



European Securities and  
Markets Authority

## REPORT

### Prospectus Directive: Peer Review Report on good practices in the approval process



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**Table 1 – Country codes and acronyms of Competent Authorities**

COUNTRY CODES AND ACRONYMS OF NATIONAL COMPETENT AUTHORITIES AND MEMBER STATES

Country codes Member States		National Competent Authorities - acronyms	
AT	Austria	Financial Market Authority	FMA
BE	Belgium	Financial Services and Markets Authority	FSMA
BG	Bulgaria	Financial Supervision Commission	FSC
CY	Cyprus	Cyprus Securities and Exchanges Commission	CySEC
CZ	Czech Republic	Czech National Bank	CNB
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
DK	Denmark	Finanstilsynet	Finanstilsynet
EE	Estonia	Estonian Financial Supervision Authority	EFSA
EL	Greece	Capital Market Commission	HCMC
ES	Spain	Comision Nacional del Mercado de Valores	CNMV
FI	Finland	Finanssivalvonta	FIN-FSA
FR	France	Autorité des Marchés Financiers	AMF
HU	Hungary	Hungarian Financial Supervisory Authority	HFSA
IE	Ireland	Central Bank of Ireland	CBoI
IS	Iceland	Financial Supervisory Authority	FME
IT	Italy	Commissione Nazionale per le Società e la Borsa	Consob
LT	Lithuania	Lithuanian Securities Commission	LSC
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
LV	Latvia	Financial and Capital Markets Commission	FCMC
MT	Malta	Malta Financial Services Authority	MFSA
NL	Netherlands	Autoriteit Financiële Markten	AFM
NO	Norway	Finanstilsynet	Finanstilsynet
PL	Poland	Polish Financial Supervision Authority	PFSA
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
RO	Romania	Romanian National Securities Commission	CNVMR
SE	Sweden	Finansinspektionen	Finansinspektionen
SI	Slovenia	Securities Market Agency	SMA
SK	Slovakia	National Bank of Slovakia	NBS
UK	United Kingdom	Financial Services Authority	FSA

## **I - Introduction**

1. At the plenary of May 2009, it was agreed that CESR would conduct a peer review in selective areas of the approval process for prospectus. It was agreed that the exercise was to be conducted in two steps, namely: a mapping and peer review. It was agreed that the mapping exercise would identify the good practices to be used in the self-assessment/peer review exercise.
2. The mapping exercise report was approved by the CESR plenary in February 2010 with the agreement that more work was to be done on the staff statistics which was completed in November 2010. The full mapping report was published internally in November 2010 with a selective summary published externally.
3. The proposals for good practices were agreed by CESR Chairs at the plenary meeting in November 2010 with the agreement that Members would have an overall period of 6 months (May 2011), which included the period for the implementation of the good practices (e.g. development of internal procedures, review of existing internal procedures, etc) and the period for application before the self-assessment and peer review was to start.
4. The benchmark proposals and timeline for the self-assessment and peer review exercise were agreed by the ESMA Board of Supervisors at its meeting in May 2011.
5. In line with the Review panel methodology, the peer review was conducted in two phases: the first phase was the self-assessment in which Members assessed their application of each of the six good practices by answering a number of questions that have been developed for each practice against a set of benchmarks. The second stage was the peer review assessment which involved each Member's self assessment being reviewed by peers, the results of which are set out in this document.
6. It was noted in the questionnaire that some questions might have addressed situations which have not yet been faced by a Competent Authority (e.g. submission of a prospectus involving mathematical formula). However, the scope of the exercise was to find out how the Competent Authority would deal with such cases.
7. All Members responded to the questionnaire, which cut-off date was on the 29 July 2011.
8. Members were required to provide supporting evidence for the responses provided to the self assessment questionnaire. As agreed by the ESMA Board of Supervisors, the evidence should have been either an extract from the Competent Authority's relevant procedures or a summary of the internal procedures. All documents were to be provided in English.
9. The conclusions reflected in this report are based on the written evidence provided by Member States.

## II. Summary of the peer review

10. This report reflects the peer review on the implementation of the good practices in the approval process of prospectus which was agreed under CESR Chairs at the plenary meeting in November 2010.
11. There are six good practices:
  - Similar Comments
  - Four eyes principle
  - Financial information
  - Consistency of the Prospectus document
  - Comprehensibility
  - Structure of the prospectus document
12. Based on the evidence provided the peer review confirmed overall full application of the good practices in 25 Member States (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, NO, PL, PT, SE, SI, SK), which is in line with the self assessment provided.
13. Based on the evidence provided the peer review confirmed the partial application of the good practices in 4 Member States (EE, LV, RO, UK). For 2 of these Member States (RO, UK) the peer review confirmed the outcome of the self-assessment provided. The other 2 Member States (EE, LV) were unable to provide the necessary supporting evidence as agreed by the ESMA BoS (see paragraph 8).
14. It should be noted that since the deadline for the provision of evidence (July 2011), 3 Member States (BE, CZ, SI) have formalised written procedures and 6 Member States (DK, FR, MT, NL, RO, SE) have changed their written internal procedures to formalise existing practices. For informative purposes, the draft report reflects a ‘\*’ to show the relevant responses and parts which were affected by both cases.
15. In the course of examining the evidence provided, the subgroup:
  - agreed not to perform further peer review of the self assessment in relation to the questions on financial information, due to the difficulties in attempting to set a fair and transparent standard of acceptable evidence. For example, in the case of Member States who responded that the reader does not collaborate with other relevant areas of expertise within the Competent Authority as the expertise is available within the team, the evidence required would not be appropriately reflected in internal procedures. The subgroup discussed the possibility of requesting a list of different skill sets present in the relevant teams, but agreed that such information would be inconclusive in view of so many different ways that Member States might want to organise their departments with responsibility for approving prospectuses. The information from the self assessment on the financial information good practice can be found in Annex 1.
  - agreed that the provisions in some of the good practices were closely related to the provisions in the Prospectus Regulations (PR) and therefore the reference to the PR was accepted as supporting evidence.

**Table 2 – Overall Assessment**

**Overall Assessment**

<p><b>A – Similar comments</b>  <b>B - Four eyes principle</b>  <b>C – Consistency of the Prospectus document</b>  <b>D- Comprehensibility</b>  <b>E – Structure of the Prospectus document</b></p> <p><i>SA – Self Assessment</i>  <i>PR – Peer Review</i></p>	
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	<b>A</b>		<b>B</b>		<b>C</b>		<b>D</b>		<b>E</b>		<b>Overall</b>	
	<b>SA</b>	<b>PR</b>	<b>SA</b>	<b>PR</b>	<b>SA</b>	<b>PR</b>	<b>SA</b>	<b>PR</b>	<b>SA</b>	<b>PR</b>		
AT	100	100	100	100	100	100	100	100	100	100	100	100
BE	100	100*	100	100*	100	100*	100	100*	100	100*	100	100*
BG	100	100	100	100	100	100	100	100	100	100	100	100
CY	100	100	100	100	100	100	100	100	100	100	100	100
CZ	100	100*	100	100*	100	100*	100	100*	100	100*	100	100*
DE	100	100	100	100	100	100	100	100	100	100	100	100
DK	100	100	100	100	100	100*	100	100*	100	100*	100	100*
EE	100	100	100	100	100	0	100	0	100	0	100	40
EL	100	100	100	100	100	100	100	100	100	100	100	100
ES	100	100	100	100	100	100	100	100	100	100	100	100
FI	100	100	100	100	100	100	100	100	100	100	100	100
FR	100	100	100	100	100	100*	100	100*	100	100*	100	100*
HU	100	100	100	100	100	100	100	100	100	100	100	100
IE	100	100	100	100	100	100	100	100	100	100	100	100
IS	100	100*	100	100*	100	100*	100	100*	100	100*	100	100*
IT	100	100	100	100	100	100	100	100	100	100	100	100
LT	100	100	100	100	100	100	100	100	100	100	100	100
LU	100	100	100	100	100	100	100	100	100	100	100	100
LV	100	100	100	100	100	0	100	100	100	0	100	60
MT	100	100*	100	100	100	100*	100	100	100	100	100	100
NL	100	100*	100	100*	100	100	100	100*	100	100	100	100*
NO	100	100	100	100	100	100	100	100	100	100	100	100
PL	100	100	100	100	100	100	100	100	100	100	100	100
PT	100	100	100	100	100	100	100	100	100	100	100	100
RO	100	100	100	100	0	0	100	100	100	100	80	80*
SE	100	100	100	100	100	100*	100	100	100	100*	100	100*
SI	100	100*	100	100*	100	100*	100	100*	100	100*	100	100*
SK	100	100	100	100	100	100	100	100	100	100	100	100
UK	100	100	100	100	100	100	0	0	100	100	80	80

### III - Self-assessment and peer review of the good practices

16. The following section of the report provides a summary of the Members responses to the self-assessment of their application of the six agreed good practices and the peer review on the basis of the evidence provided.

- Similar Comments;
- Four eyes principle;
- Consistency of the Prospectus document;
- Comprehensibility;
- Structure of the prospectus document.

17. Each of the sections below sets out the requirements of each good practice, the benchmark that was established for each of them, and a summary table reflecting both the self-assessment and peer review of each practice.

#### A - Similar Comments

18. The Similar Comments good practice requires that:

- When seeking to ensure that similar comments are raised in similar prospectus, the Competent Authority should have measures and / or procedures in place.
- Having a database in place is one of the ways to ensure that precedents are available when the reader is reviewing a prospectus document. Controls should be in place that ensure the integrity and availability of the information included in the database.
- Having an internal working instruction in place is another way to ensure that the readers are informed about considerations for prospectus scrutiny and instructions for the practice of scrutinizing prospectus documents.
- Sharing information within the team is another way to ensure that precedents are known by the readers. There are different means to achieve effective communication including cascading information, for example via email, exchanging documents, discussions in periodic meetings, escalating, etc. Another way is an active coordination of comments where comments prepared by the reader are reviewed by another person (who may be a second reader, more senior, the Head or coordinator), as appropriate.

#### Benchmark

19. There were **eight** questions asked in relation to this practice and the benchmarks for the assessment were:

20. **Full application** of the Similar Comments good practice requires that at least one of the following requirements are met:

- A database is in place and there are controls regarding the updating of the database, or
- An internal working instruction is in place and it is subject to periodic reviews, or

- There are regular meetings at which information is exchanged among readers about new decisions of principle concerning scrutinizing prospectuses, or
- Information is exchanged in written format among readers (e.g. minutes, emails) about new decisions of principle concerning scrutinizing prospectuses.

21. **Partial application** of the Similar Comments good practice requires that only one of the following requirements are met:

- A database is in place and is updated regularly, or
- The comments prepared by the reader are reviewed by another person with a view of ensuring that similar comments are raised in similar prospectuses.

22. **Non application** of the Similar Comments good practice means that:

- No database is in place or if in place it is not updated regularly, and
- No internal working instruction is in place, and
- There are no regular meetings at which information is exchanged among readers about new decisions of principle concerning scrutinizing prospectuses, and
- There is no exchange of information in written format among readers (e.g. minutes, emails) about new decisions of principle concerning scrutinizing prospectuses.



**Table 3 – Self-assessment and peer review of the Similar Comments good practice**

A1 – Do you have a database?

A2- Do you update the database?

A3- Are there controls in place in relation to updating the database?

A4 – Do you have an internal working instruction containing considerations for prospectus scrutiny and instructions for the practice of scrutinizing prospectus documents?

A5 – Is the internal working instruction subject to periodic review?

A6- Do you have regular meetings at which information is exchanged among readers about new decisions of principle concerning scrutinizing prospectuses?

A7- Do you exchange information in written format among readers (e.g. minutes, emails) about new decisions of principle concerning scrutinizing prospectuses?

A8 – Are comments prepared by the reader reviewed by another person with a view of ensuring that similar comments are raised in similar prospectuses?

	1		2		3		4		5		6		7		8		Overall	
	SA	PR	SA	PR	SA	PR	SA	PR	SA	PR	SA	PR	SA	PR	SA	PR		
AT	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
BE	√	√*	√	√*	√	√*	●	●	●	●	√	√*	√	√*	●	●	100*	
BG	●	●	●	●	●	●	√	√	√	√	●	●	√	√	√	√	100	
CY	√	√	●	●	●	●	√	√	√	√	√	√	√	√	√	√	100	
CZ	√	√*	√	√*	√	√*	√	√*	√	●	√	√*	√	√*	√	√*	100*	
DE	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
DK	√	√	√	√	●	●	√	√	√	√	√	√	√	√	√	√	100	
EE	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
EL	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
ES	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
FI	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
FR	√	√	√	√	√	●	√	√	√	√	√	√	√	√	√	√	100	
HU	●	●	●	●	●	●	√	√	√	√	√	√	√	√	√	√	100	
IE	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
IS	√	√*	√	√*	√	√*	√	√*	√	√*	√	√*	√	√*	√	√*	100*	
IT	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
LT	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
LU	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
LV	√	√	√	√	√	√	√	√	√	√	√	●	√	●	√	●	100	
MT	√	√	√	√	√	√	√	√	√	●	√	●	√	●	√	√	100	
NL	√	√	√	√	√	√	√	√	√	√*	√	√	√	√*	√	√	100	
NO	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
PL	√	√	√	√	√	√	√	√	√	√	●	●	√	√	√	√	100	
PT	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
RO	●	●	●	●	●	●	√	√	√	√	√	√	√	√	√	√	100	
SE	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	
SI	√	√*	√	√*	√	√*	√	√*	√	√*	√	√*	√	√*	√	√*	100*	
SK	√	√	√	√	√	√	√	√	√	√	√	●	●	●	●	√	√	100
UK	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	100	

23. All Member States have assessed themselves as fully applying the Similar Comments good practice, with 18 Member States applying all of the four techniques reflected in the benchmark, i.e. having a database that is subject to controls and is updated regularly; having a working instruction that is subject to periodic review; having regular meetings and exchanging information in written format.
24. The peer review confirmed full application in all 29 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK).

## **B - Four Eyes Principle**

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

### Benchmark

26. There were **three** questions asked in relation to this practice and the benchmarks for the assessment were:
27. **Full application** of the Four Eyes Principle good practice requires that one of the following requirements are met:
- The Competent Authority has a four eyes principle approach in place which is always applied for the whole prospectus document, or
  - The Competent Authority has a four eyes principle approach in place which is not always applied for the whole prospectus document, but criteria are in place to decide when to apply the principle.
28. **Non application** of the Four Eyes Principle good practice requires that at least one of the following requirements are met:
- The Competent Authority does not have a four eyes principle approach in place, or
  - The Competent Authority has a four eyes principle approach in place, but does not always apply it and there are no criteria in place to decide when to apply it.

*Table 4 - Self-assessment and peer review of the Four Eyes Principle good practice*

*B1. Do you have a four eyes principle approach in place?*

*B2. Do you always apply the four eyes principle for the whole prospectus document?*

*B3. If no to question 2, do you have criteria in place to decide when to apply the four eyes principle?*

	<b>1</b>		<b>2</b>		<b>3</b>		
	<b>SA</b>	<b>PR</b>	<b>SA</b>	<b>PR</b>	<b>SA</b>	<b>PR</b>	<b>Overall</b>
AT	√	√	√	√			100
BE	√	√*	•	•	√	√*	100*
BG	√	√	√	√			100
CY	√	√	•	•	√	√	100
CZ	√	√*	•	•	√	√*	100*
DE	√	√	√	√			100
DK	√	√	√	√			100
EE	√	√	√	√			100
EL	√	√	√	√			100
ES	√	√	•	•	√	√	100
FI	√	√	•	•	√	√	100
FR	√	√	•	•	√	√	100
HU	√	√	√	√			100
IE	√	√	√	√			100
IS	√	√*	√	√*			100*
IT	√	√	•	•	√	√	100
LT	√	√	√	√			100
LU	√	√	•	•	√	√	100
LV	√	√	√	√			100
MT	√	√	√	√			100
NL	√	√	•	•	√	√	100
NO	√	√	•	•	√	√	100
PL	√	√	√	√			100
PT	√	√	√	√			100
RO	√	√	√	√			100
SE	√	√	•	•	√	√	100
SI	√	√*	√	√*			100*
SK	√	√	•	•	√	√	100
UK	√	√	•	•	√	√	100

29. All Member States have assessed themselves as fully applying the Four Eyes Principle good practice and stated that they have a four eyes approach in place. 18 Member States always apply the Four Eyes Principle for the whole prospectus document whereas the remaining 11 Member States have criteria in place to decide when to apply the Four Eyes Principle.

30. The peer review confirmed full application in all 29 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK).
31. The questionnaire provided Member States with the opportunity to give details of the criteria in place to decide when to apply the Four Eyes principle<sup>1</sup>. 12 Member States provided examples of criteria such as: the type of security (e.g. shares), the type of issuer (e.g. specific characteristics of the issuer, going concern and negative working capital statement), the type of transaction (e.g. IPO, spin-off, complex transaction, risk categorisation of the transaction), the complex structure of the prospectus document and the level of experience of the reader.

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<sup>1</sup> It should be noted that the criteria was not included in the benchmark for peer review.

## D - Consistency of the Prospectus Document

32. The Consistency of the Prospectus Document good practice requires that:

- The reader(s) should pay attention to possible inconsistencies in the information given in the different parts of a prospectus. The reader(s) should ask the issuer, the offeror or the person asking for admission to trading on a regulated market to introduce amendments to the prospectus when necessary to ensure the consistency of the information in the prospectus.
- When considering the consistency of a prospectus according to key issue 1, particular attention should be granted to the language used for information incorporated by reference (including financial information and auditor's report) and their consistency with the prospectus itself.<sup>2</sup>
- The reader(s) should bear in mind that, when incorporating information by reference, the issuer, offeror or person asking for admission to trading on a regulated market does not endanger investor protection in terms of accessibility of the information.<sup>3</sup>
- When looking at the consistency of a prospectus according to the key issues listed in the first bullet above, the reader(s) should pay particular attention to the consistency of the information given with respect to risk factors.

### Benchmark

33. There were **five** questions asked in relation to this practice and the benchmark for the assessment was:

34. **Full application** of the Consistency of the Prospectus Document good practice requires that ALL of the following requirements are met:

- The reader considers the consistency of information incorporated by reference (including financial information and auditor's report) with the other information given in the prospectus, when examining the consistency of a prospectus; and
- The reader checks or asks the issuer, the offeror or the person asking for admission to trading on a regulated market whether the documents to which reference is made have been approved by the Authority or filed with it in accordance with Article 11(1) of the Prospectus Directive; and
- For the cases where the issuer, the offeror or the person asking for admission to trading on a regulated market incorporates information in a prospectus by making reference only to certain parts of a document the reader checks that it is stated in the prospectus that the non-incorporated parts are either not relevant for the investor or covered elsewhere in the prospectus in accordance with Article 28(4) of the Prospectus Regulation; and
- The reader checks whether all risks mentioned in the other parts of the prospectus are described in the risk factors section; and
- Where the risks mentioned in other parts of the prospectus are not described in the risk factor section, the reader makes sure that the persons responsible for the prospectus consider this risk factor as being non material.

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<sup>2</sup> See Recital 30 of the Prospectus Regulation.

<sup>3</sup> See Article 11 of the Prospectus Directive and Article 28 of the Prospectus Regulation.



35. **Non application** of the Consistency of the Prospectus Document good practice requires that at least one of the above requirements is **NOT** met

**Table 5 – Self-assessment and peer review of the Consistency of the Prospectus Document:**

1 – The reader considers the consistency of the information incorporated by reference with the other information given in the prospectus;

2 – The reader checks or asks the issuer, the offeror or the person asking for admission to trading on a regulated market whether the documents to which the reference is made having been approved by the Authority or filed in accordance with Art 11(1) of the Prospectus Directive;

3 – Where information incorporated in a prospectus makes reference to only parts of a document, the reader checks that it is stated in the prospectus that the non-incorporated parts are either not relevant for the investor or covered elsewhere in the prospectus in accordance with Art 28(4) of the PD Regulation;

4 – The reader checks whether all risks mentioned in other parts of the prospectus are described in the risk factor section;

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

	1		2		3		4		5		
	SA	PR	SA	PR	SA	PR	SA	PR	SA	PR	Overall
AT	√	√	√	√	√	√	√	√	√	√	100
BE	√	√*	√	√*	√	√*	√	√*	√	√*	100*
BG	√	√	√	√	√	√	√	√	√	√	100
CY	√	√	√	√	√	√	√	√	√	√	100
CZ	√	√*	√	√*	√	√*	√	√*	√	√*	100*
DE	√	√	√	√	√	√	√	√	√	√	100
DK	√	√	√	√*	√	√	√	√*	√	√*	100*
EE	√	√	√	●	√	√	√	●	√	●	0
EL	√	√	√	√	√	√	√	√	√	√	100
ES	√	√	√	√	√	√	√	√	√	√	100
FI	√	√	√	√	√	√	√	√	√	√	100
FR	√	√	√	√	√	√	√	√	√	√*	100*
HU	√	√	√	√	√	√	√	√	√	√	100
IE	√	√	√	√	√	√	√	√	√	√	100
IS	√	√*	√	√*	√	√	√	√*	√	√*	100*
IT	√	√	√	√	√	√	√	√	√	√	100
LT	√	√	√	√	√	√	√	√	√	√	100
LU	√	√	√	√	√	√	√	√	√	√	100
LV	√	●	√	√	√	√	√	●	√	●	0
MT	√	√	√	√*	√	√	√	√	√	√	100*
NL	√	√	√	√	√	√	√	√	√	√	100
NO	√	√	√	√	√	√	√	√	√	√	100
PL	√	√	√	√	√	√	√	√	√	√	100
PT	√	√	√	√	√	√	√	√	√	√	100
RO	√	√	●	●	√	√	√	√	√	√	0
SE	√	√	√	√	√	√	√	√*	√	√*	100*
SI	√	√*	√	√*	√	√*	√	√*	√	√*	100*
SK	√	√	√	√	√	√	√	√	√	√	100
UK	√	√	√	√	√	√	√	√	√	√	100

36. All Member States have assessed themselves as fully applying the Consistency of the Prospectus Document good practice, with all Member States applying all of the five techniques reflected in the benchmark which is listed above.

37. The peer review confirmed:

- full application in 26 Member States (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, NO, PL, PT, SE, SI, SK, UK)
- not applied in 3 Member States (EE, LV, RO).

## E - Comprehensibility

38. The Comprehensibility good practice requires that:

- In the scrutiny of a prospectus, the reader(s) should consider the comprehensibility of the information given in a prospectus from the perspective of the investor;
- The reader(s) should request that the use of technical/specialist words (e.g. legal) and mathematical formulas do not endanger investor protection in terms of comprehensibility of the information;
- The reader(s) should request, if necessary that the prospectus contains a description of derivative securities and a clear explanation on how the value of the investment is affected by the value of the underlying instrument(s);
- It is recognised that in the case of programmes much of the technical and descriptive detail relative to the securities will appear in final terms rather than the base prospectus. In addition, the Level 2 review of the PD will determine what should and should not appear in the base prospectus / final terms. As such, the questions do not apply for the base prospectus.

### Benchmark

39. There were **three** questions asked in relation to this practice and the benchmark for the assessment was:

40. **Full application** of the Comprehensibility good practice requires that **ALL** of the following requirements are met:

- The reader requests that the technical/specialist words used in a prospectus document are clear, by requiring definitions to be provided either throughout the prospectus document or via a glossary if necessary from the perspective of the investor;
- The reader requests that mathematical formulas included in the prospectus are clear, by requiring that a description of the mathematical formula is given in the prospectus if necessary;
- The reader requests that the prospectus contains a description of derivative securities and a clear explanation is given to help investors to understand how the value of the investment is affected by the value of the underlying instrument(s).

41. **Non application** of the Comprehensibility good practice requires that **ONE** of the above requirements is **NOT** met.



**Table 6 – Self-assessment and peer review of the Comprehensibility good practice**

*E.1. Does the reader request that the technical/specialist words used in a prospectus document are clear, by requiring definitions to be provided either throughout the prospectus document or via a glossary if necessary from the perspective of the investor?*

*E.2. Does the reader request that mathematical formulas included in the prospectus are clear, by requiring that a description of the mathematical formula is given in the prospectus if necessary?*

*E.3. Does the reader request that the prospectus contains a description of derivative securities and a clear explanation is given to help investors to understand how the value of the investment is affected by the value of the underlying instrument(s)?*

	<b>1</b>		<b>2</b>		<b>3</b>		
	<b>SA</b>	<b>PR</b>	<b>SA</b>	<b>PR</b>	<b>SA</b>	<b>PR</b>	<b>Overall</b>
AT	√	√	√	√	√	√	100
BE	√	√*	√	√*	√	√*	100*
BG	√	√	√	√	√	√	100
CY	√	√	√	√	√	√	100
CZ	√	√*	√	√*	√	√*	100*
DE	√	√	√	√	√	√	100
DK	√	√*	√	√*	√	√	100*
EE	√	●	√	●	√	√	0
EL	√	√	√	√	√	√	100
ES	√	√	√	√	√	√	100
FI	√	√	√	√	√	√	100
FR	√	√	√	√*	√	√*	100*
HU	√	√	√	√	√	√	100
IE	√	√	√	√	√	√	100
IS	√	√*	√	√*	√	√*	100*
IT	√	√	√	√	√	√	100
LT	√	√	√	√	√	√	100
LU	√	√	√	√	√	√	100
LV	√	√	√	√	√	√	100
MT	√	√	√	√	√	√	100
NL	√	√	√	√*	√	√	100*
NO	√	√	√	√	√	√	100
PL	√	√	√	√	√	√	100
PT	√	√	√	√	√	√	100
RO	√	√	√	√	√	√	100
SE	√	√	√	√	√	√	100
SI	√	√*	√	√*	√	√*	100*
SK	√	√	√	√	√	√	100
UK	√	√	●	●	√	√	0

42. All Member States with the exception of one (UK) have assessed themselves as they fully applying the Comprehensibility good practice.

43. In relation to the question whether the reader would require a description of the mathematical formulae included in the prospectus, the UK responded that they have not historically applied this approach, as consequence of both: a) that the vast majority of formulae arise in final terms and b) that CESR indicated in the FAQ 57 dated December 2007 that CESR members discussed the delineation between the base prospectus and the final terms and it was comfortable with the consequence of this being that no scrutiny at all is applied to the vast majority of formulae. The UK also noted that they are fully supportive of ESMA's position (ESMA/2011/141) to force formulae into the base prospectus, and that internal procedures will be amended when ESMA's position is implemented.
44. In September 2011 ESMA Board of Supervisors approved ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU, which includes among others a categorization of the different items of the applicable Prospectus Regulation Annexes to the base prospectus which has been made on the basis of determining which information should be included in the base prospectus at the time of its approval and which information can be included in the final terms. In essence the distinction is being drawn to ensure that all information which needs to be approved by a Competent Authority due to its significance is included in the base prospectus and that only information that is not known at the time of the approval of the base prospectus is included in final terms and only then when such information does not need to be approved by a Competent Authority.
45. The peer review confirmed:
- full application in 27 Member States (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK)
  - not applied in 2 Member States (EE, UK).

## F - Structure of the Prospectus Document

46. The Structure of the Prospectus Document good practice, which requires that:
- Check that the information related to different securities is structured so as to be easily understood;<sup>4</sup>
  - Check that duplication does not impair clarity and comprehensiveness of the prospectus document;
  - Check that the prospectus follows the format requirements of article 25 and 26 of the Regulation (e.g. the information items included in the schedules and building blocks are at least disclosed after the risk factors section and that the cover note is brief and contains general information);
  - Check that the table of content is sufficiently precise and detailed in order to allow investors to find easily the information that they are looking for (especially when the prospectus is very large).

### Benchmarks

47. There were **four** questions asked in relation to this practice and the benchmark for the assessment was:

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<sup>4</sup> E.g. in case of base prospectus, the prospectus document could have specific sections to describe the special and singular characteristics of each product.

48. **Full application** of the Structure of the Prospectus Document good practice requires that **ALL** of the following requirements are met

- The reader checks that the information related to different securities is structured so as to be easily understood;
- The reader checks that duplication does not impair clarity and comprehensiveness of the prospectus document;
- The reader checks that the prospectus follows the format requirements of articles 25 and 26 of the Regulation;
- The reader checks that the table of content is sufficiently precise and detailed in order to allow investors to find easily the information that they are looking for.

49. **Non application** of the Structure of the Prospectus Document good practice requires that at least one of the above requirements is **NOT** met:

*Table 7 – Self-assessment and peer review of the Structure of the Prospectus Document good practice*

*F.1. Does the reader check that the information related to different securities is structured so as to be easily understood?*

*F.2. Does the reader check that duplication does not impair clarity and comprehensiveness of the prospectus document?*

*F.3. Does the reader check that the prospectus follows the format requirements of articles 25 and 26 of the Regulation?*

*F.4. Does the reader check that the table of content is sufficiently precise and detailed in order to allow investors to find easily the information that they are looking for?*

	1		2		3		4		Overall
	SA	PR	SA	PR	SA	PR	SA	PR	
AT	√	√	√	√	√	√	√	√	100
BE	√	√*	√	√*	√	√*	√	√	100*
BG	√	√	√	√	√	√	√	√	100
CY	√	√	√	√	√	√	√	√	100
CZ	√	√*	√	√*	√	√*	√	√*	100*
DE	√	√	√	√	√	√	√	√	100
DK	√	√*	√	√*	√	√	√	√	100*
EE	√	•	√	•	√	√	√	√	0
EL	√	√	√	√	√	√	√	√	100
ES	√	√	√	√	√	√	√	√	100
FI	√	√	√	√	√	√	√	√	100
FR	√	√*	√	√*	√	√*	√	√*	100*
HU	√	√	√	√	√	√	√	√	100
IE	√	√	√	√	√	√	√	√	100
IS	√	√*	√	√*	√	√*	√	√*	100*
IT	√	√	√	√	√	√	√	√	100
LT	√	√	√	√	√	√	√	√	100
LU	√	√	√	√	√	√	√	√	100
LV	√	•	√	•	√	√	√	√	0
MT	√	√	√	√	√	√	√	√	100
NL	√	√	√	√	√	√	√	√	100
NO	√	√	√	√	√	√	√	√	100
PL	√	√	√	√	√	√	√	√	100
PT	√	√	√	√	√	√	√	√	100
RO	√	√	√	√	√	√	√	√	100
SE	√	√*	√	√*	√	√*	√	√*	100*
SI	√	√	√	√	√	√	√	√	100
SK	√	√	√	√	√	√	√	√	100
UK	√	√	√	√	√	√	√	√	100

50. All Member States have assessed themselves as fully applying the Structure of the Prospectus Document good practice, with all Member States applying all of the four techniques reflected in the bench-

mark , i.e. checking that the information related to different securities is structured so as to be easily understood; checking that duplication does not impair clarity and comprehensiveness of the prospectus document; checking that the prospectus follows the format requirements of Articles 25 and 26 of the Regulation and checking that the table of contents is sufficiently precise and detailed in order to allow investors to find information.

51. One Member State (BG) noted that they have not to date approved a prospectus with different securities while another Member (NO) noted that it is a very rare occurrence to receive a structured prospectus document.

52. The peer review confirmed:

- full application in 27 Member States (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK)
- not applied in 2 Member States (EE, LV).

## Annex 1 - Financial Information

*In the course of examining the evidence provided, the subgroup agreed not to perform further peer review of the self assessment in relation to the questions on financial information, due to the difficulties in attempting to set a fair and transparent standard of acceptable evidence. For example, in the case of Member States who responded that the reader does not collaborate with other relevant areas of expertise within the Competent Authority as the expertise is available within the team, the evidence required would not be appropriately reflected in internal procedures. The subgroup discussed the possibility of requesting a list of different skill sets present in the relevant teams, but agreed that such information would be inconclusive in view of so many different ways that Member States might want to organise their departments with responsibility for approving prospectuses. The proposal was agreed by the Review Panel.*

*The self-assessment is presented in this annex for information.*

53. The Financial Information good practice requires that:

- The Competent Authority should consider the applicability of the ESMA update of CESR recommendations - the consistent implementation of the European Commission Regulation (EC) No809/2004 implementing the Prospectus Directive (ESMA 2011/81) that provide guidelines on financial information issues;
- The Competent Authority should have procedures in place to check the completeness, consistency and comprehensibility of the prospectus document taking financial information into account. In the review of financial information contained in a prospectus, consideration should be given to collaboration with relevant areas of expertise within the Competent Authority where appropriate and possible;
- It should be noted that where the reader is not able to consult relevant areas of expertise in view of conflict of interest or information barrier, the Authority should nonetheless ensure that controls are performed on the completeness, consistency and comprehensibility of the prospectus document taking financial information into account;
- There are documents which may not require collaboration, e.g. securities notes, supplements. This good practice only relates to documents where the review of financial information is applicable.

### Benchmark

54. There were **two** questions asked in relation to this practice and the benchmark for the assessment was:

55. **Full application** of the Financial Information good practice requires that one of the following requirements is met:

- The reader always collaborates with other relevant areas of expertise within the Competent Authority where financial information has to be taken into account, or
- In the cases where the reader does not collaborate, the Competent Authority has the expertise within the team.

56. **Non application** of the Financial Information good practice requires that both of the requirements below are met:

- The reader does not collaborate with other relevant areas of expertise within the Competent Authority where financial information has to be taken into account, and



- The Competent Authority does not have the relevant expertise within the team.

*Table – Self-assessment and peer review of the Financial Information good practice*

*C.1. Where financial information has to be taken into account, does the reader always collaborate with other relevant areas of expertise within the Competent Authority?*

*C.2. For the cases where you do not collaborate, do you have the expertise within the team?*

	<b>1</b>	<b>2</b>
	<b>SA</b>	<b>SA</b>
AT	•	√
BE	•	√
BG	•	√
CY	•	√
CZ	•	√
DE	•	√
DK	•	√
EE	•	√
EL	√	
ES	•	√
FI	•	√
FR	•	√
HU	•	√
IE	•	√
IS	•	√
IT	•	√
LT	•	√
LU	•	√
LV	•	√
MT	•	√
NL	•	√
NO	•	√
PL	•	√
PT	√	
RO	•	√
SE	•	√
SI	•	•
SK	•	√
UK	•	√

57. All Member States with the exception of one (SI) have assessed themselves as fully applying the Financial Information good practice. 26 Member States who responded that the reader does not always collaborate with the relevant areas of expertise within the Competent Authority, reported that they have the expertise within the team.



58.SI responded that it is rare for financial statements in prospectuses to require collaboration with other departments. If this occurs employees in the Capital Market Department would consult with colleagues in the Supervisory Department and SI added that collaboration is decided on a case-by-case basis.