Answer to the ESMA consultation (Listing Act) – December 2024

Q1: What are your views in relation to format and sequencing? Do you agree with ESMA’s approach to limit changes to the ‘standard’ equity and non-equity annexes? And do you have any concerns relating to a potential tension between Annexes II and III in the Amending Regulation and Articles 24 and 25[45](#_bookmark0) CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

We agree with ESMA’s approach to limit changes to the ‘standard’ non-equity annexes. It is very important to limit the time spent and the costs incurred by corporate group to adapt their existing prospectus.

However, we do not understand why the sequence of certain annexes has been changed. This will entail additional work for the issuers in order to adapt their existing base prospectus which does not seem justified. We would favor keeping the existing order as provided by Articles 24 & 25 CDR.

In addition, it is not clear to us what the cover note refers to and its content is not defined. As mentioned above, we would not recommend adding more paper work if ESMA's intention is not to confirm an existing practice.

Q2: Do you have specific comments about the reduced time periods which financial information should cover which need to be considered as part of this work?

Q3: Do you agree with ESMA’s sustainability-related assessment in relation to the ‘standard’ equity registration document? If not, please explain why?

Q4: With respect to sustainability aspects, do respondents have concerns about the proposal which offers non-equity issuers who fall under the Accounting Directive or Transparency Directive an option to provide an electronic link to their relevant sustainability information?

We do not object to ESMA’s proposal in principle but insist on the fact that, in line with the Listing Act’s aim to reduce the administrative, technical and regulatory burden for debt securities issuers, providing an electronic link to relevant sustainability information should remain an option and not constitute a first step to a future requirement where this would become compulsory.

This option to provide an electronic link to their relevant sustainability information should not open the door to possible discussions with the National Competent Authorities on the level of ambition of the sustainability targets and the choice of sustainability KPIs of non-equity issuers. Continuous upstream discussions with the NCA should facilitate the fluidity of the process.

Q5: What are you views in relation potential implications of the proposed single non- equity disclosure framework?

Our main concern is that this may open the door to a future automatic alignment of the requirements for wholesale prospectus on those prevailing for retail prospectus, which are necessarily more detailed and protective.

In order to avoid this and question the merged text may raised, we would favor keeping a distinct annex for the wholesale disclosure regime.

Q6: Do you have any other concerns about the disclosure items as proposed? If so, please explain.

Q7: In your view, will these proposals add or reduce costs? Please explain your answer.

Every amendment to the existing form of the prospectus will entail additional costs for corporate groups (both in additional time spent by internal stakeholders and in increased fees from external advisors such as, but not limited to, legal counsel and second party opinions providers).

Q8: Do you agree with ESMA’s approach to the disclosure requirements for non- equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives? Please explain your answer and provide any suggestions for amendments.

Our understanding is that under ESMA's approach it will be necessary to anticipate at the date of the update of EMTN programs a precise framework for any possible ESG note issuances for the 12 months to come with some likelihood to have to supplement the prospectus and amend the framework if some changes occur.

This does not seem in line with the constraints of a corporate group, which are looking for simplicity and agility (except a few ones which finance themselves almost only through this type of bonds).

More generally, issuers may encounter difficulty in reconciliating the characteristics of project-related data available at the time of the issuance with the expectation that pre-issuance information be comprehensive, detailed and specific.

Lastly, we suggest amending Annex 21, Section 1, item 1.1 as follows: *“Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the risks associated with the ESG profile of these securities and the market risk in the section headed ‘Risk Factors’. The risk factors should disclose the possible impact of the materialisation of the risks on the ESG profile of the securities and the likely potential financial effect.”*

Q9: Do you agree with the definitions proposed for ‘use of proceeds bonds’ and ‘sustainability-linked non-equity securities’? If not, what changes to the definition would you suggest?

**We suggest amending the definition of "sustainability-linked non-equity securities" as follows in order to take into account current market practice in the drafting of sustainability-linked bonds:**

***"Sustainability-linked non-equity securities" means non-equity securities for which the financial and/or structural characteristics are conditional on whether the issuer achieves, over a given financial year, some or all predefined ESG objectives, including bonds defined in point (6) of Article 2 of Regulation (EU) 2023/2631.***

We suggest amending the definition of use of proceeds bond as follows in order to take into account the fact that such proceeds may be used within a certain time period following the bond issuance:

"Use of proceeds bond" means non-equity securities whose proceeds are or an equivalent amount of which is applied to finance or re-finance green and/or social projects or activities.

Q10: Do you agree with ESMA’s approach to dealing with (i) prospectuses relating to EuGBs and ii) prospectuses from issuers who have opted to use the templates for voluntary pre-issuance disclosures, as referred to in European Green Bond

45 Articles 22 and 23 in the CP Annex (clean) and CP Annex.

Regulation? Please explain your answer and provide any additional proposals to alleviate the regulatory burden.

We consider the EuGBs not to be adapted to the needs for simplification and flexibility of corporate groups. We generally expect and anticipate that only few players will elect to proceed with the issue of EuGBs. In order to incentivize issuers to use the templates for voluntary pre-issuance disclosures for “use of proceeds bonds” which do not fall into the scope of EuGBs, it would be preferable to clarify that using such templates on a voluntary basis will not give rise to an increased regulatory burden for issuers (for instance, no additional review by the National Competent Authorities).

In addition, we are eager to have more information as to the content of the pre-issuance information: incorporation by reference of information (if relevant) or references to information, such as already provided in SLB or “use of proceeds” frameworks) is desirable and should be allowed, in order to minimize the regulatory burden and create an incentive for issuers of “use of proceeds” (other than EU GBs) or “SLB” bonds to use the templates. More generally, a concern may be to determine how voluntary pre-issuance information is likely to overlap the information provided in frameworks.

Q11: Should Annex 21 be disapplied in relation to prospectuses relating to European Green Bonds and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

 Generally, we should have preferred one annex per type of product, rather than annex 21 which mixes use of proceeds bonds, EUGBs, SLBs and structures securities, which are very different products, and makes the reading complex.

Q12: Are the proposed disclosure requirements in Annex 21 proportionate? If not, please (i) identify disclosure requirements that could be alleviated and (ii) provide a (quantitative) description of the costs of compliance.

In order to maintain the markets’ competitiveness and facilitate access to finance, we consider that it would not be advisable that item 3.1.3. 2nd paragraph opens discussions with the National Competent Authorities on the level of ambition and on the choice of sustainability KPIs of the project to be financed.

Some ESG rating agencies do not allow the publication of their rating. It would then not be possible for an issuer to comply with item 6.1.

The reference in item 6.1 is unclear. The rating referred therein should be limited to a rating assigned at the request of the issuer.

 Reviews, advice or assurance are not necessarily anticipated to be made public. The issuer should not be required to make public such information which are generally intended to be for its own use and prepared when it is studying the feasibility of the transaction. Disclosure should be on a voluntary basis only.

Q13: Do you agree with the proposal to require disclosure about whether post- issuance shall be provided and the scope of this disclosure in items 6.3 and 6.4 of Annex 21? If not, what changes would you propose? Please explain your answer.

Item 6.4: disclosure should be on a voluntary basis only. The issuer may conduct reviews or seek advice for its own use in relation to its business which should not necessarily be publicly disclosed. It is not clear what kind of review, advice or assurance this item is referring to.

In any event, it should be possible for issuers to complete such disclosure by referring to existing publicly available information.

Q14: Do you agree with ESMA’s proposal in item 2.1 of Annex 21 concerning unequivocal statements about how the criteria or standard are met and that they are significant in relation to the ESG features or objectives of the security?

In most cases, compliance with a Taxonomy will be ascertained by a third-party expert in a framework. The requirement of item 2.1 should be satisfied by referring to this framework and the related second party opinion.

Q15: Do you agree with the ‘Category A’, ‘Category B’ and ‘Category C’[46](#_bookmark1) classification of the items included in Annex 21, in particular in relation to items 2.1, 2.2 and 2.3? Please provide any suggestions for alternative categorisations and explain your answer.

The classification of items 2.1 and 2.2 in Category A will require the issuer to identify at the time of the annual update of its EMTN programme (i.e. until 1 year in advance of an issuance) the exact projects it may finance. This will not allow issuers to design a general framework according to which it may ultimately chose which project it wishes to finance. Although item 3.1.3 permits the identification of the projects to be financed on a second stage, we fear that in practice the other item of Annex 21 would prevent it.

As a consequence, item 4.1.1 should be Category B. It may be envisaged to have in the base prospectus a list of KPIs among which the issuer can chose for a specific bond issuance.

Q16: Do you agree with ESMA’s approach to disclosure for structured products with a sustainability component? Please explain your answer and include any suggestions to improve the approach.

Q17: Do you support ESMA’s proposal to amend Article 26 CDR on scrutiny and disclosure to facilitate the incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms? Please explain your answer and provide any alternative proposals.

In order to avoid having to implement standalone bond issuance documentation for EuGBs (as the information required to be disclosed in the factsheet would not be available at the time the base prospectus is updated or the supplement is filed), we are in line with ESMA’s approach pursuant to which information to be disclosed in EuGB factsheets shall be incorporated by reference into final terms.

However, we would welcome any clarification and guidelines as to how National Competent Authorities would perform their review (ie *ex post* review vs *ex ante* review? and in the case of an *ex post* review, how would issuers be expected to deal with ex post comments regarding the information made available in the factsheet?).

 More generally, we would advise to keep simplicity and flexibility, which are absolutely necessary for “usual” corporates.

Q18: Do you think that allowing incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms will impose any significant costs or burden on issuers? Please explain your answer.

 Keeping the ability to make these disclosures via final terms is indeed absolutely needed to keep some slight agility.

Q19: Do you agree with ESMA’s assessment regarding changes to the URD annex?

46 Category A’, ‘Category B’ and ‘Category C’ information are referred to in the current Article 26 CDR on scrutiny and disclosu re.

Q20: Do you agree with ESMA’s proposal to delete Article 40 CDR on scrutiny and disclosure and introduce Article 21b into CDR on scrutiny and disclosure? Please explain your answer and present any alternative proposals.

Q21: Do you expect the deletion of Article 40 CDR on scrutiny and disclosure and/or the inclusion of Article 21b in CDR on scrutiny and disclosure to lead to additional administrative burden or costs for stakeholders? If so, please quantify the costs as much as possible.

Q22: Do you agree with ESMA’s assessment that there are no circumstances in which an NCA should require additional information in a prospectus over and above that which is required under Articles 6, 13, 14a and 15a PR within the context of the scrutiny and approval of a prospectus? Please explain your answer.

We agree as it is necessary for issuers due to market constraints to be able to anticipate what will be the content of their prospectus and that they can proceed within a predictable and stable environment. Predictability and stability are key to corporates in terms of costs assessment, timing management as well as the need of legal certainty.

It is also important that the ultimate decision as to which information or risk factor is or not relevant remains with the issuer.

Q23: Do you agree with ESMA’s approach to further harmonising the deadlines in NCAs’ approval processes, i.e. trying to keep the deadlines as simple as possible and avoiding complicated administrative procedures? In your answer, please indicate what changes could be made to improve ESMA’s advice in this area.

We are not sure that the imposing such deadlines is aligned on the reality of a transaction where the volatility of the markets may significantly impact the timing of such transaction.

The obligation to start an approval process from the beginning because a transaction may have been postponed due to market conditions may increase the costs and further complicate the access to the markets by creating additional delays.

We are of the opinion that this deadline should be left at the appreciation of the relevant National Competent Authority depending on the circumstances.

Paragraph 5 of draft article 36 is not aligned with practical issues an issuer may come across, notably if new circumstances require the addition of an additional disclosure in the recent development section of its draft prospectus. Our understanding is that this paragraph 5 would prevent the issuer to update its draft prospectus and would, consequently, prevent it from completing its bond issuance.

In addition, the availability of the National Competent Authorities' teams or their capacity to treat a transaction should not interfere with the capacity of an issuer to launch a bond issuance.

Q24: Do you believe ESMA’s proposal will impose additional costs and/or burdens for issuers? Please explain your answer and provide an indication of the related costs.

Yes, please see Q23 above.

Q25: Do you agree with ESMA’s proposal to amend CDR on metadata to account for the new types of prospectuses stemming from the Amending Regulation? Please explain your answer and present any alternative proposals.

Q26: Do you agree that ESMA requires metadata to identify which securities qualify as EuGB (field 39 of draft Annex to CDR on metadata)? If not, why not? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

Q27: Do you agree with ESMA’s proposal to streamline the process of submitting information that will need to be submitted by NCAs to ESAP via the Prospectus Register (Article 11a of the draft RTS amending CDR on metadata)? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

Q28: With regards to field 5, is it always possible to determine a single venue ‘of first admission’ in case of simultaneous admission on two or more venues? Please explain why.

Q29: Do you agree with the other changes proposed on the list of metadata which are proposed in Table 1 of Annex I of the draft CDR on metadata? Do you think these changes will create an unreasonable additional burden on issuers? Please explain why.