

2 March 2021

Establishment of a European single access point (ESAP) for financial and non-financial information publicly disclosed by companies - European Commission consultation 2021

Additional remarks to ICMA's response

Introduction / background

1. **ICMA** –Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years. See: www.icmagroup.org. ICMA's European Transparency Register number is 0223480577-59.
2. **ICMA underwriter community** – ICMA's consultation response is primarily drafted on behalf of ICMA's primary market constituency comprised of underwriters that lead-manage cross-border syndicated bond issuance transactions throughout Europe and beyond. This constituency deliberates principally through:
 - the [ICMA Primary Market Practices Committee](#), which gathers the heads /senior members of such lead-managers' syndicate desks; and
 - the [ICMA Legal and Documentation Committee](#), which gathers the heads / senior members of such lead-managers' legal documentation / transaction management teams.
3. **Other ICMA constituencies** – Other ICMA constituencies have provided input on specific issues including (the [ICMA Asset Management and Investors Council / AMIC](#) re. Q.7.4 on NFRD and Q.7.32 on SFDR and the [ICMA European Repo and Collateral Council / ERCC](#) re. Q.7.21 on SFTR).
4. **Queries** – In case of any queries regarding ICMA's response, please contact Ruari Ewing (+44 20 7213 0316 / ruari.ewing@icmagroup.org).
5. **Prior feedback** – ICMA has previously provided feedback on the ESAP topic in:
 - [30 June 2020 High-Level Forum Report on the Capital Markets Union: ICMA Feedback](#) (re. Recommendation 1); and
 - [25 June 2020 ICMA Response to European Commission Consultation on a new digital finance strategy for Europe / FinTech Action Plan](#) (at questions 27/28).

General aspects / scope

6. **General support in principle** – ICMA is supportive in principle of an ESAP as a European version of the long-standing US EDGAR central repository for regulated information/documents (notably regarding PR prospectuses, supplements and final terms), subject to the implementation aspects below.
7. **Scope of information (documents) in the ESAP** – Whilst all or most EU regulated public information (which may not always take documentary form) might ultimately be included, this should be subject to any specific concerns / incompatibilities (whether substantive or logistical) but also subject to need (to the extent it creates an additional administrative burden for contributors). (See response E to Q.1.1.) Some regulatory regimes might be included sooner (such as the Prospectus Regulation / **PR**) and some later (see response to Q.7.13 regarding PRIIPs). Though may be many commonalities, individual EU regulations may involve different dynamics in terms of form, content, timing and legal/logistical responsibility for such information – these should not be impacted by the ESAP without careful consideration in each case.
8. **Main ICMA focus on bond prospectus information under the PR** – Except as otherwise stated, ICMA's response focuses mainly on approved prospectuses / supplements and filed final terms under the PR as being most relevant in the context of international syndicated bond issuance. (And see response A to Q.1.1.) In this respect, the response also considers how some of the PR dynamics might be impacted by the ESAP (notably in terms of ESAP inclusion formally equating to public availability).
9. **TD / NFRD / MAR / PRIIPs / SFTR / SFDR** – The response also includes references to (i) the Transparency Directive (see response to Q.7.1), (ii) the Non-Financial Reporting Directive (see response to Q.7.4), (iii) stabilisation announcements under the Market Abuse Regulation (see response to Q.7.7), (iv) PRIIPs (see response to Q.7.13), (v) the Securities Financing Transactions Regulation (see response to Q.7.21) and (vi) the Sustainable Finance Disclosure Regulation (see response to Q.7.32).
10. **Non-PR submissions / exchange-regulated markets** – The PR is applicable to non-exempt public offers in the EEA and also to admissions to trading on regulated markets in the EEA. The PR notably does not apply in the case of exempt public offers in the EEA or to admissions to EEA exchange-regulated markets (which are also MTFs). (Non-exempt public offers under the PR tend to be combined with a regulated market admission also under the PR, whilst exempt public offers may be combined with exchange-regulated market admission outside the scope of the PR.) Therefore, individual exchange-regulated markets in the EEA should be free to elect that, notably, offer documentation (equivalent to prospectuses / supplements and final terms under the PR) be included within ESAP scope.

Submissions into the ESAP

11. **Who responsible for submissions into the ESAP** – As a general point, it would seem logical for reporting companies (so issuers in a PR context), as producers of documents (prospectuses / supplements / final terms), to be prima facie responsible for their submission into the ESAP (whether directly or via intermediary mechanisms). However:

- (a) in a PR context, NCAs are strategically well placed to be able to include ESAP straight through processing (**STP**) submission into existing workflows: prospectuses / supplements are approved by them and final terms filed with them;
- (b) prospectuses / supplements / final terms (or their non-PR equivalents) are submitted on behalf of issuers to stock exchanges in the context of admissions to trading (whether as regulated markets in a PR context or otherwise as exchange-regulated markets) and so stock exchanges are also strategically placed to be able to include ESAP STP submission into their existing workflows;
- (c) in some cases, such submissions to stock exchanges occur via official regulatory information services (**RISs**), which are then also arguably strategically placed to be able to include ESAP STP submission into their existing workflows.

See also response E to Q.1.1 and response to Q.13.

12. **Timing of submissions into the ESAP** – On the basis the ESAP is to be a repository for public information, documents should be included in the ESAP as soon as possible following publication (and see #17 below as to ESAP inclusion eventually constituting publication). Absent ESAP submission being embedded in existing workflows as above, there should be no ambiguity as to by when submission is required and as to any consequences stemming from any delays. See response D to Q.1.1 and response to Q.13.
13. **Content of submissions into the ESAP** – This should not be an ESAP concern / see response B to Q.1.1 and responses to Qs.14/15/16. See also response F to Q.1.1.
14. **Format of submissions into the ESAP** – See responses to Q.9.1 and Q16. Furthermore, it is important that submissions are not required to be accompanied by disproportionate accompanying data (in amount or form), as providing such data can be a material burden (especially in high turnover / commoditised contexts). In the PR context, accompanying data (to the extent not machine-readable) might be just (i) document type ('prospectus' or 'base prospectus' or 'supplement' or 'final terms'), (ii) issuer name, (iii) issuer LEI, (iii) ISIN (except for base prospectuses and related supplements) and (iv) document date. In this respect, see extract in the box below from p.44 the [Fourth Quarter 2021 edition](#) of the ICMA Quarterly Report.

Also as reported in the [last edition](#) of this Quarterly Report, ICMA understands that NCAs began to introduce new data requirements for issuers on 30 November pursuant to the provisions of Commission Delegated Regulation (EU) 2019/979 that oblige NCAs to provide certain prospectus-related data to ESMA in XML format.

It is understood that different NCAs are taking different approaches to the form in which they require the relevant data to be submitted to them, meaning that the precise impact of this change for issuers and their advisors depends on the approach of the relevant NCA.

The rationale for this change seems to be to allow ESMA to update its [Prospectus Register](#) and gather increased data on the Prospectus Regulation-related activity, which could inform EU authorities' work on a further review of the EEA Prospectus Regulation in due course.

From a market perspective, it will be interesting to see whether any improvements to the ESMA Prospectus Register could help to address some of the concerns that have been raised previously by ICMA's buy-side members that finding published prospectuses online is not as straightforward as it could be. For further information on this issue, see the article *[cited under #18 below]*.

15. **Language of submissions into the ESAP** – Regarding the responses to Q.11, ESAP language considerations should not create additional administrative burdens, bearing in mind that raw

regulatory information is mostly searched for by professionals and that language constraints already apply under the various EU regulatory regimes (including under the PR).

16. Responsibility for errors in ESAP material – See responses to Q.14 and Q.15.

17. ESAP inclusion equating to availability to the public – The issuer is required under the PR to make prospectuses / supplements / final terms available to the public by publishing them on certain websites before any non-exempt public offer or regulated market admission. In practice these tend to be the regulated market website or the issuer website. In due course, if initial ESAP operation is concluded to be successful (including in terms of timeliness), one might consider whether ESAP inclusion might formally constitute such availability to the public under the PR. See also responses to Q.7.1 regarding the Transparency Directive and Q.7.7 regarding the Market Abuse Regulation.

Access to ESAP content

18. Searching mechanics – It is crucial that the ESAP enable adequate direct searching (including presentation/refinement of results), but that it also enables 3rd party search engine access. See response to Q.5.1. In terms of search mechanics, see extract in the [box below](#) from p.40-41 of the [Third Quarter 2020 edition](#) of the ICMA Quarterly Report.

Finding prospectus information online

Introduction: It has been suggested in ICMA group discussions that finding published prospectuses online is not as straightforward as it could be.

Publication requirements: Existing legislation usually requires regulator-approved prospectuses to be published prior to stock exchange admissions or non-exempt public offerings, for example under the EU's Prospectus Regulation. This may typically relate to either (i) a "standalone" prospectus (and any subsequent supplement) relating to specific, and usually imminent, bond issuance or (ii) a "base" prospectus (and any subsequent supplement) relating to general issuance under an issuance "programme" over a period stretching up to a year and completed by a "final terms" document relating to specific issuance. In the prevailing institutional (rather than retail) dynamic of the international bond markets, the standalone prospectus tends to be available to potential investors during an exempt offering in draft (notably excluding commercial terms such as issuance size, price and closing/ redemption dates). It is then completed (importing the commercial terms from the final pricing announcement) for regulatory approval and publication in time for stock exchange admission on closing of the new issue (usually five business days after pricing). Approved base prospectuses are published up to a year prior to an exempt offering, with final terms then similarly completed for regulatory filing and publication in time for stock exchange admission.

Investor use: Institutional investors may choose to seek access to prospectus information before issuance as part of their investment decision analysis on specific issuance (in the case of a standalone prospectus) or generally on a issuance programme (in the case of a base prospectus). This may include a scenario where an investor may then approach an issuer to initiate a transaction as a "reverse enquiry". However, institutional investors have access to other information sources that they may choose to make additional or alternative use of. Investors may distinctly seek access to prospectus information for administrative purposes unrelated to investment decision-making (eg compiling data for settlement or internal reporting purposes). Investors may also seek access to prospectus information after issuance, again often for administrative purposes related to portfolio management.

Ideal data platform search functionality: The most efficient and timely way to access prospectus information then depends on the specific use context. In the context of a *draft standalone prospectus pre-issuance*, this is disseminated directly (as it evolves), to the investor bases of issuers' underwriting banks. In the context of a *published base prospectus pre-issuance*, ideal search functionality on a data platform (such as those of stock exchanges, [ESMA's prospectus register](#) and any EU single access point as envisaged by the CMU High Level Forum's [June 2020 Final Report](#)) would enable a search, based on just a handful of parameters (eg issuer LEI, with a "debt programme" filter), that would return the base prospectus (or sometimes where relevant several base prospectuses) and, importantly, any and all supplements related to a base prospectus – but maintain clarity by excluding other extraneous documents (final terms related to other issuances under the base prospectus, periodic reports under the EU's Transparency Directive, *ad hoc* announcements under the EU's Market Abuse Regulation etc – that should be separately searchable). In a *post-issuance* context, ideal platform search functionality would enable a search, based just on an ISIN, that would return, as applicable (and together with any related supplements), either the standalone prospectus or the final terms and its related base prospectus – but again maintaining clarity by excluding other extraneous documents. Whether post or pre-issuance, data platforms should ideally enable searching at a European level at least.

Conclusion: ICMA will engage with ESMA, stock exchanges and any other relevant data platform providers to support efficient search functionality for prospectus information.

Responsibility for ESAP running

19. **Administrative responsibility** – Administrative responsibility should rest with the authorities but involving stakeholder input. See response to Q.12.
20. **Cost/benefit** – The cost/benefit is difficult to define as current costs are frictional rather than monetary and future ESAP costs are not yet set (but should be controlled to be proportionate for whoever ultimately bears them). See responses to Q.3.1, Q.22 to Q.26.