approval is also considered good practice. More specifically, management should be aware of material issues that arise during the scrutiny of prospectuses so they can adequately steer the supervision process.
42. Additionally, the PRC notes that there is a great deal of variation between NCAs in relation to the additional documentation necessary for the approval of prospectuses. In other words, some NCAs appear to require additional information that others do not. The PRC recommends that NCAs [CY, CZ, DK, EL, ES, FR, HR, HU, IE, IS, IT, LI, LV, NO, PL, SI and SK] requiring additional documentation from issuers for prospectus approval consider reviewing their practices in this regard, in particular whether they conflict with Art. 44 and Art. 42(2) CDR 2019/980. When reviewing these provisions, NCAs should verify if the documentation is being requested in relation to the prospectus supervision or if it is necessary in relation to other supervision. If the documentation is required for other purposes than prospectus supervision, this recommendation can be disregarded. If some of these requirements are required under national law, NCAs should discuss changes with their national legislator in order to ensure the proper implementation of the PR and the acts promulgated thereunder. The PRC also recommends that LV should refrain from requesting physical copies of prospectuses from issuers at approval.
43. The PRC has identified a wide range of practices concerning **withdrawals and refusals**. Taking this into account, the PRC recommends that the Commission looks at aligning the timelines for the refusal of the approval of prospectuses at the EU level to ensure a level playing field across the various NCAs.

NCAs' application of ESMA's Guidelines 1-5, 7 and 11 on Risk Factors

44. The PRC assessed whether NCAs comply with Guidelines 1-5 in respect of the materiality and specificity of risk factors as well as Guidelines 7 and 11 in respect of both risk factors included in registration documents and in securities notes.
45. The PRC considers that all NCAs appear to properly apply the Guidelines on risk factors. Overall, the PRC notes that each NCA challenges the issuer or guarantor when information in the risk factors section of the first draft prospectus does not comply with the Guidelines and the PRC does not see any major failures. However, the PRC also notes that there are differences in NCAs' approaches to the assessment of risk factors. In particular, the PRC notes that seven NCAs appear to require the deletion of risk factors [DK, ES, FI, FR, IT, NL, PT], while three NCAs believe that the issuer is best placed to determine whether it is appropriate to include a risk factor in a prospectus [AT, DE, LU].

46. The concerns about an issuer's liability may result in NCAs being more reluctant to require risk factors to be deleted from prospectuses if the specificity and/or materiality is not clear from the disclosure. The PRC does not necessarily prefer either approach but believes that there may be different outcomes for issuers based on the appetite of NCAs to require that risk factors are deleted from prospectuses, especially considering that this can be a sensitive issue for some issuers. To deal with this issue, the PRC recommends that ESMA should work towards further harmonising NCAs' enforcement of the Guidelines on risk factors and that ESMA may want to consider further guidance in this area.
47. In respect of the application of the Guidelines on risk factors, the PRC notes requesting the inclusion of quantitative information about the impact of a risk factor when it reasonably appears to be available (Guideline 4) and moving risk factors that only act as disclaimers to other sections of the prospectus as good practices.

Adequacy of NCA resources to carry out the scrutiny and approval of prospectuses

48. The PRC assessed the adequacy of NCAs' financial, human and operational resources to their level of prospectus activity.
49. While the PRC explored the different NCAs' funding models, the complicated nature of NCA budgets and the different costs across jurisdictions made it difficult for the PRC to assess whether NCAs have sufficient **financial resources** for prospectus supervision. However, the PRC does not have any indication that NCAs have insufficient financial resources based on their responses to questions from the PRC.
50. As regards **human resources**, the number of NCA staff involved in the scrutiny and approval of prospectuses is overall related to the number of prospectuses approved by an authority. To inform the assessment of this area, the ratio of prospectuses per reader was taken into account. Acknowledging the limitations of this metric, the PRC focused on cases that appeared to be clear outliers. Given that in the case of SE and SK the number of prospectuses per reader was around 40, these NCAs are invited to reinforce the number of prospectus readers available at any given time. Additionally, considering that in the case of IT and PL the number of prospectuses per reader is around 2, these NCAs are advised to revisit their internal procedures and review the individual steps of their scrutiny process to address potential inefficiencies in the scrutiny and approval process.
51. It is also noted that the average turnover of readers was significant in the case of NO. Even though this finding appears to be limited to one specific year, the NCA is invited to consider improving its retention policy to avoid similar situations in the future.
52. The PRC assessed how NCAs deal with spikes in prospectus activity to determine whether NCAs are effectively able to manage any extremely busy periods and still maintain their normal standards for the scrutiny of prospectuses, and the four-eye principle in particular. To deal with such busy periods, many NCAs have staff working in other areas assist the PG with the scrutiny of prospectuses, or even provide administrative support to the PG during busy periods. This approach appears to work well at NCAs, especially when the staff assisting the PG have previous experience working in prospectus supervision so that they can be easily integrated into prospectus supervision. The PRC considers this approach to be the most effective manner of dealing with spikes in prospectus activity and, as such, a good practice.

53. Overall NCAs strive at providing **training** to NCA staff involved in the scrutiny and approval of prospectuses. This may take the form of internal or external training, internal discussions and presentations on prospectus-related topics, attending meetings of ESMA groups etc. A recommendation is addressed to BG to formulate a training strategy.
54. Overall **operational resources** are deemed sufficient to ensure the traceability of the scrutiny and approval process. As expected, the level of sophistication and the degree of efficiency differs and to a certain extent depends on the prospectus activity of the NCA.
55. With the exception of LV and SI, the team/department responsible for the scrutiny and approval of prospectuses is subject to **internal audit**. These NCAs are invited to ensure regular audit of the task of prospectus scrutiny and approval, the frequency of which should be commensurate to their level of prospectus activity.

Independence and liability of the NCA in relation to the supervision of prospectuses

56. The PRC assessed NCAs' independence with regard to their relationship with third parties, internal controls regarding how conflicts of interest between members of the PG and issuers are managed, cooling off when PG staff resign and take up employment elsewhere. The PRC also examined whether NCAs' civil liability can impact their approach to the scrutiny and approval of prospectuses.
57. In respect of **relationships with third parties**, the PRC assessed that the PG of NCAs enjoy interactions with issuers, advisors, trade associations as part of the normal course of business. NCAs reported that they also engage with their local Ministry of Finance. Discussions with the Ministry of Finance tend to focus on implementation of EU law into national legislations. NCAs generally do not consult their Ministry of Finance in respect of prospectus scrutiny and approval. No NCA reported a secondment from the PG to a local trading venue during the review period. The mandate set the expectation that NCAs do not provide undue preferential treatment to certain issuers and advisors. One NCA [IE] stated that, for the period under review, it had arrangements in place with advisors identified as Recognised Prospectus Advisors (RPAs). RPAs enjoy preferential arrangements in respect of turn-around times. RPAs are not supervised by the NCA nor subject to any oversight or inspection by the NCA. IE stated that since 31 March 2022, the RPA arrangement is removed and that all advisors are treated equally.
58. In respect of how NCAs identify and manage **conflicts of interest** when a reader reviews a prospectus in which he or she has a conflict (financial interest in the issuer, previous employer, spousal or family connection), NCAs were asked if they have a conflicts of interest policy or code of conduct in place to handle such situations. Additionally, in order to ensure the onus on staff at the PG to comply with the conflicts of interest provisions, NCAs were asked if staff have to provide an undertaking, or analogous requirement to comply with the conflicts of interest framework and/or a requirement on PG staff to provide a declaration when a conflict of interest arises. In this respect AT, BE, BG, CY, CZ, EE, ES, DE, DK, FI, FR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK met both these requirements. In light of the fact that PG staff are privy to vast amounts of inside and confidential information and act as the gatekeepers to capital markets in the EU, the other NCAs [EL, SE] are recommended to put in place such arrangements. The PRC considers that restricting PG staff's ability to trade in instruments of regulated entities and PG staff providing a

declaration of their financial interests annually and before commencing employment with the NCA are good practices in relation to conflicts of interest.

59. **Cooling off periods** are an important tool available to NCAs to ensure that any possible undue influence by former PG staff who subsequently take up employment with an issuer, advisor or trade association is mitigated and managed. Cooling off periods are also an important tool to combat the inference of a revolving door between former NCA staff and industry, a complaint too often levelled by commentators. AT, BE, ES, FR, LT, LU, LV, MT, NL, SE reported that they have a cooling off period in place for PG staff. The peer review recognises for those NCAs that do not have a cooling off procedure in place (or analogous requirement such as applying a code of conduct for a period of time post-NCA employment) that there may be the need to vary existing contracts of employment or have a change in national law¹¹. However, in light of the large amount of NCAs that reported not having a cooling off period in place, the PRC recommends that those NCAs introduce a hurdle when a senior member of the PG leaves an NCA and takes up employment with a connected third party (issuer, advisory entity, or trading association). The PRC recognises that there may be difficulties of various nature for some NCAs to introducing a cooling off period, such as a constricted labour market, for example for smaller NCAs who may have difficulties in recruiting staff. Those NCAs may wish to explore the introduction of an analogous requirement as a suitable alternative hurdle e.g. applying the NCA's code of conduct for a period of time post NCA employment. When considering any new requirement for senior members of the PG and the duration thereof, NCAs may wish to take into account the level of seniority, experience, length of service accrued at the NCA and activities undertaken e.g. responsibility for approving prospectuses. The NCA may also wish to take into consideration the future role and the level of seniority and responsibility that is attached to this new role.
60. Although not strictly related to independence, **NCAs' civil liability** can impact their approach to the scrutiny and approval of prospectuses due to possible conflicts of interest which may arise when considering their own interest as opposed to the interests of stakeholders such as issuers and investors. Considering this, the peer review assessed the impact of NCAs' liability on their approach to scrutiny and approval of prospectuses and its impact on issuers' access to the capital markets. Overall, in the PRC's view, the *de facto* liability regime in all Member States is likely to reasonably ensure that a member of the PG can carry out his or her role in terms of the scrutiny and approval of a prospectus in an impartial and objective manner balancing the needs of investors and issuers equally. However, in one jurisdiction [IT] the high number of historical claims initiated against the NCA in that jurisdiction has meant that the threat of possible litigation, based on previous claims, is a likely feature of its approach and ingrained into its operating model for the scrutiny and approval of prospectuses. In this regard, the PRC believes that there needs to be urgent change in the domestic liability law insofar as an NCA employee can become the target in civil litigation claims vis-à-vis the discharge of their functions when reviewing a prospectus without being afforded insurance cover for personal financial risk in this case.

¹¹ The PRC is aware that in DE restrictions on the free choice of work would need to be based on law. It is not upon BaFin itself to impose restrictions like cooling off periods.

61. The onsite visits, including the related access to representative samples of supervisory files, played a key role in enhancing the understanding of the NCAs' supervisory approaches and to assess the NCAs against the supervisory expectations defined in the mandate. The PRC wishes to note that visited NCAs engaged openly and constructively and to thank them for their good cooperation in this peer review.

BaFin (Germany)

62. BaFin was chosen for an onsite visit because it approved a significant number of prospectuses: 291 in 2019 and 301 in 2020, of which 280 non-equity prospectuses. 40 of these prospectuses related to equity securities, which was significant considering the more limited activity in many other Member States. Another 223 of these prospectuses relate to base prospectuses: this is the third highest number of base prospectuses approved amongst NCAs in 2019. The PRC also understands that DE has a relatively high volume of retail structured products in its market. Additionally, BaFin passported a total of 208 prospectuses to other Member States in 2019, which was the second number of passports by an NCA. This indicates that BaFin's prospectus supervision may have a higher impact on other Member States. Finally, BaFin was not selected in the 2016 Prospectus Peer Review.

63. The PRC found BaFin to meet expectations as regards both the scrutiny and approval process, its compliance with ESMA's Guidelines on Risk Factors and its resources. Worthy of mentioning are BaFin's efforts with respect to the scrutiny of comprehensibility and plain language as reflected in the base prospectuses reviewed by the visiting team.

64. As regards the assessment area of independence, the PRC notes a new regime came into place following the introduction into law of amendments to FinDAG¹² on 1 July 2021. The PRC notes that, contrary to the expectations set out in the mandate, BaFin does not have a post-cooling off period for employees who take up employment with an issuer, advisor or trade association as there is no basis for such under German law. As such the PRC assessed BaFin to largely meet expectations in this assessment area.

AMF (France)

65. FR was chosen for an onsite visit as it approves a significant number of both equity and non-equity prospectuses. In 2020 AMF approved 118 equity prospectuses and 141 non-equity prospectuses, of which 84 were base prospectuses. The prospectuses approved by AMF in 2020 included nine EU Growth prospectuses and one prospectus drawn up in accordance with the simplified disclosure regime for secondary issuances. AMF also has significant numbers of Universal Registration Documents (URDs) under supervision. Due to the fact that URDs can be filed without approval in accordance with Article 9(2) PR, 323 URDs were filed within 2020, of which 158 were reviewed by AMF during 2020.

66. The PRC found AMF to meet expectations in all the areas under assessment.

¹² Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht, Act establishing the Federal Financial Supervisory Authority.

67. As regards human resources, the PRC recommends that AMF monitors the workloads of the Heads of Division to ensure that they are able to continue to operate at their current high level. Should the Heads of Division become too busy, it may be useful to consider whether additional senior staff should act as senior readers to help ease their workload.
68. The PRC found that AMF applies the four-eye principle to the scrutiny of prospectuses satisfactorily. However, the PRC notes that AMF's IT system is unable to automatically monitor deadlines for readers. Considering the high volumes of prospectus approvals, the PRC recommends that AMF should consider upgrading its IT systems to be able to do so. Additionally, the PRC considers that there appear to be a significant number of manual operations in the PG's IT system that could be further automated considering the high volumes of prospectus approvals.

CONSOB (Italy)

69. In 2020, ESMA's EEA Prospectus Activity and Sanctions Report identified CONSOB as the NCA that experienced the most significant fall in prospectus approval since 2007 from 1,161 in 2007 to 34 in 2020. In CONSOB'S view, the decline in the number of prospectuses has mainly concerned prospectuses relating to non-equity securities issued by banks (from 1,091 in 2007 to 14 in 2020) and is attributed to a number of external factors. In the PRC'S view however, this trend is particularly relevant as the peer review is concurrently assessing the impact of different approaches to scrutiny and approval on issuers' ability to access the capital markets.
70. The PRC observed that the liability regime is a feature of CONSOB's approach and ingrained into its operating model for the scrutiny and approval of prospectuses. CONSOB is very careful when scrutinising prospectuses and as part of its approach, performs broad outreach both internally and externally.
71. This approach is likely to be costly and burdensome both to the NCA and issuers. It may not necessarily benefit investors either as the information included in prospectuses approved by CONSOB does not necessarily render them more readable and investor friendly. It is very understandable that members of the PG may feel the need to be very diligent when scrutinising a prospectus for fear of possible litigation. In this respect, the PRC believes that there needs to be urgent change in domestic liability law insofar as an NCA employee can become the target in civil litigation claims vis-a-vis the discharge of their functions when reviewing a prospectus without being afforded insurance cover for personal financial risk in this case.
72. Therefore, apart from the assessment areas of compliance with ESMA's Guidelines on risk factors and of resources where CONSOB meets the PRC's expectations, the PRC could not conclude that CONSOB fully meets expectations in the three other assessment areas which the PRC assessed as follows: (i) scrutiny – largely meeting expectations, (ii) approval process – largely meeting expectations and (iii) independence and liability – partially meeting expectations. In respect of the latter area, the PRC's assessment of IT's liability regime and its impact on the scrutiny and approval of prospectuses is the prevailing reason for the "partially meeting expectations" assessment. Indeed, if there was no assessment of the liability regime, the PRC's assessment of IT solely in respect of independence would likely have led to an improved grading.

CBI (Iceland)

73. CBI was included as it has never been subject to an onsite visit in a peer review. Indeed, the ESMA peer review methodology states in para 44 that “*the BoS endeavours to ensure that over several peer reviews all NCAs are subject to onsite visits*”.
74. CBI approved 26 prospectuses in 2019. Of the 32 prospectuses approved in 2020, two were equity prospectuses and 30 non-equity prospectuses (twelve base prospectuses and eighteen standalone prospectuses).
75. Overall, the PRC is of the view that the organisational structure of the PG at CBI and its scrutiny and approval processes are satisfactory and appropriate for the scale, size and importance of the securities market in Iceland. CBI therefore meets expectations as regards the scrutiny and approval processes, the compliance with ESMA’s Guidelines on Risk Factors and its resources.
76. As regards independence, whilst the PRC assesses that CBI’s PG carries out its role independently and free from external interference in a sufficient way and that the liability regime in Iceland is unlikely to affect the impartiality of readers when scrutinising a prospectus, it however recommends that a cooling off period (or analogous requirement e.g. applying a code of conduct for a period of time post NCA employment) for members of the PG who resign and take up employment with an issuer, advisory entity or relevant trade association is implemented. As such the PRC assessed CBI to largely meet expectations in this respect.

CSSF (Luxembourg)

77. In 2020, ESMA’s EEA prospectus activity and sanctions Report identified CSSF as the NCA with the highest number of prospectus approvals in the EU with a significant number of retail non-equity prospectuses. In 2020, out of the 505 prospectuses approved by CSSF, 314 were base prospectuses, 183 standalone non-equity prospectuses and eight standalone equity prospectuses. It was also identified that LU passports out a considerable number of prospectuses to other Member States (236 in 2020). Therefore, similarly to DE, CSSF’s prospectus supervision may have a higher impact on other Member States.
78. The PRC found CSSF to meet expectations as regards both the scrutiny and approval process, its compliance with ESMA’s Guidelines on Risk Factors, its resources and in respect of independence and liability.
79. As regards human resources, however, the PRC considers that CSSF should explore whether additional support should be provided to the Heads of Division in order to assist them during busy periods, especially considering that they carry out managerial tasks in addition to their responsibilities directly related to prospectus supervision.

SFSA (Sweden)

80. SFSA was chosen for an onsite visit as it approves a significant number of equity prospectuses. SE was the NCA with the highest number of equity prospectus approvals in 2020 (172). Furthermore, SE has approved large numbers of EU Growth prospectuses, which are a type of prospectus meant to help SMEs access the capital markets and implemented by the PR. The reason for choosing SE for an on-site visit was compounded given the upward trend in approvals in SE over the medium-term. This is an important facet considering that the peer review must consider the impact of different approaches to supervision on issuer’s ability to access the capital markets.

81. SFSA meets the expectations as regards the approval process and its compliance with ESMA's Guidelines on Risk Factors.

82. As regards the scrutiny process and its human resources, the PRC notes that both are linked in the sense that SFSA's stretched amount of resources in view of the number of approvals interplays with its outlier approach to the four-eye principle for the purposes of scrutiny compared to other NCAs. SFSA's approach in essence is to have a reader, who has a mandate to approve prospectuses, discuss with the whole PG the comments he/she intends to make to the issuer in weekly meetings (held twice a week). However, the group never reviews specific parts of the prospectus and does not prepare in advance for the meetings. In this regard, the PRC considers SFSA should revisit the application of the four-eye principle. Contrary to the underlying concept of the four-eye principle that the more sensitive parts of the prospectus should be reviewed by a second person, this does not appear to be the case for prospectuses approved by SFSA, with the exception of Initial Public Offer (IPO) prospectuses and complex transactions or complex prospectuses. Additionally, in the PRC's view, the current model in relation to the four-eye principle does not appear sustainable in the longer run, particularly if there were to be any additional increase in prospectus volumes. In this regard, the PRC encourages SFSA to proactively look at the limitations of the current model and consider alternative options to prepare for a possible further increase in prospectus applications. Given other positive aspects of the SFSA's scrutiny process, the PRC concluded that SFSA largely meets expectations in relation to the scrutiny process.

83. As regards its human resources, the ratio of staff to the number of prospectuses (43) is the highest among the NCAs that received onsite visits. NCAs with the most comparable ratios of staff to approvals focus primarily on non-equity prospectuses, which are considered to be less labour-intensive. As such, the PRC concluded that SFSA may not have sufficient staff for the volume of prospectuses under its supervision, especially considering the large number of equity and EU Growth prospectuses. The SFSA therefore only partially meets expectations in this area. Taking this into account, the PRC recommends that SFSA hire additional staff for the supervision of prospectuses. Additionally, SFSA should consider internal mobility as a tool to alleviate pressure during peak-times.

84. Finally, as regards independence, the PRC found SFSA to largely meet expectations. In this regard, in the PRC's view, the allocation of prospectuses should not be done by an active member of the reading team but on a more impartial basis by a person with managerial responsibilities over the PG.

3 Assessment table

85. This Section sets out the peer review’s assessment grade for each NCA under the areas assessed. In each case, NCAs are assessed as fully meeting expectation, largely meeting expectation, partially meeting expectations or not meeting expectations.

| Country | Scrutiny of prospectuses | Approval process and notification of approvals | Guidelines on risk factors | NCA resources | Independence and liability |
|---------|--------------------------|--|----------------------------|---------------|----------------------------|
| AT | Green | Green | Green | Green | Green |
| BE | Green | Yellow | Green | Green | Green |
| BG | Yellow | Green | Green | Yellow | Yellow |
| CY | Green | Yellow | Green | Green | Yellow |
| CZ | Green | Green | Green | Green | Yellow |
| DE | Green | Green | Green | Green | Yellow |
| DK | Green | Green | Green | Green | Yellow |
| EE | Green | Yellow | Green | Green | Yellow |
| EL | Green | Green | Green | Green | Yellow |
| ES | Green | Green | Green | Green | Green |
| FI | Yellow | Green | Green | Green | Yellow |
| FR | Green | Green | Green | Green | Green |
| HR | Green | Yellow | Green | Green | Yellow |
| HU | Green | Yellow | Green | Green | Yellow |
| IE | Yellow | Green | Green | Green | Yellow |
| IS | Green | Green | Green | Green | Yellow |
| IT | Yellow | Yellow | Green | Green | Orange ¹³ |
| LI | Green | Green | Green | Green | Yellow |
| LT | Green | Yellow | Green | Green | Green |
| LU | Green | Green | Green | Green | Green |
| LV | Green | Orange | Green | Yellow | Green |

¹³ The PRC’s assessment of IT’s liability regime and its impact on the scrutiny and approval of prospectuses is the prevailing reason for the “partially meeting expectations” assessment.

| Country | Scrutiny of prospectuses | Approval process and notification of approvals | Guidelines on risk factors | NCA resources | Independence and liability |
|---------|--------------------------|--|----------------------------|---------------|----------------------------|
| MT | Green | Orange | Green | Green | Green |
| NL | Green | Green | Green | Green | Green |
| NO | Yellow | Green | Green | Yellow | Yellow |
| PL | Green | Green | Green | Green | Yellow |
| PT | Green | Green | Green | Green | Yellow |
| RO | Green | Orange | Green | Green | Yellow |
| SE | Yellow | Green | Green | Orange | Yellow |
| SI | Green | Orange | Green | Yellow | Yellow |
| SK | Orange | Orange | Green | Orange | Yellow |

| | | | | | | | |
|----------------------------|-------|------------------------------|--------|--------------------------------|--------|--------------------------|-----|
| Fully meeting expectations | Green | Largely meeting expectations | Yellow | Partially meeting expectations | Orange | Not meeting expectations | Red |
|----------------------------|-------|------------------------------|--------|--------------------------------|--------|--------------------------|-----|

4 Introduction

85. This report sets out the main findings of the peer review of the scrutiny and approval procedures of prospectuses by competent authorities.
86. The report is organised as follows: (i) this section provides background information on the peer review work; (ii) Section 5 provides the PRC's assessment of the impact of different approaches with regards to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union; (iii) Sections 6-10 present the peer review findings and assessment for each area under review; (iv) Sections 11-13 include the recommendations by the PRC, the good practices identified by the PRC and the PRC's recommendations to ESMA on policy work on prospectus scrutiny and approval to promote supervisory convergence respectively and the recommendations to the European Commission for future legislative work; (v) the Annexes enclose the mandate that formed the basis of the peer review, the questionnaire sent to all NCAs and statement from an NCA.

4.1 Background

87. Regulation (EU) 2017/1129, the Prospectus Regulation (PR) constitutes an essential step towards ensuring the Capital Markets Union (CMU) as set out in the 'Action Plan on Building a Capital Markets Union', because it promotes supervisory convergence in the scrutiny and approval of prospectuses by further harmonising and clarifying areas of divergence. In that regard, Articles 35 to 45 of Commission Delegated Regulation 2019/980 (CDR 2019/980) are particularly noteworthy because they specifically relate to the process of scrutinising and approving prospectuses and universal registration documents (URDs). The PR also introduces several new types of prospectuses, such as the EU Growth prospectus and the simplified disclosure regime for secondary issuances. These formats are intended to facilitate the process of accessing the capital markets and reduce the administrative burden on issuers.
88. Article 20(13) of the PR requires ESMA to organise at least one peer review of the scrutiny and approval procedures of competent authorities, including notifications of approval between competent authorities. The peer review shall also assess the impact of different approaches with regard to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union. The report on the peer review shall be published by 21 July 2022 and shall take into account the opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.
89. In view of the above, the Board of Supervisors (BoS) decided through ESMA's 2021 Annual Work Programme to launch a peer review on NCAs' scrutiny and approval of prospectuses. In July 2021, the BoS approved the mandate for this peer review (enclosed in Annex 1), to be conducted in accordance with Article 30 of ESMAR¹⁴ and the Methodology¹⁵.

¹⁴ EU Regulation 1095/2010 that established ESMA.

¹⁵ ESMA Peer Review Methodology ([ESMA42-111-4966](#) |28 May 2020): The methodology when read together with the ESMA Regulation sets out the methods and tools to conduct peer reviews of NCAs.

90. This peer review builds upon the work of the 2016 peer review on the prospectus approval process¹⁶, which looked into several of the same areas that are addressed in this peer review, such as the four-eye principle, requests for the omission of information from prospectuses, additional checks carried out by NCAs in connection with the scrutiny of prospectuses, the approval of prospectuses and NCA resources. In fact, the 2016 peer review suggested convergence work in the following areas:

- a) risk-based approaches to scrutiny;
- b) the deadlines set by NCAs during the prospectus scrutiny process;
- c) the comprehensibility of prospectuses, in particular with regard to retail base prospectuses;
- d) information sharing;
- e) the disclosure in risk factors; and
- f) NCA staffing, especially during peak periods of prospectus approvals.

91. While this peer review explores these topics further, it also addresses additional topics such as NCAs' financial and operational resources, independence and liability.

92. On top of the topics covered in the 2016 peer review, this peer review should be seen in the context of the Capital Markets Union, as it explicitly addresses the impact of competent authorities' approaches to scrutiny and approval on issuers' ability to raise capital in the Union, as required under Article 20(13) PR.

4.2 Scope of the peer review

93. The peer review focuses on NCAs' prospectus scrutiny and approval processes under the PR.

94. In particular, the review considers five assessment areas as relevant to the prospectus scrutiny and approval processes:

- a) The scrutiny of prospectuses having regard to their completeness, comprehensibility and consistency under Articles 35 to 45 of CDR 2019/980.
- b) The approval process by NCAs of prospectuses, including the notification of approvals by competent authorities pursuant to Article 25 of the PR.
- c) NCAs' application of Guidelines 1-5, 7 and 11 on risk factors in respect of registration document risk-factor disclosure.
- d) The adequacy of NCA resources to carry out the scrutiny and approval of prospectuses.
- e) The independence of the NCA in relation to the supervision of prospectuses, including NCA liability.

95. The peer review assesses, as part of the five areas identified above, the impact of different approaches by NCAs on issuers' ability to raise capital in the Union and corollary impact on investor protection.

¹⁶ Peer Review report on prospectus approval process ([ESMA/2016/1055](#) | 30 June 2016).

96. The peer review also assesses the approach by NCAs to the scrutiny of prospectuses for Small and Medium sized Enterprises (SMEs). For example, NCAs were asked about their experiences with SMEs during the scrutiny and approval process, including their experiences reviewing EU Growth prospectuses. This is important as one of the core objectives of the Capital Markets Union is to facilitate access to financing on capital markets for SMEs in the Union.

4.3 NCAs under review

97. Whilst the peer review covers all NCAs, which were asked to respond to a questionnaire, six NCAs [DE, FR, IT, IS, LU and SE] were selected for an onsite visit based on one or more of the following objective criteria, which conform with Section 7 of the Methodology:

- a) The type of prospectuses approved by the NCA;
- b) Trends regarding the number of approvals of prospectuses by the NCA;
- c) The number of notifications of prospectus approvals made by the NCA;
- d) The number of prospectuses approved by the NCA; and
- e) Whether the NCA has so far never received an on-site visit in the context of a peer review.

98. As regards volumes of prospectus approval activity, the PRC kindly refers readers of this report to ESMA's report on EEA prospectus activity and sanctions in 2020¹⁷.

4.4 Process of the peer review

99. The peer review was carried out by the ad hoc Peer Review Committee (PRC) identified in the mandate approved by the BoS and composed of experts from NCAs and from ESMA staff and chaired by a senior ESMA staff member.

100. As a basis of the assessment, in July 2021 the PRC addressed a questionnaire (enclosed in Annex 2) to all NCAs, followed by complementary information requests between December 2021 and May 2022. Onsite visits¹⁸ took place to the six NCAs between 11 January and 16 February 2022. Such onsite visits to NCAs, including the related access to representative samples of supervisory files, played a key role in enhancing the understanding of the NCAs' supervisory approaches and to assess the NCAs against the supervisory expectations defined in the mandate. The PRC wishes to note that visited NCAs engaged openly and constructively and to thank NCAs for the good cooperation in this peer review.

101. During these visits, the PRC met with stakeholders in each country visited, as facilitated by each NCA. In total the PRC met eleven stakeholders, to further capture relevant stakeholder perspectives on their NCA and the PR. The outcome of discussions with stakeholders was taken into account in the assessment in Sections 6 to 10.

¹⁷ [ESMA report on EEA prospectus activity and sanctions in 2020](#).

¹⁸ Conducted through remote settings, due to sanitary conditions and travel restrictions linked to COVID-19.

102. The peer review covered the period from 4 December 2019 to 30 June 2021.
103. The PRC reported its findings to the BoS, for its approval, after having consulted the Corporate Finance Standing Committee (CFSC), as the relevant Standing Committee for the topics at stake, and the Management Board (MB).
104. For each of the five assessment areas, the mandate identifies supervisory expectations against which NCAs have been assessed. Considering these expectations, the PRC made a qualitative assessment of whether, for each of the five assessment areas, an NCA is likely to be: (i) fully meeting the peer review's expectations, (ii) largely meeting the peer review's expectations, (iii) partially meeting the peer review's expectations or (iv) not meeting the peer review's expectations.

5 The impact of different approaches with regards to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union

105. To the extent possible, this peer review has assessed the impact of competent authorities' different approaches to scrutiny and approval on issuers' ability to raise capital in the Union, as required under Article 20(13) PR. In order to do so, the PRC has included criteria for its mandate that are intended to provide insight into whether different approaches to scrutiny and approval impact issuers' ability to raise capital. For example, the assessment looks into topics such as the efficiency of NCAs' procedures, the experience of NCA staff, communication with issuers and their advisors and the amount of time that NCAs take to provide issuers with comments and approve prospectuses.

106. Based on this assessment, the PRC has identified several factors that may impact issuers' ability to raise capital that relate to NCAs' scrutiny and approval of prospectuses:

a) Communication with issuers

Several NCAs speak with issuers about their desired timelines so that these issuers can plan their offering of securities¹⁹. This helps to ensure that issuers can access the market in a timely manner. Even if most NCAs communicate well with issuers in this regard, the PRC believes it is important to emphasise this factor to encourage appropriate communication between NCAs and issuers.

b) Flexible approval procedures

NCAs approving fewer prospectuses typically have longer approval procedures, some of which take 3 days or more after the actual scrutiny of the prospectus has been completed. Often, this appears to be linked to the requirement to have prospectuses approved by an NCA's Board. Other NCAs typically either have the prospectus readers themselves, a member of management or a reader acting together with a member of management approve the prospectus. Some NCAs are even able to approve a prospectus on the same day that the scrutiny of the prospectus is finished.

Additionally, many NCAs provide issuers with comments relating to draft prospectuses more quickly than required in Article 20(2) and (3) PR. These faster turnaround times are intended to facilitate issuer access to the market by speeding up the review process.²⁰

c) NCA staffing

The NCAs approving larger number of prospectuses have staff with expertise in the types of securities and issuers that are most common in their Member State. This expertise appears to influence issuers' choice to have a prospectus approved at a particular NCA when they can choose their home Member State. For example, IE and LU both have specific expertise in complex non-equity securities, including more esoteric asset-backed securities. DE is considered to have a high degree of

¹⁹ See section 6.3.6 of this report for a discussion of NCA's interactions with issuers.

²⁰ See the discussion concerning '*Self-imposed or national time frames*' starting in section 6.3.5.1 of this report.

expertise in relation to structured products. The expertise at each NCA tends to reflect the types of prospectuses that they typically supervise.

This does not mean that these NCAs do not have expertise in other areas nor that there is a lack of expertise at NCAs with fewer approvals. However, the PRC considers that prospectus readers supervising a larger volume of certain types of prospectuses and that have expertise concerning specific products will often be able to scrutinise prospectuses more quickly. This is particularly the case in relation to non-equity securities, which are often drawn up using standard documentation.

d) Attitude towards liability

While all NCAs generally appear to supervise prospectuses in accordance with the PR, there are differences in NCAs' approaches to requiring issuers to make changes to prospectuses. More specifically, some NCAs appear to be comfortable requiring issuers to delete risk factors from their prospectuses or amend sections of the prospectus that they do not consider sufficiently comprehensible. Other NCAs appear to be more reluctant to force issuers to make such changes because the issuer is ultimately responsible for the information in the prospectus. These approaches may result in different outcomes depending on the NCA.

Additionally, the level of liability of NCAs and their staff can also cause NCAs to take a more cautious approach to the supervision of prospectuses. This may make it more difficult for issuers to have their prospectuses approved, especially because NCA staff are understandably concerned about their personal liability²¹.

107. This report also identifies several areas where there are material differences between NCAs, such as the deadlines imposed by NCAs for issuers to respond to comments²², NCAs' procedures for the approval of prospectuses²³ and the additional criteria that NCAs apply to prospectuses under their scrutiny²⁴. Although these differences may appear minor at first glance, their accumulation may result in it being easier to have a prospectus approved at some NCAs than at others. Ultimately, this means that it will be more convenient for issuers to raise capital in the Member States where it is easier to have a prospectus approved.

Additional findings

108. The PRC has additional findings that are relevant to the discussion about issuers' ability to raise capital throughout the Union. These findings relate to the following areas:

- a) the number of draft prospectuses submitted to NCAs before approval;
- b) the length of prospectuses; and
- c) the length and number of risk factors in prospectuses.

109. While the data concerning the number of draft prospectuses submitted to NCAs before approval was collected from NCAs in connection with the peer review, the data concerning the length of prospectuses and the length and number of risk factors was

²¹ See section 10.2 concerning '*Liability regimes*' and the discussion of the liability of IT in particular.

²² See section 6.3.5.1 concerning '*Self-imposed or national timeframes*'.

²³ See section 7.1 concerning the '*Approval and notification of prospectuses*'.

²⁴ See section 6.3.4 concerning '*Additional criteria*'.



collected from ESMA’s prospectus register and analysed using ‘natural language processing’.

The number of draft prospectuses submitted to NCAs before approval

110. The PRC requested data from NCAs about the number of drafts of different prospectus formats that were submitted to NCAs before approval. Based on this information, the PRC calculated the average number of drafts of IPO prospectuses, other types of equity prospectuses which are not drawn up as an EU Growth prospectus or under the simplified disclosure regime for secondary issuances, non-equity prospectuses which are not drawn up as an EU Growth prospectus or under the simplified disclosure regime for secondary issuances, EU Growth prospectuses, and prospectuses drawn up using the simplified regime for secondary issuances.

Table 1: Average number of drafts submitted before approval

| | IPO | Other equity | Non-equity | EU Growth | Secondary issuances |
|---------------------------------|------|--------------|------------|-----------|---------------------|
| Average number of drafts | 5.30 | 4.80 | 4.13 | 4.28 | 5.15 |

Source: ESMA using data provided by NCAs to the PRC in connection with this peer review.

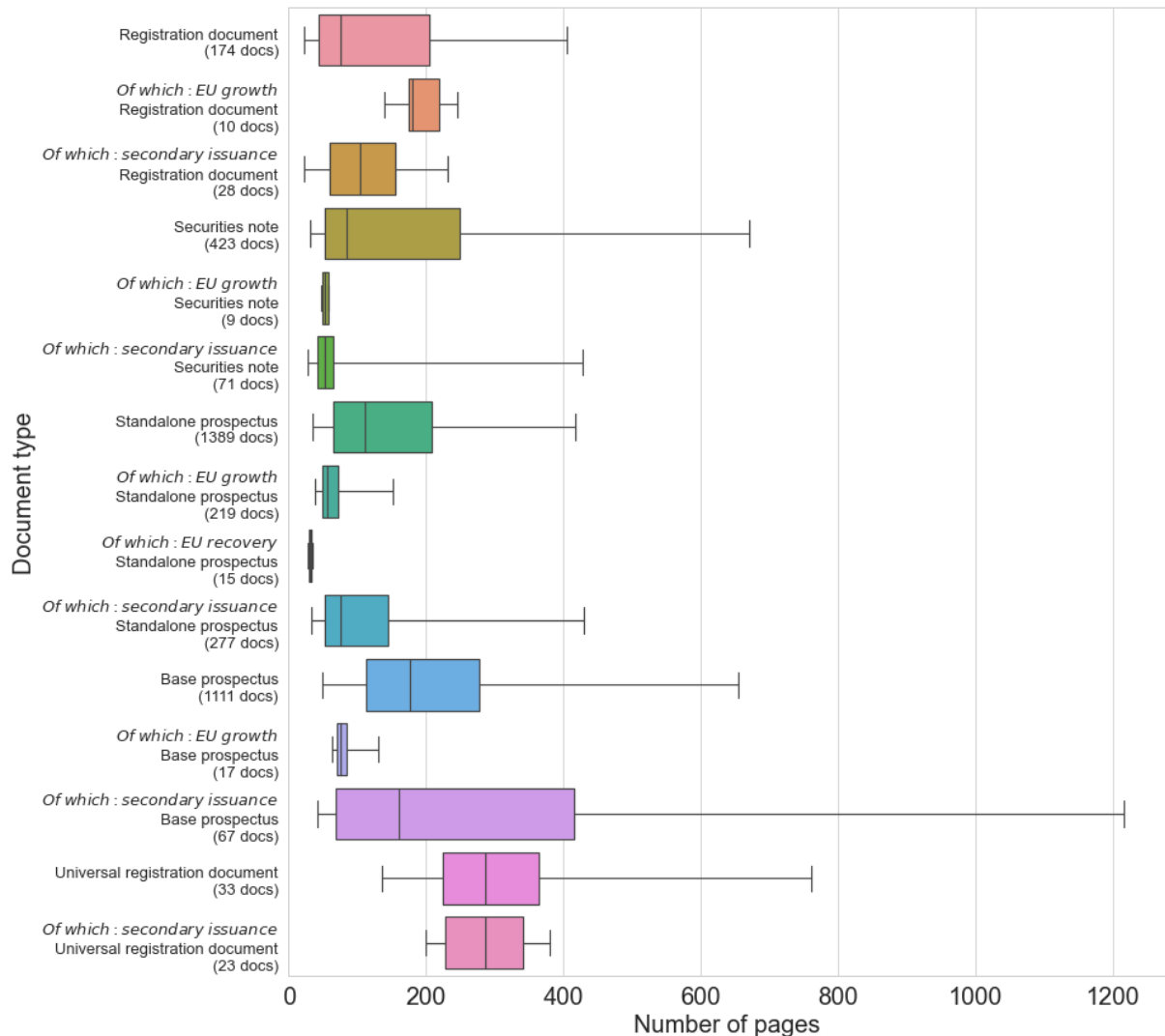
111. The data in the table shows that the alleviations in EU Growth prospectuses have not significantly reduced the rounds of review, while the reduced requirements as regards secondary issuances did not translate into fewer rounds of review for these prospectuses. More analysis would be necessary to further explore why this is the case. Possible explanations could be that (i) these are relatively new formats, (ii) there are a comparable number of rounds of comments but a smaller number of comments (in relation to EU Growth prospectuses), (iii) SMEs do not always have access to advisors experienced with prospectuses and/or (iv) SMEs have difficulty drawing up appropriate disclosures.

112. Additionally, the PRC notes that issuers often include significant amounts of information in prospectuses that are not necessarily required under the disclosure requirements set out in CDR 2019/980 and the ‘necessary information test’ in Article 6(1) PR. The inclusion of this information may also increase the number of rounds of review of a prospectus in all formats.

The length of prospectuses

113. Table 2 below shows the distributions of the number of pages within each document type. The length of documents in the sample varies widely, for example depending on the document type. The data contained in the table was retrieved from the following types of documents submitted to the Prospectus Register between 30 November 2020 and 27 January 2022: base prospectuses (with and without final terms), standalone prospectuses, securities notes, registration documents (including universal registration documents).

Table 2: Document length – range in document length by document type



Note: Each box shows the range of the number of pages for specific types of documents. The vertical line in each box is the median for that respective document type. Box edges are the 25th and 75th percentiles of the number of pages within each document type, while the whiskers represent the 5th and 95th percentiles.
Source: ESMA.

114. The longest documents tend to be base prospectuses, with a median length of nearly 200 pages, and universal registration documents, with a median length of almost 300 pages. Both groups are characterised by a marked heterogeneity, though, with some documents reaching several hundred pages.²⁵

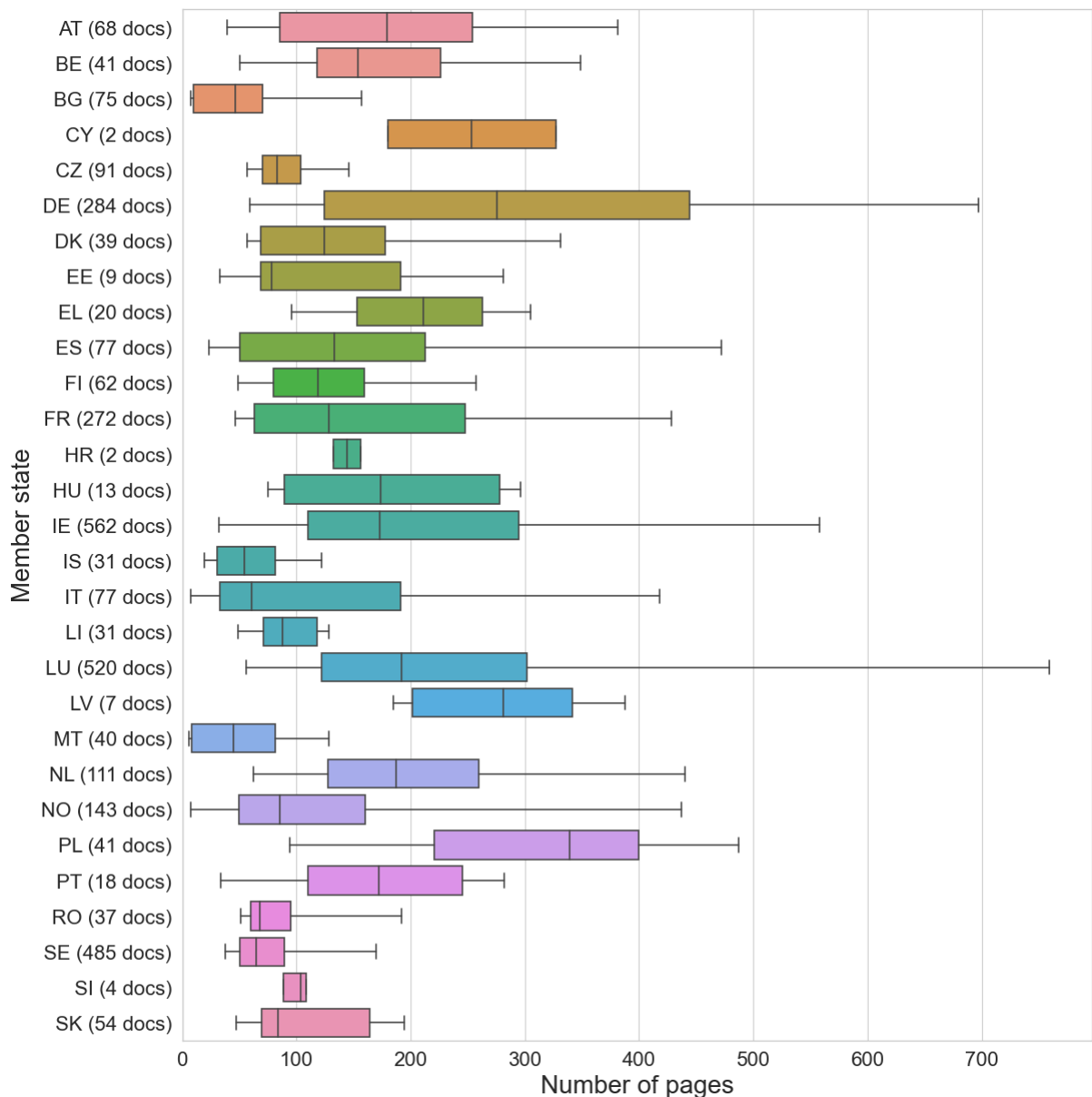
115. Table 2 also provides breakdowns of document types into special categories, such as the EU Growth Prospectus and the EU Recovery Prospectus. Documents in these special categories are almost always markedly shorter than the rest of the documents of the same overall category (e.g., EU Growth base prospectuses are almost always shorter than the typical length of base prospectuses). A notable exception are the ten EU Growth registration documents, whose length exceeds that of most other registration documents.

²⁵ It should be noted that some of the documents include translations, appendices, or annexes.

116. When looking at prospectuses associated with secondary issuances, the difference in length when compared to the other documents of the same type tends to be less clear-cut. Only in the case of securities notes, at least three quarters of the secondary issuance prospectuses are at the lower end of length for this document type (less than 65 pages, as shown by the position of the right side of the box).

117. Next, Table 3 below explores heterogeneity in the length of prospectuses across jurisdictions. The table shows that prospectuses approved in DE, IE and LU span the widest range of length, with at least 5% of the documents reaching respectively 750, 700 and 550 pages. Among NCAs with a relatively large number of prospectus approvals, prospectuses in SE tend to be remarkably short, with more than 75% of the documents below 100 pages.

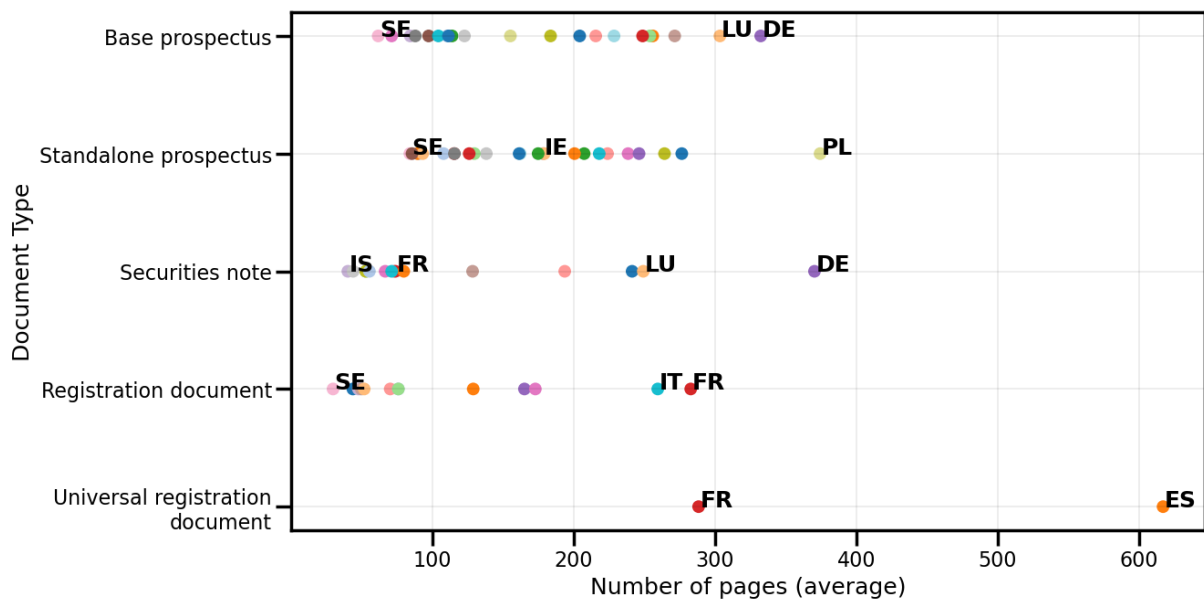
Table 3: Range in document length by NCA



Note: Each box shows the range of the number of pages for documents filed at a specific NCA. The horizontal line in each box is the median for that respective group. Box edges are the 25th and 75th percentiles of the number of pages within each NCA, while the whiskers represent the 5th and 95th percentiles. Sources: ESMA.

118. As some of the differences in document length across Member States may be due to differences in the mix of document types in each State, these two dimensions are explored at the same time. Table 4 below presents a split across document type, but also groups documents by Member State, showing the average number of pages for documents within each group. While several types of prospectuses approved in BG, CZ, IS, LI, MT, RO, SE and SK tend to be relatively short, on the other end of the spectrum often lie prospectuses approved in DE, ES, FR, IE, IT, LU, NL, NO and PL.

Table 4: Average document length by prospectus type and NCA



Note: Each dot shows the average number of pages for documents of a specific type issued in a specific member state. Dots of the same colour represent the same member state. Due to space constraints, dots are labelled only for “outliers” at the right-hand side of the chart and member states with a large number of prospectus approvals.
Sources: ESMA.

119. It is difficult to provide a reason for the differences in length between the different Member States. This may be linked to differences in civil liability in different Member States. Such differences could lead to issuers and their advisors including larger volumes of information in documents to make it easier to defend against possible civil liability. Further work would need to be done in this area to try to explain these differences. ESMA may want to consider undertaking additional work in this area to identify possible reasons for the differences in the length of prospectuses between Member States. In particular, it may be useful to understand why prospectuses are shorter in SE, especially considering the larger volume of approvals in that Member State.

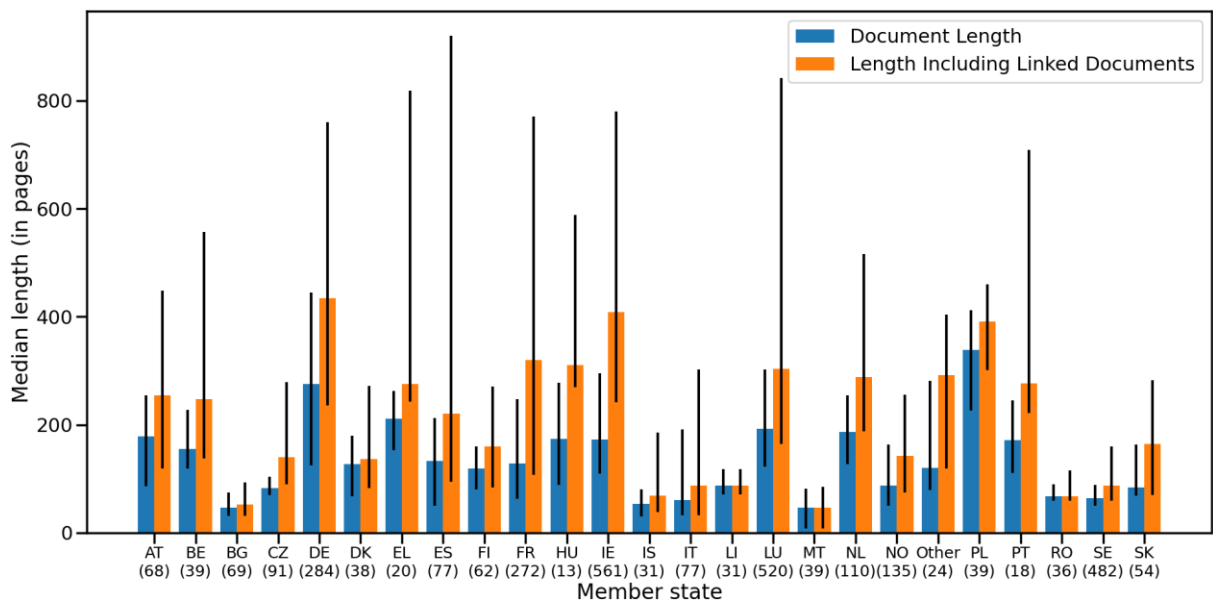
120. In that regard, it is interesting to consider the recent proposal for a page limit for prospectuses²⁶. The PRC notes that the length of prospectuses creates a challenge for investors. However, the introduction of page limits is not the appropriate solution to this

²⁶ Final report of the Technical Expert Stakeholder Group (TESG) on SMEs, [Empowering EU capital markets for SMEs – making listing cool again](#), May 2021, p. 23.

problem, especially considering the difficulties determining what the maximum page limit should be due to the various types of transactions that can be included in prospectuses. The PRC is concerned that such an approach would be overly complicated and could lead to NCAs adopting different approaches in relation to allowing issuers to extend the length of prospectuses. The PRC also notes that the length of prospectuses will also not be effectively reduced if the consequence is that more information is incorporated by reference into prospectuses. Indeed, any documents incorporated by reference still form an integral part of a prospectus and should be read by prospective investors.

121. The previous tables do not take into account the impact of any documents incorporated by reference into prospectuses. In order to take into account the impact of such documents, Table 5 below sets out the median length of prospectuses approved by different NCAs. Based on this information, it becomes apparent that documents incorporated by reference greatly contribute to the length of prospectuses, with some prospectuses growing to more than double their original size when such documents are taken into consideration. Additionally, there are also significant differences between the length of prospectuses approved in different Member States.

Table 5: Length of prospectuses, including documents incorporated by reference by NCA



Note: The bar chart shows the comparison between the median length of prospectuses over NCA with the median effective length (length including documents that are linked to from prospectus-related documentation considered). The black lines indicate the range of the findings (i.e., the 25th and 75th percentile of observations). Also note that NCAs with less than 10 issued documents in the data sample were grouped in the category “other”. These NCAs include EE, LV, SI, HR and CY.
Sources: ESMA

Risk factors

Description of the methodology

122. ESMA staff analysed the risk factor section of documents drafted in English, Swedish, German, and French (i.e. the four most common languages in the sample of documents). Documents where either the risk factor section could not be extracted, or – more frequently – it references risk factors in another document (and therefore it does not contain all the risk factors) were removed from the original sample. Following this

step, this left 1,775 documents in English, 336 in Swedish, 238 in German, and 133 in French.

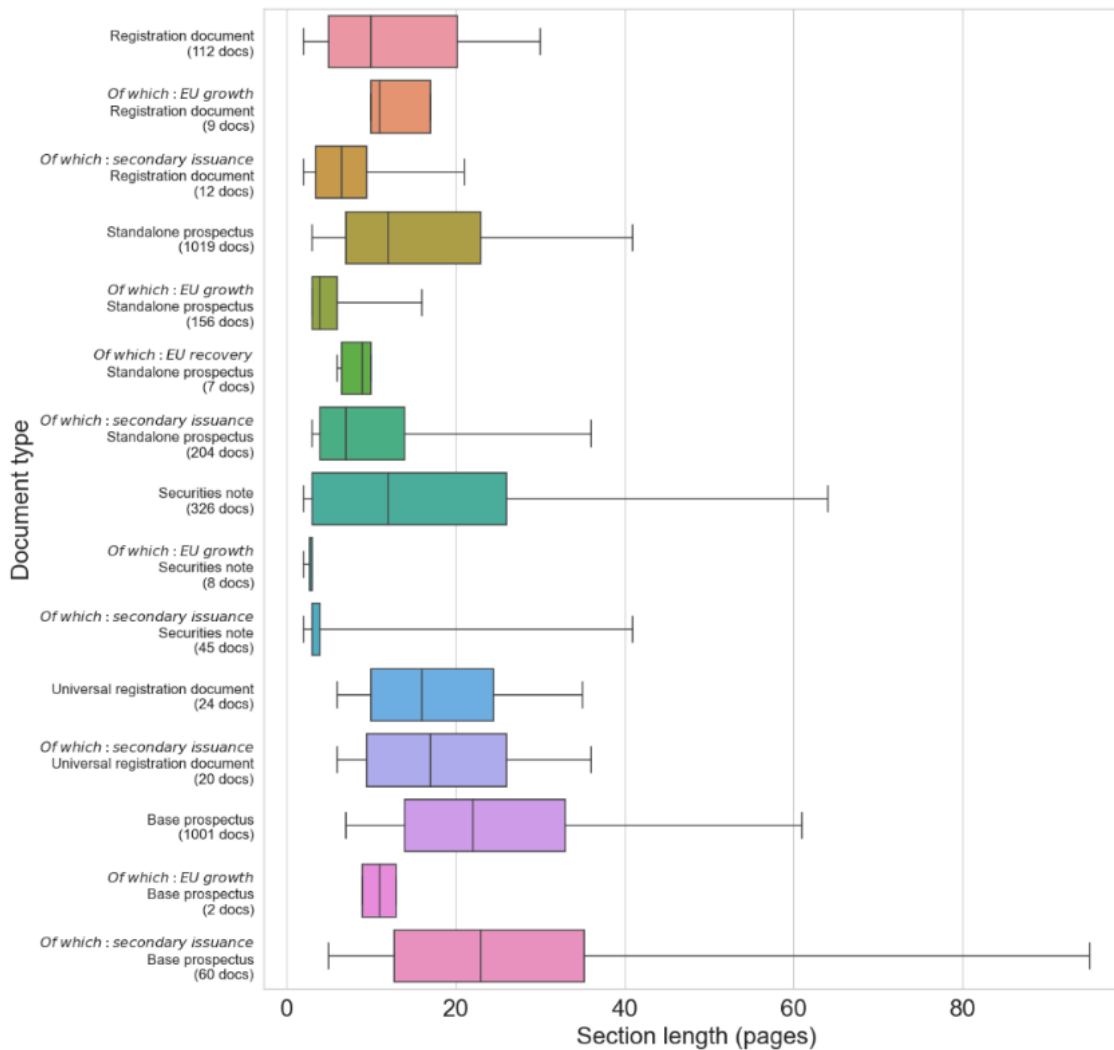
123. In the next step, the risk factors were identified. Issuers typically group risks in categories and sub-categories. However, issuers are not required to follow a specific classification or explicitly declare which sources of risk qualify as distinct “risk factors” as there is no ex-ante definition for these concepts. Therefore, the individual risk factors were first identified based on the structure of the section and lay out of the risks. Specifically, this allowed the identification of all occurrences of a heading directly followed by a text paragraph. Among this group, the most frequent heading types (i.e. headings which have the same font type and same text size) were identified, which typically corresponds to the last and most granular “level” of headings. The headings of this type – and the following text paragraphs – were considered to be the risk factors and their description.²⁷

Length of the risk factor section

124. Table 6 below shows how the length of the risk factor section is distributed across the different types of prospectuses. The longest sections tend to be in base prospectuses and securities notes, while the drafting of risk factors is usually shorter in registration documents and standalone prospectuses. In most of the documents which follow the EU Growth and EU Recovery formats, the risk factor section is significantly shorter, in agreement with these documents being usually more compact, as it also emerged when looking at the overall length of these kinds of prospectuses. This is not always the case for secondary issuance prospectuses; while risk factors in securities notes and registration documents tend to be relatively shorter, some of the longest sections are to be found in secondary issuance base prospectuses without final terms.

²⁷ In other words, this typically means that in documents formatted with a sequence of sections, subsections, sub-subsections, etc., each of the last, most granular headings within the risk factor section is considered a risk factor.

Table 6: Longest sections in base prospectuses and securities notes



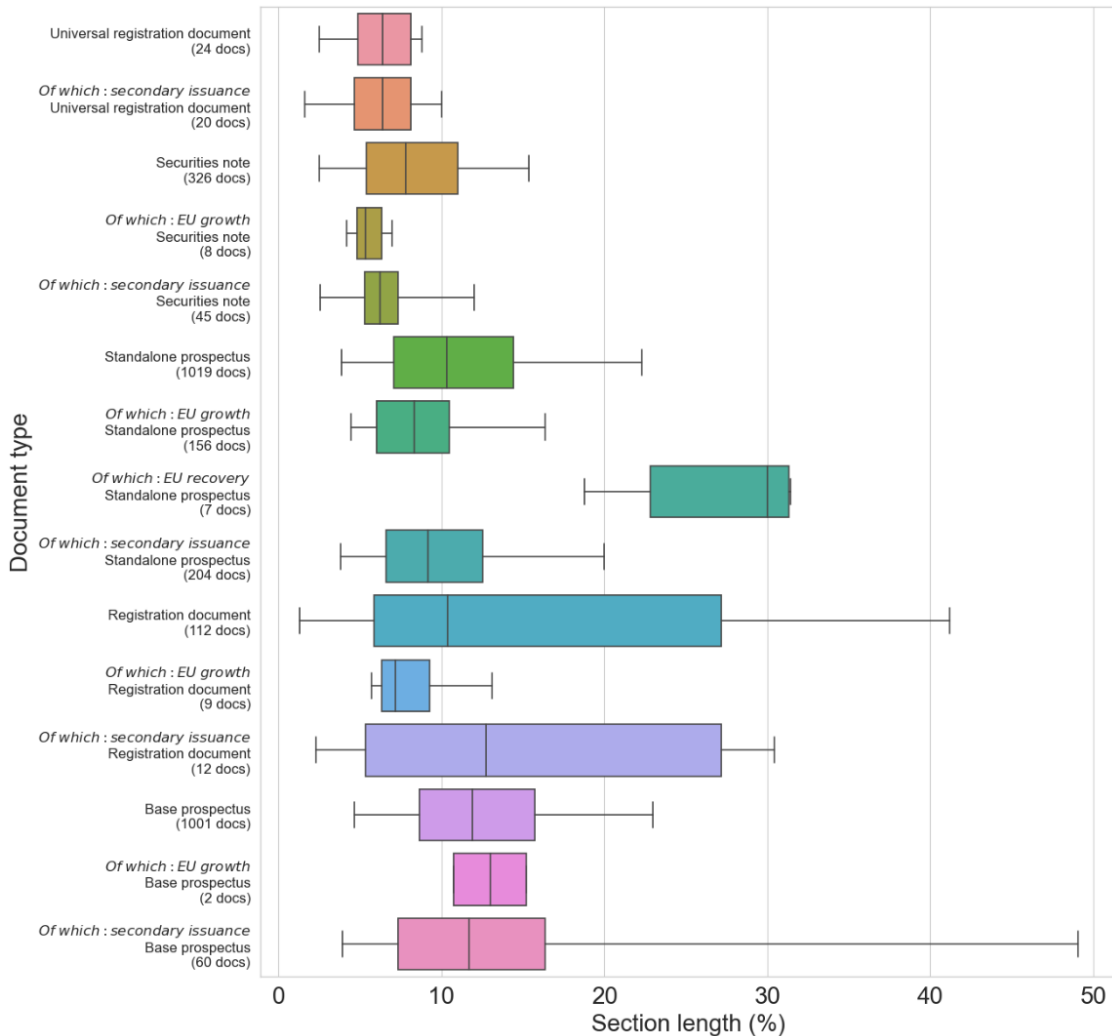
Note: Each box shows the range of the length of the risk factor section for documents of a specific type. The horizontal line in each box is the median for that respective document type. Box edges are the 25th and 75th percentiles of the length within each document type, while the whiskers represent the 5th and 95th percentiles.
Sources: ESMA.

125. To better gauge how prominent the risk factor section is in relation to the overall amount of information contained in a prospectus, Table 7 below presents similar statistics, but this time setting out the length of the risk factor section as a percentage of the length of the respective document as a whole.

126. Examining the risk factor section length relative to total pages gives a significantly different picture than the plain number of pages; when expressed in relative terms, the risk factor section is often more prominent in registration documents than in other document types, at times accounting for more than 40% of the entire document. Conversely, in securities notes this section almost never exceeds 15% of the document length. Interestingly, even when normalising by the size of the document, EU Growth prospectuses still tend to include shorter risk factor sections. This is not true for documents drafted in the EU Recovery format; while the risk factor section typically ranges from 5% to a little over 20% of a standalone prospectus, it accounts for between

roughly 20% and 30% of the seven EU Recovery prospectuses of the same type in the sample.

Table 7: Length of risk factor section relative to document length



Note: Each box shows the range of the length of the risk factor section as a percentage of the total document length for documents of a specific type. The horizontal line in each box is the median for that respective document type. Box edges are the 25th and 75th percentiles of the percentage length within each document type, while the whiskers represent the 5th and 95th percentiles.

Sources: ESMA

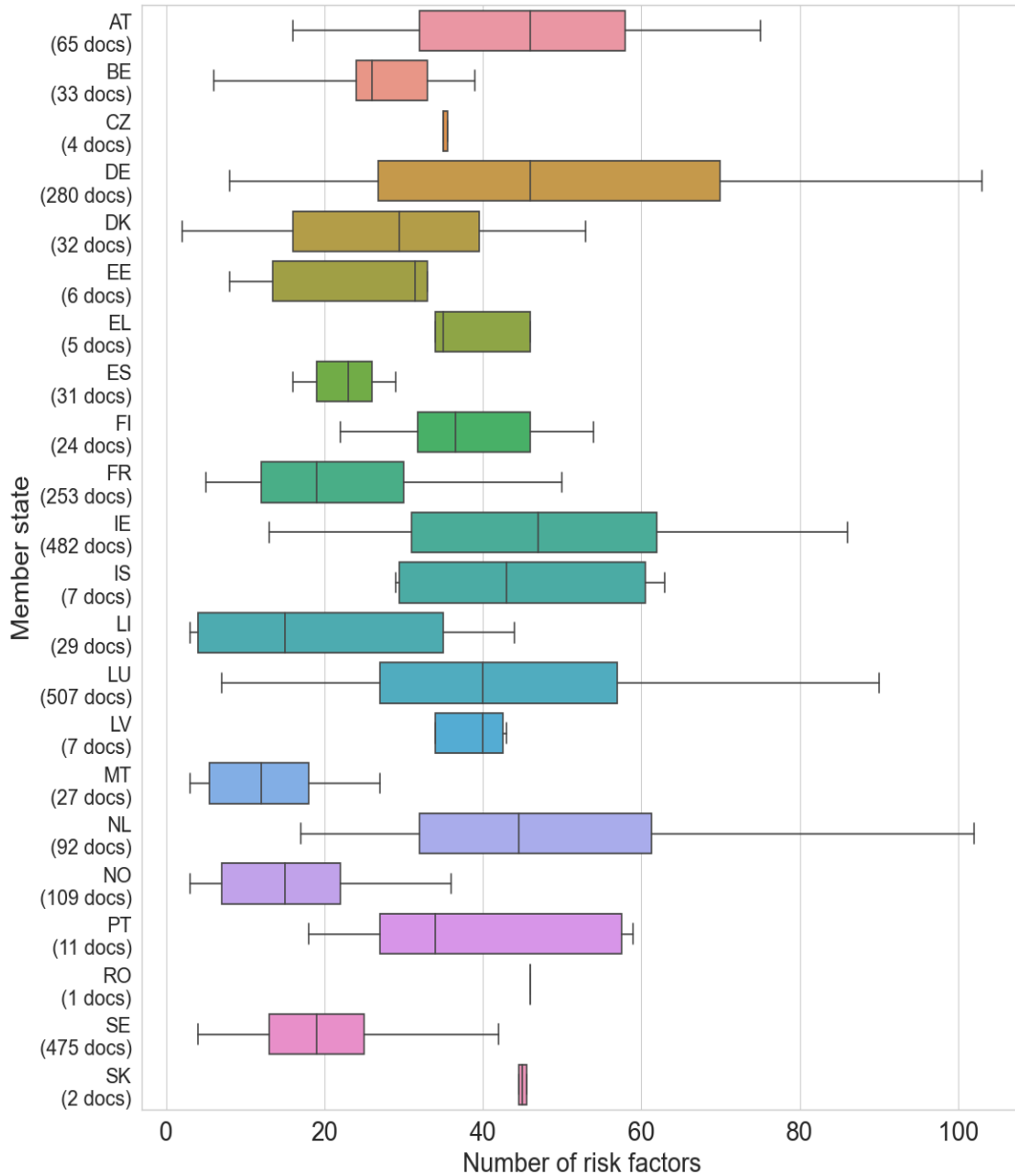
Number of risk factors

127. In order to shed light on the range of risk-related information that issuers provide to investors, the number of risk factors included in the prospectuses was analysed. Table 8 below shows the distribution of this measure for each group of documents filed at the same NCA. Among the more numerically relevant Member States in the sample, prospectuses in AT, DE, IE, LU and NL often include a large number of risk factors: in more than half of the documents filed in these jurisdictions, at least 40 were detected; in more than one quarter of the documents, about 60 or more were detected.

128. Conversely, in five jurisdictions almost no prospectus filed contains more than 40 risk factors, and half of the documents from these NCAs count below 20. Pinning down the root cause of such variation among countries is complex, as differences could be due not only to geographical heterogeneity in the sources of risk and in the

characteristics of the companies, but also to different approaches by companies as regards the disclosure of information to investors in different jurisdictions. Additional differences could be explained by the characteristics of the national markets in Member States, such as the large number of structured products offered in DE, the relatively large numbers of prospectuses relating to complex wholesale non-equity securities in IE and LU and the relatively large number of equities in FR and SE.

Table 8: Number of risk factors by Member State



Note: Each box shows the range of the number of risk factors found in a document for documents filed with a specific NCA. The horizontal line in each box is the median number of risk factors for that respective NCA. Box edges are the 25th and 75th percentiles, while the whiskers represent the 5th and 95th percentiles.
Sources: ESMA

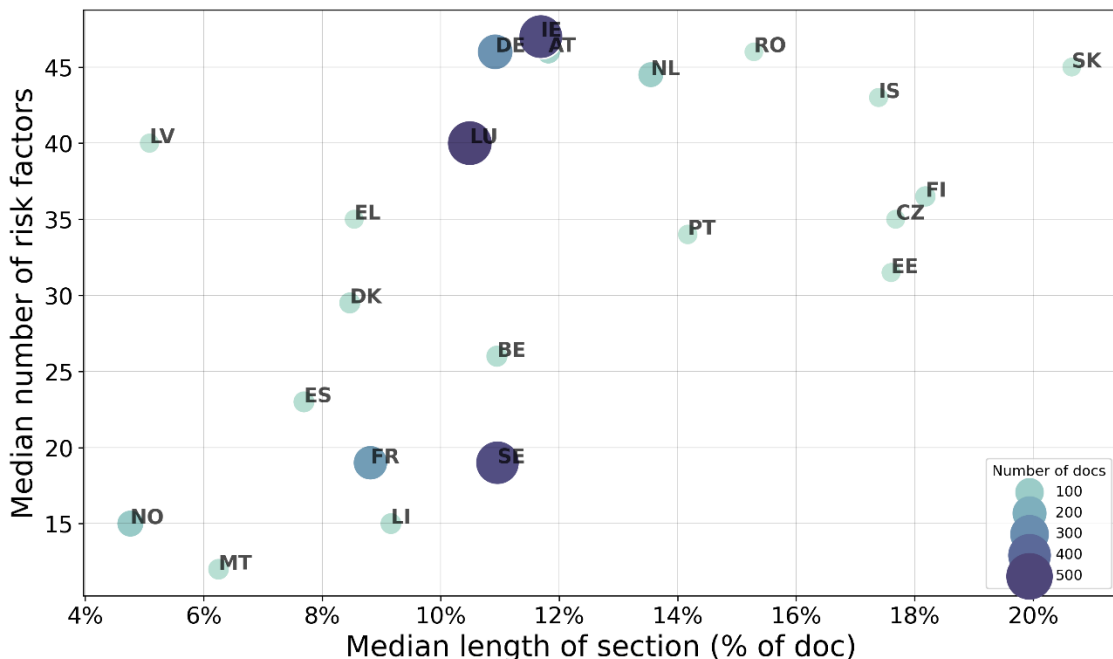
129. Finally, the relationship between the number of risk factors found in a prospectus and the length of the risk factor section was considered. These two measures were expected to be positively correlated, as a higher number of risk factors naturally increases the length of the section. At the same time, another important

determinant of the overall section length is how much text issuers use to describe each risk factor.

130. Table 9 below plots the number of risk factors against the length of the section as a percentage of the document length, showing for each NCA the median for prospectuses filed in that jurisdiction. As expected, in many countries the number of risk factors tends to explain well the relative length of the respective section. However, especially when focusing on NCAs with the most documents in the sample [DE, FR, IE, LU, SE], two interesting facts are observed. First, all these countries display a roughly similar and relatively low median length of the risk factor section: between 9% and 12%, compared to a range between 5% and 21% among the NCAs with a lower number of documents. Second, notwithstanding the similar median percentage length, prospectuses approved in DE, IE and LU are characterised by a much higher number of risk factors compared to French and Swedish documents.

131. This suggests that while the risk factor section could seem to have a similar relevance in prospectuses from different countries – taking up roughly the same space within the document – the quantity and granularity of different sources of risk laid out can vary significantly. It is unclear why there would be such divergence in this area. However, once again, the PRC considers the logical place to look for an explanation would be the civil liability regimes in different jurisdictions as well as to consider the different approaches that NCAs take to the enforcement of the Guidelines on risk factors, as discussed in Section 8 of this report. In any event, it appears that there is merit in carrying out further convergence work in this area.

Table 9: Number of risk factors versus section length



Note: The data points shown in the scatterplot represent the median of two variables for documents filed with a specific NCA. The variable on the x-axis is the percentage length of the risk factor section. The variable on the y-axis is the number of risk factors found in a document.

Sources: ESMA

Other issues impacting issuers' ability to raise capital

132. It is important to emphasise that the requirement to draw up a prospectus is only one of the issues that may impact issuers' ability to raise capital. In fact, the PRC considers that, while there may be areas in which the administrative burdens included in the Prospectus Regulation can be alleviated, such alleviations are not necessarily likely to be effective without further changes to the ecosystem in which issuers operate. Such areas relate to tax, the liability of issuers, access to experienced advisors, corporate governance, especially in relation to business owners' concerns about diluting their ownership and control, and the costs associated with capital markets transactions more generally. Accordingly, the PRC would encourage legislators and stakeholders to look beyond prospectus to consider these other areas in the future.
133. In that regard, it is useful to consider the capital markets in SE, where there is a particularly high number of prospectus approvals relating to equity securities, and EU Growth prospectuses in particular. It appears that SE's rules concerning pensions is a significant driver of both direct, and indirect (via for example investment funds), retail participation in their capital markets, because it ensures that there is a significant investor base available for issuers. While the PRC understands that other Member States may not want to emulate SE's pension system, Member States and the Commission may want to consider how to further encourage retail investment.
134. Finally, the PRC emphasises the importance of investor protection, which must be taken into consideration in any proposals. Without sufficient protection, (retail) investors may not be prepared to participate in the capital markets

6 NCAs’ scrutiny of prospectuses having regard to their completeness, comprehensibility and consistency under Articles 35 to 45 of CDR 2019/980

6.1 Application of the four-eye principle

135. The PRC has assessed the application of the so-called, “four-eye” principle by NCAs in relation to the scrutiny of prospectuses. According to the mandate for this peer review:

“[Each] Competent Authority should have the ‘four-eye 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 scrutinising prospectus than the first reviewer.”

a) Summary of findings

136. Table 10 below provides an overview of the application of the “four-eye” principle by the 30 NCAs covered by the peer review.

Table 10: Application of the four-eye principle by NCAs

| | Column A: 2 readers + senior or 3 readers | Column B: 2 readers | Column C: 1 reader + senior reader | Column D: At least 1 reader | Column E: Other |
|-----------------------------|--|---|--|-----------------------------------|---|
| IPO | BE, BG, DE, IT, LT, LU, PL, RO (8) | AT, CZ, DK, EE, EL, ES, FI, HU, IE, IS, HR, LV, MT, PT, SE, SI (16) | CY, FR, NL, NO (4) | | SK (none approved), LI (none approved), (2) |
| Retail non-equity | BG, PL (2) | AT, BE, CZ, DE, DK, EE, EL, ES, HR, HU, IS, LI, LT, LV, MT, PT, SI (17) | CY, FR, IT, LU, NL, RO, SE (7) | FI, IE, NO, SK (4) ²⁸ | |
| Wholesale non-equity | BG, PL (2) | AT, BE, CZ, DE, DK, EE, EL, HR, HU, IS, LI, LT, LV, MT, PT, SI (16) | CY, ES, FR, IT, LU, NL, RO, SE (8) | FI, IE, NO, SK (4) ²⁹ | |

²⁸ FI, IE, NO and SK take a risk-based approach so that it is possible that either two readers scrutinise a retail non-equity prospectus, one reader scrutinises a retail, non-equity prospectus together with a senior reader or a single reader scrutinises a retail, non-equity prospectus. These approaches are described in more detail in the findings.

²⁹ FI, IE, NO and SK take a risk-based approach so that it is possible that either one reader scrutinises a wholesale, non-equity prospectus together with a senior reader or a single reader scrutinises a wholesale, non-equity prospectus. These approaches are described in more detail in the findings.

| | Column A: 2 readers + senior or 3 readers | Column B: 2 readers | Column C: 1 reader + senior reader | Column D: At least 1 reader | Column E: Other |
|--|--|---|--|--|---|
| EU Growth prospectuses | BG, DE, IT ³⁰ , PL (4) | AT, BE, CZ, DK, EE, EL, ES, FI, HR, HU, IE, IS, LI, LT, LV, MT, PT, SK (18) | CY, FR, LU, NL, NO, RO, SE (7) | | SI (not applicable) (1) |
| Secondary issuance prospectuses | BG, IT ³¹ , PL (3) | AT, BE, CZ, DE, DK, FI, EE, EL, ES ³² , HR, HU, IE ³³ , IS, LT, LV, MT, PT, RO, SI (19) | CY, FR, LU, NL, NO, SE (6) | | SK (not applicable), LI (none approved) (2) |
| Supplements | BG, IT ³⁴ (2) | AT, CZ, DE, DK, EE, EL, HR, HU, IS, LI, LT, LV, MT, PL, PT, SI, SK (17) | CY, FR, LU, NL, RO (5) | BE, ES, FI, IE, NO, SE (6) ³⁵ | |
| Equity with no admission to trading | BG, IT, LU, PL, (4) | AT, BE, CZ, DE, DK, EE, EL, ES, FI, HR, HU, IE, IS, LI, LT, LV, MT, PT, SI, SK (20) | CY, FR, NL, NO, RO, SE (6) | | |

137. The above table highlights the two main approaches to the application of the “four-eye” principle. In the **first main approach** set out in column B, two readers scrutinise the prospectus, where, in most cases, both readers review the prospectus in its entirety for consistency, completeness and comprehensibility. Some variations to this approach were identified: one NCA (BG) has two readers scrutinise the prospectus under the direction of a senior reader and a significant number of NCAs have indicated that they occasionally have a third reader in relation to higher risk prospectuses. For example, LU may add readers in several situations, including a) in case of new types of products, b) where complicated legal questions may be anticipated, c) where transaction parties have been subject to enforcement actions or which were reluctant to comply with LU’s comments in the past, and d) where one of the readers is less

³⁰ IT would have a junior reader scrutinise the prospectus with a senior reader if the EU Growth prospectus relates to non-equity securities.

³¹ IT would have a junior reader scrutinise the prospectus with a senior reader if the secondary issuance prospectus relates to non-equity securities.

³² ES would have a reader scrutinise the prospectus with a senior reader if the secondary issuance prospectus relates to non-equity securities.

³³ IE takes a risk-based approach so that it is possible that either two readers scrutinise a secondary issuance prospectus, one reader scrutinises a secondary issuance prospectus together with a senior reader or a single reader scrutinises a secondary issuance prospectus. This approach is described in more detail in the findings.

³⁴ IT would have a junior reader scrutinise the supplement with a senior reader if it relates to non-equity securities.

³⁵ BE, ES, FI, IE, NO and SK take a risk-based approach so that it is possible that either one reader scrutinises a supplement together with a senior reader or a single reader scrutinises a supplement. These approaches are described in more detail in the findings.

experienced in relation to the type of prospectus to be reviewed. Other NCAs, such as DE, FR, IT and PT may add readers in similar situations, especially in relation to high profile transactions such as IPOs. In EL, the Head of Public Offerings Department scrutinises each prospectus in its entirety for consistency, completeness and comprehensibility as the second senior reader.

138. In the **second main approach** set out in column C, whilst two readers also scrutinise the prospectus, the first reader reviews the prospectus in its entirety for consistency, completeness and comprehensibility and the second reader generally focusses on the most important and sensitive sections of the prospectus, where issues most often arise, such as the risk factors, the business description, the Operating and Financial Review (OFR), the working capital statement and pro forma financial information. The second reader is generally more experienced and often has a seniority over the first reader, which is consistent with the expected application of the four-eye principle. However, the PRC notes that this is not an obligation and is not always the case at each NCA. Differences in the approach taken by the senior readers also exist. More specifically, FR's senior readers appear to typically read the entire prospectus, unless they are dealing with prospectuses that are scrutinised using the proportionate approach in accordance with Article 41 CDR 2019/980. DE has indicated that their senior readers typically have a legal background and that they are currently looking to ensure that they have more senior readers with an economic or financial background.
139. As the table above shows, more NCAs apply the first approach to equity prospectuses that are considered to be riskier, while applying the second approach to non-equity securities and transactions that they consider to be less risky. However, there appear to be deviations in the specific risk assigned to transactions by NCAs. For example, some NCAs appear to reserve the first approach for prospectuses concerning the initial admission to trading of equity securities on a regulated market, while other NCAs also take the first approach when scrutinising all equity prospectuses, such as prospectuses concerning secondary issuances, EU Growth prospectuses and/or unlisted offerings of equity securities.
140. The application of the second approach to the four-eye principle by SE is noteworthy. Except for IPOs, SE generally assigns a single reader, who has a mandate to approve prospectuses, to scrutinise the entire prospectus and then discuss their comments in one of two weekly PG meetings. These weekly meetings typically last two hours and are attended by the Deputy Director and, if warranted, by the Director. During peak periods, the meetings may last longer, and additional meetings may be scheduled. These meetings are normally attended by all readers. Each reader is expected to fill in a specific 'template' which sets out the key points that should be presented at the meeting. The template differs depending on the type of prospectus, i.e., equity or non-equity prospectus. This document requires readers to present information on the prospectus and the reasons for publishing a prospectus, the issuer, financial information, information on the offer, the most important risks and where applicable omission of information requests. The 'template' is not sent to the PG prior to the weekly meeting; it is presented by readers during the meeting. SE considers that the use of the 'template' is a way of ensuring that important topics are raised and discussed during the weekly meetings.
141. The concept of the "mandate" is a key feature of SE's approach to the four-eye principle. In particular, the "mandate" is a formal delegation of prospectus approval to the reader. New readers are not allowed to approve prospectuses until such time that

their knowledge and expertise is considered appropriate based on a formal process. SE has internal rules on who can approve prospectuses and on what level. There is a formal process and the individual assessment to grant a “mandate” takes into account different criteria such as the reader’s background, knowledge, capabilities, the number and type of prospectuses reviewed. Normally, readers receive their “mandate” within a year, although in some cases it may take longer. Prior to receiving the formal “mandate” readers are not allowed to approve a prospectus. Therefore, irrelevant of the type of transaction, a newly recruited reader reviews the prospectus together with a senior reader that has the “mandate” to approve the prospectus. After a while, the new reader is responsible for reviewing the prospectuses, but the senior reader must review certain critical parts of the prospectus. Prospectuses scrutinised by these readers are approved by a senior reader with a “mandate” for prospectus approval.

142. IE also takes a different approach to the four-eye principle. Under this approach, prospectuses are assigned a risk classification of low, medium or high risk. The type of review will depend on which risk classification is assigned. A prospectus considered to be low risk will be scrutinised by a single senior reader. The reader will review the prospectus and the annotated annex items in full and comment on the document and the annex item in their entirety. They will also review the prospectus in terms of the suitability of the transaction against the annexes of CDR 2019/980 and the structural soundness. For example, IE has experience of asset backed transactions presented using Annex 19 where there appeared to be no asset in place. These prospectuses were not suitable for scrutiny and approval under the Asset Backed Securities (ABS) regime due to the lack of a cash generating asset. In that case, a check is carried out to ensure that the structure presented is, for example, truly ABS or truly plain vanilla, or whether it has specific features which move it into a different risk category. IE notes that when a single senior reader scrutinises a prospectus, they can escalate any issues to a manager.
143. In IE, a medium risk prospectus is scrutinised by a first reader and a second, more experienced reader. The first reader will review the prospectus and the annotated annex items in full and comment on the prospectus and the annex items in their entirety. The second reader will assess the structural soundness of the transaction and its suitability under the proposed regime. They will not carry out a comprehensive review of the annotated annex items. The second reader will review the comment sheet and revise the structural comments where necessary. Finally, a high-risk document is scrutinised by a first reader and a more experienced second reader. Both readers will review the document and the annotated annex items in full and comment on the document and the annex items in their entirety. The senior reader will assess the structural soundness and the suitability of the transaction under the proposed regime. IE notes that 90% of its retail, non-equity prospectuses are considered high-risk and such prospectuses are therefore reviewed in their entirety by two readers.
144. FI takes a similar approach as IE to the four-eye principle, in which prospectuses considered to be ‘lower risk’ are reviewed by a single reader. These prospectuses appear to be non-equity prospectuses. In that regard, FI noted that the reader in question has 20 years of experience reviewing prospectuses. Additionally, seven of these prospectuses were also partially scrutinised by a colleague in FI’s department responsible for the supervision of credit institutions and one of these prospectuses was scrutinised by a colleague in the department responsible for the supervision of

employee pension institutions. Finally, FI noted that any material issues would have been discussed in their PG meetings, which are held twice a week.

145. NO and SK may also assign a single senior reader to scrutinise prospectuses which are considered to be less risky taking into account issues such as an issuer's financial situation and the type of transaction. In that regard, SK notes that the prospectus is always read also by the Head of the Department at the time of approval. NO reported that it typically has one reader scrutinise non-equity prospectuses that solely relate to the listing of the securities. NO considers such prospectuses to be low risk since there is no offer of securities to the public.
146. Depending on the characteristics of the issues emerging from the scrutiny of a prospectus, FR notes that its readers will sometimes consult an expert of the Legal Affairs Department (e.g., it ensures compliance with the applicable regulations, in particular the PR and its delegated acts), an expert from the Policy Department or an expert of the Corporate Accounting Department (e.g. in case of complex financial information, proforma information or IPO on a regulated market). FR considers that these experts must be taken into consideration in any discussion of its application of the four-eye principle.
147. Finally, five NCAs [BE, ES, FI, NO and SE] have at least a single reader review supplements to prospectuses, depending on the risk and complexity of the supplement, while the remaining NCAs take either the first or second approach when scrutinising supplements. ES notes that recurrent and standard supplements are generally reviewed by one reader, for example a supplement that incorporates by reference an issuer's newly published annual financial statements. In these cases, the first reader of the original prospectus scrutinises the supplement because they will already be familiar with the issuer and the contents of the prospectus. However, if any 'non-standard issues' arise, the supplement may be scrutinised by two readers depending on the nature of the prospectus and the importance of the new fact or event. Similarly, IE also has a single reader scrutinise supplements considered low-risk under its risk-based approach, while other supplements are scrutinised by two readers.
148. BE reports that the four-eye principle is applied to supplements on a case-by-case basis, taking into account the experience and expertise of the reader and the specific characteristics of the file. As a rule, the reviewer(s) of the supplement will be (one of) the reviewers who have reviewed the prospectus. Oftentimes, all readers of the prospectus will be involved in the scrutiny of the supplement.

b) Assessment

149. The PRC considers NCAs properly apply the four-eye principle to the scrutiny of prospectuses, with a couple of exceptions. Firstly, FI, IE and NO do not appear to properly apply the four-eye principle if only a single (senior) reader scrutinises a prospectus. The PRC considers that the four-eye principle requires at least the addition of a second reader even if both readers do not scrutinise the entire prospectus. In particular, it is important for the second reader to assess whether there are no material issues necessitating their scrutiny.
150. While the PRC acknowledges that the single reader can escalate issues to someone in management, this is considered insufficient for the purposes of the four-eye principle. The PRC considers that it is important to have a second reader monitor the supervision of the prospectus and that this reader can decide for themselves what sections they want to scrutinise, instead of relying on the reader escalating any issues.

Furthermore, the PRC notes that there should always be a reader that scrutinises the entire prospectus, unless the proportionate approach is applied. If NCAs would prefer, the PRC suggests having a discussion on this topic within ESMA. Otherwise, there is a danger of non-convergence in this area considering the differences in NCAs' approaches to the scrutiny of prospectuses.

151. In relation to the risk-based approach, the PRC notes that a risk-based approach is already embedded into the four-eye principle, since it only requires a single reader to scrutinise the entire prospectus (if the proportionate approach is not applied). However, one single reader does not appear to be compatible with the four-eye principle as worded in the PRC's mandate. It is also important to note that the PRC does not object to risk-based approaches to prospectus supervision in general.
152. Likewise, the PRC considers that SK should also reconsider its practice of having a single senior reader scrutinise certain low risk prospectuses. Although the Head of Department may also read the entire prospectus at the time of approval, it would be preferable if the prospectus was read in its entirety at an earlier stage so that any issues identified could be addressed during the scrutiny of the prospectus. Therefore, SK may want to consider having a second reader monitor the transaction and discuss any comments with the first reader.
153. BE, ES, FI, IE and NO's practice of having a single reader scrutinise certain low risk supplements also does not appear to satisfy the four-eye principle, even if this is on a risk-based basis taking into account the nature of the supplement. However, the PRC understands that some supplements may be so limited in nature that deviating from the four-eye principle could be justified. Therefore, the PRC suggests discussing this approach within ESMA to consider whether it is possible to have a single reader scrutinise a supplement if its content is limited in nature. An example is a supplement which only incorporates by reference information that has already been published such as a press release or (semi-)annual financial information or makes very minor changes to a prospectus.
154. The PRC positively notes as a good practice that DE has reported that it is currently working to hire more supervisors with an economic/financial background to ensure a more diverse group of senior readers. The PRC supports this initiative and considers it a good practice if NCAs' PGs have both economic/financial and legal expertise. Another good practice is DE, FR, IT, LU and PT's practice of having additional readers to scrutinise prospectuses in relation to higher risk prospectuses such as a) IPOs, b) in case of new types of products, c) where complicated legal questions may be anticipated, d) where transaction parties have been subject to enforcement actions, e) where the party responsible for the prospectus was reluctant to comply with comments in the past, and f) where one of the readers is less experienced in relation to the type of prospectus to be reviewed.
155. SE has a novel approach to the four-eye principle, which has the benefit of encouraging consistent comments between readers and ensuring the Deputy Director has a good overview of the prospectuses under scrutiny. Furthermore, SE has specific safeguards to ensure that issues are signalled for discussion during these meetings, such as the template setting out the key points in relation to each prospectus to be discussed in weekly meetings, the use of the 'mandate' and scheduling bilateral meetings between readers and the Deputy Director outside of these discussions. The weekly meetings allow for a discussion between many participants before reaching a conclusion on significant issues of a file.

156. However, as the group never reviews certain parts of the prospectus and does not prepare in advance for the meetings, the PRC considers SE should revisit the application of the four-eye-principle, as, contrary to the underlying concept of the four-eye principle that the more sensitive parts of the prospectus should be reviewed by a second person, this does not appear to be the case for prospectuses approved by SE, with the exception of IPO prospectuses and complex transactions or complex prospectuses. Additionally, in the PRC's view, the current model in relation to the four-eye principle is unlikely to be sustainable in the longer run if there be any additional increase in prospectus volumes.

157. Therefore, the PRC would not recommend this model to other NCAs, because many safeguards are necessary to ensure that issues are raised, and it may not be suitable for larger teams of readers and/or volumes of prospectus approvals. Furthermore, the PRC is not convinced that this model ensures a thoroughness of review in all cases. In this regard, the PRC recommends that SE proactively look at the limitations of the current model and consider alternative options to prepare for a possible further increase in prospectus applications.

c) Recommendations

158. The PRC recommends that FI, IE and NO ensure that all prospectuses are scrutinised by either (i) two readers in line with the first approach or (ii) a single reader, together with a senior reader or manager focussing on the most sensitive sections of the prospectus in line with the second approach.

159. The PRC recommends that SK also ensure that the four-eye principle is applied during the scrutiny of prospectuses, since the review of a prospectus by the Head of department at the time of the approval of a prospectus does not reflect the proper application of the four-eye principle.

160. The PRC encourages SE to proactively look at the limitations of their current model and consider alternative options to prepare for a possible further increase in prospectus applications.

161. The PRC also invites ESMA to develop criteria to help NCAs determine the risk associated with a specific prospectus and to help senior readers determine which sections of the prospectus to scrutinise when taking the second approach. In that regard, the PRC would encourage ESMA to develop risk-based, qualitative criteria in this area due to the wide range of issues that can arise when assessing prospectuses. In that sense, it is not feasible to draw up exhaustive criteria. However, ESMA should be careful to ensure that the criteria are not so high level and as such not useful and not enhancing supervisory convergence. As part of the exercise, it may be useful to consider NCAs' approaches to risk assessment.

162. In relation to supplements, the PRC recommends that BE, ES, FI, NO and SE ensure that all supplements are scrutinised by either (i) two readers in line with the first approach or (ii) a single reader, together with a senior reader or manager focussing on the most sensitive sections of the supplement in line with the second approach.

163. Finally, the PRC invites ESMA to consider the application of the four-eye principle in relation to prospectuses and supplements to ensure a more convergent approach in the scrutiny of these documents. As part of this assessment, ESMA should consider how NCAs can adopt a risk-based model in relation to the supervision of

prospectuses and supplements, including under what circumstances (if any) it is appropriate to have a single reader scrutinise a prospectus or supplement.

d) Good practices

164. NCAs' PGs should have both economic/financial and legal expertise.
165. NCAs should consider having additional readers to scrutinise prospectuses in relation to higher risk prospectuses such as a) IPOs, b) in case of new types of products, c) where complicated legal questions may be anticipated, d) where transaction parties have been subject to enforcement actions or which were reluctant to comply with comments in the past, and e) where one of the readers is less experienced in relation to the type of prospectus to be reviewed.

6.2 Application of Article 41 CDR 2019/980 - Proportionate approach

166. Article 41 CDR 2019/980 introduced the possibility for NCAs to adopt the proportionate approach to the review of prospectuses that they had already reviewed and/or previously approved. This approach allows NCAs to focus on the changes made to the previously approved or reviewed document instead of reviewing the prospectus in its entirety and reflects a practice that was already developed at many NCAs³⁶. The PRC has assessed NCAs' application of the proportionate approach.

a) Summary of findings

167. Twenty-six NCAs appear to have either taken the proportionate approach to non-equity prospectuses during the period covered by the peer review or would have taken the proportionate approach in relation to the scrutiny of non-equity prospectuses if the opportunity had presented itself [AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IS, IT, LI, LT, LU, LV, NL, NO, PT, SE, SI, SK]. Similarly, twenty-six NCAs have also either applied the proportionate approach to the scrutiny of equity prospectuses or would have applied the proportionate approach to such prospectuses if the opportunity had presented itself [AT, BE, CY, CZ, DE, DK, EE, EL³⁷, ES, FI, FR, HR, HU, IS, IT, LT, LU, LV, NL, NO, PL, PT, RO, SE, SI, SK]. FR also notes that it applies the proportionate approach to RDs and URDs relating to the same issuer that have been approved less than 12 months ago.
168. NCAs have generally indicated that the proportionate approach comes up more in relation to the scrutiny of non-equity prospectuses, in particular updates of recently approved prospectuses. Furthermore, it appears that significantly fewer opportunities arose in which an equity prospectus was sufficiently similar to a prospectus that was recently reviewed or approved by the same NCA. Additionally, LI has indicated that it would not apply the proportionate approach to equity prospectuses and that one of the readers involved in the scrutiny of the prospectus would check the entire document. It appears that IE does not apply the proportionate approach when reviewing equity prospectuses, because of the risks associated with such prospectuses. IE also notes that the volumes of equity prospectuses submitted in IE are low, so that the opportunity to apply the proportionate approach to an equity prospectus has not presented itself.

³⁶ It is important to note NCAs also apply the proportionate approach when reviewing new iterations of a prospectus under scrutiny.

³⁷ In its responses, EL noted that it applied the proportionate approach to an equity prospectus after the period covered by the peer review (4 December 2019 – 30 June 2021).

169. FR and LU occasionally opt not to apply the proportionate approach when they would otherwise be entitled to do so. LU only applies the proportionate approach where a substantially similar prospectus has already been approved only a few days or weeks before without encountering any major issues. FR's readers' teams can decide not to take a proportionate approach if they consider that this would not be appropriate based on the risk associated with the transaction described in the prospectus. This analysis would involve a risk-based approach based on a team's experience, the sector, similar type of issuance and/or the issuer.

170. When scrutinising supplements, nineteen NCAs appear to either take the proportionate approach [DK, CZ, EE, ES, FR, IS, IT, LU, NL, NO, SK] or would take a proportionate approach if the opportunity presented itself [AT, BE, CY, LT, MA, PT, RO and SI]. Three NCAs [DE, IE, HR] explicitly state that they do not take the proportionate approach in relation to supplements. Regardless of the response, several NCAs have indicated that the opportunity to take the proportionate approach in relation to the scrutiny of a supplement rarely presents itself. On the other hand, NL notes that it applies the proportionate approach to supplements to base prospectuses that are similar to other supplements that were previously reviewed and to the standard language included in supplements. During the onsite visits, the PRC discussed the possibility to take a proportionate approach in relation to the scrutiny of a supplement. Based on these discussions, it became apparent that the approach taken to the scrutiny of supplements in DE, FR and IT appears to be similar despite the fact that FR and IT state they take the proportionate approach in relation to supplements and DE state they do not.

b) Assessment

171. All NCAs appear to apply the proportionate approach in accordance with Article 41 CDR 2019/980.

172. However, at first glance, there appear to be possible differences in NCAs' approach to the application of the proportionate approach to supplements. NCAs may have different understandings of what it means to take a proportionate approach in relation to supplements. This may also explain that DE, FR and IT take similar approaches to the scrutiny of supplements, while DE considers that it does not take a proportionate approach to the scrutiny of supplements.

c) Recommendations

173. The PRC recommends that ESMA explore NCAs' approach to the scrutiny of supplements to see if there are any material divergences. If there are any divergences, ESMA should develop additional guidance to encourage supervisory convergence in this area.

174. While the PRC considers it a good practice to consider whether it is appropriate to apply the proportionate approach, it also believes that there is room for LU to be slightly more flexible with the application of the proportionate approach. The PRC agrees that it may not be appropriate to take the proportionate approach if a significant amount of time has elapsed. At the same time, restricting the use of the proportionate approach to prospectuses that were approved a number of days or weeks earlier is not necessary. In that regard, the PRC notes that being slightly more flexible in this area would also help to ensure a more uniform application of Article 41 PR.

d) Good practices

175. The PRC believes that it is a good practice to consider whether it is appropriate to take a proportionate approach to the scrutiny of a prospectus based on an analysis of the risks associated with the review of a particular prospectus. For example, it may not be appropriate to take a proportionate approach in the following situations:
- a) a great deal of time has passed since the approval of that substantially similar prospectus;
 - b) the prospectus in question has not been subject to a complete review in the last 2 or 3 years;
 - c) transaction parties have been subject to enforcement actions or were reluctant to comply with comments in the past;
 - d) one of the readers is less experienced in relation to the type of prospectus to be reviewed; and
 - e) there have been substantial changes to the circumstances of the issuer.
176. The PRC also emphasises that the proportionate approach should not be applied where a substantial number of amendments have been made to the previously approved prospectus. In this case, the prospectus is no longer 'substantially similar' as required in Article 41(1) PR.

6.3 Procedures in relation to scrutiny

6.3.1 Circumstances that may delay or speed up the scrutiny process

177. The PRC sought input on which situations have an impact on the length of the scrutiny process by either delaying or speeding it up.
178. The vast majority of NCAs views engagement between the issuer and the NCA before formal submission of the draft prospectus as a key element that could potentially speed up the process. During such consultations, issuers usually raise complex issues regarding the offer. The feedback from the NCA allows them to address these issues before formally submitting the prospectus application and therefore face fewer rounds of comments.
179. Most NCAs consider that issues which may prolong the review process are: a) the complexity of the issuer's circumstances; b) the complexity of the security/product; and c) emerging issues related to the financial information included in the prospectus. Similarly, how quickly an issuer responds to the NCA's comments and the quality of the responses are key factors that may speed up or delay the scrutiny process.
180. NCAs in general view the NCA's response time when providing comments as being of lesser importance in relation to the overall length of the scrutiny process. On the other hand, NCAs consider that cooperation with the issuer's advisors has a positive impact on the review process, particularly in case of advisors which are experienced and interact with the NCA in a constructive and continuous manner. The use of tripartite prospectuses, though, is seen by NCAs as an element that does not significantly impact the length of the scrutiny process.

181. NCAs also reported a number of other elements as having an impact on the scrutiny process such as the potential delay in receiving the relevant documentation, the number of prospectus applications submitted at the same time, and the pause or suspension of the scrutiny process by the issuer.

6.3.2 Consultation prior to first submission

182. The PRC assessed whether NCAs engage in consultation with issuers and their advisors prior to formal submission of a draft prospectus.

a) Summary of findings

183. NCAs were requested to state whether they allow issuers and their advisors to engage in consultation with the NCA prior to the submission of the prospectus.

184. Twenty-nine NCAs allow for pre-consultation between issuers and members of the PG prior to the submission of a prospectus. One NCA [BG] stated that they do not engage in prior consultation.

185. The reasons for engagement cited by a large majority of NCAs were: a) the type of public offer or issuance (e.g. IPO) mentioned by 23 NCAs [AT, BE, CY, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, NO, PL, PT, RO, SE]; and b) complex issues relating to the transaction also reported by 23 NCAs [AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, NL, NO, PL, PT, RO, SE, SI]. These were followed by first application of International Financial Reporting Standards (IFRS) mentioned by eighteen NCAs [AT, BE, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, NO, PL, PT] and profit forecasts which was highlighted by twelve NCAs [BE, DE, DK, EL, HU, IE, IT, LU, NL, NO, PL, PT].

186. In general, NCAs reported organising meetings or conference calls for this type of engagement with issuers and their advisors. LU explained that a question is received by e-mail, analysed internally by a prospectus reader, the answer is agreed internally and a reply is communicated orally. This communication is stored by the NCA. LU mentioned that in case of meetings with the issuer, minutes of the meeting are also saved by the NCA. Similarly, FR follows the practice of keeping a record of the relevant discussions with the issuer.

187. IT reported that the Italian Issuers' Regulation foresees a 'pre-filing' process under which an issuer may present to the NCA any matter relating to the offer before the submission of a formal application. The NCA explained that this process involves a meeting with the issuer, but it may also involve an informal submission of the draft prospectus in some cases. To this the authority responds by means of a comment letter. Additionally, requests for internal cooperation may be launched before the draft prospectus is formally submitted. The 'pre-filing' process was recently under public consultation and is expected to be revised.

188. Lastly, SK indicated that, due to the PR deadlines being short, the NCA scrutinises the entire prospectus in terms of compliance with the PR and provides comments to the issuer before its formal submission. SK mentioned that national law provisions limit the possibility to amend or modify the prospectus once formally submitted.

6.3.3 Preliminary comments

189. LU follows a practice of aiming to provide the issuer with preliminary comments within one working day. This is achieved in the vast majority of files. These preliminary comments are not the outcome of a full or partial review of the draft prospectus. After these are sent, the reader(s) continue with the detailed review to subsequently aim to send detailed comments 5 working days after the initial filing. Moreover, LU reserves the right to send more detailed comments on points raised in the context of those preliminary comments.
190. The objective of the preliminary comments is to provide the issuer with overall feedback on main issues, (in)completeness of the submission (e.g., whether a checklist or the financial information are missing), quality of drafting. The NCA may send more detailed comments on points raised in the context of the preliminary comments. Where these preliminary comments highlight major issues, the NCA may opt to put on hold the review until it receives feedback on how these were resolved.
191. LU indicated that this is not a market requirement but that it helps make the process leaner as it enables issuers to start resolving issues raised without having to wait for the detailed comments from the NCA. Stakeholders confirmed the usefulness of such practice to the PRC.
192. LU clarified that it remains available to discuss the major issues raised in the preliminary comments by phone or email, at the issuers' initiative.
193. On a related point, FR reported that the comments provided to the URDs that are filed with the authority allow for a faster approval process given that comments in relation to the issuer have already been made and taken into consideration by the issuer.

b) Assessment

194. The PRC is satisfied that almost all NCAs are open to engaging with issuers and their advisors before a formal prospectus application is submitted. The PRC considers that this practice enables issuers to receive helpful clarifications and guidance with regard to the treatment of complex issues and better prepare the draft prospectus for a smooth and efficient scrutiny process.
195. On the other hand, the PRC notes the practice followed by SK to review the prospectus before it is formally submitted to the NCA. The PRC considers that this approach is related to the national interpretation of the PR deadlines which the authority deems to be short. This view does not appear to be shared by other NCAs who did not report difficulties in meeting the deadlines set out in the PR. In addition, it appears that national law provisions do not allow for flexibility once a prospectus is formally submitted. The PRC acknowledges that reviewing the prospectus before formal submission of the application may not necessarily impact the quality of the review. However, the PRC is of the view that this informal practice could not be encouraged nor recommended given that the scrutiny process takes place in a legally informal environment, outside the legal perimeter of the PR. In this respect, the PRC invites SK to consider the purpose and usefulness of this practice, also taking into account that most other NCAs do not find it necessary to review the entire prospectus before its formal submission. The PRC emphasises that Article 20(4) PR covers the situation

when a draft prospectus does not comply with the 3Cs³⁸. In this case, the NCA asks for changes in the prospectus or supplementary information. A new time limit is applied from the date on which the issuer submits a revised draft prospectus or the supplementary information that was requested.

196. As regards the 'pre-filing' process followed by IT, this appears, in some cases, akin to the scrutiny process. The PRC acknowledges that NCAs should engage with issuers before formal submission of the prospectus. The purpose of such engagement is for issuers to get clarifications that would allow them to address certain matters before a prospectus is formally submitted. Even if not systematic, the PRC considers that the 'pre-filing' process bears similarities to the scrutiny process. It also appears to present some dissimilarities from the practice followed by other NCAs, mainly due to its formal nature. The PRC notes that other NCAs reported an informal approach to their engagement with issuers prior to submission of the prospectus application, even though they coordinate internally before responding and keep records of such communication as would be expected. The PRC considers that in the case of IT the formal 'pre-filing' process is likely related to the existence of national deadlines on the length of the scrutiny process. The 'pre-filing' appears to allow the NCA to deal with these national deadlines which in some cases may be overly short. The PRC notes that IT expects the 'pre-filing' process to be revised following the end of a public consultation.

c) Recommendations

197. The PRC considers that BG should revisit its practice and facilitate interaction with issuers and their advisors, in order to respond to questions and provide relevant clarifications prior to formal submission of a draft prospectus.
198. The PRC also invites SK to reconsider the practice of reviewing the full prospectus and if needed consider amending national law provisions to ensure that scrutiny of prospectuses is carried out within the legal perimeter of the PR.
199. Lastly, the PRC invites IT to revisit the process of 'pre-filing' in a way that differentiates it from the scrutiny and approval process envisaged in the PR. The PRC is also supportive of the current review of the 'pre-filing' process and notes that the scrutiny of the prospectus should primarily take place after filing an application for approval.

6.3.4 Additional criteria

200. The PRC assessed the application of additional criteria by NCAs in accordance with Article 40 of CDR 2019/980. In particular, the PRC assessed whether the application of additional criteria is proportionate to the risks for investors taking into account the legitimate interests of the issuer and whether the prospectus is the appropriate instrument to address any risks to investors. Moreover, the PRC assessed whether additional criteria are applied on a case-by-case basis and whether their application creates an unlevel playing field amongst issuers and amongst different jurisdictions.

³⁸ 3Cs: standards of completeness, comprehensibility and consistency necessary for the approval of a prospectus.

a) Summary of findings

201. Twenty NCAs [BE, BG, CZ, DE, DK, EE, EL, FI, HR, HU, IS, LI, LT, LV, MT, NO, RO, SE, SI, SK] responded that they have not applied additional criteria for the scrutiny of the completeness, consistency and comprehensibility of the information contained in prospectuses, while ten NCAs [AT, CY, ES, FR, IE, IT, LU, NL, PL, PT] responded that they applied such criteria.
202. Eight NCAs have in place internal guidance for the application of additional criteria [AT, CY, ES, FR, IT, NL, PL, PT]. However, these NCAs appear to have different views on what qualifies as 'additional criteria'. Some NCAs referred to IFRS compliance checks in case of IPOs [CY, FR] or consistency checks with information on the website of an issuer or available in other departments [AT, CY, NL, PT]. NL indicated fraudulent offers or undesirable product characteristics for investors as examples of additional criteria.
203. Five NCAs [CY, FR, IT, NL, PL] mentioned that they have formalised these additional criteria. Some of the topics covered by those formalised criteria include the following: a) completeness and consistency checks with information available within the NCA or information from the issuer's website [AT, CY, NL], the additional measures included in the Supervisory Briefing [CY], issuer announcements [CY] and suitability of the product for the target group [NL]. PL provided a list of completeness and consistency checks that relate to existing disclosure requirements of the Annexes of CDR 2019/980. In the case of IPOs, FR and IT mentioned certain relevant corporate governance rules and regulations to issuers, to ensure that issuers are aware of the relevant requirements after they are listed.
204. IT has published a communication which, inter alia, provides guidance on the application of additional criteria for the scrutiny. The publication provides a non-exhaustive list of topics that may be subject to additional checks. These relate to potential checks that the NCA may perform based on information from reports by third parties or publicly available information. These checks could also be triggered by or relate to proforma financial statements, the internal reorganisation of the business and corporate governance regime and adoption of new accounting standards in the case of IPOs and also cover consistency checks between the working capital statement and other parts of the prospectus. IT mentioned that it also applies additional criteria where this is considered warranted for investor protection on a case-by-case basis.

b) Assessment

205. The PRC observes that a little more than one-third of NCAs applied additional criteria for the scrutiny of the information contained in prospectuses and six NCAs have formalised such criteria. While several NCAs have in place internal guidance on the application of additional criteria, IT appears to be the only authority to have published guidance on this topic.
206. The PRC observes that overall NCAs have a different understanding of what constitutes additional criteria. Pursuant to Article 40 CDR 2019/980 such criteria should be applied where necessary for investor protection. However, some NCAs view certain practices as additional criteria whereas other NCAs do not. An example of this is the case of PL which indicated a number of checks on the disclosures required by the Annexes of CDR 2019/980 which appear to be normal checks carried out as part of the scrutiny process. The PRC also notes that NCAs which applied additional criteria reported different approaches. This is a clear indication of a divergent application of

Article 40 of CDR 2019/980. With this in mind, the PRC is of the view that the legal provisions on the application of additional criteria lack clarity. In this regard, the PRC would reserve judgement on whether the checks carried out under these additional criteria fall within Article 40 of CDR 2019/980 as it considers that it is not in a position to assess the application of such criteria.

c) Recommendations

207. The PRC considers that the findings of the peer review clearly indicate that NCAs do not have the same understanding of the concept of criteria and whether this concept encompasses additional checks on an ad hoc basis or is related to internal procedures for the verification of information in the prospectus. The PRC, therefore, is of the view that the notion of the term 'criteria' should be further clarified to promote consistent implementation by NCAs. As this is an interpretation issue of the Level 2 requirements, the PRC invites the European Commission to review Article 40 of CDR 2019/980 in order to clarify the notion of 'criteria'. At the same time, the PRC encourages ESMA to provide technical assistance to the EC as needed.

6.3.5 Average timing of approval and monitoring of deadlines

208. The PRC assessed whether NCAs monitor compliance with (i) the deadlines set out in Article 20(2), (3) and (4) PR, (ii) their turn around times during each round of review of a prospectus, (iii) the total time for the review of a prospectus. The PRC also assessed whether NCAs have in place procedures to help ensure that readers meet these deadlines and whether there are procedures to ensure that an NCA does not approve a prospectus that does not meet the criteria set out in Article 6(1) PR due to the impact of deadlines.

209. The PRC, furthermore, assessed whether any agreed specific timeframes are noted and recorded and that they do not provide undue preferential treatment to certain issuers and advisors, while any such agreements are expected to be made by persons with the authority in the NCA to do so and review times are not unduly short or result in inadequate review of a prospectus.

210. The assessment of the PRC was carried out in the context of the PR requirements with regards to the timeframes that apply to the NCA when providing comments to issuers. These are set out in Article 20 PR according to which the NCA will notify the issuer about its decision regarding prospectus approval within ten working days from the day of the submission of a draft prospectus³⁹. This deadline is extended to 20 working days in the case of an IPO⁴⁰. When the NCA deems that the prospectus does not meet the standards of completeness, comprehensibility and consistency for its approval and asks for changes or supplementary information, then a time limit of ten working days is set from the day of submission of the new draft prospectus⁴¹. The PR also sets out specific time limits for prospectuses drawn up by frequent issuers and EU Recovery prospectuses⁴². The PR does not include specific time limits for issuers' turnaround times.

³⁹ Article 20(2) PR.

⁴⁰ Article 20(3) PR.

⁴¹ Article 20(4) PR, second sub-paragraph.

⁴² Article 20(6)(6a) PR.

a) Summary of findings

6.3.5.1 Self-imposed or national timeframes

211. Fifteen NCAs indicated that they do not have pre-specified timeframes in relation to the review process. These NCAs mentioned that they return comments within shorter timeframes sometimes [AT, BG, EE, LI, LT, MT, PL, RO], regularly [CZ, EL, FR, IS, SE, SI] or rarely [CY]. Five NCAs stated that they agree an indicative timeline with the issuer at the beginning of the scrutiny process [BE, DK, EE, FR, NO], while NL requests such a timetable in case of an IPO prospectus. DE reported that it will usually apply shorter deadlines in accordance with the issuer's proposed timetable depending on the circumstances.
212. IT, HU and SK reported having timeframes arising from national legal provisions. IT explained that in accordance with national rules a specific timeframe applies to the overall length of the scrutiny process⁴³. This timeframe is calculated once the prospectus application is deemed complete. This rule was recently under public consultation and is expected to be repealed. HU clarified that the national timeframes apply in cases where the NCA asks the issuer for additional information. In the case of SK, the 30-day deadline that is applied under national law relates to the submission of a complete application.
213. Nine authorities have timeframes that are self-imposed [BE, ES, FI, HR, IE, LU, LV, NO, PT]. Five NCAs have published these self-imposed timeframes [BE, ES, IE, NO, PT]. IE and PT report publicly on a half yearly and yearly basis, respectively on the NCAs' performance against the self-imposed deadlines. A similar practice is followed by PL which, after the end of the procedure, publishes statistics for each prospectus review setting out the time needed by the NCA to review the prospectus and the issuer's turnaround time. In addition, in the case of PL indicative timetables are discussed without being binding for the NCA. HR mentioned that in accordance with the NCA's internal methodology the applicable internal deadlines are shorter compared to the PR deadlines. In particular, readers are required to finalise their scrutiny of first drafts no later than five days before the expiry of the relevant legal deadline and send comments to the issuer within the two days that follow. As regards scrutiny of subsequent drafts, this needs to be finalised within two days of receiving these drafts. HR explained that while a full review of the draft prospectus is carried out, it is still possible to send additional comments to the same draft under exceptional circumstances and where this is deemed relevant for investor protection.
214. AT noted that in case of update prospectuses, where the security note is updated first, the NCA undertakes the scrutiny of this part, and the registration document is reviewed when the financial information is updated. Similarly, ES mentioned that they may provide comments separately on the registration document and the securities note in case of prospectuses which fall under Article 20(3) PR⁴⁴. This practice is agreed with the issuer and in this case, both sets of comments are provided within the 20 working days deadline. PT mentioned that on a few occasions⁴⁵ it provides

⁴³ In IT a deadline of 30 working days is applied in the case of prospectuses submitted by frequent issuers in accordance with Art. 20(6) PR, 40 working days for secondary issuance prospectuses and 60 working days for IPO prospectuses.

⁴⁴ Article 20(3) relates to a prospectus where the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public.

⁴⁵ PT clarified that this practice is followed in agreement with the issuer and if a proposed timetable is agreed.

a first set of comments that focuses on more general topics and the detailed comments in respect of the issuer are provided in the next step, but within the legal deadline set out in the PR.

215. The majority of NCAs do not differentiate the application of shorter deadlines based on the type of the prospectus, with a few exceptions, notably concerning plain vanilla corporate bonds offered by well-known issuers [BE], non-equity prospectuses addressed to qualified investors [ES], prospectuses of issuers previously approved in the last 12 months [EL] and secondary issuance prospectuses [MT].

216. The length of the pre-specified shorter timeframes which apply to NCAs' turnaround times varies. In ES the shorter deadlines that apply to prospectuses for non-equity offers of securities to qualified investors are five working days for comments on registration documents and base prospectuses⁴⁶, three working days for comments on final terms and two working days for subsequent comments. In IE a deadline of six working days is applied for first submissions of retail debt transactions and a deadline of four working days for subsequent submissions. For wholesale debt transactions the deadline is four working days for initial submissions and three working days for subsequent submissions, while for supplements the deadline is two working days⁴⁷. Provided that certain conditions are satisfied, BE applies a fast-track procedure to plain vanilla corporate bonds which allows the NCA to decide, within five working days of the receipt of a draft prospectus, either to approve the prospectus or proceed to a more detailed review. FI applies a deadline of ten working days to the approval of prospectuses while for IPO prospectuses this is extended to 20 working days. The authority usually provides comments within three to five working days on first drafts and within one to two working days on subsequent drafts. In LV the shorter timeframe is five working days. LU aims at providing comments within five working days after submission. In certain situations⁴⁸, this deadline would be extended to ten working days. The same deadline applies to subsequent rounds of comments. For supplements, comments are provided on the same day for drafts submitted in the morning or within the first working day following submission for submissions in the afternoon or evening. This deadline may be extended where the supplement is complex, lengthy or of poor quality. In NO the relevant deadline is ten working days for IPO prospectuses and seven working days for other prospectuses. PT⁴⁹ provides comments within seven working days in the case of first drafts and supplements and within five working days for subsequent drafts. SE regularly aims at providing comments within a shorter timeframe of seven days and in less than ten days during busy periods. Moreover, SE applies a 90-day deadline to the overall length of the review period. This deadline may be extended on a case-by-case basis. While it is not published, SE considers that their 90-day approval deadline is well known to the market. Where the issuer is not able to address the NCA's comments within that deadline, they would normally withdraw the application.

⁴⁶ This deadline is applied on condition that the draft prospectus highlights the changes compared to the last base prospectus approved by the NCA.

⁴⁷ The NCA has published on its website information on the prospectus approval service standards, which includes the deadlines that apply to different prospectus types. This information can be accessed through the link [here](#).

⁴⁸ This extension would take place in cases where the prospectus is unusually complex, drawn up in more than one language, of poor quality or in periods of very high workload. If these circumstances are extreme and where permitted under Article 20 PR, this deadline can be extended to 20 working days.

⁴⁹ PT clarified that these timeframes are the maximum deadlines applied by PT.

6.3.5.2 *Timeframes that apply to issuers*

217. Eleven authorities indicated that they do not impose a specific deadline on the issuer's turnaround time [BE, ES, FI, FR, IE, IS, LI, LV, MT, PT, RO]. EE clarified that they apply a pre-agreed timeframe and a reasonable deadline of two weeks in relation to the issuer's time to respond. Moreover, AT and LT who reported not imposing a specific deadline on the issuer's turnaround, indicated that they have a practice of setting a deadline in their comment letters to the issuer. DK and NO stated that they generally agree a timetable with the issuer at the beginning of the review process.
218. Four authorities mentioned that they have timeframes that arise from national rules [BG, EL, IT, SI]. These deadlines range from ten working days [IT], 30 working days [EL], or not less than one month [BG], to a deadline of between eight and fifteen days [SI]. IT clarified that national rules provide the NCA with discretion to extend this deadline based on the issuer's circumstances.
219. In relation to imposed timeframes, these are applied by ten NCAs [CY, CZ, DE, HR, HU, LU, NL, PL, SE, SK]. In CY the issuer is required to respond within ten working days as regards prospectuses and within five working days as regards supplements. However, deadlines may be extended at the issuer's request. CZ usually sets a deadline of ten working days or 20 working days in case there are lots of comments. This deadline may be extended at the issuer's request. HU allows 15-30 calendar days depending on the complexity of the prospectus. PL adopts a deadline of fourteen working days which may be extended on a case-by-case basis. In SK the timeframe for the issuer is usually not longer than 30 days. As regards HR the timeframes which are set out in the NCA's internal methodology are set on a case-by-case basis and range from five to 30 days. An extension of these deadlines is possible at the issuer's request. DE sets a deadline of four weeks for the issuer to provide an updated draft prospectus. If this deadline passes without submission of a new draft, DE sets a hard deadline of two weeks if no compelling reason for the delay can be presented by the issuer. If this is not met, the application is refused. LU contacts the issuer in cases of not having received a new draft within three months and gives the issuer fifteen working days to update the prospectus. If the issuer does not respond, the file is closed. This deadline may be extended upon justification and on a case-by-case basis. NL impose a deadline to the issuer in certain cases, i.e. when the draft is of poor quality and when a revised draft has not been received within six weeks. This deadline is usually ten or 20 working days. As mentioned in paragraph 216, SE applies a 90-day timeframe to the review process to ensure that the information in the prospectus remains up to date. This deadline is not published.
220. In cases where the issuer's response takes long or the deadline is missed, some NCAs reported that they suspend or terminate the review process [EE, EL, ES, LU, LV, NL, PT, SK], while others may consider this as grounds to refuse the application [AT, BG, CY, CZ, DE, HR, LT, LV, PL, SI, SK]. The matter of withdrawal or refusal of an application is discussed in more detail in Section 7.2 of this report.

6.3.5.3 *Monitoring of compliance with deadlines*

221. Fifteen NCAs reported that compliance with the relevant deadlines is monitored by the readers themselves [AT, BE, EE, ES, FI, FR, IE, IS, IT, LI, LT, NL, NO, SE, SI]. In addition, IE explained that compliance with the turnaround times is monitored by the

NCA's IT system as well as by an interactive spreadsheet which is used to distribute submissions amongst the readers. ES also reported that monitoring of deadlines is carried out by means of a database, while during PG meetings the progress of prospectus files is frequently discussed. Thirteen authorities mentioned that PG managers are involved or are responsible for the monitoring of deadlines [BG, CY, CZ, DE, EL, FR, HR, HU, LU, LV, PL, PT, RO]. Moreover, FR clarified that managers have shared excel files for this task and the relevant filing and approval dates are recorded in the NCA's IT tool. PL also clarified that monitoring of deadlines is the responsibility of readers. This is done by means of the NCA's document management system. PG managers monitor the deadlines by means of an excel file which is used to check compliance with relevant deadlines. MT indicated that the monitoring of deadlines is carried out by the PG. DK reported that the readers are responsible for monitoring deadlines by means of the NCA's electronic document management system and an excel file which is used by the PG manager to keep track of compliance with relevant deadlines. SK reported that the deadlines are monitored via a shared excel file.

222. NCAs, in general, reported that monitoring compliance with deadlines is carried out in various ways: by the readers, sometimes together with PG managers, by PG managers, or the PG team. NCAs mentioned the use of various tools to monitor compliance with deadlines. This is done via readers' calendars or shared calendars, the use of a dedicated file or an internal database etc. Some NCAs explained that readers have the discretion to use their own tools for the monitoring of deadlines [BG, HR, NO, RO, SI]. ES, FI and MT reported that deadlines are discussed during PG meetings. BG mentioned that a weekly report with the deadlines is submitted to the NCA's Board.

223. Seventeen NCAs reported that they did not encounter situations where the legal or national or self-imposed deadlines were not met. Thirteen NCAs mentioned that in some cases PR deadlines [ES, FR, NL, SE, SI], national or self-imposed deadlines [IE⁵⁰, LU] or deadlines applicable to the issuer were not met [DE, DK, EE, HR, NO and PL].

224. As regards the NCAs [ES, FR, NL, SE, SI] who missed deadlines during the review period different explanations were provided. FR mentioned that it has not met the relevant deadlines on very rare occasions. Readers monitor the relevant deadlines during the review process. Moreover, to ensure that legal deadlines are met, the authority checks on a quarterly basis that any delay concerning prospectuses filed for more than 30 days is due to the issuer being late in replying. NL explained that it has missed deadlines on four occasions due to IT issues or illness of the reader, while in SE this happened in one case due to human error. SI explained that deadlines were not met on some occasions due to not being always able to convene a meeting of the NCA's Council for the approval of the prospectus within ten days from final submission of the prospectuses. ES mentioned that it missed the deadline on rare occasions related to unforeseen and external circumstances such as regulations that came into force during the scrutiny period or emerging issues during the scrutiny process. The issuer and/or its advisors were informed about the delay.

225. In relation to the reasons for the issuer not being able to meet the deadlines, NCAs mentioned the number and complexity of comments which could relate to the

⁵⁰ IE reported that it was not able to meet the self-imposed deadlines in approximately 10% of cases, which usually related to complex transactions, while the authority did not encounter situations where the PR deadlines were not met.

financial information in the prospectus or request of information that needs to be prepared by the issuer, market conditions, changes affecting the transaction or poor quality of the draft prospectus.

b) Assessment

226. The PRC takes note that NCAs are split in their approach to shorter timeframes with fifteen NCAs applying such timeframes either arising from national rules or self-imposed and the remaining fifteen NCAs not applying shorter timeframes. Almost all of the latter NCAs are striving to return comments within a shorter deadline sometimes or regularly. The PRC, furthermore, observes that the length of self-imposed or national deadlines varies between NCAs, while in some cases this depends on the prospectus type. A few NCAs also impose an overall deadline to the length of the scrutiny process.
227. As regards the timeframes applicable to issuers, the PRC notes that a small majority of NCAs imposes timeframes on the issuer's turnaround times either stemming from national rules or imposed by the NCA. Of the remaining NCAs, a few set a deadline to the issuer in their comment letters, while others agree with the issuer a timetable which also includes the deadlines that apply to the issuer at the onset of the scrutiny process.
228. In relation to the application of shorter self-imposed timeframes, the PRC acknowledges the existence of divergent approaches amongst NCAs that apply them. To the PRC's understanding, these would be related, to an extent, to PG staffing and availability of relevant expertise at the NCA but also the evolution and expertise of the local ecosystem and the type and volume of prospectuses approved by NCAs. Nevertheless, even if some NCAs apply shorter self-imposed timeframes, the PRC notes that all NCAs apply the deadlines set out in the PR. The PRC also notes the practice followed by HR to provide additional comments to the same draft prospectus; however, the NCA reported that this is not a systematic practice.
229. The PRC is generally satisfied that NCAs have appropriate systems in place for the monitoring of the deadlines that are relevant to the scrutiny process. The PRC notes that the different tools adopted by NCAs for the monitoring of deadlines do not appear on the whole to impact the efficiency of each approach.
230. While the PRC considers that overall NCAs have in place procedures which help ensure that readers meet the deadlines, it nevertheless notes that in very limited occasions a few NCAs missed the relevant deadlines.

c) Recommendations

231. With regards to the timeframes that apply to issuers' turnaround times the PRC takes note that NCAs follow different approaches given that these are not covered in the PR. As this is an area of divergence, the PRC considers that there is merit in the Commission examining how to ensure a common approach regarding issuers' turnaround times. Moreover, the PRC notes that in IT the national deadlines that apply to the scrutiny process were under public consultation with a view to being repealed. The PRC is supportive of this proposal. However, as during the period under review the national deadlines were still in place, the PRC addresses a recommendation to IT to revisit the national deadlines that are applied to the scrutiny process. Moreover, IT along with SI are invited to examine whether the national deadlines that apply to the issuer are overly short and adjust them as needed. As regards monitoring of deadlines, the PRC suggests that those NCAs which give readers discretion to use their own tools

for the monitoring of deadlines [BG, HR, NO, RO, SI], revisit this approach and provide guidance to readers by suggesting a few alternative tools that are consistent with the NCA's internal organisation.

232. The PRC encourages the NCAs who missed deadlines to consider how to improve their internal process and tools for the monitoring of deadlines in order to avoid such incidents in the future [ES, FR, NL, SE, SI]. As regards SI, in particular, the matter is addressed more fully in Section 7 of this report taking into account that it is linked to the approval process of the NCA.

d) Good practices

233. The PRC considers that it is in general a good practice for NCAs to receive from issuers an indicative timetable with the relevant deadlines. This is helpful for NCAs to better organise internally the review process. The PRC considers this practice as key in the case of IPO prospectuses and prospectuses relating to complex transactions.
234. The PRC encourages NCAs to set in their comment letters a specific (realistic) deadline for issuers to address the NCA's comments, while retaining flexibility to prolong this deadline in the face of reasonable explanations by the issuer. This would have an overall positive impact on the timeliness of the review process. With this in mind, the PRC suggests that where the issuer is not able to provide an updated draft prospectus within a reasonable timeframe, NCAs may wish to consider suspending or terminating the process. This would allow NCAs to avoid situations of reopening outdated prospectus files.
235. The PRC considers that it is a good practice for NCAs to discuss imminent deadlines during regular PG meetings. Furthermore, the PRC finds that another good practice is to apply a second layer of checks regarding compliance with deadlines (e.g. weekly checks by the PG manager or another reader).

6.3.6 Interaction of NCA staff with issuers

236. The PRC assessed whether NCA staff are available to discuss the comments raised as part of the scrutiny process. Moreover, the PRC assessed whether NCAs provide contact details for the readers to issuers and whether issuers and their advisors have the possibility to directly interact with NCA staff involved in the review of their prospectus throughout the process.

a) Summary of findings

237. NCAs mentioned that it is possible for issuers and/or their advisors to contact NCA staff during the scrutiny process. Contact details of prospectus readers are provided in several ways: when acknowledging the prospectus application, in the NCA's comment letters or the NCA's website.
238. BG does not provide contact details of readers to issuers. The NCA explained that issuers may contact the NCA's call centre through which the PG members could be contacted. During the scrutiny process it is possible for issuers to directly communicate with PG staff and therefore the NCA indicated that communication via a call centre is not an obstacle to direct interaction between readers and issuers.

239. LT⁵¹ reported that they provide the name of the reader to the issuer who can contact the relevant reader via the NCA's call centre or the Secretariat of the PG, respectively. PL clarified that the direct telephone numbers of the readers are included in the comment letters without mentioning the name of the reader. LI explained that their website includes a group email address of the PG, while the names of the reviewers are not explicitly mentioned in their communications to issuers; however, given the size of the authority these are known to issuers.

240. Twenty-three NCAs reported providing contact details when receiving the prospectus application [BE, CY, CZ, DK, DE, EE, ES, FI, FR, HR, HU, IE, IS, IT, LT, LU, NL, PL, PT, RO, SK, SE, SI]. Thirteen NCAs mentioned that contact details are available on the NCA's website or relevant web-platform for the filing of applications [CZ, EE, FI, FR, IS, LU, LV, MT, NO, PT, RO, SI, SK], twelve NCAs indicated that this information is included in their letters / comment sheets to issuers [AT, CY, DE, DK, EL, ES, IE, LU, LV, MT, NL, SE].

b) Assessment

241. The PRC is satisfied that NCAs facilitate communication between responsible PG staff and issuers and ensure that issuers are able to contact NCA staff if needed. The practices adopted are slightly different; however, these small differences have a minor impact on the effectiveness of each approach.

c) Recommendations

242. The PRC is of the view that BG and LI should share contact details of readers and enable direct interaction between readers and issuers. As regards LI the PRC considers that it would be a good practice to share contact details of readers, for example in the NCA's comment letters as, regardless of the size of the PG, this would facilitate interaction between readers and issuers. PL already provides direct telephone numbers of readers in the comment letters; however, mentioning the names of the readers as well would further facilitate interaction between issuers and readers. Similarly, the PRC observes that LT provides the names of the relevant readers to issuers; however, readers cannot be directly accessed. In this regard, the PRC invites LT to consider further facilitating direct interaction between readers and issuers.

d) Good practices

243. The PRC finds that in general it is a good practice to share contact details of PG staff responsible for the prospectus when the prospectus application is submitted to the NCA.

6.3.7 Information sharing amongst prospectus reviewers

244. The PRC assessed whether all guidance provided by an NCA, including internal procedures and internal guidance to staff, is consistent with the requirements of the PR and the legislation promulgated thereunder. For NCAs that provided guidance in relation to additional criteria that the NCA considers necessary for investor protection in accordance with Article 40 of CDR 2019/980, the PRC assessed whether this guidance is proportionate to the risks for investors and applied on a case-by-case basis.

⁵¹ LT provides the names of the readers when issuers consult the NCA prior to formal submission of the prospectus.

a) Summary of findings

245. Eight NCAs reported that there is no national legislation or external guidance relevant for the scrutiny of prospectuses [AT, BG, DK, FI, MT, NO, PT, SK]. Eighteen NCAs [BE, CY, DE, EE, EL, HR, HU, IE, IT, IS, LI, LT, LV, LU, NL, PL, SI and SE] referred to national law implementing the Prospectus Regulation. FR reported that there are two published user guides on URDs and prospectuses which readers take into account in the scrutiny of prospectuses. These guides collect EU regulation and ESMA's Q&As.
246. Three NCAs [CZ, ES and RO] reported a compliance check against the requirements of certain national laws which forms part of the scrutiny of prospectuses. Any non-compliance has to be addressed before approval of the prospectus.
247. As regards guidance on the application of additional criteria, the findings of the peer review are set out in paragraphs 201 to 204 of this report.

b) Assessment

248. The PRC takes note that NCAs in general reported that they do not have any national law requirements or external guidance that is relevant for prospectus readers. NCAs either referred to their national law implementing the Prospectus Regulation without mentioning other national law or reported that there is no such national law or external guidance which would be relevant for prospectus readers with regards to the scrutiny of prospectuses. As regards those NCAs who reported performing compliance checks with certain national law requirements as part of their scrutiny of prospectuses, the PRC is not in a position to assess the legal basis of these checks and reminds that any checks regarding compliance with national laws or regulations should be consistent with the PR and not impede supervisory convergence.
249. With regards to internal guidance on the application of additional criteria the PRC reiterates that, as mentioned in paragraph 206 of this report, NCAs do not have the same understanding of what qualifies as additional criteria pursuant to Article 40 CDR 2019/980. Taking into account the different perception that NCAs have on the meaning of additional criteria, the PRC refrains from assessing whether NCAs meet the expectations with respect to guidance regarding the application of additional criteria taking into account the recommendation addressed to the European Commission regarding the notion of 'criteria'.

6.3.8 Consistency of comments amongst prospectus reviewers

250. The PRC assessed how NCAs ensure consistency in the review of prospectuses and comments raised and in particular whether there is information sharing between prospectus reviewers in order to achieve consistent reviews and comments, whether regular internal meetings are organised for the exchange of information relating to prospectus review and whether there is exchange of information in written format following meetings for the purposes of prospectus specific knowledge transfer regarding new principles to be taken into account.

a) Summary of findings

Review of draft comments

251. Twenty-two NCAs [BE, BG, CY, CZ, DE, DK, EE, EL, FI, FR, HR, HU, IS, IT, LI, LT, LU, LV, MT, PL, PT and SI] reported that draft comments are reviewed by another prospectus reviewer before they are finalised and communicated to the issuer. NCAs follow slightly different approaches as regards whether all or only the most material comments are reviewed, and the level of seniority of the person who reviews the draft comments. IE mentioned that draft comments are reviewed by another prospectus reader before being finalised in the case of high and medium risk documents only.
252. LV reported that only material draft comments are reviewed by a second person before being sent out to the issuer. Seven NCAs [CY, DE, DK, IE (where appropriate)⁵², IS, IT and FR] stated that the second reader reviews all draft comments. Twelve NCAs [BG, EE, EL, HR, HU, LT, LU, LV, MT, PL, PT and SI] reported that draft comments are reviewed by someone with a managerial position, in most cases the Head of Division. CZ reported that all comments are reviewed by the second reader and all material comments are then reviewed by the Head of Division.
253. Seven NCAs [AT, ES, NL, NO, RO, SE and SK] mentioned that comments raised by the reader responsible for drafting the comments, are not reviewed by another prospectus reader or PG member. However, in some cases the second reader may check comments, depending on the materiality and / or the level of experience of the prospectus reader who drafts the comments [ES, NL, NO, SK]. SK mentioned that the reader and ultimately the Head of the Department are responsible for prospectus scrutiny.
254. In the case of SE draft comments are discussed at the regular PG meetings before being sent out to the issuer.

Regular PG meetings

255. Twenty-one NCAs organise regular meetings with the whole PG with varying frequency. In particular five NCAs [LI, MT, NL, NO, RO] organise a PG meeting once a week, one NCA [BE] holds such meetings on a daily basis, three NCAs [FI, IE, SE] organise these meetings twice a week, three NCAs [AT, DK, LU] once every two weeks. PT reported holding such meetings at least once per month and EL approximately twice per month. ES reported having 'frequent' PG meetings. Lastly, five NCAs [HR, IS, PL, SI, SK] have PG meetings on an ad hoc basis.
256. Six NCAs do not organise meetings with the whole PG. Four authorities [CY, CZ, IT, LT] reported that they hold such meetings on an ad hoc or a case-by-case basis with the participation of the persons involved. In DE all divisions of the PG hold weekly meetings. Due to size of the divisions, these meetings are organised by each division separately. In addition, the Heads of the Divisions also meet on a weekly basis. FR organises a PG meeting once a week with the participation of the second readers, the Head of department, Heads of Division and the Policy team, while first readers do not attend those meetings. IT, PL, HR, and CY clarified that these meetings relate to the scrutiny of specific prospectuses. In the case of IT the Head of Division meets regularly with the Heads of the Office and the outcome of these discussions are relayed to team

⁵² In IE, this is the case for medium and high risk prospectuses only.

members by the Heads of Office. Since the end of the review period, IT has put in place a process for the organisation of regular meetings within each of the Offices that deal with prospectus scrutiny.

257. Four NCAs reported that they do not organise internal PG meetings at all [BG, EE, HU, LV]. HU stated that while the PG does not hold regular PG meetings, nevertheless there is a weekly meeting of the Division of Issuer Related Licensing which is attended by the Head of the Division and all Division staff. During these weekly meetings, the prospectus application is presented by the first reader, key points are discussed and next steps are decided.

Minutes of PG meetings

258. Eleven NCAs responded that they take minutes in relation to PG meetings and specific prospectus related meetings [AT, DE, DK, EE, EL, HU, IE, LU, NL, NO and SI]. Fifteen NCAs [AT, BE, CY, CZ, DK, EE, EL, IE, LU, MT, NL, NO, PL, SE and SI] reported that they update their databases and internal guidance after relevant meetings and discussions. Furthermore, fifteen NCAs [BE, BG, CY, CZ, EL, ES, FI, HU, IE, LT, LU, NL, NO, PL⁵³, SK] mentioned that they communicate by email to the PG information regarding decisions, new rules and regulations, ESMA publications and relevant news. RO explained that they do not take minutes at the PG meetings, nor follow the practice of communicating to the PG information by email. PT clarified that while the NCA does not take minutes at PG meetings, the outcome of the discussions is normally reflected in the comment letter. It is in this manner that the NCA's databases are updated with comments on specific issues. The NCA furthermore notes that their website includes relevant ESMA guidance.

Use of standard comments / database of standard comments and relevant decisions

259. Ten NCAs make use of standard comments [AT, BE, CY, EL, FI, IE, LU, NL, PL and SE]. AT, FI and NL clarified that they have a list of standard comments and the other seven NCAs have a database with standard comments. BE mentioned that the standard comments are used as a knowledge tool and tailored depending on the case. NO has an archive of all comments raised. In addition, NO has a list of standard comments that can be sorted by item of the Annexes of CDR 2019/980. This list also includes guidance to readers on important considerations regarding each item, as well as guidance on relevant decisions. Twenty NCAs do not have a specific database or list of standard comments. However, all NCAs have a document management system (DMS) in place or store their prospectus files electronically. This gives PG access to all comments raised. DK has a DMS in which comments can also be searched by topic or item of the Annexes of CDR 2019/980.
260. Nineteen authorities [AT, BE, CY, CZ, DE, DK, EL, FI, FR, HR, IE, IS, LU, LV, NL, NO, PL, PT, SE] reported having a database or list of relevant decisions and other prospectus related topics. HR, furthermore, reported that they have in place a methodology that provides guidance on elements that should be taken into account when reviewing a prospectus.

⁵³ In PL, such emails are sent after PG meetings in connection with prospectus related topics.

b) Assessment

261. The PRC notes that NCAs are expected to ensure consistency in their review of prospectuses and comments raised. The PRC points out that, in this regard, sharing of information and relevant decisions within the PG is particularly relevant. The PRC appreciates that there are different approaches to information sharing that could nevertheless achieve the same regulatory outcome. This largely depends on internal organisation and number of PG members.
262. The PRC observes that in general the various practices followed by NCAs ensure sufficient consistency in the review of prospectuses and comments raised. Nevertheless, the PRC notes that a number of NCAs do not organise regular meetings attended by the whole PG or take minutes of the discussion at these meetings. In some cases, these meetings are organised in an ad hoc manner or on a case-by-case basis. As regards CY, CZ, IT⁵⁴, LT, the PRC takes note that these authorities do not organise meetings with the whole PG. These authorities organise meetings with the participation of the persons involved (and not the whole PG) on an ad hoc or a case-by-case basis. In the case of HR, IS, PL, SI and SK meetings of the whole PG are not organised regularly but on an ad hoc basis. The PRC observes that four NCAs [BG, EE, HU, LV] reported not holding meetings of the PG at all; however, HU mentioned that, during the weekly meetings organised by the NCA at division level, prospectus-related matters are also discussed if needed. These weekly meetings, while not strictly meetings of the PG, appear to serve the same purpose as key issues regarding the prospectus application are discussed.
263. The PRC takes note that in [CY, EE, IS, LT, LV and SK] the number of PG staff is two FTEs or less and, in this regard, holding formal PG meetings does not appear to be the proper approach for these NCAs. Where this is not already the case, the PRC would nevertheless expect the use of other tools to ensure consistency of comments such as review of draft comments, maintaining and updating a database of standard comments and a database of relevant decisions.
264. The PRC observes that in HR and SI the number of FTEs that perform scrutiny and approval (readers) is five and three respectively and the NCAs approved four and ten prospectuses respectively in 2020. At the same time the PRC notes that in HR and SI draft comments are reviewed before being finalised and, given the size of the authorities and their prospectus activity, organising PG meetings on an hoc basis appears to be a proportionate approach. On the other hand, as regards PL which also organises PG meetings on an ad hoc basis, given the size of the PG (11 readers and 20 PG staff overall) and the number of prospectus approvals (23 in 2020), the NCA is invited to consider setting up PG meetings on a regular basis, with a frequency (monthly, weekly etc.) to be determined based on the actual operational needs of the PG.
265. As regards information sharing amongst prospectus readers and communication in written format the PRC notes that in general most NCAs use tools at their disposal to facilitate information sharing. The PRC also observes that these tools are tailored to the size of the PG and the prospectus activity of the NCA.

⁵⁴ The PRC notes that since the end of the review period, IT has put in place a process for the organisation of regular meeting within each of the Offices that deal with prospectus scrutiny.

c) Recommendations

266. The PRC recommends that NCAs which do not organise regular meetings of the whole PG adopt this practice [CZ, IT, PL]. In the case of IT the PRC is aware that the authority has put in place a process for the organisation of regular meetings within each of the Offices that deal with prospectus scrutiny and therefore this recommendation is already addressed. BG which do not organise meetings of the PG at all are invited to consider organising such meetings on a regular basis. This will give the opportunity to PG members to discuss questions, complex cases, material issues and decisions regarding the scrutiny of prospectuses and relevant other information. In the case of EE and LV it is understandable why such meetings are not organised due to the size of the PG. The PRC appreciates that for NCAs with a very small number of prospectus readers a formal meeting may not be necessary as long as all prospectus readers are involved in relevant discussions.
267. Lastly, the PRC considers that those NCAs [LI, RO] which do not take minutes of PG meetings, nor follow the practice of sending emails to the whole PG on prospectus-related topics or update databases with comments, NCA decisions and new rules revisit their practice in order to ensure that there is exchange of relevant information in written format.

d) Good practices

268. The PRC considers that the review of draft comments by a second PG member is in general a good practice regardless of the seniority of the reader. This is especially relevant for NCAs where readers do not get the chance to interact with other readers regarding their comments such as in the case of NCAs that do not organise regular PG meetings or meetings with the participation of the whole PG. The PRC notes that in the case of larger PGs review of comments by a second person may not be sufficient to ensure consistency and may need to be coupled with other appropriate tools such as database of standard comments and regular PG meetings.
269. Moreover, the PRC is of the view that maintaining a database with (standard) comments, material decisions and other relevant information is a good practice. The database does not have to be set up in a sophisticated IT tool. A simple Excel or Word document with the appropriate structure that would facilitate navigation would suffice. Moreover, the PRC points out that providing easy access to readers to previous comments, standard comments and other relevant information could be achieved, for example through setting up in the document management system of the NCA an advanced search function.
270. The PRC is of the view that taking minutes at PG meetings and electronically documenting them, preferably in a database, is also a good practice.

6.3.9 Information sharing with other teams/departments/supervisors

271. The PRC assessed whether there is information sharing amongst specialists within the NCA and in certain circumstances externally to specific authorities regarding matters related to the review of the prospectus and how the sharing of information depends on the level of complexity and risk to investors. The objective of such information sharing is to assist the reader with the review of the prospectus. The PRC also assessed whether NCAs have objective criteria to determine when information sharing is warranted. Examples of such cooperation amongst specialists include

sharing of information with financial reporting specialists, product governance specialists or prudential supervisors.

a) Summary of findings

272. Five NCAs [BG, EE, HR, IS, SK] stated they do not involve other units or departments in the scrutiny of prospectuses. EE and SK do not involve any other units or departments at all; however, EE clarified that it did not encounter cases of complex prospectuses during the review period and therefore there was no need for the involvement of specialists. Such specialists would nevertheless be involved if needed. BG and HR request other units/departments to provide the PG with relevant information; however, the other units/departments are not involved in the scrutiny itself. BG and HR further stated that they have criteria in place for the exchange of information within their NCA and with other supervisory authorities. IS involves other specialists in the scrutiny of prospectuses but these specialists work within the same department as the PG.
273. The remaining 25 NCAs reported that they involve other units/departments in prospectus scrutiny. Sixteen NCAs [AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, LU, MT, NL, PL, SE, SI] mentioned that they have in place internal guidance on this topic. IT has published guidance on prospectus scrutiny which covers the involvement of other units/departments. HU reported that during the scrutiny process the PG involves IFRS experts and prudential supervisors (in cases of supervised entities). IT stated that, following a series of lawsuits and judicial inquiries, the NCA has put in place a formal process with regards to information sharing with other departments/teams within CONSOB and with other authorities. This process is also related to the functionalities of its internal IT tool (DEMACO) as it is easier to communicate internally by means of formal letters. The NCA also clarified that information sharing with other authorities is required by law. An MoU between CONSOB and the Bank of Italy is in place with regards to the rules of cooperation between the two authorities. IT furthermore mentioned that this cooperation is activated at the beginning of the scrutiny process and it does not have an impact on the length of the scrutiny process. IT considers that the process for information sharing that is in place allows assessment of the information shared by other PG members in case the reader is absent, ensures certainty on the content of the information provided, allows checks by senior readers on the work of junior readers and also consultation ultimately by Board members and provides reliable information on the basis of which liability amongst staff can be differentiated. This process ensures that the NCA does not approve a prospectus that contains material misstatements regarding information that is available at the authority, an eventuality that could be considered as gross misconduct.
274. Seven NCAs do not have in place internal guidance or internal criteria regarding the cooperation of the PG with other units / departments [CY, IS, LI, LT, LV, PT, RO].
275. NCAs identified four main types of involvement: (i) assistance of specialists in the areas of their expertise; (ii) sharing of information from other supervisory units/departments; (iii) scrutiny of certain parts of the prospectus by other units/departments; and (iv) compliance checks with other rules and obligations. The majority of NCAs reported that this cooperation entails the use of expertise and transfer of information from the other unit/department. This usually concerns regulated issuers which are under the NCA's supervision, and expertise from the legal or financial departments. DE clarified that when cooperating with other departments regarding prospectus scrutiny, information is usually shared from the PG to other departments.

Certain NCAs mentioned that specialists from other units/departments may review certain parts of the prospectus to assist the prospectus readers with their completeness check. Moreover, some NCAs reported involving other units/departments in relation to certain requirements, such as for example whether an issuer needs an Alternative Investment Fund (AIF) license under the Alternative Investment Funds Managers Directive (AIFMD).

276. DE's general rules of procedure ("Geschäftsordnung BaFin") state that it is the responsibility of the Head of the Division to inform other organisational units if their area of responsibility should be involved in a certain matter. This task is carried out by staff members of the Division. In addition to formal involvement, the PG also communicates informally with other Units and shares information with them. DE also holds regular meetings of the Heads of Divisions and Heads of Departments to foster flow of information.

Cooperation with financial reporting specialists

277. Twenty-three NCAs [AT, BE, CY, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE, IT, LI, LU, NL, NO, PL, PT, RO, SI, SE] involve financial reporting specialists in prospectus scrutiny to assist prospectus readers in their review. Such cooperation usually takes place in cases of IFRS adoption, complex financial history, pro forma financial information or auditing matters. CY, EL, FR, NL reported that in IPO prospectuses financial information is checked concerning compliance with IFRS. In DE there is not currently a formal arrangement for sharing information with the team responsible for the supervision of financial reporting because this supervision was previously conducted by Financial Reporting Enforcement Panel (FREP) under the previous two-tier system for the enforcement of financial information and has only been transferred to BaFin as of 1 January 2022. This arrangement is expected to be formalised after the reorganisation is complete. Nevertheless, DE has information sharing with specialist working groups working within the PG regarding, inter alia, historical financial information.

Cooperation with TD and MAR specialists

278. All NCAs are the competent authority for the Transparency Directive (TD) and the Market Abuse Regulation (MAR) and nineteen NCAs reported that they involve TD and MAR specialists in prospectus scrutiny [BE, BG, CY⁵⁵, CZ, DK, EL, ES, FI⁵⁶, FR, IE, HR, HU, IT, LU, NL, MT, PL, PT and SI]. CZ, DK, FR, IS, PT and SE have organised the TD and MAR supervision within the same department as prospectus supervision. In all cases where the prospectus readers are also in charge of the TD and MAR supervision, the information regarding an issuer pursuant to the TD and MAR is taken into account in the scrutiny of the prospectus. NL stated that the information pursuant to MAR and TD is not shared with the PG, but the PG informs these teams in case of IPOs and secondary issuances.

⁵⁵ In CY prospectus and TD supervision are organised in the same department.

⁵⁶ FI clarified that the PG cooperates with TD and MAR specialists; however these are not involved in the prospectus review process.

279. Twenty-four NCAs reported cooperating with the prudential supervisor [AT, BE, CY, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE, IT, LI, LU, LV, MT, NL, NO, PL⁵⁷, PT, RO, SI]. With the exception of CY, ES, NL and RO, the NCAs involve the prudential supervisor in case the issuer is a regulated entity. Cooperation also takes place in case the issuer is in financial distress or when the prudential supervisor is likely to possess relevant information. IT reported that other national supervisory authorities may be involved in the scrutiny process for the purpose of the completeness and consistency check of certain information in a prospectus. Examples of this practice include cooperation with the prudential supervisor of insurance and reinsurance undertakings and sector specific supervisory authorities such as the Ministry of Health for pharmaceutical companies.

Cooperation with regulated markets / MTFs

280. Seventeen NCAs stated that they cooperate with regulated markets/MTFs. Fifteen NCAs [AT, BE, CY, EL, ES, FI, FR, HR, HU, IE, IT, LU, MT, PL, PT] cooperate with regulated markets/multilateral trading facilities (MTFs) with respect to specific issuers, mainly in case of IPOs. In most cases the PG contacts the regulated market to seek confirmation that the issuer has applied for admission to trading and confirm the timetable of the transaction. In ES the PG verifies compliance with the listing requirements. LU reported that it contacts the regulated market with respect to specific cases. EL mentioned that in their jurisdiction the regulated market is required to inform the NCA about whether the issuer complies with the listing requirements. HR stated that it cooperates with the regulated market only if the issuer is already listed, without further explaining the nature of this cooperation or what cases it concerns. In NL and NO cooperation with regulated markets / MTFs takes the form of general exchange of views and/or information.

Cooperation with takeover bids supervisors

281. Nineteen NCAs [AT, BE, CY⁵⁸, CZ, DE, DK, EL, ES, FI, FR⁵⁹, HR, HU, IE, IT, LU, NL, PL, PT⁶⁰, SI] stated that they cooperate with the takeover bids supervisors in case the prospectus relates to securities that are subject to a takeover bid.

Cooperation with product governance specialists

282. Nineteen NCAs [AT, BE, CY, CZ, DE, EL⁶¹, ES, FI⁶², HU, IE, IT, LI, LU, MT, NL, NO, PL, PT, SI] stated that the PG cooperates with product governance specialists. The nature of this cooperation ranges from only transfers of information to the product governance department with respect to certain products for the purpose of specific checks pursuant to Market in Financial Instruments Directive and Regulation

⁵⁷ PL is an integrated financial supervision authority including supervision over prudentially supervised entities. In this regard, the PG consults the unit responsible for prudential supervision in case of issuers that are prudentially supervised by the NCA.

⁵⁸ In CY supervision of prospectuses and takeover bids are organised in the same department.

⁵⁹ In FR supervision of prospectuses and takeover bids are organised in the same directorate.

⁶⁰ PT stated that supervision of takeovers and prospectuses is organised in the same department.

⁶¹ EL reported that cooperation with product governance specialists mainly relates to PRIIPS disclosure.

⁶² FI clarified that the PG cooperates with product governance specialists; however, these are not involved in the prospectus review process.

(MiFID/MiFIR) [AT, ES, MT] to suitability checks of the product or certain of its characteristics [BE, CY, DE, FI, IT, NL, SI].

283. BE, DE and IT stated that this suitability check is performed by the department responsible for the product governance supervision pursuant to MiFID/MiFIR in cooperation with the PG. DE explained that in Germany all securities subject to prospectus approval are subject to product supervision powers as the respective scope of MiFID/MiFIR is extended by national law. NL stated that the involvement of product governance specialists entails the use of their expertise and a suitability check is performed as part of the scrutiny procedure and within the check on the completeness, consistency and comprehensibility to the extent possible. A similar approach was reported by CY and SI.

284. IE and PT stated that the expertise of product governance specialists is used in the scrutiny of prospectuses to review certain related information in the prospectus. PL mentioned that, in cooperation with the product governance department, it requires a standard disclaimer regarding the method of offering of the securities and specific information to be included in the prospectus, without further involvement of product governance specialists. LI explained that the NCA staff dealing with prospectus supervision is also involved in product governance topics. CZ, LU and NO did not explain the nature of the involvement of product governance specialists in prospectus scrutiny.

285. Eleven NCAs stated that they do not cooperate with product governance specialists [BG, DK, EE, FR, HR, IS, LV, LT, RO, SE, SK]. FR in particular explained the PG does not cooperate with product governance specialists during the scrutiny of prospectuses in case of concerns with respect to product intervention in accordance with MiFIR because there is no legal basis to not approve a prospectus due to a product governance issue. However, the PG reviews the marketing materials in accordance with Article 22 PR⁶³ to check compliance with the Prospectus Regulation. Moreover, EE mentioned that they did not cooperate with product governance specialists during the review period as they did not review prospectuses relating to complex financial instruments or complex transactions. However, product governance specialists would be involved where the prospectus application relates to complex financial instruments. In a similar vein, HR stated that, due to the type of prospectus applications, cooperation with product governance specialists was not needed during the review period. However, such cooperation will be sought where needed depending on the type of the prospectus.

Cooperation between competent authorities

286. Eight NCAs [BG, FI, HR, IT, HU, RO, SI, SK] reported that they had not sought cross-border cooperation during the review period, while 22 NCAs had sought such cooperation. As the most frequent reason for seeking cross-border cooperation NCAs reported situations of transfers of approval of prospectuses which was cited by eighteen authorities [AT, BE, CY, CZ, DE, DK, EE, ES, FR, IE, IS, LI, MT, NL, NO, PL, RO, SE] while fourteen authorities [AT, CZ, DE, ES, HR, IE, IS, LI, LU, MT, NL, PL, PT, SK] mentioned issues relating to the notification of prospectuses. Other reasons for engaging with other NCAs were: a) issues relating to the classification of a security and its qualification as a transferable security which was selected by ten NCAs [AT, BE,

⁶³ Article 22 PR relates to advertisements.

DE, EE, IE, LI, LU, LV, MT, PL]; b) sanctions imposed by another NCA which was reported by eight NCAs [AT, EE, IE, LI, LU, LV, NL, PL]; and c) shared competence for an issuer reported by seven authorities [AT, BE, EE, EL, FR, IE, NL].

287. Fifteen NCAs [AT, BG, CY, DK, ES, FR, IE, IT, LT, LU, NO, PL, PT, SE, SI] cited additional circumstances under which cooperation with other NCAs is sought. These include seeking feedback from ESMA's Corporate Finance Standing Committee and/or members of ESMA's Operational Working Group on prospectus-related matters [CY, DE, DK, FR, LU, NO, PT, SE], engaging with other NCAs over complex transactions during the scrutiny process or post approval [IE], communication over the content of documents and timing of transactions in case of cross-border mergers and take-over with a public offer and/or an admission to trading on a regulated market [FR]. LU mentioned a number of cases where cooperation is sought such as when there is an open issue with an approval request filed with another NCA, when the NCA considers enforcement measures in relation to an issuer incorporated in another MS, where the prospectus has been passported or in case another NCA has information regarding the issuer's historical background as well as general exchange of views on prospectus matters.

6.3.10 *Emerging issues from the scrutiny process*

288. Although the first step in escalation will generally be to discuss issues with other readers within the PG, there will also be situations in which emerging issues should be escalated to management. In that regard, twenty-six NCAs also have standard procedures for escalation to senior management [AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LI, LU, LT, MT, NL, NO, PL, PT, SE, SI, SK], while only eight NCAs have procedures for escalation to an executive committee [BE, EL, ES, IE, LU, NO, PL, SI]. In exceptional cases, a note will be presented to LU's Executive Board concerning issues with a high impact such as, for example, issues relating to investor protection or issues affecting other issuers. The most recent example is the escalation to the Executive Board of the discussion of the review of prospectuses approved in relation to SPACs.

b) Assessment

289. The PRC positively notes that the vast majority of NCAs involves relevant specialists and supervisory authorities in prospectus scrutiny. The PRC, also, observes the different approaches as regards the specialists involved, the nature of their involvement and the actual checks performed.

290. However, the PRC believes that NCAs have different levels of information sharing across teams and departments, while some NCAs do not appear to share information at all. The PRC also observes that IT follows a formal process to involve other units / departments and supervisory authorities in prospectus scrutiny. This involvement appears to be carried out on a regular basis and entails exchange of communications with other units / departments but also with other supervisory authorities. As stated by the authority this process was put in place following a series of lawsuits and judicial inquiries and, inter alia, aims at addressing potential gross misconduct cases and differentiate liability amongst staff in such eventualities. It appears, therefore, that this formal process, which is launched when a prospectus application is received, is not linked only to the scrutiny and approval process but was put in place as a result of national law specificities which require cooperation amongst

supervisory authorities but also the national liability regime as explained in Section 10.2. It also appears that this approach requires significant organisational effort on the part of the authority and even though it does not affect compliance with legal deadlines, the PRC considers that it potentially affects the overall efficiency of the review process.

291. The PRC considers that all NCAs should have mechanisms in place to escalate a concern or issue to senior management concerning the prospectus approval where the responsibility is assigned to or delegated to the readers, a person holding a managerial position or a combination thereof. It is important to ensure that efficient escalation mechanisms are provided to allow readers and managers to escalate material concerns and receive a response in a timely manner.

292. As regards product governance specialists in particular, the PRC acknowledges that NCAs do not follow a convergent approach. Firstly, almost two-thirds of NCAs involve product governance specialists in prospectus scrutiny. Where such involvement takes place, the nature of involvement ranges from passing on information to product governance specialists regarding specific products to cooperation regarding product intervention or a suitability check of the product. Nevertheless, the PRC is satisfied that generally NCAs involve product governance specialists in case of concerns with respect to the suitability and appropriateness or in case of complex or certain specific products. On this topic, the PRC notes that ESMA suggested that the EC considers extending the scope of Article 32(1)(j) PR to allow for the suspension of prospectus scrutiny when a prohibition or restriction is being considered for investor protection reasons under MiFID/MiFIR in its response to the European Commission's targeted consultation on the Listing Act.⁶⁴

c) Recommendations

293. The PRC recommends that SK revisit their current approach and involve in prospectus scrutiny specialists from other departments / units and / or other supervisory authorities depending on the complexity of the prospectus and the risk for investors.

294. Moreover, the PRC invites ESMA to consider updating the Supervisory Briefing to address the involvement of specialists and other supervisory authorities in prospectus scrutiny on a risk-based basis in order to promote in this regard a consistent approach between NCAs in conjunction with potential supervisory convergence work regarding the application of additional criteria under Article 40 of CDR 2019/980 as mentioned in Section 6.3.4.

295. IT should consider reviewing its practices in relation to information sharing to ensure their efficiency.

296. BG, IS, LV and RO should put mechanisms in place to escalate a concern or issue to senior management concerning the prospectus approval.

297. While the PRC encourages DE to formalise its relationship with the specialists responsible for the supervision of financial reporting, it nonetheless recognises that the PG also has its own expertise in financial reporting and a work group concerning financial reporting issues, so that it may not be necessary to have the sort of intensive cooperation seen at other NCAs.

⁶⁴ For more details please see ESMA's response to the EC targeted consultation on the Listing Act ([ESMA32-384-5357](#) |15 February 2022).

298. Lastly, the PRC considers that those NCAs which do not cooperate with product governance specialists [BG, DK, FR, IS, LV, LT, RO, SE, SK] should consider doing so in the interest of investor protection.

d) Good practices

299. The PRC is convinced that the involvement of product governance specialists in case of product suitability concerns is a good practice. The PRC appreciates that such involvement is limited to the assessment of completeness, consistency and comprehensibility under the PR and that the prospectus approval, assessment of MiFID II suitability requirements and product intervention are distinct procedures carried out under different legal texts. Nevertheless, the PRC considers that such cooperation ensures that certain information in the prospectus is reviewed by product governance specialists and also it may proactively prevent the approval of a prospectus relating to securities that may be subject to a product intervention procedure after approval of the prospectus. This is in the interest of investor protection and will also save time and effort for NCAs.

300. Several NCAs indicated that they bring issues to ESMA's operational working group on prospectus-related matters (OWG). The PRC believes that bringing such issues to the OWG is a good practice and encourages NCAs to continue doing this.

6.3.11 Memorandum of Understanding (MoU)

301. The PRC assessed whether NCAs have a memorandum of understanding with external parties with whom they share information in the context of prospectus scrutiny. In general, the PRC assessed whether there are any impediments in national law to the sharing of information with external parties when it is necessary for the scrutiny of a prospectus.

a) Summary of findings

302. Nine NCAs responded that they have no MoUs or any similar agreements [CZ, EE, FI, IS, LT, LV, NO, PL, SK] because their authority is responsible for all relevant supervision in their jurisdiction.

303. Where the prudential supervisor is another authority, twelve NCAs mentioned that they have an MoU usually with the financial institutions' supervisor [BE, CY, EL, ES, HR, HU, IT, MT, NL, PT, RO and SI]. AT, BG and FR reported that cooperation and the exchange of information with other supervisors is regulated in national law. Ten NCAs [CY, DE, DK, ES, FI, FR, IE, LI, LU, SE] mentioned that they are, inter alia, signatories of the IOSCO MoU.

304. Fourteen NCAs [AT, BE, CY, EL, ES, FI, HR, HU, IE, IT, LU, MT, PL, PT] mentioned that they cooperate with their regulated market in accordance with national law.

305. Some NCAs reported MoUs with several specific supervisory authorities such as: a) the accounting/auditors supervisor [BE, CY, EL, MT, SI]; b) the Ministry of Economic Affairs [BE], c) the Betting Authority [CY]; and d) the Fair Competition Supervisor [MT]. SE mentioned that it has an agreement with the Swedish Securities Council regarding certain delegated tasks related to takeovers. HU stated having an MoU with the four auditing firms. HU explained that it seeks the advice of these auditing firms by submitting questions on specific topics relating to rare and special

valuation cases. These questions are anonymised so that the issuer or matters related to the transaction cannot be identified. The response will assist HU in its analysis of the specific issue. Furthermore, the NCA clarified that the scope of the MoU is wider and does not relate only to prospectuses as it fulfils cooperation and educational purposes for both parties to allow for regular professional consultation on a regular basis. The advisory companies involved are the auditors of the entities supervised by HU.

306. None of the NCAs reported any impediments in national law to the sharing of information to external parties in cases where this is necessary for the scrutiny of a prospectus.

b) Assessment

307. The PRC is satisfied that in general supervisory expectations are met by NCAs, given that NCAs either have MoUs or similar arrangements with external parties with whom they cooperate, or this cooperation is provided for in national law. The PRC observes that no national law impediments exist in Member States to the sharing of information where necessary for the scrutiny of prospectuses. The PRC is unclear though about the scope and purpose of the MoU that HU reported having with four auditing firms. The PRC appreciates that consulting market stakeholders is helpful in allowing NCAs to better assess the issues that deserve their attention. Moreover, interacting with external advisors / auditors on specific issues may be needed sometimes, but such interaction would nevertheless be carried out in exceptional cases and not systematically. In general, NCAs are expected to build expertise on financial information issues in order to be able to form their own opinion and challenge outside experts. Where needed, NCAs could bring matters for discussion at ESMA level in order to seek the views of other supervisors.

c) Recommendations

308. The PRC invites HU to consider whether the use of four auditing firms with which the NCA has an MoU is in line with the PR regulatory framework. Additionally, the NCA is invited to consider whether it should further develop its inhouse financial expertise to ensure that external advice is sought in exceptional circumstances. The NCA is also reminded that where needed input on financial information matters could be sought from other NCAs at ESMA level.

6.3.12 Publication of National Guidance

309. The PRC assessed whether NCAs have published guidance for issuers and their advisors on their website concerning the scrutiny and approval process in accordance with Article 20(7), whether this guidance is consistent with the PR and the legislation promulgated thereunder, and whether NCAs are transparent about the application of the operational procedures and their technical requirements.

a) Summary of findings

310. NCAs in general reported that they have published guidance regarding the scrutiny and approval procedure on their website, except for BG which has published only ESMA's Guidelines on Disclosure Requirements under the Prospectus Regulation on its website. NCAs mentioned that the published guidance includes practical information on the procedure for the submission of an application of

prospectus approval, albeit with differences on the topics covered and how extensive the guidance is.

311. Most NCAs have also published information on certain aspects of the Prospectus Regulation and the approval procedure such as applicable laws and regulations, legal timeframes, exemptions, applicable fees and accepted languages. AT, BE, and NL have also published guidance on advertisements. DE has published guidance on the use of 'plain language' and comprehensibility. DK has published guidance to help issuers prepare and draft a prospectus and NO has published guidance to ensure a good quality of first draft prospectuses. IE has published Q&As regarding the application of the PR which deals with operational matters relating to the PR. BE has published guidance regarding a fast-track procedure which applies to prospectuses relating to plain vanilla debt securities, which under certain conditions can be approved within five working days.

b) Assessment

312. The PRC positively notes that almost all NCAs have published guidance regarding the scrutiny and approval procedure, even if the scope of the published guidance varies amongst NCAs. The PRC is satisfied that in general NCAs meet the expectation of having published guidance for issuers and their advisors on their website concerning the scrutiny and approval process in accordance with Article 20(7) PR and that this guidance is consistent with the PR and the legislation promulgated thereunder. On that basis, the PRC further notes that NCAs are overall transparent about the application of their operational procedures and their technical requirements. Nevertheless, the PRC believes that accessibility of information posted on NCAs' websites could be further enhanced in some cases and invites NCAs to consider how they could facilitate access to the guidance that is published on their websites.

c) Recommendations

313. The PRC considers that BG should publish guidance addressed to issuers and their advisors with regards to the NCA's scrutiny and approval process to clarify the relevant operational procedures and technical requirements.
314. Moreover, to promote supervisory convergence at EU level the PRC recommends that, where this is not already the case, NCAs publish on their websites links to ESMA's website (and in particular the prospectus-related webpage) as well as links to ESMA guidance such as the ESMA Q&As and Guidelines.

d) Good practices

315. The PRC considers that guidance to issuers providing practical information on how to draw up a prospectus would have a positive impact on the quality of draft prospectuses and the overall efficiency of the scrutiny procedure and encourages NCAs to consider publishing such guidance.

6.3.13 Comprehensibility of the prospectus

316. The PRC assessed whether NCAs ensure that the disclosure for retail prospectuses is written in plain language in accordance with Article 37(1)(g) of CDR 2019/980. The PRC furthermore assessed whether NCAs have a consistent approach to ensure that a retail prospectus is drafted in plain language.

a) Summary of findings

317. NCAs in general reported that they review compliance of the prospectus with the plain language requirement and indicated how they perform such review. Some NCAs indicated in a more general manner that they review whether plain language is used in a way that the language should be easily understandable for retail investors, clear, concise, non-technical or non-legalistic. Other NCAs provided examples of how they ensure that plain language is used. Such examples include requests to:

- a) explain or rephrase complex wording [AT, BE, CY, CZ, EL, ES, FI, FR, HU, IE, IS, IT, LI, LU, LV, MT, NL, NO, PT, RO, SE, SK];
- b) add definitions [BE, EL, HU, IT, LT, LU, MT, NL, NO, PT, SE];
- c) capitalise defined terms [BE, LU, NL];
- d) add a glossary for defined terms and acronyms [AT, CY, ES, LI, LU, PL];
- e) shorten sentences [AT, DY, LT, LU, NL, SK];
- f) refrain from unnecessary repetitions [CY, HU, LU, NL, PT];
- g) explain mathematical formulas [BE, EL, HU, IE, LT, LU]; and
- h) use cross references [CY, EL, HU, IT, LU].

318. Five NCAs [CY, HU, LI, LU, MT] emphasised the importance of the four-eye principle in this context. ES and NL mentioned that as a rule of thumb where a prospectus reader has difficulties in understanding the information contained in the prospectus, it could be assumed that retail investors would not understand it either. EE and PT indicated that the plain language requirement should be assessed from the point of view of an average investor and BE referred in this regard to a retail investor without prior knowledge of the issuer. One NCA [DE] has published guidance regarding the notion of plain language, dealing in particular with base prospectuses which are characterised by a modular design impairing comprehensibility.

b) Assessment

319. The PRC positively notes that as part of their scrutiny NCAs aim at ensuring compliance with the plain language requirement. The PRC appreciates that the most commonly used approach to address this requirement is by inviting the issuer to either reword, explain or shorten the respective part of the prospectus. However, the PRC wonders whether the rule of thumb mentioned above will generally result in prospectuses that are comprehensible for retail investors, especially when it comes to base prospectuses. It may be difficult for prospectus readers (as experts themselves) to assess whether a prospectus will be comprehensible for retail investors. With this in mind, the PRC considers that it may be useful to consider further guidance in this area.

320. The PRC is of the view that guidance at ESMA level in the area of comprehensibility, including the plain language requirement, would be conducive to a convergent approach amongst NCAs in the application of the plain language requirement, while it would also facilitate enforcement of this rule. Such guidance should distinguish between prospectuses addressed to retail investors where the requirements should be more stringent, and prospectuses addressed to qualified investors. Additionally, considering the importance of this topic for retail investor

protection the PRC believes that a behavioural study that would look at the use of prospectuses and their comprehensibility for retail investors would provide a solid basis for further improvements of the regulatory framework and ensure consistent supervision of prospectus comprehensibility.

c) Recommendations

321. The PRC invites ESMA to consider developing guidance in the area of comprehensibility, including plain language requirements, distinguishing between prospectuses for higher risk and complex products that are addressed to retail investors where more stringent checks would be expected and those addressed to qualified investors. As a starting point such work could be based on examples of comments raised by NCAs and other public recommendations on this topic by national authorities. In addition, the PRC recommends that the European Commission undertakes a behavioural study to look at the use of prospectuses and their comprehensibility as regards retail investors with a mind to using the outcome of this study to improve the prospectus regulatory framework and ensure consistency of comprehensibility checks by NCAs.

d) Good practices

322. The PRC recommends as a good practice for NCAs to focus their scrutiny on complex language, legal, technical or industry specific terms, formulas, acronyms when reviewing prospectuses which are not used exclusively for the purposes of admission to trading on a regulated market of non-equity securities for which a summary is not required under Article 7 of the PR.

6.3.14 Scrutiny of summaries

323. The PRC assessed whether NCAs follow a structured and consistent approach for the scrutiny of prospectus summaries.

a) Summary of findings

324. Twenty-three NCAs [AT, BE, CY, CZ, DE, EE, EL, ES, FR, HU, HR, IE, IS, IT, LT, LU, LV, NL, NO, PL, PT, SE, SK] indicated that they have encountered practical issues when scrutinising prospectus summaries. These issues usually related to excessive length of the summary, small font size, inconsistency of information between the summary and the body of the prospectus, information in the summary that was not included in the body of the prospectus, presentation of key financial information, key risks in the summary as regards their number or related disclosures, compliance with ESMA Guidelines on Risk Factors, cross references to other parts of the prospectus, superfluous content, insufficient content and comprehensibility issues. NL mentioned that, in case of an emphasis of matter in the audit report, issuers are requested to include it (without the notes) in the summary. The authority also asks for the inclusion in the summary of the working capital statement where this is qualified. While not requiring its inclusion in the summary NL also considers as relevant information the date of incorporation of the issuer. In addition, eight NCAs [DE, FR, LT, LU, NO, PL, PT, SK] encountered issues with regards to disclosures included in the key risks which was deemed either excessive or insufficient.

325. Seven NCAs [BG, DK, FI, LI, MT, RO, SI] reported not having any practical issues in relation to the scrutiny of summaries.

b) Assessment

326. The PRC notes that NCAs mostly come across cases of issuer non-compliance with the PR requirements that apply to prospectus summaries or the ESMA Guidelines on risk factors. This leads NCAs to raise relevant comments.
327. The PRC observes that NCAs mentioned that issuers used smaller font size than the rest of the prospectus to circumvent the page limit of the summary. While the PRC appreciates that there is no guidance addressing the issue of small font size, it nevertheless considers that it should be possible for NCAs to challenge issuers on the basis of Article 6 (2) PR and Article 37(1)(d) of CDR 2019/980. Moreover, given the key role of prospectus summaries in prospectuses addressed to retail investors the PRC considers that it would be worth investigating the usefulness of summaries for retail investors.

c) Recommendations

328. The PRC concludes that the development of guidance from ESMA would be useful in order to clarify the use of easily readable font size in the summary and the information to be disclosed in the description of the key risks in the summary. In the absence of guidance in relation to font size, the PRC invites NCAs to challenge the use of small font size in prospectus summaries on the basis of Article 6 (2) PR and Article 37(1)(d) of CDR 2019/980. Additionally, the PRC considers that it would be beneficial to have a better understanding of the use of summaries by retail investors and particularly how summaries can be further improved to assist retail investors when deciding to invest in securities. In this respect, the PRC recommends that the European Commission carries out a behavioural study that would look at whether and how retail investors use the prospectus summary in order to make concrete improvements to the summary regime.

6.3.15 Summaries in base prospectuses (issue-specific summaries)

329. The PRC assessed NCAs' approach to the supervision of summaries of base prospectuses which are not subject to ex-ante review or approval.

a) Summary of findings

330. Five NCAs [EE, ES, HU, LI, SK] reported reviewing all issue-specific summaries annexed to final terms. ES specified that the NCA carries out a thorough review of the issue-specific summary which is submitted first⁶⁵. The outcome of this check serves as reference for subsequent issue-specific summaries filed with the authority. IT reported that the first reader checks whether the summary is in compliance with the PR after its publication.
331. Nine NCAs [AT, BE, CZ, DK, FR, IS, IT, NL, NO] reported conducting random or periodic controls of issue-specific summaries. CZ specified that issue-specific summaries by issuers who file final terms less frequently are always reviewed and that such review is detailed. NO mentioned that it carries out random checks on final terms to check whether an issue-specific summary is included in the final terms as required by the PR.

⁶⁵ ES clarified that all final terms are reviewed and their summary where included. Moreover, the reader is expected to review the summary of the first final terms.

332. Two NCAs [DE, LU] reported following a risk-based approach for the review of issue-specific summaries. IE follows a reactive approach and carries out reviews of the final terms and summary where regulatory concerns arise. PL reviews issue-specific summaries but considers that the lack of a provision requiring the submission of a summary as part of the prospectus approval procedure hampers the verification and the possibility of submitting any comments by the NCA. RO mentioned the possibility of control of issue-specific summaries without further specifying how frequent these controls are. SE has not reviewed issue-specific summaries for the period under review.
333. Eight NCAs [BG, CY, EL, HR, LT, MT, PT, SI] reported not having reviewed retail base prospectuses during the review period while FI mentioned that they reviewed only one such base prospectus.
334. LV indicated that they request the submission of a draft summary for ex ante review. FI reported that they may request to review the summary as part of the prospectus review. However, FI would not request to review the summary in all cases. MT stated that it would ask to review this summary even though this is not required under the PR. IS may perform an ex ante review of issue specific summaries at the issuer's request.

b) Assessment

335. The PRC observes several practices amongst NCAs, notably reviewing all issue-specific summaries, performing random or periodic controls, reviewing issue-specific summaries in accordance with a risk-based approach or requesting issuers to submit a draft summary for ex ante review.
336. The PRC notes that the practice of requesting the submission of a draft issue-specific summary for an ex-ante review as reported by LV and MT appears to go beyond the PR requirements given that these summaries are annexed to the final terms which are filed with NCAs in accordance with Article 8(5) PR and are not subject to ex ante review. The PRC also acknowledges that reviewing these summaries at the issuer's request raises no such concerns. At the same time, the PRC considers that checking these summaries ex post on a periodic basis is a prudent approach.

c) Recommendations

337. The PRC considers that it would be beneficial to promote harmonisation as regards the approach followed by NCAs to monitor compliance of issue-specific summaries with the PR. The PRC is of the view that NCAs should consider including in their processes random ex post checks of issue specific summaries. Where the number of these summaries is significant, NCAs could consider using a risk-based approach as a second step to ensure proportionality of the number of checks they would need to perform. The PRC recommends that work be undertaken at ESMA level to develop common approaches which NCAs would implement regarding their controls on issue-specific summaries.
338. The PRC also recommends that LV and MT revisit their approach regarding the ex ante review of issue specific summaries given that the final terms to which these summaries are annexed in accordance to Article 8(5) PR are not subject to ex ante review.

d) Good practices

339. In the PRC's view a good practice in this area would take into account the number of retail base prospectuses approved by an NCA and the number of final terms, containing annexed issue-specific summaries, filed with that authority. Where that number is very limited, the NCA could review all issue-specific summaries. Where that number is more significant, a sample of those summaries could be selected for review following a risk-based approach, which should be further defined.

6.3.16 Omission of information

340. The PRC assessed NCAs' adherence to Article 18 PR⁶⁶ concerning the omission of information from prospectuses and to the Supervisory Briefing concerning the scrutiny and approval of prospectuses in relation to the omission of information from a prospectus and which disclosure requirements can be considered 'not applicable'.

a) Summary of findings

341. Twenty-six NCAs [AT, BE, CY, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE, IT, IS, LI, LU, LV, MT, NO, PL, PT, RO, SE, SI, SK] reported that they have in place an internal process and internal guidance in relation to omission of information which is in line with the relevant section of ESMA's Supervisory Briefing. Nine of these NCAs [CY, DE, HR, IS, IT, LV, RO, PL, SI] reported that they have not received any omission requests during the review period.
342. Three NCAs [EE, LT, NL] mentioned that their internal process and internal guidance is partly in line with the omission process set out in the Supervisory Briefing. In particular, EE indicated its internal process does not cover cases of an issuer referring to an annex that is not appropriate. However, the NCA has not received any application relating to this point during the review period. LT reported that the authority does not have an internal process or internal guidance. The authority, which has not received requests for omission of information, follows in principle all the elements of the Supervisory Briefing, with the exception of having experts in different economic sectors or cooperation arrangements with other authorities that could provide such expertise if needed. However, as regards items marked as non-applicable, the NCA clarified that it asks for an explanation by the issuer and assesses the matter on a case-by-case basis. NL explained that in cases where it is not obvious why an item is not applicable, the NCA asks for explanations. As regards omission of information, NL mentioned that it follows the supervisory briefing except for issuers that will be incorporated around the date of prospectus approval, where the NCA does not require an omission of information request regarding historical financial information as such information does not exist and cannot be drawn up.
343. BG reported that it does not have in place an internal process or guidance that is in line with the Supervisory Briefing. The authority clarified that omission of information requests are assessed on a case-by-case basis. For this assessment the authority follows its internal methodology and performs a series of checks to assess whether the disclosure of this information would: a) be contrary to the public interest;

⁶⁶ Under this provision an NCA may authorise the omission of certain information from the prospectus in certain instances.

b) negatively affect the issuer and mislead the public; c) be insignificant in terms of affecting investors' assessment of the issuer's financial position and prospects.

344. Twenty-eight NCAs [AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK] clarified that in case of items marked as N/A they challenge the issuer. NO and RO did not explicitly refer to their approach regarding items marked as not applicable (N/A).

b) Assessment

345. The PRC positively notes that NCAs in general reported following ESMA's Supervisory Briefing with regards to omission of information and the treatment of disclosure items marked as N/A. There are nonetheless three NCAs which reported that they partly follow the Supervisory Briefing [EE, LT, NL]. As regards NL the PRC considers that it makes sense not to require an omission of information request in case of issuers that will be incorporated around the date of approval of the prospectus, as this information does not exist and cannot be prepared. LT mentioned that in principle the NCA follows the Supervisory Briefing except for having sectoral experts and experts on new innovative financial products which is not a matter related to omission of information. The PRC, also, notes that BG applies its internal methodology as regards omission of information, which does not fully reflect the Supervisory Briefing.

c) Recommendations

346. The PRC invites BG and EE to consider fully aligning their internal process and guidance with the Supervisory Briefing.

347. As regards NL the PRC appreciates the reason for its approach in relation to historical financial information of issuers that will be incorporated around the date of prospectus approval and takes note that this is a matter to be taken into account when updating ESMA's Supervisory Briefing.

6.3.17 Other – Documentation of scrutiny process

348. The PRC assessed whether NCAs ensure appropriate documentation of the various stages of the scrutiny process by including in the dossier the completed reference tables (if applicable)⁶⁷, the NCA's comments on each draft of the prospectus and the issuer's responses as well as whether NCAs have a document management system in place.

a) Summary of findings

349. All NCAs have in place a storage system which allows them to save the relevant documentation during the scrutiny process.

350. Twenty-seven authorities clarified that they have in place a document management system in electronic format for the various stages of the scrutiny process [AT, BE, BG, CY, DE, DK, EE, EL, FI, FR, HU, IE, IT, IS, LI, LV, LT, LU, MT, NL, NO, PL, RO, SK, SI, ES, SE]. Two NCAs [CZ, PT] mentioned that they do not have in place a document management system. CZ clarified that all documentation is stored in electronic format, including all comments raised and issuer responses.

⁶⁷ For example, the list of 'cross references' referred to in Article 42(2)(a) of CDR 2019/980.



PT explained that comments from the issuer are saved in the NCA's servers. All rounds of comments with issuers are carried out in electronic format and are stored in the NCA's servers / database. HR mentioned that they do not have a special document management system; however, communication with the issuer is carried out by electronic means, the issuer's responses are provided in an electronic file and all documentation is stored and is available to PG members.

b) Assessment

351. The PRC takes notes that all NCAs keep track and store the relevant documentation during the various stages of the scrutiny process. The PRC is satisfied that the NCAs generally have in place electronic systems for the storage and management of the documentation that are proportionate to their prospectus activity.

7 NCAs' approval process, including the notification of approvals by Competent Authorities pursuant to Article 25 of the PR

7.1 Approval and notification of prospectuses

352. The PRC assessed NCA's processes relating to the approval of prospectuses focussing on a number of criteria, including:

- a) a prospectus should only be approved once it satisfies Article 6(1) PR and all other relevant provisions of the PR have been fully addressed and all comments that have been raised by the NCA have been resolved to its satisfaction;
- b) it is expected that NCAs have an efficient process to approve the prospectus and that there are no unreasonable time delays;
- c) it is expected that NCAs have effective measures in place to ensure that the person(s) responsible for the approval can confirm that the review is consistent with relevant legal requirements in the PR and CDR 2019/980;
- d) it is expected that the signing-off of the approval by the NCA of a prospectus, once all comments have been addressed, should be an efficient process as matters of substance and materiality should have been addressed through the scrutiny process; and
- e) it is expected that there should not be a delay in notifying the issuer that the prospectus is complete and that all comments have been addressed in order for the issuer to take the next steps in the transaction that it deems appropriate.

353. When assessing the NCAs' approval processes, it is immediately apparent that hierarchical structures and job titles differ substantially between NCAs. The PRC has tried to classify responses within structures provided in the questionnaire as best as possible. In addition, in some NCAs, responsibility for approval differs depending on the type of prospectus or specific risk assessment and, as such, they may have been included in more than one category.

a) Summary of findings

Responsibility for the approval of prospectuses

354. Based on NCA responses, there are different arrangements for the approval of prospectuses. In DE, DK and NO, prospectus readers are responsible for the approval of the prospectus. This appears to be the lowest level hierarchically that is de facto responsible for the approval of prospectuses. The PRC discussed this approach during the onsite visit to DE and it appears that there are additional safeguards to ensure that this is not an issue. These safeguards include that the approval letter is signed by all members of the review team; the strict application of the four-eye principle, where both readers normally scrutinise the entire prospectus; effective communication with the Heads of Division and senior management to ensure that they are aware of material issues; and DE's measures to ensure adequate information sharing.

355. In SE, the prospectus readers are also often responsible for the approval of the prospectus, but this depends on whether the reader in question has a 'mandate' to approve prospectuses, which is a key feature of the SFSA's approach to prospectus supervision. More specifically, the 'mandate' is a formal delegation of prospectus approval to the reader. New readers are not allowed to approve prospectuses until such time that their knowledge and expertise is considered appropriate based on a formal process. This evaluation is based on the types of prospectuses reviewed since joining SE and the reader's background. SE has internal rules on who can approve prospectuses and on what level. There is a formal process and the individual assessment to grant a 'mandate' takes into account different criteria such as the reader's background, knowledge, capabilities, the number and type of prospectuses reviewed. Normally, readers receive their 'mandate' within a year, although in some cases it may take longer. At SE, prospectuses must be approved by a person holding a managerial position or a reader having a mandate to approve prospectuses.
356. In CZ, HU and SK a person holding a managerial position is solely responsible for the approval of the prospectus; while in AT, FI, IE, IS, LI and LU⁶⁸, the reader(s) are responsible for the approval of the prospectus, acting together with a person holding a managerial position. This is also the case in NL, but in some cases, the readers approve the prospectus without the involvement of a person holding a managerial position. This depends on the risk associated with the prospectus in question. More specifically, the readers may approve a prospectus with a low-risk classification without the involvement of a person holding a managerial position, while the involvement of such person will be necessary for the approval of a prospectus with a high-risk classification, such as an IPO. In PL a person holding a managerial position is responsible for the approval of the prospectus but, depending on the risk associated with the prospectus in question, the approval by the Board of the NCA is also foreseen.
357. In BE, BG, CY, EE, EL, HR, IT⁶⁹, LV, MT, PT, RO and SI, the Board of the NCA is responsible for the approval of the prospectus. At some NCAs [BE, IT], the Board consists of full-time members with specific expertise. When approving a prospectus, the Boards of these NCAs discuss the prospectus applications, the risk profile associated with the transaction as well as the main elements of the prospectus disclosure such as company information and financial information. In terms of amendments, Boards most often request amendments with regards to risk factors and warnings [BE, CY, EE, IT, PT], reasons for the offer/use of proceeds [EE], conflicts of interests [HR] and working capital [CY]. Six NCAs [BG, EL⁷⁰, HR, LV, RO, SI] state the Board has never challenged the readers' recommendation to approve the prospectus but would be able to do so, if necessary. Finally, in FR, the Board has delegated the responsibility to approve prospectuses to the Chair.
358. The responsibility for approval is (partly) assigned to a special committee in ES and LT. More specifically in ES, the Executive Committee (with responsibility delegated from the Board) approves IPO prospectuses, refuses the approvals of prospectuses, signs off on transfers of approvals and on omission requests, while a

⁶⁸ In LU, the Board is formally responsible for the approval of the prospectus, but this competence has been delegated to a person holding a managerial position acting together with a reader.

⁶⁹ In IT the procedure and timeframes of the approval process are set out in the NCA's "Regulation on organisation and functioning".

⁷⁰ While its Board did not challenge readers recommendations to approve a prospectus during the period covered by the peer review, EL notes that it is within the Board's responsibility to challenge readers and has done so in the past.

Chairman or Vice-Chair to the Executive Committee approves the remainder of the prospectuses. While, in LT, the Supervision Service Committee is responsible for the approval of prospectuses for unlisted issuers and for regulated entities, all other prospectuses are approved by the Director of the Department.

'No comments' and the notification of approval

359. NCAs inform issuers that all comments have been addressed either (i) on the same day [BE, BG, CZ, DE, DK, EL, ES, FI, IS, IT, LT, LU, NL, SE and SI] or (ii) within 1 or 2 working days [CY, EE, ES, FR, HR, HU, LV, MT, NO, PL, PT, RO and SK]. There are three outliers in this area. LI normally informs issuers within 10 working days, while IE and IT do not formally inform issuers that all comments have been addressed. Instead, in IE the issuer will be aware that all outstanding comments have been resolved through the comment sheet returned to them following the review of each draft of the prospectus. In IT the issuer will be aware that there are no further comments when the issuer is requested to send the latest version of the prospectus for approval together with a 'signed responsibility statement'.
360. In ES the issuer is informed that all comments have been addressed and the prospectus is ready for approval in an informal manner via the telephone or email. However, there is no formal obligation to inform an issuer and if there is no explicit communication, the issuer will be aware that the prospectus is ready for approval when they are asked to send a signed final version of the prospectus. Finally, AT typically sends a final request to the issuer asking them to file the final version of the prospectus shortly before the approval date that has been previously agreed with the issuer.
361. Although HU normally takes 1 or 2 working days to approve most prospectuses, for prospectuses relating to an issue of securities with a total consideration of more than 5 billion HUF (Hungarian Florint) (EUR 12.7 million) the Executive Director responsible for legal issues must approve the prospectus. In such cases, there are often senior management meetings to discuss the prospectus and the approval process takes 3 – 6 working days.
362. However, the actual time that NCAs need to formally approve prospectuses after they begin with the approval procedure varies further. Twelve NCAs report that they approve prospectuses on the same day from the point in time when the issuer wishes to proceed with formal approval of the prospectus [AT, BG, DE, DK, EE, FI, FR, IE, IS, LU, PT and SE]. In CZ, EL, LI, NO and PL, the prospectus is normally approved within 1 or 2 working days after beginning the procedure to approve the prospectus. ES and NL report that they approve prospectuses either on the same day from the point in time when the issuer wishes to proceed with formal approval of the prospectus or within two days thereafter.
363. Other NCAs approve the prospectus within 3-5 days [CY, BE, HR, IT and LT] or more than five days [LV, MT, RO, SI and SK] after beginning the approval procedure. SI states that the time of approval cannot be known in advance because its Board only meets once a week (sometimes even less), which appears to indicate that issuers may need to wait as long as a week (or more) for approval. In fact, SI reports that it has taken more than ten days to approve a prospectus in which the Board did not meet and as a result the NCA was not able to meet the PR deadlines in a number of cases as already mentioned in paragraph 224.

364. While the previous paragraph states that BE takes 3-5 days to approve a prospectus, BE often takes place within 1-2 days but can take up to 3-5 days, it being understood that minor changes can be made to the prospectus until the evening before the Board meeting. In exceptional cases, it may take five working days or more in order to allow the Board to read the prospectus and the accompanying note drafted by the prospectus readers. However, BE noted its Board can also approve prospectuses within 24 hours via a written procedure, which is frequently used. Also, prospectuses are often presented to the Board in an earlier meeting than the date of approval. In that case, the Board is already familiar with the prospectus, which facilitates a quicker approval.
365. EE stated that the approval of a prospectus by their Board has never taken more than one day. EE agrees with the issuer on a specific approval date with the issuer taking into account the dates that their Board meets. Thereafter, the issuer is required to provide a signed, final version of the prospectus three days before the Board meeting where the prospectus will be approved. According to EE, this ensures that no further clarifications or corrections are required. However, EE also stated that issuers are provided with the opportunity to amend and revise the prospectus until the last moment and noted that it is customary for the price and number of the securities to be included in the prospectus only upon the day of the Board meeting.
366. CY reported that it will not take longer than five days to approve a prospectus, because their Board convenes every week. Furthermore, CY has the possibility to convene a Board meeting at an earlier date or add an item in the agenda of a Board meeting in cases where the issuer has specific timelines that have to be met. This option has been used in several cases in the past. In addition, CY's Chairman and Vice-Chairman are available for consultation with the PG staff in order to discuss complex issues prior to the submission of a prospectus to the Board for approval.

Steps taken once all comments have been addressed

367. Where an NCA requires Board approval, the prospectus readers regularly produce an internal report or memorandum for the NCA Board setting out the background of the transaction described in the prospectus and any particular issues or concerns and a recommendation whether or not to approve the prospectus, together with the final version of the prospectus. Additionally, ES and FR also have their readers produce an internal report or memorandum in the context of their approval procedures. These reports are often reviewed by senior staff, together with a recommendation to approve or refuse the prospectus. This report sets out the main elements of the prospectus application [BE, BG, CY, ES, FR, IT, MT, PT, RO]. In RO, the memorandum is also reviewed by the legal department before submission to the Board or senior management, while ES also has the memorandum reviewed by the legal department in some cases.
368. While CZ, HU and PL have assigned the responsibility for the approval of the prospectus to a person holding a managerial position, these NCAs also require an internal memorandum. More specifically in relation to NL, a third person who is a senior supervisor or manager must approve high-risk prospectuses, while low-risk prospectuses can be approved by the senior reader involved in the scrutiny of the prospectus.
369. In cases where prospectuses are approved by the PG (i.e. the prospectus is approved by the reader, a reader acting together with a member of management or

a member of management within the PG), the NCAs normally inform the issuer directly that they can proceed with the approval and a formal approval submission can be made or implicitly accept an approval submission once there are no further material comments.

370. Following approval, all NCAs inform the issuer that approval has taken place by letter, often submitted electronically.

Documentation required from the issuer at approval

371. All NCAs require issuers to file a final version of the prospectus, either as part of the approval submission or prior to the approval, as set out in Art. 44 and Art. 42(2) CDR 2019/980. However, sixteen NCAs [CZ, DK, ES, FR, HR, HU, IE, IS, IT, LI, LV, NO, PL, PT, SI and SK] require additional documentation, such as:

- a) issuer's minutes of Board meetings authorising the issuance of securities or to authorise the offering programme [LV, PL, PT, SK];
- b) copy of ISIN documentation [SK];
- c) written certificate in case of covered bonds [SK];
- d) proof of payment of prospectus fee [SK, SI];
- e) proof of incorporation if incorporated in different Member State [SK]; and
- f) documentation to support statements, such as contracts [HU].

372. Additionally, CY, DK, ES, HR, IS and LI require a signed copy of the prospectus. Similarly, CY, EL⁷¹, ES, FR, IT and NO require signed responsibility statements. In ES, this takes the form of an electronic signature, which they do not consider 'additional documentation'. ES also reported that it requires additional documentation with the application for the approval the prospectus, such as the minutes of an issuer's Board and/or shareholders' meetings authorising the issuance and the power of attorney authorising the authority of the person(s) signing the prospectus. PL stated that it requires resolutions concerning the issuance of the securities described in the prospectus and a signed version of the prospectus prior to its approval. PL noted that the resolutions are necessary to assess the completeness of the information in the prospectus. LV requires two original, paper copies of the prospectus and the text of the prospectus in electronic form. Finally, CY stated that issuers provide it with a signed declaration on consent on a voluntary basis.

373. In terms of the submission of metadata for the ESMA prospectus register, thirteen NCAs [BE, DE, DK, ES, FI, FR, IT, LI, LU, MT, NL, NO, SE] require the issuer to submit the relevant metadata for the ESMA prospectus register. Twelve NCAs [BG, CZ, EE, EL, HR, HU, IS, LT, PL, PT, SI and SK] do not require the submission of the metadata and have their prospectus readers collect the metadata. However, three NCAs also state that they intend to require the issuers to submit the metadata in the future [BG, EE and LT], while CY and LV only require issuers to submit metadata that is not already included in the prospectus. IE only requires the

⁷¹ EL notes the provision of additional documentation from issuers, such as liability statements are common practice in its jurisdiction and required by law. Furthermore, EL reports that a decision from an issuer's board of directors or shareholders is a requirement under company law to issue securities and that issuers and their advisors are required to sign a statement regarding their liability for the information in a prospectus. Finally, EL reports that the provision of such documentation is common practice and done without complaint by stakeholders.

submission of metadata where automated submission is in place. In AT issuers are required to submit certain metadata when filing the prospectus to the Secure Electronic Prospectus Portal. However, most of the metadata required according to Annex VII to the Delegated Regulation 2019/979 are collected by a third party to which certain tasks have been delegated in accordance with Article 31(2) PR. This party collects the data and sends it to the NCA in AT, who then forwards the data to ESMA. Likewise, a data vendor provides RO with the relevant metadata to provide to ESMA.

b) Assessment

374. The PRC considers that NCAs generally meet the assessment criteria concerning the approval of prospectuses. The PRC takes note that there are differences in relation to who is responsible for the approval of prospectuses at NCAs and appreciates that NCAs may follow different approaches that have the same regulatory outcome. In that regard, NCAs with lower numbers of prospectus approvals tend to require approval by the Board or special committee. NCAs with higher numbers of prospectus approval numbers tend to delegate responsibility or assign responsibility for approval to either the readers, a person holding managerial responsibility or a combination thereof. The PRC believes that this reflects the needs of NCAs with larger number of approvals for a more efficient approval process.
375. Where the responsibility for approval is assigned to the Board, the PRC considers that firstly the NCA needs to be mindful to operate this in such a manner that will allow issuers' efficient access to capital markets and not to unnecessarily slow down the approval process. When NCAs take significant amounts of time to approve prospectuses, this can present an issuer with transaction risk when they are trying to access market windows. The differences in the time necessary to approve a prospectus can create an unlevel playing field in issuers' ability to raise capital via a prospectus approved in certain Member States. Notwithstanding this, the PRC appreciates that the objective of an efficient capital raising process should not jeopardise the thoroughness of prospectus scrutiny. At the same time, NCAs should endeavour to ensure that material issues are raised, and where necessary escalated to and discussed at Board level, during the scrutiny process and not at a later time, it being understood that the approval process should be robust and any material shortcomings in a prospectus should be dealt with before the formal approval of a prospectus. Some of the mechanisms for Board approval may not satisfy the assessment criteria stating that it is expected that the NCA have an efficient process to approve the prospectus and that there are no unreasonable time delays and therefore could be further improved. This could be done, for instance, by informing the Board in advance about the prospectuses under scrutiny so that approval can take place more quickly, escalating prospectuses to the Board where necessary or delegating the responsibility of some approvals based on prospectus type and risk assessment.
376. In particular, there is a danger that Board involvement unnecessarily elongates the approval process in some cases, so that the PRC is of the view that the NCA should have mechanisms and procedures in place that allow for timely and efficient consultation of the Board. More specifically, the PRC notes that one of the findings of the peer review was that Board approval appears to impact how long it takes to formally approve a prospectus once the issuer notifies that it wishes to proceed with the approval.

377. Furthermore, the findings of the peer review raise the question of why some NCAs can approve documents more quickly, often on the same day. Other valid questions relate to the resources necessary to have the Board approve prospectuses if the approvals must be planned around Board meetings or whether it would be more efficient to inform the Board about the prospectuses under scrutiny and to escalate prospectuses to the Board when necessary. Additionally, Board approval could be sought in relation to high profile / high risk transactions such as IPOs or new, complex products. At the same time, these NCAs may consider whether delegating the responsibility of approving certain low risk prospectuses would improve the approval process. The PRC considers that this peer review provides an opportunity for all NCAs and, in particular, NCAs not fully meeting expectations to take a careful look at the approval procedures adopted by other NCAs. This would allow them to seek points of improvement taking into account their internal organisation and prospectus activity and therefore increase efficiency in this area, where necessary. The PRC notes that a speedy approval process should not be to the detriment of the quality of the prospectus review and appreciates that delays in the scrutiny and approval process may be due to the issuer not responding in a timely manner. However, it appears that in some cases procedural changes may bring about efficiency gains that would further facilitate issuers' access to capital markets.

378. Eighteen NCAs [AT, BG, CZ, DE, DK, EL, ES, FI, FR, IE, IS, LI, LU, NL, NO, PL, PT and SE] have efficient procedures for formal approval taking place on the same day or within 1-2 working days, while formal approval takes three working days or more at eleven NCAs [BE, CY, EE⁷², HR, IT, LT, LV, MT, RO, SI and SK]. The NCAs taking three days or more either have the prospectus approved by their Board [BE, CY, EE, HR, IT, LV, MT, RO, SI], by a member of senior management [SK] or an executive committee (LT). In that regard, the PRC notes that FR does not have any unnecessary delays in the approval prospectuses, because there are mechanisms to ensure that the Chair can quickly approve prospectuses. However, the PRC also notes that these mechanisms may be relatively inefficient in some cases due to the extra communication and coordination involved.

379. Some NCAs, such as BE and CY, have taken measures to make Board approval more efficient, such as convening a Board meeting at an earlier date, consulting with Board members in advance of approval and having prospectuses approved by the Board via written procedure. The PRC would encourage these NCAs to continue these practices to make their approval processes even more efficient. However, the PRC still believes that their approval practices appear to be relatively heavy compared to other NCAs and that an issuer still may need to wait three days or more for approval.

380. HU appears to normally take 1 or 2 days to approve most prospectuses, i.e. prospectuses concerning transactions under 5 billion HUF (EUR 12.7 million). Based on the time required for approval, this appears to be a relatively efficient approval process. However, the PRC notes that it can take 2 to 6 days to have prospectuses approved that concern transactions of 5 billion HUF (EUR 12.7 million) or more. The

⁷² Although EE reports that it only takes one or two days to approve a prospectus once it is submitted to its Board, the PRC considers that the date from which the approval process starts is the point at which the issuer is required to provide a signed, final version of the prospectus, which is three days prior to the Board meeting where the prospectus will be approved. The PRC notes that, while EE has a relatively streamlined process, it still requires issuers to submit a final version of the prospectus well in advance of the actual approval.

PRC invites the authority to consider if this process can be streamlined to ensure timely access to the capital markets for issuers.

381. The PRC considers that NCAs are expected to have effective measures in place to ensure that the Board can confirm that the review is consistent with relevant legal requirements in the PR and CDR 2019/980. Any approval by the Board should therefore not be a mere formality. In particular, NCAs [BG, EL⁷³, HR, LV, RO and SI] where the Board has never challenged the readers' recommendation to approve a prospectus may consider evaluating their procedures for the approval of prospectuses in this regard. The PRC acknowledges that in many cases the Board of the NCA takes an active role in the approval process reviewing reports/memorandum prepared by the readers and challenging, in particular, the risk factors disclosure in the prospectus. However, in some NCAs [CY, EL, HR, IT, PT] the decision for approval is only submitted to the Board when all key issues are already resolved, often with the involvement of senior staff. In such cases, it is questionable whether Board approval necessarily has added value.
382. Additionally, the PRC notes that NCAs placing the responsibility for the approval of prospectuses at the level of the readers should have sufficient safeguards to ensure the integrity of the approval process. The most important of these safeguards is that management should be aware of material issues concerning prospectuses and should be informed in advance of the approval of a prospectus. These safeguards are specifically intended to ensure that management can monitor the approval process and intervene, if necessary.
383. As regards the additional documentation necessary for the approval of prospectuses, the PRC notes that there is a great deal of variation between NCAs. The PRC questions the value of many of these requirements, such as requiring a signed copy of the prospectus, documentation to support statements in prospectuses, the minutes of Board meetings authorising the offering/programme and copies of the ISIN documentation. These requirements appear to be specific to certain NCAs and leave the PRC with the impression that they may create additional administrative burden without necessarily improving supervision. In fact, the PRC believes that the requirements to submit significant levels of additional information may be problematic given Art. 44 and Art. 42(2) CDR 2019/980⁷⁴.
384. In particular, the PRC emphasises that Article 42(2)(j) CDR 2019/980 requires that any additional information requested by NCAs must be for the purposes of the scrutiny and approval of the prospectus. This means that this information should relate to the NCA's check of the completeness, consistency and comprehensibility of the prospectus. Any information requested to check the veracity of information in a prospectus should only be done on an exceptional basis, where an NCA has significant doubts. NCAs requiring such documentation should therefore consider whether it is truly necessary for the scrutiny and approval of prospectuses. In particular, NCAs should reflect on why they require additional information if it is not necessary for scrutiny and approval at other NCAs. However, the PRC has not reached conclusions about what information/documentation can be requested from

⁷³ EL noted that, while the Board did not challenge their readers during the period of this peer review, their Board has challenged their readers in the past. However, this has not resulted in major changes.

⁷⁴ For the sake of clarity, the PRC notes that the collection of metadata is necessary for the approval of prospectuses and is therefore consistent with Article 42(2)(j) PR.

issuers, since the PRC did not have all the information necessary to make such assessment.

385. The PRC also wonders whether some of the additional documentation requested by NCAs actually relates to supervision outside of the scope of the PR. The PRC appreciates that some of this documentation may be required under other pieces of legislation that are supervised by the NCA. To the extent that these documents are required under national law, the PRC emphasises that national laws should not conflict with the provisions of the PR.
386. Additionally, the PRC does have specific concerns in relation to LV's requirement for issuers to provide it with physical copies of prospectuses. Article 42(2) CDR 2019/980 requires that such information is supplied to NCAs in searchable electronic format via electronic means. Therefore, NCAs should not require the submission of physical documents in relation to the approval of prospectuses. The PRC also questions the usefulness of having printed, physical copies of prospectuses provided to NCAs by issuers.
387. While the PRC also notes ES's explanation that it does not consider an electronically signed version of a prospectus to be additional documentation, the PRC notes that such administrative requirements do not exist in all Member States so that such a requirement is relevant to this discussion. In response to ES's requirement that certain additional information is submitted together with the application for approval, the PRC notes that such requests should also be in accordance with Article 42(2)(j) CDR 2019.

c) Recommendations

388. Before making any recommendations in relation to approval, the PRC would like to emphasise that it understands that the approval process may not necessarily be the choice of an NCA but may be a matter of national administrative law. In that case, it may be useful if NCAs discuss their approval process with their national legislator to see to what extent their processes may be simplified. In other cases, NCAs may be able to simplify their procedures by delegating the responsibility for the approval of prospectuses to allow these decisions to be made at a lower level. Ultimately, the need to make any changes in this area may depend on the size of the prospectus approval function and the type of prospectuses typically approved by an NCA.
389. The PRC is making the following recommendations in the area of approval:
- a) NCAs requiring that their Board approve prospectuses [BE, BG, CY, EE, EL, HR, IT, LV, MT, PT, RO and SI] may consider reviewing their approval processes to assess whether they can be organised in a more efficient manner (without jeopardising the thoroughness of the scrutiny process).
 - b) The six NCAs where the Board has never challenged the readers' recommendation to approve the prospectus during the review period [BG, EL, HR, LV, RO, SI] may consider reviewing their approval procedures to look for points of improvement and consider whether Board approval is appropriate in all cases. The eleven NCAs taking more than 1 or 2 working days for the approval of prospectuses [BE, CY, EE, HR, IT, LT, LV, MT, RO, SI and SK] should review their procedures to see if they can be made more efficient. NCAs should be mindful that, irrespective of the organisation of their prospectus approval functions and of the level of sign-off required for approval, they ensure

efficient mechanisms for sign-off through possible pre-consultation or possible approval in principle by senior parties (senior management / Board) to enable written procedure, etc. The PRC considers that, from the point in time where the issuer has addressed all comments from the NCA, formal approval should be able to be completed under an efficient approval process within 1-2 days, except in exceptional circumstances. This also reduces the risk that an additional supplement is required due to the new circumstances arising in the interim period.

- c) HU should specifically amend its procedures concerning the approval of prospectuses concerning transactions of 5 billion HUF (EUR 12.7 million) or more in order to make them more efficient. Considering that prospectuses concerning transactions under 5 billion HUF (EUR 12.7 million) are approved in 1 or 2 days, the PRC does not necessarily consider it necessary to change the approval procedures relating to those prospectuses.
- d) NCAs requiring additional documentation from issuers for prospectus approval [CY, CZ, DK, EL, ES, FR, HR, HU, IE, IS, IT, LI, LV, NO, PL, SI and SK] may consider reviewing their practices to assess whether they conflict with Art. 44 and Art. 42(2) CDR 2019/980. When reviewing these provisions, NCAs should verify if the documentation is being requested in relation to the prospectus supervision or if it is necessary in relation to other supervision. If the documentation is required for other purposes than prospectus supervision, this recommendation can be disregarded. If some of these requirements are required under national law, NCAs should discuss such changes with their national legislator in order to ensure the proper implementation of the PR and the acts promulgated thereunder.
- e) It is recommended that LV should refrain from requesting physical copies of prospectuses from issuers at approval.

d) Good practices

390. NCAs having prospectuses approved by readers should have sufficient safeguards to ensure that management is able to monitor and control the approval process and management should be informed in advance of any approval. More specifically, management should be aware of material issues that arise during the scrutiny of prospectuses so that they can adequately steer the supervision process.

Changes to prospectuses after the NCA has indicated that it has 'no comments'

391. NCAs have previously communicated to ESMA that there are sometimes issues due to issuers and their advisors unexpectedly amending prospectuses after the NCA has indicated that they have no further comments on the prospectus. This can cause delays for NCAs, who need to review the new amendments to the prospectus and can even lead to new rounds of comments. To better understand this issue, the PRC included this topic in its questionnaire. In particular, the PRC is evaluating whether this issue impacts the ability of NCAs to assess whether a prospectus satisfies Article 6(1) PR and/or the efficiency of the approval process.

a) Summary of findings

392. NCAs' responses can be split into three groups. The first group of nine NCAs [AT, CY, EE, FI, LV, MT, PL, PT and RO] have not yet encountered a situation where material changes are made when the final version has been submitted for approval. The second group of eight NCAs [BE, BG, CZ, DK, HU, HR, IS, SK] reported that material changes are very rarely made to prospectuses at this stage. The third group of thirteen NCAs [DE, EL, ES, FR, IE, IT, LI, LT, LU, NL, NO, SE, SI] reported encountering material changes more regularly. Regardless of which group they are in, all NCAs reported that any changes will always be scrutinised to ensure that the prospectus satisfies the relevant requirements in the PR. NCAs also reported that any potential delays would largely depend on whether the changes are material and/or result in additional comments. However, fourteen NCAs [BG, CY, DK, EL, ES, FI, FR, HR, IE, IT, LU, NL, SI, SK] specifically reported that they will proceed with the approval of the prospectus in case of uncontroversial changes, such as dates or ISINs.

b) Assessment

393. The PRC acknowledges that all NCAs review any changes to the final prospectus documentation and assess such changes for materiality. Most NCAs allow the approval to proceed despite minor changes, such as the inclusion of dates or ISIN codes. Given that dates are often only known or finalised shortly before issuance, this practice seems to reflect the need for efficient functioning of markets.

394. Some NCAs stated that major changes which result in further comments or additional requests would delay the approval process. This practice appears prudent from a regulatory point of view. The need for investor protection is taken into account in case of more major changes as most NCAs may reopen the scrutiny process in this case. NCAs need to be mindful that in case of material changes they are not pressured into approval but ensure that they take the time to properly scrutinise these material changes at approval to ensure the prospectus meets the standards of completeness, consistency and comprehensibility.

395. Considering the nature of this issue, the PRC would not propose any legislative changes in this area since NCAs can always take longer to review prospectuses if material issues arise. Instead, the PRC believes that issuers should communicate to NCAs if they will need to make any changes before the last filing, unless it is already evident that such changes will need to be made. For example, the PRC can imagine that the issuer will need to finalise certain, uncontroversial information in prospectuses, as already referred to in paragraph 393 above.

c) Good practices

396. The PRC considers it is a good practice to ensure proper assessment of any change at approval stage for materiality but allow the approval process to continue in case of minor changes.

Notification of approvals

397. The PRC also assessed the notification of approved prospectuses by the home Member State to the host Member State under the following criteria:

- a) it is expected that there are no unreasonable time delays in notifying other NCAs under Article 25 of the PR; and

- b) it is expected that host NCAs do not impose additional barriers regarding prospectuses approved by other NCAs without sufficient legal basis.

a) Summary of findings

398. In accordance with Article 25 (1) of the PR, most NCAs notify any host NCAs with the approval of a prospectus either on the same day [BE, DE, DK, EE, FR, IE, IS, LU, NL and SI] or within 1-2 working days [AT, BG, CY, CZ, FI, HU, IS, IT, LI, LT, LV, NO, RO, SE and SK], with one NCA [ES] reporting that it notifies host Member States either the same day or within 1-2 working days. Other NCAs have not passported any prospectuses to other Member States during the review period [EL, HR, MT, PL and PT].

b) Assessment

399. All NCAs appear to meet the assessment criteria concerning the passporting of prospectuses and there do not appear to be any issues in this area based on the responses to the questionnaire and the PRC's interactions with NCAs during the onsite visits.

7.2 Withdrawal and refusal of prospectuses

400. The PRC assessed whether each NCA has clear criteria, policies and procedures in place in relation to the refusal to approve a prospectus due to the failure to satisfy the 'necessary information test' in Article 6(1) PR.

401. Additionally, the PRC assessed whether NCAs have recorded the instances in which issuers have withdrawn requests for approval of prospectuses and asked NCAs to provide information about the possible reasons for the withdrawal of prospectuses. Information on withdrawals is important because in practice it may be more likely that issuers decide to withdraw their request for approval than to have the approval of a prospectus refused.

a) Summary of findings

Withdrawals

402. Although eight NCAs [CY, EL, HU, IS, LV, PT, SI and SK] report that no prospectuses were withdrawn during the review period, other NCAs have reported various numbers of withdrawals during the period covered by the peer review. These figures are set out in the table below. IE has reported that it does not have any statistics on withdrawals.

Table 11: Number of prospectus withdrawals

| NCA | Number withdrawn | NCA | Number withdrawn | NCA | Number withdrawn |
|-----|------------------|------------------|------------------|-----|------------------|
| AT | 3 | ES ⁷⁵ | 9 | LU | 56 |
| BE | 2 | FI | 6 | MT | 2 |
| BG | 4 | FR | 22 | NL | 6 |
| CZ | 3 | HR | 1 | NO | 5 |
| DE | 51 | IT | 29 | PL | 5 |
| DK | 4 | LI | 11 | RO | 1 |
| EE | 1 | LT | 1 | SE | 51 |

403. In most cases, withdrawals concerned IPO and EU Growth prospectuses. Only seven NCAs have encountered withdrawals in relation to non-equity prospectuses. In this context, it is worth noting that withdrawals are mostly recorded for equity prospectuses where the issuer does not have a choice of Home Member State under Article 2 (m)(i) of the Prospectus Regulation.

404. NCAs generally remark that they do not know the reasons for the withdrawal of requests for approval and these are not communicated to them by issuers and their advisors. However, several NCAs communicated to the PRC that they consider the following reasons for withdrawals to be particularly relevant:

- a) the issuer decided not to proceed with the offer/issue due to market circumstances [DE, DK, ES, FI, IE, IT, LI, LU, NL, PL and SE];
- b) an issuer's inability to satisfy the requirements in the PR or an NCA's comments [AT, IT, LI, LU and LT];
- c) the closing of a market window [ES, FR, IE, LU, NO and SE]; and
- d) a change in circumstances of the issue and/or its funding needs [FI, MT and RO].

Refusals

405. In relation to the refusal of an application to approve a prospectus, 24 NCAs [AT, BE, CY, CZ, DK, EE, EL, ES, FI, FR, HR, IE, IS, IT, LI, LT, LU, LV, MT, PL, PT, RO, SI, SK] did not refuse the approval of any prospectuses during the review period. The remaining six NCAs reported the following number of refusals:

Table 12: Number of prospectus refusals

| NCA | Prospectuses refused |
|-----|----------------------|
| BG | 3 |
| DE | 3 |
| HU | 3 |
| NL | 2 |
| NO | 5 |
| SE | 2 |

⁷⁵ This figure represents both withdrawn prospectuses and cases where ES considers that the application for approval has expired after a period of three months as set out in Spanish national administrative law.

406. NCAs that have refused prospectus applications indicated that in most cases this is due to the issuer's failure to adequately address the comments raised by the PG during the scrutiny process within the required time period or due to the issuer's non-compliance with other regulatory requirements. One NCA [FR] mentioned that it is difficult to envisage refusing the approval of a prospectus as it is always possible for the issuer to provide the information and remedy any deficiencies in a prospectus. NCAs ranked concerns about the appropriateness of the securities for retail investors as either not relevant or only sometimes relevant. Some NCAs highlighted those concerns about the appropriateness of the securities for retail investors or non-compliance with other requirements (including national requirements) should not be taken in consideration for prospectus approval as it is not included in the criteria set out in Articles 36 – 40 of CDR 2019/980.

Refusal procedures

407. In relation to the refusal of the approval of a prospectus, all NCAs require that the refusal decision has to be set out in an official document, containing detailed reasons for the NCA's decision to refuse, the legal basis for the refusal and stating that there is legal recourse against the NCA's decision. The procedural requirements tend to be set out and aligned with relevant provisions in national administrative laws.
408. Twenty-one NCAs [BE, BG, CY, CZ, EL, ES, FI, FR, HR, HU, IS, IT, LT, LV, MT, NL, PL, PT, RO, SE and SI] stated that their procedure for refusals is similar to that for approvals. This is particularly the case where approval takes place by senior management, Board or special committee. In such cases, an internal memorandum is often prepared together with a recommendation to refuse the prospectus application. Two NCAs [LI, SK] did not provide a description of any procedure for the refusal of the approval of a prospectus. In that regard, LI considers that it does not need a specific policy due to the small size of their PG.
409. At most NCAs [AT, CZ, FI, LI, NL, SK] in which a reader approves a prospectus together with a person holding managerial responsibilities (as referred to in Section 7.1 above), there is the requirement to have the refusal signed off by someone higher up in the NCA's hierarchy. In DE, IE and PL, the PG also consults with the legal department and in IE, an (internal) senior independent assessor is also involved. In AT, any upcoming refusal is discussed in a PG meeting and must be sufficiently justified in a written official order after internal consultation with the legal department. The official order refusing approval has to be authorised by the NCA's management and signed by the Head of Department and the deputy Head of Department (who is also Head of the PG). The issuer can appeal any refusal in AT and AT notes that refusal is the ultimate step if the issuer cannot be convinced to revise the prospectus or withdraw the request for approval on his own behalf.
410. In order to make issuers aware of the possibility that approval will be refused, a number of NCAs specifically inform issuers that the application may be refused if comments are not addressed during the scrutiny process. In some cases, fourteen NCAs [AT, CZ, EE, FI, HR, HU, IE⁷⁶, LI, LT, LV, MT, NL, PL and RO] may invite the issuer and its advisors to meet in person in order to convey this message. IT informs issuers that their approval may be refused via a 'notice of rejection'. ES notifies issuers in every set of comments that three months of inactivity triggers the automatic

⁷⁶ IE will generally facilitate a physical meeting if the issuer and/or its advisors make such a request.

expiration of their application for approval. AT pointed out that there is no legal requirement to inform the issuer in advance of the refusal. However, AT would do so without pre-empting full legal grounds. NO explained that after they have provided their comments on a draft prospectus, the person submitting the draft prospectus has 20 business days to amend the draft accordingly or to explain why no amendment should be required. If no amended draft is submitted before this deadline, approval is refused and the process is aborted/cancelled. The person who submitted the draft is informed of the refusal (on the day of refusal) by email and a formal letter. Prior to the deadline, the person who submitted the prospectus is reminded of the deadline and that the process will be cancelled if they fail to submit an amended draft. NL informs issuers of the possibility to refuse the approval of a prospectus in the letter to the issuer, which is sent in case of very low-quality draft or if no draft has been received within 6 weeks after sending out the last set of comments. Finally, BG and SK do not notify the issuer that the application may be refused, while nine NCAs did not provide information on this topic.

Timeframes

411. In the context of withdrawal and refusal of prospectus applications, it is worth highlighting that some NCAs require new drafts of prospectuses to be filed within specific timeframes [AT, BG, CY, CZ, DE, EL, HR, IT, LU, NL, NO, SE, SI and SK]. Following expiry of such timeframes, the prospectus application can either be considered or declared expired or suspended. Such timeframes vary significantly between NCAs and range from five working days to three months. The timeframes are either set out in (i) legislation [BG, ES, IT, NO, SI and SK] or (ii) in NCAs' internal procedures [AT, CY, CZ, DE, EL, HR, LU, NL and SE]. The timeframes may be subject to possible extension upon request and NCAs may issue reminders. Where based on internal procedures, some NCAs may set specific timeframes individually for each application depending on the specific comments or prospectus type. See Section 6.3.5.1 for more information on the deadlines set by NCAs.
412. If a resubmission is not filed within the relevant timeframe, the NCA [BG, EL, ES, HR, IT, NL, NO and SI] either asks the issuer to withdraw the prospectus application or refuses the approval of the prospectus. Some NCAs consider the expiration of a timeframe or more specifically the non-compliance with requests for amendments to the prospectus within the timeframe as sufficient grounds for the refusal [BG, CZ, CY, EL, HR, NL and SI], while ES consider the application is expired if the timeframe expires and LU sends out a reminder after a period of three months without any activity from an issuer. This reminder gives the issuer a deadline of 20 working days. If this deadline expires without feedback from the issuer, LU considers the application for approval withdrawn and closes the file. AT, DE, IT and SE proactively suggest that issuers withdraw their application for approval and give issuers the opportunity to do so before going over to refusal.
413. BE, DK, EE, FI, HU, IE, IS, LT, LV, MT, PT and RO do not have a specific timeframe during which an application has to be resubmitted. Finally, FR noted that in the event that an issuer withdraws a filing, the only consequence is that the issuer may resubmit a new request for approval for the same prospectus.

b) Assessment

414. Firstly, the PRC notes that all NCAs require a refusal decision to be justified and allow legal recourse against the refusal decision, meeting the supervisory

expectations in this regard. Furthermore, the overall number of withdrawals and refusals appears to be quite low. The PRC notes the importance of good communication to ensure that issuers are well informed and prepared. Good communication also helps to ensure that neither issuers nor NCAs are spending unnecessary time and resources on the preparation or scrutiny of prospectus applications and approval documentation. Because the reasons for withdrawal may vary and are not always known to NCAs, it is difficult to reach further conclusions in this area.

415. Where responsibility for approval occurs at (or has been delegated to) a more junior level, the NCAs generally have additional oversight and governance structures in place for the refusal decision, such as the involvement of a more senior manager or committee or consultation with the legal department / independent assessors. The PRC considers such practices to be prudent and considers that a refusal of a prospectus application warrants additional review and oversight to safeguard issuers' rights, except where taken for formal reasons, such as expiration of timeframes. In this context, the PRC would also like to point out the four-eye principle and considers that the four-eye principle should be applied in all cases where an NCA intends to refuse a prospectus application for reasons other than for purely formal reasons.
416. Finally, the PRC notes that there is also an onus on issuers and their advisors to ensure they are familiar with NCAs' procedures, are clearly aware of the requirements in the PR, ESMA and NCA guidance and that they have realistic expectations regarding achievable timetables.

c) Recommendations

417. The PRC has the following recommendations in relation to withdrawals and refusals:
- a) NCAs should ensure that they have proper systems in place to record withdrawals and refusals. In particular, IE should ensure that it keeps track of the number of withdrawals in the future. This should entail minimal effort and will help to compare practices in this area in the future.
 - b) NCAs should have a specific procedure for refusal, even if they have not yet encountered any refusals. NCAs that did not describe a procedure for the refusal of approval should consider whether this is necessary and, if so, formalise a procedure for refusals [LI, SK].
 - c) In line with the four-eye principle, all NCAs should have at least a second reader and/or additional senior oversight in place as part of their refusal procedure. The only possible exception to this case would be refusals for purely formal reasons, such as not responding within legal deadlines.
418. Taking all of this into account, the PRC recommends that the Commission looks at aligning the timelines for the refusal of prospectuses at the EU level to ensure a level playing field across the various NCAs.

8 NCAs' application of Guidelines 1-5, 7 and 11 on risk factors

419. The PRC assessed whether NCAs comply with Guidelines 1-5 in respect of risk factors in respect of the materiality and specificity of risk factors as well as Guidelines 7 and 11 in respect of both risk factors included in registration documents and in securities notes.

a) Summary of findings

420. Fifteen NCAs [BE, CY, EL, ES, FI, FR, IE, IT, LI, LU, NL, NO, PT, SE, SI] stated they have a policy or strategy for the application of the Guidelines which either relates to all or to some of them. Eleven of these NCAs [BE, CY, EL, ES, FI, FR, IE, LU, NL, NO, SE] have formalised their internal policy by various means, such as internal instructions, internal check lists, standard comments addressed to prospectus readers, an archive of real cases related to prospectuses already approved or by including the ESMA Guidelines in national regulation.

421. The other fifteen NCAs who reported that they do not have an internal policy or strategy confirmed that they challenge issuers when a risk factor does not comply with the requirements set out in the ESMA Guidelines to appropriately amend the risk factor [AT, BG, CZ, DE, DK, EE, HU, HR, IS, LT, LV, MT, PL, RO, SK]. These NCAs also explained that they have other methods of ensuring that their PG properly applies the guidelines by:

- a) regularly sharing information through internal meetings on examples of risk factors which are not acceptable [DK];
- b) by use of an internal checklist to ensure that the Guidelines are properly applied [MT]; or
- c) their internal instructions relating to applications for prospectuses approval generally remind the ESMA Guidelines in question and particularly draw the readers' attention to specific aspects to be taken into account in their application [IS].

Guidelines on specificity

422. In the context of **Guideline 1**⁷⁷, the PRC assessed whether NCAs meaningfully challenge those responsible for the prospectus where the disclosure does not establish a clear and direct link between the risk factor and the issuer(s) and guarantor(s). In this regard, all NCAs have a policy, whether formalised or not, to challenge the issuer to amend risk factors whose specificity is not apparent. The following practices were reported in relation to the application of this Guideline:

- a) providing issuers with a non-exhaustive list of risk factors which in their view do not meet the specificity requirement and should be amended or removed [BE⁷⁸, NL, PL];

⁷⁷ Guideline 1 requires NCAs to ensure that the specificity of a risk factor is clear from the disclosure.

⁷⁸ BE noted that such general comments are only made in the first round of comments. If specific comments remain problematic in later drafts, BE provides issuers with comments targeted at specific risk factors.

- b) sharing experiences of cases to enhance a consistent application of this Guideline [BE, ES, LU, PL, SE];
- c) requesting quantitative information to make the risk factor more specific [ES, FR, IE, NL];
- d) carrying out a comparative analysis to assess the similarities and the differences between issuers operating in the same industry in order to identify the differences between issuers operating in the same sector (e.g. banks) [IT].

423. Specifically in relation to Guideline 1, fourteen NCAs [BE, CZ, EL, ES, HR, IE, LT, MT, NL, NO, PL, PT, SE, SK] noted that it can generally be difficult to differentiate information on risk factors related to companies belonging to the same industry (e.g. in case of general market risks, regulatory risks, counterparty risks or liquidity risks relating to credit institutions) or to issuers which are newly incorporated, including SPACs as some risk factors are identical for most SPACs. DE noted differences in the application of Guideline 1 between standard prospectuses and base prospectuses.

424. In the context of **Guideline 2**⁷⁹, the PRC assessed whether NCAs challenge the inclusion of risk factors on the issuer(s) and guarantor(s) that only serve as disclaimers. In this regard, the PRC noted the following policies:

- a) not accepting certain wording that often seems to only serve the purpose of limiting the issuer's responsibility, such as 'there can be no assurance/guarantee', in particular when they refer to situations which can be controlled by the issuer [BE, LU];
- b) if the disclosure cannot be improved after an NCA's request for amendment, asking for a removal of the risk factor [DK, ES, FR, FI, IT, MT, NL, PT];
- c) moving risk factors that only act as a disclaimer into a different section of the prospectus [FR, IE, NL];
- d) drawing the issuers' attention to the need to analyse and confirm the validity of general disclaimers that seem copied and pasted from other prospectuses and that do not appear specific to the issuer [LU, PL].

425. Eight NCAs [CZ, DK, EL, ES, IE, LT, PL, RO] flagged difficulties in the application of Guideline 2, mentioning that these types of issues generally arise when legal advisors are involved, as they try to avoid prospectus liability as much as possible.

Guidelines on materiality

426. In the context of **Guideline 3**⁸⁰, the PRC assessed whether NCAs challenge those responsible for the prospectus when the materiality of the risk factor is not apparent from the disclosure and, where necessary, request those responsible to amend the disclosure or request a clearer explanation. All NCAs confirmed the application of the criteria set out in this Guideline. However, only FR stated that it requires the deletion of risk factors that still appear not significant after having challenged the issuer. In that regard, BE highlighted that it came across situations of issuers which promptly remove risk factors whose materiality is not apparent rather than develop a specific materiality assessment. To address this situation, BE requests that (i) issuers confirm that the deleted risk factor is no longer deemed material and (ii)

⁷⁹ Guideline 2 is intended to address risk factors that only serve as disclaimers.

⁸⁰ Guideline 3 requires NCAs to ensure that the materiality of a risk factor is clear from the disclosure.

to explain why this is the case. Additionally, BE raises a general comment questioning the materiality of a non-exhaustive list of risk factors (as already mentioned in relation to specificity in paragraph 422 above). BE continues to challenge issuers until they either amend the risk factor or delete it, but has not directly requested the deletion of a risk factor. ES flagged that it often challenges the materiality of risk factors relating to operational risks, key staff and environmental risks.

427. Four NCAs [AT, DE, LU and PL] highlighted that challenging the materiality of a risk factor in accordance with Guideline 3 can be difficult, as issuers and their advisers are better placed to undertake this assessment. Thus, they allow issuers to provide a better explanation of the materiality of a risk factor rather than delete it. During the onsite visits, DE also explained that it does not generally request the deletion of risk factors due to the implications this has for the liability of issuers, while LU explained that it is reluctant to request the deletion of risk factors due to concerns about its own liability. PL highlighted that issuers often remove risk factors whose materiality is questioned rather than amend the disclosure of the risk factor in their prospectus.
428. In the context of **Guideline 4**⁸¹, the PRC assessed whether NCAs challenge those responsible for the prospectus where the potential negative impact of the risk factor on the issuer(s) and guarantor(s) is not disclosed and request appropriate amendments. In this regard, the PRC noted some differences in NCAs' approaches. ES and IE consider that disclosure of the negative impact of a risk factor supports the disclosure on its specificity. Accordingly, they assess the application of Guideline 4 together with Guideline 1. Five NCAs [BE, IT, NL, PL, SE] stated that their readers challenge issuers to provide quantitative information setting out the negative impact of a risk factor. These NCAs accept a qualitative description of the negative impact when quantitative information is unavailable or where it is inappropriate to include such disclosure in the prospectus. In that regard, some NCAs check whether material disclosure on potential negative impact of a risk factor is disclosed in other sources of information, e.g., information disclosed by the issuer under MAR [FR, PT].
429. As regards Guideline 4, four NCAs [AT, CZ, DE, LU] referred to a general absence of quantitative information in risk factors and as well as a general reluctance to assess the materiality of risk factors on a qualitative scale of low, medium and high to disclose the potential negative impact of risk factors. The result is that materiality of risk factors is mainly disclosed via a narrative description. PL referred to a general absence of quantitative information in risk factors and stated that their readers challenge issuers to provide a significance assessment on a qualitative scale of low/medium/high in each risk factor.
430. In relation to **Guideline 5**⁸², the PRC assessed whether NCAs challenge the inclusion of mitigating language in risk factors in the event that such language makes it difficult to assess the materiality of a risk factor. Four NCAs [BE, CY, IT and SI] stated that they request the issuer to clearly describe the remaining risk on a case-by-case basis, i.e., the potential impact and/or the probability of occurrence of the risk after considering the effect of the mitigating factor. Eight NCAs [CY, EL, ES, IT, MT, NL, PL, PT] stated that they ask for a removal of the mitigating language when it remains

⁸¹ Guideline 4 requires NCAs to challenge the person(s) responsible for a prospectus where the potential negative impact of the risk factor on the issuer, guarantor and/or the securities is not disclosed.

⁸² Guideline 5 is intended to address mitigating language that is often included in risk factors, which obfuscates the materiality of the risk in question.

excessive or inappropriate to illustrate the negative impact of a risk factor after having challenged the issuer in this regard. FR and LU stated that readers ensure that there is not an excessive use of mitigating language in risk factors. Three NCAs mentioned that there is still considerable use of mitigating language in risk factors despite Guideline 5 [CZ, ES, LT], while one NCA noted that such mitigating language is only included sometimes or rarely [FI].

Guideline 7 on the presentation of risk factors across categories

431. Concerning **Guideline 7** on the presentation of risk factors, the PRC assessed whether NCAs ensure that risk factors are presented across categories based on their nature and where this is not the case, whether they challenge the presentation and, where necessary, request that the persons responsible for the prospectus amend the presentation of risk factors to ensure compliance with this Guideline.
432. All NCAs stated that they challenge the categorisation of risk factors when these do not support comprehensibility of risk factors. For example, NCAs challenge issuers when the same risk factor is included in different categories or if it appears that the most material risk factors are not listed first in a category. IE stated that it tends to limit the number of categories in which risk factors are presented depending on their nature.
433. When asked whether NCAs have specific policies and practices on categorisation of risk factors which go further than the ESMA Guidelines, DE indicated that it challenges issuers when a prospectus presents inconsistencies in the structure of risk factors, e.g., mixing categories/subcategories or risk factors or including the same risk factor in more than one category. DE considers it sufficient if an issuer only ranks the two most material risks at the beginning of each category.
434. Some difficulties have also been noted in the application of paragraph 33 of Guideline 7, which states that the categorisation and ordering of risk factors within each category should support their comprehensibility. In this regard, NL received questions from issuers about the application of this paragraph and particularly on how the order of risk factors in each category impacts the selection of the key risks to be disclosed in the summary.

Guideline 11 on focused/concise risk factors

435. The PRC also assessed whether NCAs ensure that the disclosure of each risk factor is presented in a concise form in accordance with **Guideline 11**. NCA practices in this area vary since two NCAs consider it unacceptable to have an overly extensive risk factors section in the prospectus [LI and SI], while fourteen other NCAs check that each individual risk factor is presented in a concise manner [AT, BE, DE, DK, ES, FI, HR, LT, MT, NL, NO, PL, PT, SE]. If this is not the case, eight NCAs request issuers to provide a more focused and concise disclosure, summarising or simplifying the paragraph and deleting unnecessary information, especially when it is already included elsewhere in the prospectus [BE, CY, EL, ES, FI, PL, PT, RO]. Where information is included elsewhere in the prospectus, these NCAs may ask issuers to cross refer to that information.
436. FR experienced difficulties in ensuring that risk factors disclosure is presented in a concise manner in accordance with Guideline 11, while LU experienced difficulties convincing certain issuers to reformulate their risk factors in a more concise manner. ES reported that it performs a thorough assessment of the conciseness of risk factors. More specifically, ES noted that when the readers challenge the conciseness of the risk

factors, the size of the draft prospectus is significantly reduced by the time it is ultimately approved. However, ES also reported that the usual iterative process for the assessment of the risk factors often takes several rounds of comments to achieve an acceptable result.

Comprehensibility of risk factors

437. NCAs appear to take different approaches when assessing the comprehensibility of risk factors. More specifically, twelve NCAs [AT, BE, BG, CZ, DK, ES, FI, IE, LT, LU, NL, PT] stated that they may accept more sophisticated technical language, apply a less strict four-eye principle or not apply the criteria set out under let. (g), (h) and (i) of Article 37(1)(g)(h) and (i) of CDR 2019/980, when assessing risk factors in prospectuses for 'wholesale' securities. Other NCAs do not appear to make any distinction when assessing the comprehensibility of risk factors in prospectuses relating to retail investors and wholesale investors.

b) Assessment

438. The PRC considers that all NCAs appear to properly apply the Guidelines on risk factors. Overall, the PRC notes that each NCA challenges the issuer or guarantor when information in the risk factors section of the first draft prospectus does not comply with the Guidelines and do not see any major failures. However, the PRC also notes that there are differences in NCAs' approaches to the assessment of risk factors. In particular, the PRC notes that seven NCAs [DK, ES, FI, FR, IT, NL, PT] appear to require the deletion of risk factors when they do not satisfy Guideline 2 and one NCA [FR] appears to require the deletion of risk factors that do not satisfy Guideline 3, while three NCAs [AT, DE, LU] appear to believe that the issuer is best placed to determine whether it is appropriate to include a risk factor in a prospectus since this relates to their liability. The concerns about an issuer's liability may result in NCAs being more reluctant to require risk factors to be deleted from prospectuses if the specificity and/or materiality is not clear from the disclosure. During the onsite visits to DE and LU, these NCAs appeared to confirm this reluctance, which indicates a different approach to the enforcement of the Guidelines than the NCAs asking for the deletion of risk factors. The PRC does not necessarily prefer either approach but believes that there may be different outcomes for issuers based on the appetite of NCAs to require that risk factors are deleted from prospectuses, especially considering that this can be a sensitive issue for some issuers.

439. The PRC had several interesting discussions with NCAs about the difficulty in assessing risk factors. Based on these discussions, it is clear that all NCAs consider the risk factors to be extremely important disclosure and focus on this section of the prospectus. However, during the onsite visits, NCAs explained that they continue challenging issuers until there is room for little or no material improvement to the general disclosure in this section. The PRC understands this point and acknowledges that there is a degree of judgement when deciding whether the disclosure in a risk factor is 'sufficient' for approval of the prospectus. Furthermore, DE and LU stated that they consider the liability associated with the risk factors to be of great importance and that ultimately the issuer should decide which risk factor disclosure is appropriate considering that the issuer bears the risk.

440. Considering these different philosophies about risk factors, the PRC encourages NCAs to exchange experiences applying the Guidelines on risk factors. However, the PRC also believes that care needs to be taken with the Guidelines due

to the sensitive nature of risk factors. If the Guidelines become too restrictive or impact issuers' ability to access market windows due to lengthy approval processes, this could result in fewer issuers seeking financing via the capital markets which would not be consistent with the goals of CMU.

c) Recommendations

441. The PRC recommends that ESMA should work towards further harmonising NCAs' enforcement of the Guidelines on risk factors. In particular, it appears that some NCAs require the deletion of risk factors, while other NCAs appear to be more hesitant to require issuers to alter risk factors.

d) Good practices

442. The PRC has identified the following good practices in relation to risk factors:

- a) in relation to Guideline 4, requesting the inclusion of quantitative information about the impact of a risk factor when it appears to be available; and
- b) in relation to Guideline 5, moving risk factors that only act as disclaimers to other sections of a prospectus.

9 Adequacy of NCA resources to carry out the scrutiny and approval of prospectuses

9.1 Financial resources

443. The PRC assessed NCAs' funding models and whether NCAs have sufficient resources to finance their staffing to scrutinise and approve, while maintaining the quality of scrutiny, especially during spikes in prospectus activity.

a) Summary of findings

444. While the PRC explored the different NCAs' funding models, it was difficult to assess whether NCAs have sufficient financial resources for prospectus supervision due to the complicated nature of NCA budgets and the different costs across jurisdictions.

445. Most NCAs charge a fee for the supervision of prospectuses. This fee can take various forms and the amount varies between NCAs. For example, it is common to charge issuers a straight fee for the approval of a prospectus, but NCAs also have other ways of charging fees for prospectus supervision. Examples include fees charged for the approval of a prospectus based upon the amount of time the NCA spends scrutinising a prospectus (IS) and fees for the filing of final terms (DE). Furthermore, at least four NCAs charge a fee for submitting an application for approval (as opposed to charging a fee for the approval of the prospectus [CY, LU, NL, NO] and IT calculates the fees for the scrutiny of prospectuses based on the number of prospectuses filed with the NCA and in some cases, the net value of the products placed. FR charges fees based on an issuer's average market capitalisation over the last three years, which covers the costs of an issuer's supervision more generally and not specifically in relation to prospectuses. Furthermore, FR charges a fixed fee of EUR 5,000 for the filing of a non-equity prospectus.

446. Many of the NCAs responsible for the approval of smaller numbers of prospectuses generally do not have a specific budget for prospectus supervision but are instead funded via the general budget [AT, BG, CY, CZ, DK, EE, EL, FI, HR, IS, LI, LV, MT, PL, RO, SI]. Any fees collected by these NCAs for prospectus supervision are generally attributed to that NCA's general budget. Finally, there are three NCAs that receive funding from the central government [CY⁸³, IE, LI].

b) Assessment

447. Although it was difficult to assess NCA's financial resources for the reasons set out in the previous paragraphs, the PRC does not have any indication that any NCAs have insufficient financial resources based on their responses to questions from the PRC.

⁸³ CY's funding from the central government relates to its general budget and is not specifically for prospectus supervision.

9.2 Human Resources

448. The PRC assessed whether NCAs have the necessary human resources to scrutinise a prospectus in accordance with the PR having regard to the following parameters a) compliance with the review periods set out in the PR; b) agreements with stakeholders regarding review times; and c) type of prospectuses under review and specific expertise attached. The PRC also assessed whether NCAs have sufficient resources to apply the four-eye principle, whether readers with less experience are supervised as well as whether NCA staff have the appropriate level of expertise, knowledge and experience. Moreover, the PRC considered as part of its assessment whether allocation of a prospectus to a reader is done in an organised, objective and structured manner, paying due regard to staff member's expertise, knowledge and experience and the risk, size, scale and importance of prospectus under review as well as whether NCAs monitor workloads to ensure readers have sufficient time to appropriately scrutinise a prospectus.

a) Summary of findings

449. Given that the number of prospectus approvals is linked to NCA staffing needs, the PRC carried out an analysis of the feedback from NCAs on the basis of their 2020 prospectus activity in order to compare organisations that have similarities in terms of human resource requirements. To this end, the PRC grouped NCAs into four groups, where group 1 refers to NCAs that approved more than 251 prospectuses, group 2 includes NCAs that approved between 56 and 250 prospectuses, group 3 includes NCAs with prospectus approvals between 55 and 15 prospectuses and group 4 includes those NCAs that approved less than 14 prospectuses.

450. The tables below set out information on a) the total number of FTEs in the PG that are dealing with the PR, including readers and staff tasks outside the scrutiny and approval process as well staff performing administrative tasks; b) the number of FTEs performing scrutiny and approval (readers); c) the average year of experience of readers; d) the number of prospectus approvals per reader. This information is presented separately for each of the four groups based on the number of prospectus approvals in 2020.

Table 13: Total number of FTEs dealing with the PR

| Total number of FTEs in the PG dealing with the PR ⁸⁴ | Group 1 | Group 2 | Group 3 | Group 4 |
|--|------------|---------|---------------------------|----------------------------|
| > 40 | DE | | | |
| 20 – 39 | FR, IE, LU | | IT, PL | |
| 10 – 19 | SE | ES, NL | BG | HU |
| 5 – 9 | | AT, NO | BE, DK ⁸⁵ , RO | HR ⁸⁶ , SI |
| < 5 | | CZ | FI, IS, LI, SK | CY, EE, EL, LT, LV, MT, PT |

⁸⁴ Please refer to paragraph 449 for the definition of each group.

⁸⁵ DK mentioned that the number of FTEs cannot be calculated as the PG consists of 6-8 people who carry out other ongoing supervisory tasks in addition to prospectuses.

⁸⁶ HR stated that PG staff performs also tasks in relation to takeovers, MAR, corporate governance and supervision of financial information.

Table 14: Number of FTEs performing scrutiny and approval (readers)

| Total number of FTEs performing scrutiny and approval (readers) ⁸⁷ | Group 1 | Group 2 | Group 3 | Group 4 |
|---|-------------|------------------|--|-----------------------------------|
| > 25 | DE | | | |
| 11 – 25 | FR, IE, LU, | NL | IT, PL | |
| 8 – 10 | SE | ES ⁸⁸ | BG, RO | HU |
| 2 – 8 | | AT, CZ, NO | BE, DK ⁸⁹ , FI, IS ⁹⁰ , LI | EL, HR ⁹¹ , MT, PT, SI |
| < 2 | | | SK | CY, EE, LT, LV |

Table 15: Average years of experience of readers

| Average years of experience of readers ^{92,93} | Group 1 | Group 2 | Group 3 | Group 4 |
|---|------------|------------------|--------------------|--------------------|
| > 15 | LU | ES ⁹⁴ | BG | |
| 11 - 15 | FR | CZ | PL, SK | SI |
| 8 – 10 | | | BE, FI, IT, LI, RO | CY, EL, HR, LT, PT |
| 4 – 7 | DE, IE, SE | AT, NL | | EE, HU, LV |
| < 4 | | NO | IS | MT |

⁸⁷ Please refer to paragraph 449 for the definition of each group.

⁸⁸ In ES readers deal with other tasks outside of scrutiny and approval some of which are carried out on a daily basis.

⁸⁹ Please see previous clarification in relation to DK.

⁹⁰ IS reported that it has two back-up readers in addition to the two full-time readers. These are NCA staff who previously worked in the PG as readers but now work in different positions at the CBI. The back-up readers read 2-3 prospectuses per year, together with a full-time reader, to maintain their knowledge and stay up to date on developments.

⁹¹ HR reported that readers also perform tasks in relation to takeovers, MAR, corporate governance and supervision of financial information.

⁹² Please refer to paragraph 449 for the definition of each group.

⁹³ DK did not provide this information.

⁹⁴ ES provided the years of prospectus experience.

Table 16: Number of prospectuses per reader

| Number of prospectuses * per reader ⁹⁵ | Group 1 | Group 2 | Group 3 | Group 4 |
|---|---------|------------|--|--|
| > 40 | SE | | SK | |
| 20 – 39 | IE, LU | NO | | |
| 11 – 19 | FR | CZ | IS, LI | |
| 5 – 10 | DE | AT, ES, NL | FI | |
| < 5 ⁹⁶ | | | BE ⁹⁷ , BG, DK ⁹⁸ , IT, PL, RO | CY, EE, EL, HR, HU, LT, LV, MT, PT, SI |

451. Ten NCAs indicated that there was no turnover of readers [CY, CZ, EL, FI, LT, LU, NL, PL, RO, SK], while seven NCAs did not provide feedback on this point [HR, HU, IS, LI, LV, PT, SI]. The responses of the remaining NCAs are presented in the table below.

Table 17: Average turnover of readers

| MS | | Total number of FTEs performing scrutiny and approval (readers) | Average turnover |
|----|---------|---|--|
| AT | Group 2 | 6.75 | - Usually, one FTE has a limited duration contract of one year. - One FTE leaves after 4-5 years. |
| BE | Group 3 | 6.45 | 6% ⁹⁹ |
| BG | Group 3 | 9 | One expert left the NCA and one new reader joined the PG, during the review period. |
| DE | Group 1 | 29.2 | 2019: 7.41%, 2020: 3.57 % ¹⁰⁰ |
| EE | Group 4 | 1.72 | 20% ¹⁰¹ |
| ES | Group 2 | 10.69 | 2019: 11.76% 2020: 6% |
| FR | Group 1 | 21 | 9 ¹⁰² |
| IE | Group 1 | 13 ¹⁰³ | 2 (from 4 Dec 20) |

⁹⁵ The calculation of this ratio is based on the number of prospectus approvals in 2020. Please refer to paragraph 449 for the definition of each group.

⁹⁶ The placing of LT and LV in this row takes into account that these NCAs have approved less than five prospectuses in 2020.

⁹⁷ BE clarified that some readers also have other supervisory tasks such as periodic control of listed companies and review of takeover documents and marketing material.

⁹⁸ In the case of DK the calculation of the ratio was based on the number of PG staff reported by the NCA i.e. 6-8 people.

⁹⁹ This number includes readers from the Prospectus Unit, TD/MAR Team and Financial Reporting Team.

¹⁰⁰ This information does not include persons dealing with managerial tasks.

¹⁰¹ EE reported average turnover in relation to the PG which consists of five members of staff.

¹⁰² The NCA clarified that staff is not allocated to the review of the prospectus only as it also deals with supervision of published information under the TD and MAR.

¹⁰³ This number does not include two managers who are also competent in prospectus scrutiny.

| MS | | Total number of FTEs performing scrutiny and approval (readers) | Average turnover |
|-------------------|---------|---|-------------------------------------|
| IT ¹⁰⁴ | Group 3 | 18.55 | 2019: 0, 2020: 12,35% |
| MT ¹⁰⁵ | Group 4 | 2.5 | 0.6 |
| NO | Group 2 | 6 | 4 FTEs the last year ¹⁰⁶ |
| PT | Group 4 | 3.5 | 2019: 25%, 2020: 28,5% |
| SE | Group 1 | 8 | 20% during 2019 and 2020. |

b) Assessment

452. The PRC observes that overall, the size of the PG and the number of readers is related to the number of prospectuses approved by an authority. The PRC takes note that NCAs with a high number of prospectus approvals are in the higher range in terms of PG staff and number of readers, with the exception of SE which seems to be in the lower range.
453. As regards average years of experience of readers the PRC takes note that there are divergences amongst NCAs regardless of PG size and prospectus activity. The PRC appreciates that these differences are not indicative of the thoroughness of the review process. Overall, the PRC considers that PG staff appear to have adequate experience for the task of prospectus scrutiny.
454. As regards the ratio of prospectus approvals per reader, the PRC appreciates the limitations of this metric in view of the application of the four-eye principle by most NCAs, the fact that readers would review prospectuses that are not ultimately approved and that – in some cases – readers may devote time to tasks other than prospectus scrutiny. For these reasons, the PRC considered it would be more prudent to focus on cases that appear to be clear outliers. In this regard, the PRC observes there are two NCAs, SE and SK where this ratio is a little more than 40 prospectuses per reader (SK: 43 and SE: 41 in 2020 and 43 in 2021). The PRC notes that more than half of prospectuses approved by SE relate to equity securities which are considered riskier, while SK approves mainly non-equity prospectuses (95% in 2020). For comparison, the PRC points out that for the three NCAs that follow [IE, LU, NO] this ratio is 35, 24.75 and 20 prospectuses per reader, respectively. IE and LU approve almost exclusively non-equity prospectuses and NO approves a mix of equity and non-equity prospectuses with a focus on non-equity (a bit more than 60% in 2020). The PRC does not question the thoroughness of the review carried out by these authorities. It is concerned, though, that a prolongation of the current workload is not sustainable, especially in case of a further increase in prospectus applications.
455. In addition, the PRC observes that two NCAs¹⁰⁷ [IT, PL] are outliers at the other end of the spectrum. For IT the ratio of prospectus approvals per reader is 1.83 and for PL this ratio is 2.09. While bearing in mind the limitations of this metric, as mentioned in paragraph 454, the PRC nevertheless considers that IT and PL¹⁰⁸

¹⁰⁴ In the case of IT, the average turnover relates to the PG.

¹⁰⁵ In the case of MT, the average turnover relates to the PG.

¹⁰⁶ The authority mentions that this turnover is extraordinary.

¹⁰⁷ IT reported that 18.55 FTEs perform scrutiny and approval, while PL mentioned that 11 FTEs perform this task.

¹⁰⁸ As regards PL, the 2016 peer review report on the prospectus approval process states in paragraph 53: "In terms of efficiency, while always complying with the timeframes set by the PD, some of the processes in the prospectus scrutiny

should be made aware of their position amongst their peers. The PRC considers that the two NCAs should not disregard this finding as it may be a signal of inefficiencies in the scrutiny and approval process. As regards average turnover of readers, the PRC takes note that almost one-third of NCAs reported that there was no turnover of readers during the review period. Amongst the remaining seven NCAs which provided information on this point, the PRC observes one outlier, NO, where the average turnover was four readers out of a team of six FTEs. While the PRC appreciates that this may have been exceptional and limited to one specific year, it is, nevertheless, concerned that this level of staff turnover could create tensions and impact the PG's ability to carry out its tasks. This is especially relevant given the number of prospectuses approved by NO and the time and effort it usually takes to replace staff.

c) Recommendations

456. The PRC considers that SE and SK should reinforce the PG by increasing the number of prospectus readers available at any given time. This could be done either by hiring new staff and/or through internal mobility.
457. The PRC also invites IT and PL to revisit their internal procedures and review the individual steps of their scrutiny process to address potential inefficiencies in the scrutiny and approval process.
458. As regards NO the PRC recommends that the NCA considers to which extent it needs to improve its retention policy to avoid situations of increased turnover of readers in the future.

Training strategy

459. The PRC assessed whether NCAs ensure the delivery of appropriate training to staff in order to fulfil their role in scrutinising prospectuses.

a) Summary of findings

460. Twenty-one NCAs organise trainings of prospectus supervisors internally [AT, BE, CY, DE, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI]. Sixteen NCAs mentioned that PG staff participates in external trainings, including trainings organised by ESMA [BE, CZ, DE, EE, EL, ES, FI, HU, IE, IS, IT, LT, LU, PT, SI, SK]. Eleven NCAs reported that training to PG staff is not limited to the Prospectus Regulation [BE, DE, EE, ES, IE, LU, LV, MT, NL, PT, SI].
461. Several NCAs noted that the discussion of PR-related topics during regular meetings of the PG constitutes a form of training [AT, BE, DK, EL, IE, IT, LI, NL, NO, PL, RO]. Five NCAs mentioned that they organise introductory courses for newcomers [BE, DK, IE, LU, NL] while several NCAs indicated that senior readers carry out an on-the-job training for new staff [BE, CY, DK, ES, HU, IE, LU, NL, SE].
462. Eleven NCAs considered the meetings of ESMA groups and the discussion of supervisory cases organised by ESMA are part of the training available to PG staff [BE, CY, ES, FI, HR, HU, IS, LT, RO, SI, SK].

could be reassessed whether there is potential for further streamlining without endangering the quality of the prospectus scrutiny". ([ESMA/2016/105](#) | 30 June 2016).

463. BG mentioned that they did not organise any training for PG staff. HR clarified that even though there was no formal training strategy during the review period, an internal methodology was put in place after the end of the review period. The internal methodology foresees internal trainings to be regularly held especially for new staff. Moreover, PG members participated in external trainings organised by other regulators, meetings of ESMA groups, supervisory case discussion. Feedback from these meetings is shared within the PG.

b) Assessment

464. The PRC considers that overall NCAs strive at providing training to PG staff. The PRC appreciates that cost concerns and other constraints may impact NCAs' ability to organise training. Nevertheless, the PRC notes that NCAs which did not report organising internal trainings for PG staff [DK, IS, LI, NO, RO, SK] identified discussions of PR topics during regular meetings of the PG and attending meetings of ESMA groups and the relevant discussions (especially those relating to supervisory cases) as an important tool to expand the knowledge base of NCA staff. The PRC considers that an important component of the discussions of supervisory cases is knowledge sharing and would encourage NCA staff to attend these discussions for training purposes. However, the PRC notes that the primary purpose of other ESMA groups such as the Operational Working Group on prospectus-related issues (PR-OWG) and the Corporate Finance Standing Committee is to discuss and develop policy, even if attending these meetings may also incidentally help to increase members' knowledge of prospectus supervision. In that regard, the PRC would encourage NCAs to seek additional training possibilities outside of these groups. The PG is also cognisant that there is one NCA (BG) which did not provide any form of training to staff during the review period.

c) Recommendations

465. The PRC invites BG that did not have a training strategy to formulate one. This strategy could at least include presentations and discussions at PG meetings and participation at the discussions of supervisory cases organised by ESMA.

d) Good practices

466. The PRC considers that it is in general a good practice to make available to readers the documentation related to the internal training sessions organised by the PG.

467. Moreover, the PRC is of the view that it is a good practice for NCAs to have in place a procedure regarding the training of newcomers.

9.3 Spikes in prospectus activity

468. The PRC assessed how NCAs deal with spikes in prospectus activity to determine whether NCAs are effectively able to manage any extremely busy periods and still maintain their normal standards for the scrutiny of prospectuses, and the four-eye principle in particular.

a) Summary of findings

469. To make this assessment, the PRC posed several questions to NCAs about how they deal with spikes in prospectus approvals and the demands placed on

staffing during these periods. The responses to these queries are set out in the table below.

Table 18: Spikes in prospectus activity

| How NCAs deal with spikes in prospectus activity | MS |
|---|---|
| Hiring additional staff | CZ, ES, LT, LV, PL, SE (6) |
| Reprioritising activities of PG staff to the scrutiny of prospectuses | CZ, BE, DE, ES, FI, FR, HR, LU, NL, PT (10) |
| Overtime | AT, BE, EL, ES, FI, FR, IS, LU, NO, PT, SE (11) |
| Assistance from staff working in other areas | BE, CY, DE, EE, EL, ES, FI, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, SE, SK, SI (22) |
| Hiring of an external consultant | BE |
| Implementation of a 'more' risk-based review strategy | NL |
| Extending review times (within PR limits) | IE |
| There was no such situation in the past | BG, DK, LT, LV, PL, RO, SI (7) |

470. The hiring of an external consultant in BE was a temporary measure to deal with two members of the PG leaving and was aimed at ensuring a sufficient buffer of resources. The external consultant was not outsourced from a law firm or company but is an independent worker with a legal background and relevant experience in the financial sector.

471. NL has indicated that they had implemented a 'more' risk-based review strategy to deal with spikes in prospectus activity in the recent past. This involved focusing on the changes that have been made in the risk factors chapter, new products (if any) and other material new information (not yet published before) when scrutinising updates of non-equity prospectuses and supplements. Further, NL would review information incorporated by reference into such supplements and updates less extensively if it had already been published. When applying this strategy, NL was careful to ensure that the four-eye principle was complied with.

b) Assessment

472. Many NCAs have staff working in other areas assist the PG with the scrutiny of prospectuses, or even provide administrative support to the PG. This approach appears to work well at NCAs, especially when the staff assisting the PG have previous experience working in prospectus supervision so that they can be easily integrated into prospectus supervision. In particular, DE generally rely on such former readers that currently still work in the prospectus department, in particular the prospectus policy division and the division for prospectus-related market supervision so that these former readers are familiar and up to date with the relevant legislation. Additionally, DE ensures that former readers always scrutinise prospectuses together with an experienced current reader.

473. Similarly, IS has two former readers that can assist the PG during busy periods and has these readers scrutinise several prospectuses each year. Both approaches ensure that these readers' knowledge of the PR is up to date and they can more

effectively assist the PG during busy periods. The PRC considers this approach to be the most effective manner of dealing with spikes in prospectus activity and would recommend that, if possible, NCAs should have former readers available to assist the PG during busy periods.

474. Some NCAs collect information from advisors in order to have an estimation of the prospectus applications that will be submitted and of possible peak periods. The PRC finds that this a good practice for NCAs which have not already adopted it.
475. Although the use of temporary staff by BE does not appear to be problematic, the PRC would discourage the use of external, temporary staff. This case does not appear to be problematic because the reader did not appear to necessarily have a conflict of interest. However, it may not always be possible to ensure that such external staff are not involved in advising issuers, especially if such staff are linked to a law firm or accountancy organisation. The PRC would also not encourage NCAs to adopt alternative review practices during busy periods and would suggest looking at other methods of dealing with spikes in prospectus activity. Such an approach could risk weakening NCAs' assessment of prospectuses. Therefore, the PRC believes that NCAs should take other measures before adapting their review strategy, such as reprioritising activities of PG staff to the scrutiny of prospectuses and having NCA staff from other areas assist with the scrutiny of prospectuses.
476. Other ways of dealing with spikes in prospectus activity involve reprioritising the activities of PG staff to allow them to scrutinise more prospectuses and requiring PG staff to work overtime. These also appear to be appropriate ways of temporarily dealing with spikes in prospectus activity. However, the PRC is concerned that NCA staff should not work overtime for extended periods and having staff work overtime during a particular period each year should be discouraged.
477. Additionally, the PRC believes that it is not only important to take the workload of readers into consideration during spikes in prospectus activity but also to take the workloads of the 'senior' readers into consideration. Often, senior readers have significantly more prospectuses under their review: in some cases, this may be 150 prospectuses per year [LU] or 64.75 prospectuses per year [FR]. While the PRC acknowledges that the role of the second reader requires less work in the event that the reader does not scrutinise the entire prospectus, the PRC considers that FR and LU may want to explore whether additional support should be provided for their Heads of Division during busy periods given their roles as second reader and the high volume of prospectuses and considering that these staff are also involved in management activities.
478. Whilst hiring new staff for the PG is a solution, it can usually only be implemented if the spikes in prospectus activity are structural. In addition, this is not a solution that can be quickly implemented. The process of hiring new staff can take months and new staff will also need to be trained. In this sense, the PRC does not consider this a realistic approach to dealing with sudden spikes in prospectus activity that are temporary. On the other hand, NCAs should hire additional staff if there are recurring spikes in prospectus activity requiring taking measures such as having the PG work overtime or having additional readers outside the PG scrutinise prospectuses.
479. Finally, one NCA [IE] states that it often extends its review times when it experiences spikes in prospectus activity. This means that IE makes use of the full

10-day review periods included in the PR instead of adhering to its informal policy of replying within a shorter period. The PRC considers this a good approach to dealing with spikes in prospectus activity and would also recommend it to other NCAs that have a policy of responding with comments within shorter periods than those set out in Article 20 PR. For more information on these NCAs, see Section 6.3.5.2, '*Timeframes that apply to issuers*'.

c) Recommendations

480. NCAs should also take the workloads of managers and senior readers into account when dealing with spikes in prospectus activity. In particular, FR and LU should consider examining whether additional support should be provided for their Heads of Division during busy periods.

d) Good practices

481. The PRC considers the following to be good practices:

- a) having a group of 'former' prospectus readers available to assist the PG with the scrutiny and approval of prospectuses during peak periods and keeping these 'back-up' readers up to date;
- b) collecting information from advisors in order to have an estimation of the prospectus applications that will be submitted and of possible peak periods; and
- c) If NCAs have an informal policy of providing issuers with comments in less than the full period set out in Article 20(2) and (3) PR, extending their review times when they experience spikes in prospectus activity to make use of the full 10-day review periods included in the PR.

9.4 Operational Resources – internal organisation

482. The PRC assessed whether NCAs have a robust internal operating model in place which ensures the traceability of the scrutiny and approval process in terms of the a) receipt of a prospectus; b) deadlines to be observed for when comments are due; c) the time required to scrutinise a prospectus; d) the distribution and allocation of work across the department; and e) any issues or concerns that arise as part of the scrutiny process are easily documented and addressed.

483. The PRC assessed whether the department responsible for the scrutiny and approval of prospectuses is subject to the NCA's own internal audit function and that any recommendations by the internal audit function have been noted and addressed.

a) Summary of findings

484. All NCAs reported that they have operational resources in place in relation for the scrutiny and approval process. The paragraphs below summarise the feedback from NCAs concerning certain aspects of their operating model. In order to explain their approach some NCAs provided more detailed feedback on their operational resources and in this regard are mentioned more than once in each sub-section.

Traceability of receipt of prospectus

485. As regards the receipt of a prospectus, NCAs indicated different ways of ensuring its traceability. Eight NCAs [AT, DE, EE, ES, IT, HR, LU, SE] reported that

prospectuses are submitted via a portal and stored in their internal IT system. Seventeen NCAs indicated that prospectuses are stored in their IT system [BE, BG, CY, CZ, DK, EL, FI, FR, HU, IS, LT, LV, NL, NO, PL, PT, SK]. FR clarified that URDs and final terms are filed on an extranet whereas all other documents are filed by email. Fourteen NCAs reported that they receive the prospectus via email [BE, BG, CY, DK, EL, IE, LI, MT, NL, NO, PT, RO, SI, SK]. SK also mentioned that the receipt of the prospectus is recorded in a shared excel spreadsheet. LI stated that the prospectus is received in physical format and by email and then stored.

Deadlines to be observed for when comments are due

486. Fourteen NCAs mentioned that they keep an overview of the relevant deadlines by means of their internal IT system [AT, CZ, FR, DK, HU, IS, IT, LI, LT, LU, LV, NL, SE, SI]. FI, MT and NO reported that this is done at the regular PG meeting. IE and NL mentioned using readers' calendars or shared calendars for the purpose of monitoring deadlines. BE and EE reported that they keep track of deadlines by following a timetable agreed with the issuer. Seven NCAs mentioned using tools such as shared files, lists, folders and databases [DE, ES, IE, IS, MT, PT, SK]. Eighteen NCAs indicated that readers and/or PG managers are responsible for keeping track of the deadlines [BE, BG, CY, DE, DK, EL, ES, FR, HR, EL, IS, IT, LT, LU, PL, PT, RO, SI].

Time required to scrutinise a prospectus

487. Nineteen NCAs reported that the time to scrutinise a prospectus is recorded in various ways. These NCAs indicated that this is done via their IT system, filing system, intranet or internal database [AT, BE, CY, CZ, DE, DK, ES, FI, FR, HU, IS, IT, LI, LU, LV, MT, NL, NO, SE]. Four NCAs [HR, LT, PT, SK] mentioned using a shared file / folder / list for this purpose.
488. Six NCAs [BG, EL, FR, IE, PL, SI] reported that the PG keeps track of the time required for the scrutiny of prospectuses. FI indicated that this is followed in the PG meetings twice a week. EE stated that this is recorded in the relevant documentation for the scrutiny of the prospectus, without specifying whether this record is in an electronic format. FR mentioned that readers monitor the relevant deadlines during the review process. On top of that, the NCA performs additional quarterly checks for prospectuses filed for more than 30 days. Lastly, RO did not provide feedback on this point.

Distribution and allocation of work across the PG

489. Twenty-one NCAs reported that the distribution and allocation of work across the PG is the responsibility of a manager [BE, BG, CY, DE, DK, EL, ES, HR, IT, LT, LU, LV, PL, PT, SI, SK], or a PG member [NL, SE] or carried out on the basis of pre-specified criteria [FR, IE, RO]. IS, LI and MT mentioned that due to the size of the PG, the two readers are involved in the scrutiny. FI and NO indicated that allocation of work is decided at the regular PG meetings. Four NCAs mentioned that allocation of prospectuses is recorded in the NCA's IT internal system [AT, CZ, HU, IT], while PT mentioned that a log is kept in a shared file. EE did not provide this information.

Any issues or concerns that arise as part of the scrutiny process are swiftly documented and addressed

490. Eighteen NCAs reported that any issues arising during the scrutiny process are recorded in their internal IT system [BE, CZ, DE, DK, ES, FR, HU, IS, IT, LI, LU, LV, MT, NL, PL, PT, SE, SI]. HR mentioned that these issues are stored in a shared location. Eight NCAs mentioned using a series of tools such as the NCA's internal checklist, comment letters / sheets, emails or minutes from calls with the issuer [CY, DE, FI, EL, IE, IS, LI, SE] to document and address emerging issues. EE indicated that these issues are recorded in written format and PT mentioned that all interactions with the issuer are stored in electronic format. PL mentioned that they are reported to management and the legal department when needed. EE did not specify whether these issues are stored in electronic format. BG mentioned that it did not encounter such issues so far. Five NCAs did not specify their approach [AT, LT, NO, RO, SK].

b) Assessment

491. The PRC notes that NCAs have overall sufficient operational resources to ensure the traceability of the scrutiny and approval process.

492. The PRC observes that the level of sophistication and the degree of efficiency differs and to a certain extent depends on the prospectus activity of the NCA. As regards the tools to monitor deadlines the PRC refers to its recommendations in Section 6.3.5.3 of this report. As a general point, the PRC notes that in cases where the number of prospectus approvals increases NCAs would need to revisit their internal process and automate it in a way that is efficient and proportionate to their prospectus activity.

493. Lastly, the PRC takes note that a number of NCAs did not clarify their approach with regards to certain aspects of their operational resources. These are the following:

- a) the time required to scrutinise a prospectus [RO];
- b) the distribution and allocation of work across the PG [EE]; and
- c) any issues or concerns that arise as part of the scrutiny process are swiftly documented and addressed [AT, BG, LT, NO, RO, SK].

494. As regards RO the PRC takes into account for its assessment the feedback provided in the NCA's reply to the questions concerning monitoring of deadlines where RO mentioned that the Head of Unit keeps a record of all prospectus files in progress. In relation to EE, taking into account the size of the PG (2.05 FTEs) the PRC does not consider that a recommendation should be addressed to the NCA regarding the traceability of the distribution and allocation of work across the PG. Regarding AT, BG, LT, NO, RO, SK, which did not directly address how issues arising during the scrutiny process are documented, the PRC takes into account for its assessment the input provided in section 6.3.17 regarding the documentation of the scrutiny process.

c) Recommendations

495. As regards NCAs' operational resources the PRC refers to the recommendations and good practices identified in Section 6.3.5.3 relating to the monitoring of deadlines and those suggestions and good practices relating to

ensuring appropriate documentation of the PG meetings and maintaining a database of standard comments in Section 6.3.8.

Internal Audit

496. The PRC assessed whether the department responsible for the scrutiny and approval of prospectuses is subject to the NCA's own internal audit function and that any recommendations by the internal audit function have been noted and addressed.

a) Summary of findings

497. Twenty-eight NCAs stated that the PG is subject to internal audit [AT, BE, BG, CY, CZ, DK, EE, FI, FR, DE, EL, ES, HR, HU, IE, IS, IT, LI, LT, LU, MT, NL, NO, PL, PT, RO, SE, SK]. Ten of those NCAs reported that the PG was subject to internal audit in the period 2019 - 2021 or during the review period [AT, DE, DK, EL, ES, FR, LI, MT, PL, RO]. These NCAs mentioned that the audit either led to the identification of minor shortcomings or had a positive outcome. DE mentioned that the last audit in 2020 recommended improvements with regards to the tools used to provide an overview of the time limits. DE indicated that these recommendations had not yet been implemented, due to being part of a larger overhaul of the relevant IT system, but that this is in its plan.

498. Two NCAs indicated that the PG is not subject to internal audit [LV, SI].

b) Assessment

499. The PRC is overall satisfied that in the vast majority of NCAs the department responsible for the scrutiny and approval of prospectuses is subject to the NCA's own internal audit function, with the exception of LV and SI.

c) Recommendations

500. The PRC and invites LV and SI to take appropriate steps to ensure regular audit of the scrutiny and approval process and follow up on potential recommendations from such audit. The frequency of such audits could depend on the number of prospectus approvals where in NCAs with low prospectus activity these audits could be less frequent.

10 Independence and liability of NCAs in relation to the supervision of prospectuses

10.1 Independence

501. The PRC assessed NCAs' independence in relation to the scrutiny and approval of prospectuses in three areas. The first area assessed NCAs relationships with third parties and examined the relationships between the NCA and issuers, their advisors, trading venues, relevant trade associations and investors. It examined whether any secondments from the PG to a trading venue took place, whether any preferential arrangements with specific advisors regarding review times existed. It also examined the relationship between the PG and the Ministry of Finance/Treasury regarding prospectus supervision.
502. In the second area the PRC assessed how NCAs manage conflicts of interest. Specifically, the conflicts of interest framework in place that deals with PG staff members and Board members who have any interests in an issuer and in particular those that have submitted a prospectus for scrutiny and approval. In this area the PRC assessed NCAs in two respects, (i) whether NCAs have a conflicts of interest policy in place that covers the situation described above and (ii) whether staff at the PG have to sign a declaration or provide an undertaking that they will observe the conflicts of interest requirements and/or a requirement to provide a declaration when a conflict of interest arises.
503. The third area assessed by the PRC was whether a cooling off period for senior members of the prospectus scrutiny and approval department who subsequently take up employment with an issuer, advisory entity or trade association is prescribed.

10.1.1 Relationship with third parties

a) Summary of findings

504. The PRC set as an expectation that representatives of the PG engage in calls or meet with issuers, their advisors, local trading venues and investors as part of the scrutiny and approval process for prospectuses.
505. All NCAs recorded events relating to the scrutiny and approval of prospectuses that are in the normal course of business.
506. NCAs stated that during the review period there have been meetings with stakeholders (issuers, consultants, law firms, auditors, trading venue, investors associations, etc.). The aim of these engagements is to keep communication channels open to discuss, at arm's length, common topics of interest.
507. The PRC set as an expectation that, in light of the important role played by the NCA in terms of prospectus scrutiny and approval, there are no staff secondments between members of staff of the PG and a trading venue.
508. No NCA recorded any secondment from the PG to a trading venue during the review period.
509. The PRC set as an expectation that any (formal or informal) arrangements with advisors should be based on objective criteria and in accordance with the rules and

procedures in place and subject to review.¹⁰⁹ Arrangements with advisors should not result in preferential treatment for specific advisors, such as faster review times for certain advisors. Furthermore, these agreements should not be anti-competitive. It is expected that an NCA is able to justify each review time.

510. One NCA [IE] had arrangements with advisors (identified as Recognised Prospectus Advisor (RPA) in Ireland¹¹⁰) regarding turn-around times for the scrutiny and approval of prospectuses during the peer review period. The RPAs were not supervised by the CBoI and not subject to any oversight or inspections by the CBoI. The PRC understands that the RPA was grandfathered over when the Irish Stock Exchange was in charge of the scrutiny and approval of prospectuses. The CBoI reported that it had an operating target to review 90% of debt prospectuses within three business days for the initial submission and two business days for subsequent submissions if submitted by an RPA. It had an operating target to review 90% of closed ended funds prospectuses within five business days for the initial submission and two business days for subsequent submissions if submitted by an RPA. The CBoI additionally reported that for equity prospectuses it had an operating target to review 90% of initial submissions in ten business days / 20 business days for IPOs with subsequent submissions operating under the same timeframe if submitted by an RPA. By contrast for non-RPA entities, the review period for debt and closed-ended fund prospectuses was 90% of initial submissions to be assessed in ten business days and taking the same length of time for subsequent submissions.
511. All NCAs stated that they are independent of their Ministry of Finance in terms of the scrutiny and approval of specific prospectuses¹¹¹.
512. However, NCAs may engage in periodic coordination about matters not relating to specific prospectus files. NL stated that in addition to implementation of new regulations it engages in periodic coordination about prospectus fees and in cases where there are questions in Parliament and the Ministry of Finance (MoF) needs more information. SI stated that it reports its annual work programme to the MoF, which includes data of approved prospectuses. IE stated that it can provide technical advice on proposed legislation and domestic transposition.
513. EL stated that the NCA operates independently and there are no supervisory activities that require approval of a government body. Nevertheless, it may consult on a regulatory decision with the Bank of Greece and the Hellenic Accounting and Auditing Standards Oversight Board. This only arises in the context of bilateral cooperation and not in the context of prospectus scrutiny.
514. HR stated that if, during the approval process, readers determine certain violations especially regarding auditing of the financial information presented in the prospectus, they will address the issue to the Ministry of Finance because the stated ministry is the authorised institution for supervision of auditors. LT stated that the

¹⁰⁹ The conduct of advisory firms should be reviewed particularly in cases when their actions fall short of an NCA's expectations.

¹¹⁰ IE reported that since 31 March 2022 the RPA arrangement has been removed and all advisors are treated equally.

¹¹¹ DE, NO indicated they are subject to legal and technical oversight of the Ministry which bears the political responsibility for the NCA's activities and stated they are subject to instructions from the Minister in relation to the general supervision and/or in specific cases. For DE the subject and scope of the legal and technical oversight is the legality and fitness for purpose of the NCA's administrative actions. In exercising its legal and technical oversight, the Ministry relies on information that is in the public domain and also on sources of knowledge available to the NCA. The Ministry may at any time require the NCA to report on the knowledge available to it or its actions and ask to submit documents. The legal provisions regarding the obligation of confidentiality must be observed.

Ministry of Finance has not been involved in prospectus scrutiny. However, it could be approached in cases of issuances of state-controlled companies, e.g., on the specifics of the management of state-controlled issuers, the rules for the distribution of dividends, the provisions of state guarantees, as well as the preparation and audit of financial statements.

b) Assessment

515. The PRC assessed that NCAs have established, arms-length relationships with issuers, their advisors trade associations, trading venues and Finance Ministries. Interactions with these groups were undertaken as part of the normal course of business. The PRC did not identify from the NCA responses any issues relating to relationships with third parties that required follow-up.
516. However, in the case of IE, the PRC identified that the RPA arrangement did give rise to preferential treatment for certain advisors during the peer review period. The PRC assessed that IE does not meet the expectation in this respect.
517. The CBoI reported to the PRC that since 31 March 2022 the RPA arrangement in Ireland is removed and that all advisors are treated *pari passu*. Therefore, the concept of an RPA no longer exists and the same turnaround times are now applied to all submitters.

10.1.2 Conflicts of interest

a) Summary of findings

518. NCAs were assessed on whether they have a conflicts of interest policy in place that deals with PG staff's interest in any issuer including those that have submitted a prospectus for scrutiny and approval. Additionally, NCAs were assessed on whether a member of the PG has to sign a declaration to observe the conflicts of interest or code of conduct policy and/or a requirement to provide a declaration when a conflict of interest arises.
519. Thirty NCAs [AT, BE, BG, CY, CZ, DE¹¹², DK, EE, EL¹¹³, ES, FI, FR, HR, HU, IE, IS, IT, LI¹¹⁴, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK] have a conflict of interest or code of conduct policy in place that deals with PG staff's financial interest in any issuer including those that have submitted a prospectus.
520. Twenty-eight NCAs [AT, BE, BG, CY, CZ, DE¹¹⁵, DK, EE, ES, FI, FR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK] require PG staff to provide an undertaking or analogous requirement, at least annually that they comply with the conflicts of interest framework and/or a requirement to provide a declaration when a conflict of interest arises. Two NCAs [EL, SE] do not require PG staff to provide an undertaking or analogous requirement, at least annually, that they comply with the

¹¹² DE's conflicts of interest policy is not in written form. However, the instructions regarding financial transactions of employees are in written form.

¹¹³ A conflicts of interest policy is currently being drafted. Greek law contains general provisions about conflicts of interest applicable to PG staff members and board members.

¹¹⁴ Conflicts of interest are managed by an internal employee/staff regulation.

¹¹⁵ DE does not require its staff to provide an undertaking, at least annually, to respect the commitment to act in good faith. However, it does have an analogous requirement. It requires each BaFin employee to provide a declaration that they have disclosed all financial transactions or provide a negative statement that there were no private financial transactions.

conflicts of interest framework and/or a requirement to provide a declaration when a conflict of interest arises.

521. As part of conflicts of interest management, FR reported that its staff must provide a declaration of their financial interests annually and indeed upon commencing employment. Similarly, SE stated that the SFSA's Chief Legal Counsel receives a report, annually, of the self-reported holdings of staff. ES stated that the General Secretariat may at any time request detailed information on the composition of the securities and financial instruments portfolio or on any transactions in securities or financial instruments carried out by any member of staff, who shall be obliged to provide it in writing within a period not exceeding three working days. IS reported that CBI staff are not allowed to trade in instruments of regulated entities but are allowed to invest in funds. A CBI compliance officer keeps track of an employee's debt obligation over ISK 55.000.000 (EUR 388,406.97) and positions over ISK 10.000.000 (EUR 70,624.90).

b) Assessment

522. The effective management of conflicts of interest is a central tenet of the financial services regulatory framework. IOSCO expects in its Methodology for Principle 5 that the staff of the regulator should observe the highest professional standards and be required to follow clear guidance on matters of conduct. This includes for example the avoidance of conflicts of interest, including the conditions under which staff may trade in securities, as well as the appropriate use of information obtained in the course of the exercise of powers and the discharge of duties. Indeed, regulated entities must adhere to a range of requirements stemming from example MiFID e.g. effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest or under the Market Abuse Regulation that contains prohibitions from trading for persons discharging managerial responsibilities

523. In the PRC's view, PG staff sit as gatekeepers to accessing capital markets in the Union. They are privy to significant tranches of inside information and confidential information as part of their day-to-day duties. PG staff should carry out their roles with integrity, due skill, care and diligence. Any potential conflicts of interest such as having an interest in an issuer before the receipt of a prospectus or purchasing an interest in an issuer during or after the PG has received a prospectus should be appropriately identified, prevented or managed.

524. In this respect having a comprehensive conflicts of interest framework in place through a conflicts of interest policy, code of conduct policy accompanied by an undertaking, provided at least annually and/or a requirement to provide a declaration when a conflict of interest arises by PG staff will help ensure that the identification of conflicts of interest and their subsequent management is on PG staff radar.

525. Twenty-eight NCAs [AT, BE, BG, CY, CZ, EE, ES, DE, DK, FI, FR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK] fully met the PRC's expectations in this specific area. Two NCAs [EL, SE] partially met the PRC's expectations in this area.

c) Recommendations

526. While NCAs are not regulated entities, when scrutinising a prospectus, readers are privy to inside and confidential information. It is recommended that all NCAs

should have an intelligible, written conflicts of interest policy in place. This policy should cover instances in which it is clear that readers should not review any prospectus in which a conflict of interest exists. It is recommended that EL and SE put in place a requirement that staff provide an undertaking, at least annually to respect the NCA's conflicts of interest requirements and/or a requirement to provide a declaration when a conflict of interest arises.

d) Good practices

527. IS reported that CBI staff are not allowed to trade in instruments of regulated entities but are allowed to invest in funds. A CBI compliance officer keeps track of an employee's debt obligation over ISK 55.000.000 (EUR 388,406.97) and positions over ISK 10.000.000 (EUR 70,624.90).
528. FR reported that its staff must provide a declaration of their financial interests annually and indeed upon commencing employment. Similarly, SE stated that the SFSA's Chief legal counsel receives a report, annually, of the self-reported holdings of staff.
529. ES stated that the General Secretariat may at any time request detailed information on the composition of the securities and financial instruments portfolio or on any transactions in securities or financial instruments carried out by any member of staff, who shall be obliged to provide it in writing within a period not exceeding three working days.

10.1.3 Cooling off period

a) Summary of findings

530. Ten NCAs [AT, BE¹¹⁶ ES, FR, LT, LU¹¹⁷ LV, MT, NL, SE] have a cooling off period in place for senior members of the PG who subsequently take up employment with an issuer, advisory entity or trade association.
531. Twenty NCAs [BG¹¹⁸, CY¹¹⁹, CZ¹²⁰, DE, DK, EE¹²¹, EL¹²², FI, HR¹²³, HU¹²⁴, IE, IS, IT¹²⁵, LI, NO¹²⁶, PL, PT¹²⁷ RO, SI¹²⁸, SK¹²⁹] do not have a cooling off period for senior

¹¹⁶ BE has a cooling off period in place for members of the FSMA's Management Committee. For non-Management Committee members such as senior members of the PG, BE stated that a resigning PG staff member is prohibited for a period of one or two years to have professional contacts with the FSMA or undertake lobbying in the FSMA's areas of competence; hence, a resigning PG staff member would not be able to exert undue influence on former colleagues regarding the scrutiny and approval of a prospectus. This is considered analogous to having a cooling off period.

¹¹⁷ The CSSF does not *per se* have a cooling off period for members of the PG. The CSSF foresees restrictions on its former staff after they have left their position by virtue of the fact that the code of conduct applies one year after leaving the CSSF. LU does however have a cooling off period for all members of the Board.

¹¹⁸ BG does have a cooling off period applicable only to executive members of the governing body.

¹¹⁹ CY has a cooling off period applicable to Executive Members of the governing body and senior management.

¹²⁰ CZ, DE and FI have a cooling off period only to the Director General, who is not a Board member, and its Deputy).

¹²¹ EE has a cooling off period for the Director General and deputy relating to their roles as member and alternate member of the Supervisory Board of the European Central Bank.

¹²² Greek law contains provisions for a cooling off period for members of the Board of the HCMC.

¹²³ HR has a cooling off period for members of the governing body.

¹²⁴ HU has a cooling off period for members of the board.

¹²⁵ IT has a cooling-off period that applies to CONSOB Board members and managers after they leave their position.

¹²⁶ NO has a cooling off period for a director and as defined in individual employment contracts.

¹²⁷ PT has a cooling off period that applies to members of the Board.

¹²⁸ SI has a cooling off period for a director and as defined in individual employment contracts.

¹²⁹ SK has a cooling off period for members of the governing body.

members of the PG¹³⁰ who take up employment with an issuer, advisory entity or trade association.

b) Assessment

532. Ten NCAs [AT, BE, ES, FR, LT, LU¹³¹LV, MT, NL, SE] meet the expectation by having a cooling off period in place for senior members of the PG who subsequently take up employment with an issuer, advisory entity or trade association. Twenty NCAs [BG, CY, CZ, DE¹³², DK, EE, EL, FI, HR, HU, IE, IS, IT, LI, NO, PL, PT, RO, SI, SK] do not meet the expectation by not having a cooling off period (or analogous requirement such as applying a code of conduct for a period of time post-NCA employment) for senior members of the PG who take up employment with an issuer, advisory entity or trade association. Nevertheless, based on ESMA's Report on the independence of National Competent Authorities¹³³ it is noted that [BE, BG, CY, DE, FI, EE, HR, HU, IT, LU, NO, SI, SK] do have cooling off periods in place that apply to staff in very senior roles such as Head of the NCA, senior management, middle management and members of the governing body but not to staff carrying out the scrutiny of prospectuses.

c) Recommendations

533. In relation to cooling-off periods for members of the PG, ESMA's 2021 report on the independence of National Competent Authorities¹³⁴ stated that cooling-off provisions, intended as restrictions for leaving staff or members of the governing bodies pursuing professional activities in the regulated sector, could contribute to enhance personal independence by reducing the risk of conflict of interests and industry's interference.

534. In another report, the OECD noted that "Cooling-off periods can contribute to signalling and promoting a culture of independence and mark a clear boundary between industry and the regulator."

535. It is recognised by the PRC that the twenty NCAs [BG, CY, CZ, DE, DK, EE, EL, FI, HR, HU, IE, IS, IT, LI, NO, PL, PT, RO, SI, SK] who do not meet the expectation in this area as they do not have cooling off periods in place for senior members of the PG, who subsequently take up employment with an issuer, advisory entity or trade association, may, at the very least, require variations to existing employment contracts or legal provisions. The PRC recognises that there may be difficulties of various natures for some NCAs to introducing a cooling off period, such as a constricted labour market, for example for smaller NCAs who may have difficulties in recruiting staff. Those NCAs may wish to explore the introduction of an analogous requirement as a suitable alternative hurdle e.g. applying the NCA's code of conduct for a period of time post NCA employment. It is recommended that these NCAs should do more in this area by introducing some element of a hurdle when a senior member of the PG resigns and subsequently takes-up employment with a connected third party (issuer, advisory entity, or trading association). The introduction of a hurdle would ensure that the risk of any impropriety is reduced as members of

¹³⁰ Senior members of the PG include readers given their close proximity to capital market activities and transactions.

¹³¹ LU does have a cooling off period for all members of the Board.

¹³² Article 12(1) of the Basic Law of the Federal Republic of Germany restricts the imposition of cooling off periods.

¹³³ ESMA42-110-3265 published on 18 October 2021 https://www.esma.europa.eu/sites/default/files/library/esma42-110-3265_report_on_ncas_independence.pdf

¹³⁴ Report on the independence of National Competent Authorities ([ESMA42-110-3265](#) | 18 October 2021).

the PG would be less likely to be able to exert undue influence on former colleagues regarding the scrutiny and approval of a prospectus. When considering any new requirement for senior members of the PG and the duration thereof, NCAs may wish to take into account the level of seniority, experience, length of service accrued at the NCA and activities undertaken e.g. responsibility for approving prospectuses.

10.2 Liability regimes

536. The PRC assessed the impact of NCA's liability on their approach to the scrutiny and approval of prospectuses and impact on issuer's access to the capital markets. The PRC reviewed the liability regime in place in each jurisdiction and assessed how this liability impacts their approach to prospectus supervision.

a) Summary of findings

NCAs liability in respect of prospectus scrutiny and approval

537. In twenty-six Member States [BE, BG, CY¹³⁵, CZ, DK, EE, ES, FI, FR, HR, HU, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI and SK] national legislation provides that NCAs may be held liable for losses as a result of wilful misconduct of staff in the exercise of their duties or their powers (intentionally improper performance of a duty or an intentionally improper exercise of power or gross negligence). In four Member States [AT, DE, EL¹³⁶ and IE] NCAs are protected from legal liability for acts committed or omitted and undertaken in good faith.

NCAs' staff personal liability

538. Twenty-five NCAs [BE, BG, CZ, DE, EE, EL, ES, FR, HR, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI and SK] reported that they may be able to initiate a claim against their staff in respect of compensation paid to investors for their staff's wilful misconduct. Four NCAs [AT, CY¹³⁷, FI, HU] reported that recourse against a member of staff is not permissible. DK stated there is no safeguard in place to protect against claims by issuers and/or investors. Only the DFSA can be exposed in connection to an approval of a prospectus.

Legal claims in the period under review

539. One NCA (AT) reported the initiation of legal claims in respect of prospectus scrutiny and approval during the period under review. One NCA (IT) reported legal claims have been initiated prior to the period of review in respect of the scrutiny and approval of prospectuses.

540. IT reported that since 1988, 39 claims have been initiated by investors and / or associations representing investors relating to the scrutiny and approval of prospectuses against the NCA. None of these claims were initiated against a staff member. Nineteen claims were resolved in favour of the NCA. Twenty claims are still

¹³⁵ In CY the NCA may be held liable for losses in case of negligence under the Law of Civil Wrongs as a result of a breach of statutory duties.

¹³⁶ According to article 3 para 3 of law 2836/2000 (as amended by law 3483/2006 and law 3631/2000) the Chairman, the members of the HCMC's Board of Directors and HCMC's staff in general shall not be liable for any acts or omissions in the exercise of their powers irrespective of whether such acts or omissions have been conducted intentionally or negligently. Only in three cases i.e., breach of secrecy, market manipulation or abuse of privileged information are they liable only in cases of intention.

¹³⁷ In CY recourse against a member of staff is not permissible when acting in the exercise of his/her duties, but disciplinary actions can be brought for an employee's act or omission which equals to a breach of duty on his/her behalf.

pending. The average value of a claim by an investor who has taken legal action against CONSOB is equal to EUR 28,082; however, the value of the claims varies depending on the number of investors involved in the claim and in the past was as little as EUR 21 and up to EUR 200 mil.

541. IT reported there are mechanisms available to provide financial support to their employees and/or members of the governing body in the context of proceedings initiated by third parties against them for facts or omissions relating to or arising from the discharge of their duties or functions. As far as IT is concerned, such financial support consists of (i) reimbursement of legal expenses afforded by staff (and former staff) after a final verdict exonerating a staff member from liability, and (ii) the possibility to provide monetary advances on such reimbursement at the end of each level of the proceeding if the total absence of his/her liability is ascertained. However, IT is unable to enter into an insurance contract to cover the personal financial risk of their staff.

b) Assessment

542. In the PRC's view, the *de facto* liability regime in all Member States is likely to reasonably ensure that a member of the PG can carry out his or her role in terms of the scrutiny and approval of a prospectus in an impartial and objective manner balancing the needs of investors and issuers equally¹³⁸.

543. However, in one jurisdiction [IT¹³⁹] the high number of historical claims initiated against the NCA has meant that the threat of possible litigation, based on previous claims, is a likely feature of its approach and ingrained into its operating model for the scrutiny and approval of prospectuses.

544. In the PRC's view, (i) notwithstanding the high legal threshold for a claim to be successful and (ii) the absence of a successful case against CONSOB for gross negligence or wilful wrong, IT is very careful when scrutinising prospectuses.

545. In the PRC's view, an unintended consequence of IT's national liability law is that, for the purpose of the liability control, the NCA may feel the need to be very careful and diligent when scrutinising a prospectus for fear of possible litigation in the future against the NCA and NCA staff. The PRC notes and understands that this is a complex area for IT staff to navigate. However, it is the PRC's view that this approach may not necessarily benefit investors as the information included in prospectuses approved by the NCA does not render them, in general, more investor friendly and readable. Additionally, it unlikely benefits issuers as significant time and effort is devoted during the scrutiny process for checks which, in view of the other jurisdictions' practices, as highlighted in this report, appear to be going well beyond

¹³⁸ In ESMA's [ESMA42-110-3265] 18 October 2021 Report on the independence of National Competent Authorities twenty-six authorities [AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, IE, IT, LI, LT, LU, LV, MT, NL, NO, PT, SE, SK, SI] reported that there are adequate legal protections for the bona fide discharge of the authority's functions and powers. Four authorities indicated that the legislation in force does not offer legal protections [FR, IS, RO] or in the case of (PL) affords only limited protections.

¹³⁹ In Italy, if a CONSOB employee is sued personally in respect of his / her scrutiny and approval of a prospectus, legal expenses are reimbursed to the employee after a final verdict exonerating the staff member from liability; the employee may request CONSOB to provide monetary advances of such reimbursement but only at the conclusion of each level of the lawsuit and provided that the total absence of his/her liability is ascertained.



what is necessary to check the 3Cs (completeness, comprehensibility and consistency) in accordance with the PR¹⁴⁰.

c) Recommendation

546. In the PRC's view, there needs to be urgent change in domestic Italian liability law insofar as the NCA employee can become the target in civil litigation claims vis-a-vis the discharge of their functions when reviewing a prospectus without being afforded insurance cover for personal financial risk.

¹⁴⁰ IT reported that the Italian Ministry of Finance launched in March 2022 a public consultation on a Green Paper concerning the competitiveness of Italian financial markets with the aim of supporting growth (so-called, "*Libro Verde*"), proposing several amendments in this sector, including a relevant change in IT's liability regime. Further to this public consultation, a legislative proposal aimed at reshaping IT's liability regime will be published by the Italian Ministry of Finance by the end of June 2022.

11 PRC Recommendations to NCAs

547. As foreseen in Article 30 of ESMA Regulation, the table below includes the recommendations made by the PRC to address weaknesses identified in the peer review. Recommendations that are marked open may be subject to follow-up two years from the publication of this report as will be defined by the PRC at that time.

| Topic | NCA / Recommendation | Follow up |
|--|--|-------------------|
| Application of the four-eye principle | FI, IE and NO shall ensure that all prospectuses are scrutinised by either (i) two readers or (ii) a single reader, together with a senior reader or manager focussing on the most sensitive sections of the prospectus. | Open |
| Application of the four-eye principle | SK shall apply the four-eye principle during the scrutiny of prospectuses. Currently the Head of department reviews the prospectus at the time of approval. This does not reflect the proper application of the four-eye principle. | Open |
| Application of the four-eye principle | SE shall review the limitations of its current implementation of the four-eye principle and considers alternative options to prepare for a possible further increase in prospectus applications. | Open |
| Application of the four-eye principle | BE, ES, FI, NO and SE may consider ensuring that all supplements are scrutinised by either (i) two readers, in their entirety, or (ii) a single reader, together with a senior reader or manager focussing on the most sensitive sections of the supplement in line with the second approach. | For consideration |
| Application of the 'proportionate approach' in Article 41 CDR 2019/980 | LU may consider applying the proportionate approach in a more flexible manner. It is noted that it may not be appropriate to take the proportionate approach if a significant amount of time has elapsed, restricting the use of the proportionate approach to prospectuses that were approved a number of days or weeks earlier is not necessary. | For consideration |

| *Topic | NCA / Recommendation | Follow up |
|--|---|-------------------|
| Consultation prior to first submission | BG shall change its practice of not engaging with issuers prior to formal submission of the prospectus application and facilitate interaction with issuers and their advisors to respond to questions and provide relevant clarifications prior to formally receiving a draft prospectus. | Open |
| Consultation prior to first submission | SK shall reconsider the practice of reviewing the prospectus before it is formally submitted to the NCA and if needed consider amending national law provisions to ensure that scrutiny of prospectuses is carried out within the legal perimeter of the PR. | Open |
| Consultation prior to first submission | IT shall differentiate the 'pre-filing' process from the formal scrutiny and approval process envisaged in the PR as the scrutiny of the prospectus should primarily take place after filing an application for approval. | Open |
| Average timing of approval / meeting deadlines | IT shall change the national deadlines that are applied to the scrutiny process. | Open |
| Average timing of approval / meeting deadlines | IT and SI may consider changing the national deadlines that are applied to issuers. | For consideration |
| Average timing of approval / meeting deadlines | BG, HR, NO, RO, SI may consider changing their current approach of providing readers discretion to use their own tools to monitor deadlines and provide PG staff with alternative and standardised tools that are consistent with the NCA's internal organisation. | For consideration |
| Average timing of approval / meeting deadlines | ES, FR, NL, SE, SI may consider changing their internal processes and tools for the monitoring of deadlines in order to avoid missing deadlines in the future. SI to look at the recommendations in relation to the approval process of the NCA. | For consideration |

| *Topic | NCA / Recommendation | Follow up |
|--|--|---|
| Interaction of NCA staff with issuers | BG shall share the contact details of readers and enable direct interaction between readers and issuers. | Open |
| Interaction of NCA staff with issuers | LI may consider sharing the contact details of readers. For example, in the NCA's comment letters as this would facilitate interaction between readers and issuers. | For consideration |
| Interaction of NCA staff with issuers | LT and PL may consider facilitating direct interaction between readers and issuers. In particular, LT may consider providing direct phone numbers and PL may consider providing names of readers in comment letters. | For consideration |
| Consistency of comments among prospectus reviewers | <p>BG, CZ, IT, PL may consider organising regular meetings of the <u>whole</u> PG.</p> <p>In the case of IT given the size of the PG it does not appear practicable or necessary to organise meetings with the entire PG. Nevertheless, the different Offices that are responsible for prospectus scrutiny could organise regular meetings with the participation of all readers of each Office.</p> | <p>For consideration</p> <p>[Addressed in the case of IT¹⁴¹]</p> |
| Consistency of comments among prospectus reviewers | LI and RO may consider ensuring there is exchange of relevant information in written format e.g. taking minutes of PG meetings, sending emails to the whole PG on prospectus-related topics, updating databases with comments, updating on NCA decisions and new rules. | For consideration |
| Information sharing with other teams/ departments/ supervisors | SK may consider involving in prospectus scrutiny specialists from other departments / units and / or other supervisory authorities depending on the complexity of the prospectus and the risk for investors. | For consideration |

¹⁴¹ Since the end of the review period IT has put in place a process for the organisation of regular meetings within each of the Offices that deal with prospectus scrutiny.

| *Topic | NCA / Recommendation | Follow up |
|--|---|-------------------|
| Information sharing with other teams/ departments/ supervisors | IT shall review its practices in relation to information sharing in order to ensure their efficiency. | Open |
| Information sharing with other teams/ departments/ supervisors | BG, IS, LV and RO may consider putting mechanisms in place to escalate a concern or issue to senior management concerning the prospectus approval. | For consideration |
| Information sharing with other teams/ departments/ supervisors | DE may consider formalising its relationship with the specialists responsible for the supervision of financial reporting. It is noted, nonetheless, that the PG also has its own expertise in financial reporting and a work group concerning financial reporting issues. | For consideration |
| Information sharing with other teams/ departments/ supervisors | BG, DK, FR, IS, LV, LT, RO, SE, SK may consider cooperating with product governance specialists as part of the scrutiny of prospectuses. | For consideration |
| Memorandum of understanding | HU may consider whether the use of four auditing firms with which the NCA has an MoU is in line with the PR regulatory framework. HU shall further develop inhouse relevant financial expertise to ensure that external advice is sought in exceptional circumstances and where needed it shall also seek input on financial information matters from other NCAs at ESMA level. | For consideration |
| Publication of national guidance | BG shall publish guidance addressed to issuers and their advisors with regards to the NCA's scrutiny and approval process to clarify the relevant operational procedures and technical requirements. | Open |
| Publication of national guidance | Where this is not already the case, NCAs may consider publishing on their websites links to ESMA's website (and in particulate the prospectus- | For consideration |

| *Topic | NCA / Recommendation | Follow up |
|--------------------------------|--|-------------------|
| | related webpage) as well as links to ESMA guidance such as the ESMA Q&As and Guidelines. | |
| Scrutiny of summaries | NCAs may consider challenging issuers regarding the use of small font size in prospectus summaries on the basis of Article 6 (2) PR and Article 37.1 (d) of CDR 2019/980. | For consideration |
| Summaries of base prospectuses | NCAs may consider including in their processes random ex post checks of issue specific summaries. Where the number of these summaries is significant, NCAs could consider using a risk-based approach as a second step to ensure proportionality of the number of checks they would need to perform. | For consideration |
| Summaries of base prospectuses | LV and MT may revisit their approach regarding the ex-ante review of issue specific summaries. | For consideration |
| Omission of information | BG and EE may consider aligning their internal process and guidance fully with the Supervisory Briefing. | For consideration |
| Approval | BE, BG, CY, EE, EL, HR, IT, LV, MT, PT, RO and SI may consider reviewing their Boards' approval processes to assess whether they can be organised in a more efficient manner (without jeopardising the thoroughness of the scrutiny process). | For consideration |
| Approval | BG, EL, HR, LV, RO, SI may consider reviewing their approval procedures to look for points of improvement and consider whether Board approval is appropriate in all cases. | For consideration |
| Approval | The eleven NCAs taking more than 1 or 2 working days for the approval of prospectuses [BE, CY, EE, HR, IT, LT, LV, MT, RO, SI and SK] shall review their procedures to see if they can be made more efficient. NCAs shall be mindful that, irrespective of the organisation of their prospectus approval functions and of the level of sign-off for approval | Open |

| *Topic | NCA / Recommendation | Follow up |
|--------------------------|--|-------------------|
| | required, they ensure efficient mechanisms for sign-off through possible pre-consultation or possible approval in principle by senior parties (senior management / Board) to enable written procedure, etc. The PRC considers that formal approval should be able to be completed under efficient approval process within 1-2 days, except in exceptional circumstances. | |
| Approval | HU shall amend its procedures concerning the approval of prospectuses concerning transactions of 5 billion HUF (EUR 12.7 million) or more in order to make them more efficient. | Open |
| Approval | NCAs [CY, CZ, DK, EL, ES, FR, HR, HU, IE, IS, IT, LI, LV, NO, PL, SI and SK] that require additional documentation from issuers for prospectus approval may consider reviewing their practices in this regard consider whether these practices conflict with Art. 44 and Art. 42(2) CDR 2019/980. When reviewing these provisions, NCAs should verify if the documentation is being requested in relation to the prospectus supervision or if it is necessary in relation to other supervision. If the documentation is required for other purposes than prospectus supervision, this recommendation can be disregarded. If some of these requirements are required under national law, NCAs should discuss changes with their national legislator in order to ensure the proper implementation of the PR and the acts promulgated thereunder. | For consideration |
| Approval | LV shall refrain from requesting physical copies of prospectuses from issuers at approval. | Open |
| Withdrawals and refusals | IE may consider keeping track of the number of withdrawals in the future. | For consideration |
| Withdrawals and refusals | LI and SK may consider having a formal procedure for the refusal of approval of a prospectus. | For consideration |
| Withdrawals and refusals | In line with the four-eye principle, all NCAs may consider having at least a second reader and/or additional senior oversight in place as part of their | For consideration |

| *Topic | NCA / Recommendation | Follow up |
|---|---|-------------------|
| | refusal procedure. The only possible exception to this case would be refusals for purely formal reasons, such as not responding within legal deadlines. | |
| Human resources | SE and SK shall reinforce the PG by increasing the number of prospectus readers available at any given time | Open |
| Human resources | IT and PL may consider revisiting their internal procedures and review the individual steps of their scrutiny process in order to address potential inefficiencies in the scrutiny and approval process. | For consideration |
| Human resources | NO shall consider to which extent it needs to improve its retention policy to avoid situations of increased turnover of readers in the future. | Open |
| Human resources - training | BG shall formulate a training strategy. | Open |
| Spikes in prospectus activity | FR and LU may want to consider examining whether additional support should be provided for their Heads of Division during busy periods. | For consideration |
| Internal audit | LV and SI shall take appropriate steps to ensure regular audit of the scrutiny and approval process and follow up on potential recommendations from such audit. | Open |
| Preferential treatment for certain advisors | IE shall remove the RPA arrangement that gives rise to preferential treatment for certain advisors | Addressed |
| Annual conflicts of interest undertaking | EL and SE shall incorporate into their internal framework the requirement by NCA staff to provide an undertaking or analogous requirement, at least annually, to comply with the conflicts of interest or code of conduct and/or a requirement to provide a declaration when a conflict of interest arises. | Open |

| *Topic | NCA / Recommendation | Follow up |
|--------------------|--|-----------|
| Cooling off period | BG, CY, CZ, DE ¹⁴² , DK, EE, EL, FI, HR, HU, IE, IS, IT, LI, NO, PL, PT, RO, SI, SK shall introduce a cooling off period (or analogous requirement such as applying a code of conduct for a period of time post-NCA employment) for senior members of the PG who take up employment with an issuer, advisory entity or trade association. When considering any new requirement for senior members of the PG and the duration thereof, NCAs may wish to take into account the level of seniority, experience, length of service accrued at the NCA and activities undertaken e.g. responsibility for approving prospectuses. | Open |
| Liability regime | IT shall change domestic Italian liability law insofar as the NCA employee can become the target in civil litigation claims vis-a-vis the discharge of their functions when reviewing a prospectus without being afforded insurance cover for personal financial risk ¹⁴³ . | Open |

¹⁴² This may need to be addressed in the legal framework.

¹⁴³ IT reported that the Italian Ministry of Finance launched in March 2022 a public consultation on a Green Paper concerning the competitiveness of Italian financial markets with the aim of supporting growth (so-called, "*Libro Verde*"), proposing several amendments in this sector, including a relevant change in IT's liability regime. Further to this public consultation, a legislative proposal aimed at reshaping IT's liability regime will be published by the Italian Ministry of Finance by the end of June 2022. These proposals fall outside of the review period of the peer review and have not been enacted. Therefore, the status of the recommendation remains 'Open'.

12 PRC Recommendations to ESMA and the European Commission for future policy and legislative work

548. The peer review has provided the PRC with a particular perspective on the different approaches taken by NCAs to the scrutiny and approval of prospectuses.

549. The PRC has identified scope for future work that the European Commission and ESMA may wish to consider. The PRC acknowledges that the timeline for undertaking any new work would need to fit in with the agenda and priorities of both institutions.

| Topic | Description | Directed to: |
|--|---|--------------|
| Length of prospectuses | ESMA is invited to consider undertaking additional work to identify possible reasons for the differences in the length of prospectuses between different Member States. This work could also assess differences in the number and length of risk factors. | ESMA |
| Application of the four-eye principle | ESMA is invited to undertake work to develop high level, qualitative criteria to assist NCAs to determine the risk associated with a specific prospectus and to help senior readers determine which sections of the prospectus to scrutinise when they do not scrutinise the entire prospectus | ESMA |
| Application of the four-eye principle | <p>ESMA is invited to consider the application of the four-eye principle in relation to prospectuses and supplements in order to promote a more convergent approach to the scrutiny of these documents.</p> <p>As part of this assessment, ESMA should consider how NCAs can adopt a risk-based approach to prospectus scrutiny, including under what circumstances (if any) it is appropriate to have a single reader scrutinise a prospectus or supplement.</p> | ESMA |
| Application of the 'proportionate approach' in Article 41 CDR 2019/980 | ESMA is invited to explore NCAs' approach to the scrutiny of supplements to see if there are any material divergences. If there are any divergences, ESMA is invited to develop | ESMA |

| Topic | Description | Directed to: |
|-----------------------------------|---|------------------------------|
| | additional guidance to encourage supervisory convergence in this area. | |
| Additional criteria | The European Commission is invited to review the notion of 'criteria' under Article 40 of CDR 2019/980. ESMA is also invited, to provide technical assistance to the European Commission as needed. | European Commission and ESMA |
| Deadlines | The European Commission is invited to examine how to ensure a common approach regarding issuers' turnaround times. | European Commission |
| Information sharing | ESMA is invited to update the Supervisory Briefing concerning prospectus scrutiny to address the involvement of specialists and other supervisory authorities in prospectus scrutiny on a risk-based basis and to promote in this regard a consistent approach between NCAs. | ESMA |
| Comprehensibility of prospectuses | ESMA is invited to consider developing guidance in the area of prospectus comprehensibility, including plain language requirements, distinguishing between prospectuses for higher risk and complex products that are addressed to retail investors where more stringent checks would be expected and those addressed to qualified investors. As a starting point such work could be based on examples of comments raised by NCAs and other public recommendations on this topic by national authorities. | ESMA |
| Comprehensibility of prospectuses | The European Commission is invited to undertake a behavioural study that would look at the use of prospectuses and their comprehensibility as regards retail investors with a mind to using the outcome of this study to improve the prospectus regulatory framework and ensure consistency of comprehensibility checks by NCAs. | European Commission |

| Topic | Description | Directed to: |
|----------------------------|---|---------------------|
| Prospectus summary | <p>ESMA is invited to develop guidance regarding the use of easily readable font size in the summary and the information to be disclosed in the description of the key risks in the summary.</p> <p>ESMA is also invited to develop common approaches which NCAs would implement regarding their controls on issue-specific summaries.</p> | ESMA |
| Prospectus summary | The European Commission is invited to carry out a behavioural study to look at whether and how retail investors use the prospectus summary in order to make concrete improvements to the summary regime. | European Commission |
| Omission of information | ESMA is also invited to update the Supervisory Briefing concerning prospectus scrutiny to consider addressing the treatment of historical financial information of issuers that are incorporated around the date of prospectus approval | ESMA |
| Withdrawals and refusals | The European Commission is invited to consider aligning the timelines for the refusal of prospectuses at an EU level in order to ensure a level playing field across the various NCAs. The European Commission may also want to consider whether it would be useful to provide further guidance about the situations in which it is appropriate to refuse the approval of a prospectus. | European Commission |
| Guidelines on Risk Factors | ESMA is invited to undertake further harmonisation of NCAs' enforcement of the Guidelines on risk factors. | ESMA |

13 Good practices

550. The PRC identified good practices with regard to NCAs' prospectus scrutiny and approval processes as presented in the table below.

| Topic | Good Practices identified by the PRC in relation to NCAs |
|--|--|
| Application of the four-eye principle | NCAs' PGs should have both economic/financial and legal expertise. |
| Application of the four-eye principle | Having additional readers scrutinise prospectuses in relation to higher risk prospectuses such as a) IPOs; b) in case of new types of products; c) where complicated legal questions may be anticipated; d) where transaction parties have been subject to enforcement actions; e) where the party responsible for the prospectus was reluctant to comply with comments in the past; and f) where one of the readers is less experienced in relation to the type of prospectus to be reviewed. |
| Application of the 'proportionate approach' in Article 41 CDR 2019/980 | <p>Taking a proportionate approach to the scrutiny of a prospectus based on an analysis of the risks associated with the review of a particular prospectus. For example, it may not be appropriate to take a proportionate approach in the following situations:</p> <ul style="list-style-type: none"> a) a great deal of time has passed since the approval of that substantially similar prospectus; b) the prospectus in question has not been subject to a complete review in the last 2 or 3 years; c) transaction parties have been subject to enforcement actions or were reluctant to comply with comments in the past; d) one of the readers is less experienced in relation to the type of prospectus to be reviewed; and e) there have been substantial changes to the circumstances of the issuer. <p>The proportionate approach should not be applied in case a substantial number of amendments have been made to the previously approved prospectus. In this case, the prospectus is no longer 'substantially similar' as required in Article 41(1) PR.</p> |

| *Topic | Good Practices identified by the PRC in relation to NCAs |
|--|--|
| Average timing of approval / meeting deadlines | Receiving from issuers an indicative timetable with the relevant deadlines, especially in the case of IPO prospectuses and prospectuses relating to complex transactions. |
| Average timing of approval / meeting deadlines | <p>In relation to the issuer's turnaround time, setting in comment letters a specific (realistic) deadline, while retaining flexibility to prolong this deadline in the face of reasonable explanations by the issuer.</p> <p>Consider suspending or terminating the scrutiny process in case the issuer is not able to provide an updated draft prospectus within a reasonable timeframe.</p> |
| Average timing of approval / meeting deadlines | Discussing imminent deadlines during regular PG meetings and applying a second layer of checks regarding compliance with deadlines (e.g. weekly checks by the PG manager or another reader). |
| Interaction of NCA staff with issuers | Sharing contact details of PG staff responsible for the prospectus when the prospectus application is submitted to the NCA. |
| Consistency of comments amongst prospectus reviewers | The review of draft comments by a second person. For larger PGs review of comments by a second person may need to be coupled with other appropriate tools such as database of standard comments and regular PG meetings. |
| Consistency of comments amongst prospectus reviewers | <p>Maintaining a database with (standard) comments, material decisions and other relevant information.</p> <p>Providing easy access to readers to previous comments, standard comments and other relevant information for example through setting up in the document management system of the NCA an advanced search function.</p> |
| Consistency of comments amongst prospectus reviewers | Taking minutes at PG meetings and electronically documenting them in a database. |
| Information sharing | Involving product governance specialists in cases of issues relating to the suitability of products. This cooperation ensures |

| *Topic | Good Practices identified by the PRC in relation to NCAs |
|----------------------------------|---|
| | that certain information in the prospectus is reviewed by product governance specialists and it may also proactively prevent the approval of a prospectus relating to securities that may be subject to a product intervention procedure after approval of the prospectus. This is in the interest of investor protection and will also save time and effort for NCAs. |
| Information sharing | Bringing issues arising due to different approaches being taken by NCAs to ESMA's operational working group on prospectus-related matters (OWG). Bringing such issues to the OWG is encouraged. |
| Publication of national guidance | Providing practical guidance to issuers on how to draw up a prospectus. |
| Comprehensibility of prospectus | Focusing the scrutiny of prospectuses on complex language, legal, technical or industry specific terms, formulas, acronyms when reviewing prospectuses which are not used exclusively for the purposes of admission to trading on a regulated market of non-equity securities for which a summary is not required by Article 7 of the PR. |
| Summaries of base prospectuses | Reviewing the summaries of base prospectuses taking into account the number of retail base prospectuses approved by an NCA and the number of final terms, containing annexed issue-specific summaries, filed with the authority. Where that number is very limited, the NCA could review all issue-specific summaries. Where that number is more significant, a sample of those summaries could be selected for review following a risk-based approach, which should be further defined |
| Approval | In cases of prospectuses approved by readers, having sufficient safeguards to ensure that management is able to monitor and control the approval process and management should be informed in advance of any approval. This means delaying approval of a prospectus unless all material issues have been dealt with. |
| Approval | Being able to ensure the proper assessment of any changes just before approval for materiality but allowing the approval process to continue in case of minor changes. |

| *Topic | Good Practices identified by the PRC in relation to NCAs |
|---|--|
| Risk factors | In relation to Guideline 4 of the Guidelines on risk factors, requesting the inclusion of quantitative information about the impact of a risk factor when it reasonably appears to be available. |
| Risk factors | In relation to Guideline 5 of the Guidelines on risk factors, moving risk factors that only act as disclaimers to other sections of a prospectus. |
| Human resources - training | Making available to readers the documentation relating to the internal training sessions organised by the PG. |
| Human resources - training | Having in place a procedure regarding the training of newcomers. |
| Spikes in prospectus approval | Having a group of 'former' prospectus readers available to assist the PG with the scrutiny and approval of prospectuses during peak periods and keeping these 'back-up' readers up to date. |
| Spikes in prospectus approval | Collecting information from advisors in order to have an estimation of the prospectus applications that will be submitted and of possible peak periods. |
| Spikes in prospectus activity | If NCAs have an informal policy of providing issuers with comments in less than the full period set out in Article 20(2) and (3) PR, extending their review times when they experience spikes in prospectus activity to make use of the full 10-day review periods included in the PR. |
| Prohibition on PG staff to trade in instruments of regulated entities | Restricting PG staff's ability to trade in instruments of regulated entities. |
| Keeping track of PG staff debt obligations and positions | Keeping track of a PG staff member's debt obligations and positions over a certain amount. |

| *Topic | Good Practices identified by the PRC in relation to NCAs |
|--|---|
| Disclosure of financial interests by PG staff | PG staff providing a declaration of their financial interests annually and before commencing employment with the NCA. |
| Periodic spot-check by NCA of staff's financial holdings and activity. | NCAs requiring PG staff to provide detailed information on their financial holdings and financial activity. |

Annex 1 – Mandate



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Annex 2 – Questionnaire



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Annex 3 – Statement from NCAs

An on-site visited NCA may submit a written statement to be annexed to the peer review report. One NCA, Consob, has issued a statement on the outcome of the peer review report, which is reproduced below. Statement by Consob

Consob shares the objectives of the ESMA Prospectus Peer Review and welcomes the contents of the Final Report and is thankful for the chance to assess its practice and compare it to the ones developed by other national competent authorities (“NCAs”), with a view to enhance investors protection and assist issuers in capital raising.

Nonetheless, Consob remains concerned with the assessment made by the Peer Review Committee (“PRC”) with reference to its independence in performing prospectus scrutiny tasks.

Consob observes that independence and liability are conceptually distinct, being the latter “...not strictly related to independence” (as also specified under the mandate to the PRC). Conversely, in the Final Report (assessment table) the two elements are counted in a single item.

After such premise of a general nature, Consob would want to highlight that the specific national liability regime applicable to the authority seems having not had significant impacts on the areas of the scrutiny and approval, where it results to largely meet the relevant expectations as set for under the mandate.

Consob would also want to recall that according to the findings of the ESMA Report on NCAs Supervisory Independence, published on last October (ESMA42-110-3265) after a mapping exercise at the level of NCAs, Consob appears endowed with the most distinctive features and prerogatives of independence, in respect of the operational and financial independence, the personal independence and the accountability and transparency.



While acknowledging the praiseworthy efforts made by the PRC in thoroughly analysing and understanding its supervisory practices, Consob disagrees with the weighing system of all elements that concurred to the appraisal of independence. In line with such a system, a prominent role has been assigned to the number of outstanding civil liability claims, leading to an overall result that in Consob's view does not fairly reflect the framework and the context under which the authority operates.