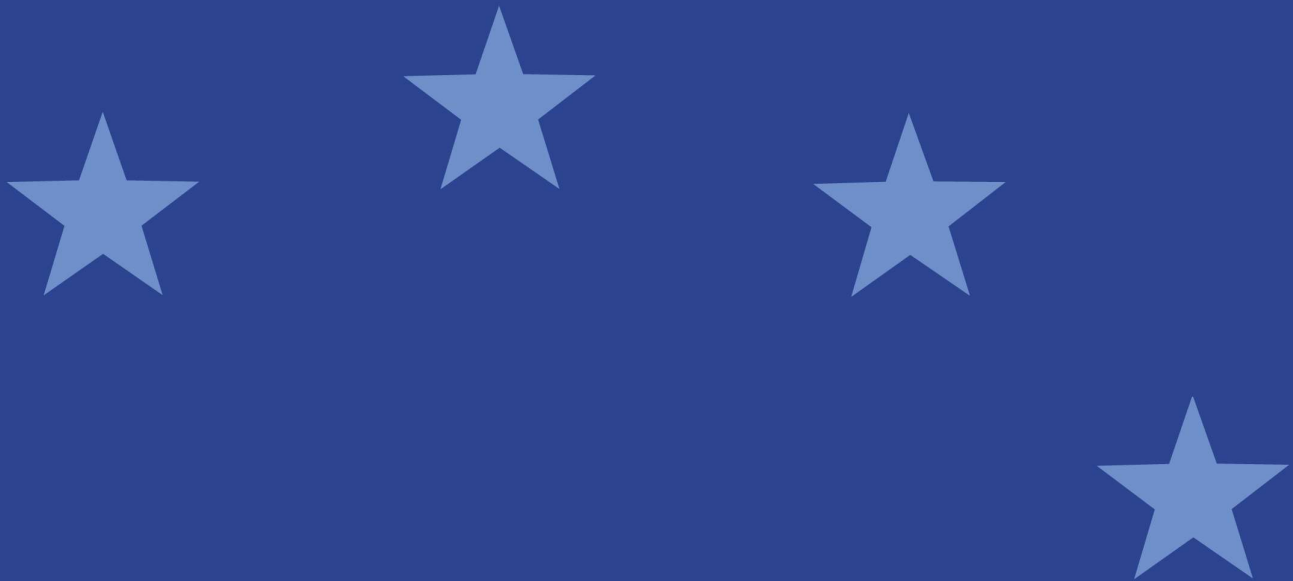


Response form for the Consultation Paper on draft RTS under the new Prospectus Regulation



Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on draft RTS under the new Prospectus Regulation (ESMA31-62-802). Responses are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all responses received by 9 March 2018.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESMA_QUESTION_PR_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_PR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_PR_ABCD_RESPONSEFORM.
- Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open consultations” → “Consultation on draft RTS under the new Prospectus Regulation”).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. **Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed.** A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.



Data protection

Information on data protection can be found at www.esma.europa.eu under the heading “Data protection”.

Who should read the Consultation Paper

The Consultation Paper may be of particular interest to investors, issuers, offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the new Prospectus Regulation (Regulation (EU) 2017/1129).



General information about respondent

Name of the company / organisation	BETTER FINANCE
Activity	Non-financial counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_PR_1>

BETTER FINANCE, the European Federation of Investors and Financial Services Users, is the dedicated representative of financial services users at European level. It counts about fifty national and international members and sub-member organizations in turn comprising about 4.5 million individual members. Our organization acts as an independent financial expertise centre to the direct benefit of the European financial services users (shareholders, other investors, savers, pension fund participants, life insurance policy holders, borrowers, etc.) and other stakeholders of the European financial services who are independent from the financial industry.

BETTER FINANCE is the most involved European end user and civil society organisation in the EU Authorities' financial advisory groups, with experts participating in the Securities & Markets, the Banking, the Occupational Pensions and Insurance and Reinsurance Stakeholder Groups of the European Supervisory Authorities; as well as in the European Commission's Financial Services User Group (FSUG), and in the European Financial Reporting advisory Group (EFRAG). Its national members also participate in national financial regulators and supervisors bodies when possible. (For further details please see our website: <http://betterfinance.eu/>)

BETTER FINANCE welcomes the draft Regulatory Technical Standards (RTS) under the Prospectus regulation submitted by ESMA. As a representative of individual investors and savers, we believe that the main concern is to provide investors with clear and concise information in order to give them a true picture of the company's financial health and prospects.

As such, the RTS must represent a way to improve investors protection. They should ensure that the information produced and included in the Summary Prospectus is clear and relevant for the reader.

To allow the investor to compare the different offers, the RTS should set up a standardized format of the Summary Prospectus while leaving some flexibility for companies so they can highlight to investors their distinct characteristics and features. The Summary Prospectus should not be overload with information.

<ESMA_COMMENT_PR_1>

Key financial information in the summary

Q1: Do you agree that the KFI extracted from the issuer's historical financial information should be sign-posted?

<ESMA_QUESTION_PR_1>

Yes, in order to ensure full transparency of the performance and financial health of the issuer, the historical financial information should be sign-posted and clearly presented in the Summary Prospectus in order to give to the potential investor a clear view of the historical financial information.

For comparison purposes (in order to facilitate investors' understanding and the comparability of the Key Financial Information), the format and the order of the information presented in the Summary Prospectus should however be the same depending on the type of securities investors are investing in: equities or non-equity securities.

<ESMA_QUESTION_PR_1>

Q2: Would you suggest the inclusion of specific templates for other types of issuer? Please specify and explain your reasoning.

<ESMA_QUESTION_PR_2>

N/A

<ESMA_QUESTION_PR_2>

Q3: Do you agree that cash flow from operations is the most useful measure of cash flow for non-financial entities issuing equity and that cash flow from financing activities and cash flow from investing activities are not so relevant for investors in equity securities?

<ESMA_QUESTION_PR_3>

N/A

<ESMA_QUESTION_PR_3>

Q4: Given the page limit for the summary please provide your views on which items of historical financial information would be most useful for retail investors.

<ESMA_QUESTION_PR_4>

Historical financial information are necessary to enable investors to make an informed assessment of the financial position and prospects of the issuer. These information are essential for potential investors and should therefore be clearly presented and carefully selected in order to provide a genuine and reliable picture of the financial position of the issuer.

Regarding the Statement of changes in equity (a document which details the change in owners' equity over an accounting period by presenting the movement in reserves comprising the shareholders' equity), BETTER FINANCE agrees with ESMA that given the page limit of the Summary, the information included in the Statement of Changes in equity should not be included in the historical information disclosed in the Key Financial Information.

For equities, the following historical information is most useful for investors on a yearly basis:

- Total revenue
- Net earnings/losses (for consolidated financial statements net earnings/losses attributable to equity holders of the parent company)
- Net earnings per share (undiluted)
- Total assets
- Total liabilities
- Shareholders equity
- Gross dividend, and End of year closing price of the share on its main market of listing are also important information for investors.

As for the rest of the information to be included in the KFI as historical information, there is no specific piece of information that would be more meaningful or useful for retail investors. We believe that the Regulatory Technical Information should leave some room for issuers to decide which other key historical information are relevant or not for the investor. However, issuers should be careful to maintain the overall comparability of their Summary Prospectuses.

ESMA proposes that an issuer may include up to three additional APMs on a voluntary basis in the summary prospectus. Better Finance supports limiting the number of APMs in the summary prospectus to ensure that they are not given more prominence than the KFI or distract investors from the key financial developments of the company. Issuers should not use this opportunity to disclose information that would not be relevant for the potential investor. Given the page limit, only relevant information for the decision investment making process should be included.

|
<ESMA_QUESTION_PR_4>

Q5: Do you agree with the proposal to allow the use of footnotes to describe APMs or could this result in lengthy footnotes and complicated explanations?

<ESMA_QUESTION_PR_5>

| Since the purpose of the Summary Prospectus is to provide the potential investor with the “*Key information that investors need in order 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 and that is to be read together with the other parts of the prospectus*”¹, we believe that adding footnotes describing APMs would overload the document making it less clear which will burden the reader. As such, the Summary could include a reference to the prospectus document where the APMs would be detailed, but a prominent warning should be included whenever an APM is used.

|

¹ Prospectus Regulation article 7 (1)

<ESMA_QUESTION_PR_5>

Q6: Do you agree that issuers should be given flexibility to present pro forma financial information as additional columns to the relevant tables or as a separate table? If not, should a format be mandated, bearing in mind the page limit for the summary as well as the requirement for the summary to be comprehensible?

<ESMA_QUESTION_PR_6>

Pro forma information presents historical balance sheet and income statement information adjusted as if a transaction has occurred at an earlier time.

As specified in the ESMA Questions and Answers on Prospectus², in the Prospectus the pro forma information must normally be presented in columnar format, composed of the historical unadjusted information, the pro forma adjustments and the resulting pro forma financial information in the final column.

For more clarity in the presentation of the information, pro forma financial information should be presented in an additional column to the tables. In fact, adding another table to the existing ones would potentially confuse the reader.

The format of those additional columns should be mandated in order to keep clarity and to allow comparison between Summary prospectuses. As such, pro forma financial information should follow the same format as the one suggested for the prospectus. The presentation of the pro forma financial information should however not overload the Key Financial Information and should only be presented if the issuer considers them relevant in the investment decision making.

<ESMA_QUESTION_PR_6>

Q7: Do you agree that complex financial information in the summary should be presented according to its presentation in the prospectus? If not, please specify and provide alternative ways of presentation.

<ESMA_QUESTION_PR_7>

In article 2 (6) of the Proposed Regulatory Technical Standard, ESMA suggests that “ *the key financial information shall be presented in a manner which corresponds to the presentation of the complex financial information in the prospectus(...)*”.

Key complex financial information (i.e. when the issuer has a complex financial history, when he/she has made a significant financial commitment or financial information about an entity other than an issuer) must be included in the Summary Prospectus in order to provide a complete picture of the financial situation. Complex financial information are by nature lengthy and could consume a large part of the pages of the Summary Prospectus. However, in order to provide the maximum clarity for the reader and to remain coherent with the information disclosed in the Prospectus, BETTER FINANCE believes that complex but key financial information should indeed be presented according to the presentation in the prospectus.

² ESMA Questions and Answers Prospectus October 2017, pages 41 to 43
https://www.esma.europa.eu/sites/default/files/library/esma31-62-780_qa_on_prospectus_related_topics.pdf

<ESMA_QUESTION_PR_7>

Q8: Which financial measures are most useful for retail investors to determine the health of a credit institution? Do you consider that the CET1 is comprehensible for retail investors? Please specify.

<ESMA_QUESTION_PR_8>

In the Table 3b of the proposed RTS, ESMA suggests a list of information to be included in the balance sheet table for credit institutions (equity and non-equity securities).

As suggested by ESMA, BETTER FINANCE agrees that the most useful information (and the easiest to understand for the reader) are the following: Total assets, Senior debt, Subordinated debt, loans and receivables from customers, deposits from customers and total equity.

Following the financial crisis, Basel III required banks to fund themselves with 4.5% of common equity of risk-weighted assets (RWAs). CET I is defined as “a component of Tier 1 capital that consists mostly of common stock held by a bank or other financial institution”. The CET 1 is primarily composed of ordinary shares, retained earnings and certain reserves.

We believe that, depending of the financial literacy of the investor, such information will probably not be comprehensible for the average (lambda) retail investors. We understand that if this information is disclosed in the prospectus, it must also be disclosed in the Summary prospectus but this information should be accompanied with guidance/ explanation for the reader. A possible solution could be to add these *explanations in the prospectus and the Summary Prospectus could refer to it in order not to overload the Summary prospectus*. In that case, and as many investors do not read the full Prospectus, a prominent warning should be added in the Summary Prospectus.

<ESMA_QUESTION_PR_8>

Q9: Do you agree that it should be mandatory for credit institutions to disclose SREP information in relation to Common Tier One Equity, the minimum prudential capital requirements, the Total Capital Ratio and the Leverage Ratio in the summary?

<ESMA_QUESTION_PR_9>

The Supervisory Review and Evaluation Process is an assessment made by the supervisors to measure where a bank stands in terms of capital requirements and the way it deals with risks³.

We believe that such information is relevant for the investor but its inclusion in the Summary Prospectus should not lead to confusion for the investor.

<ESMA_QUESTION_PR_9>

Q10 : Do you agree with the choice of measures for insurance companies?

<ESMA_QUESTION_PR_10>

TYPE YOUR TEXT HERE |

<ESMA_QUESTION_PR_10>

³ <https://www.bankingsupervision.europa.eu/about/ssmexplained/html/srep.en.html>

Q11 : Do you think it would be useful for retail investors to include a measure of historical performance for closed end funds in the summary?

<ESMA_QUESTION_PR_11>

As a general rule, BETTER FINANCE believes and has raised on many occasions ⁴ that the disclosure of the past performance should be systematic and mandatory. Through its different research studies and reports, BETTER FINANCE has shown that savers and investors are left in the dark with respect to the past performance and costs of the financial products they invest in, meaning that, more often than not, savers and investors are not even able to find out whether a product has ever made or lost money

As such, the past performance of the closed end Fund should be disclosed in the Summary prospectus as it provides a good and easily understandable picture of the performances of the issuer.

In addition, if the closed end fund approach refers explicitly or implicitly to a benchmark, then the past performance of the benchmark must be disclosed alongside that of the fund. This is already a legal requirement for open ended UCITS funds. There is no reason to adopt an inconsistent disclosure rule for closed end ones.

Lastly, one of the main risks with closed end funds is the inability of investors to exit and this risk needs a very prominent warning in the summary prospectus. Unfortunately, ESMA is not asking for this.

<ESMA_QUESTION_PR_11>

Q12 : Do you think that investment companies which are subject to capital requirements should be required to include regulated capital ratios in their summary?

<ESMA_QUESTION_PR_12>

TYPE YOUR TEXT HERE |

<ESMA_QUESTION_PR_12>

Q13 : Would the issuer, offeror or person asking for admission to trading incur costs if the proposed provisions are adopted? If so, please specify the nature of such costs, including quantifying them.

<ESMA_QUESTION_PR_13>

TYPE YOUR TEXT HERE |

<ESMA_QUESTION_PR_13>

⁴ [http://betterfinance.eu/fileadmin/user_upload/documents/Press_Releases/en/PR - ESAS FINALLY ASKED TO REPORT ON THE COST AND PAST PERFORMANCE OF LONG-TERM SAVINGS PRODUCTS - 201017.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Press_Releases/en/PR_-_ESAS_FINALY_ASKED_TO_REPORT_ON_THE_COST_AND_PAST_PERFORMANCE_OF_LONG-TERM_SAVINGS_PRODUCTS_-_201017.pdf); http://better-finance.eu/fileadmin/user_upload/documents/Position_Papers/Financial_Supervision/en/Roadmap_on_Fitness_EC_Supervisory_requirements_FINAL.pdf



Data and machine readability

Q14 : Do you believe that the data related to the amount raised should be made mandatory? Please explain your reasons.

<ESMA_QUESTION_PR_14>
N/A |
<ESMA_QUESTION_PR_14>

Q15 : Do you agree with the data items that have been identified as necessary for the purpose of classification as well as to allow for the compilation of the annual report under Article 47 of the Prospectus Regulation? Would you like to propose any additional items or suggest items that should in your view be deleted? Please explain your reasons.

<ESMA_QUESTION_PR_15>
TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_15>

Q16 : Do you agree with the ESMA proposal to maintain the current system in place whereby NCAs submit data to ESMA in XML format as the practical arrangement to ensure that such data is machine readable? Do you agree that, by keeping the data submission system unchanged, adaptation costs are minimised for the market at large?

<ESMA_QUESTION_PR_16>
TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_16>

Q17 : Do you agree that the proposed amendment to the technical advice on prospectus approval could contribute to provide clarity on the way data referred to in Annex VII are collected by NCAs?

<ESMA_QUESTION_PR_17>
TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_17>

Q18 : Do you have suggestions in relation to how the efficiency, accuracy and timeliness of the data compilation and submission process can be further improved? In your experience, is there any specific reporting format or standard that you would deem most appropriate in this context?



<ESMA_QUESTION_PR_18>
|
TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_18>

Advertisements

Q19 : Do you consider that an advertisement should contain at least a hyperlink to the website where it is published and where available and technically feasible additional information that would facilitate tracing the prospectus? Please provide examples of the additional information that you think would be helpful to include in the advertisement.

<ESMA_QUESTION_PR_19>

|
As reminded in the Consultation Paper in paragraph 132, the Prospectus Regulation provides in article 22(2) two requirements: firstly advertisements must inform investors whether a prospectus has been published and secondly advertisements must specify where it is possible to obtain the prospectus.

The issuer should ensure the access to the information and to the prospectus and as such, BETTER FINANCE agrees with ESMA on the fact that whether oral or written, the link to the website where the prospectus may be found should be clearly mentioned. Investors should be provided with as much information as possible depending of the mean used for the advertisement : hyperlink to the prospectus, and – in the case of written advertisements - LEI (Legal Entity Identifier), the ISIN, title of the prospectus, the amount that is being issued, the approval or publication date of the prospectus.

|
<ESMA_QUESTION_PR_19>

Q20 : Do you consider that the definition for complex securities set out in para 140 provides clarity to issuers and would be helpful in deciding when the comprehension alert referred to in Article 8(3)(b) of the PRIIPs Regulation should be included in an advertisement?

<ESMA_QUESTION_PR_20>

|
ESMA defines a complex security as not meeting the description set out in article 25(4) points i), ii) and vi) of MiFID (Directive 1014/65), i.e.:

- shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where those are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative;
- bonds or other forms of securitized debt admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
- other non-complex financial instruments for the purpose of this paragraph

PRIIPS Regulation article 8(3)b) provides that “where applicable, a comprehension alert which shall read: *‘You are about to purchase a product that is not simple and may be difficult to understand’.*”

Defining the notion of “ *complex security*” in a negative way (i.e a security is considered as complex when it does not meet the description of that Article) does not provide clear guidance for the investor with low



financial literacy. As such, defining the threshold/level at which an alert must be included in the advertisement is not easy since it depends of the financial literacy of the potential investor.

<ESMA_QUESTION_PR_20>

Q21 : Do you agree with the requirements suggested for Article 11 of the RTS? If not, please provide your reasoning.

<ESMA_QUESTION_PR_21>
TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_21>

Q22 : In particular, do you agree with the requirement to include warnings in advertisements? Do you consider that the suggested warnings are fit for purpose in terms of investor protection?

<ESMA_QUESTION_PR_22>

BETTER FINANCE believes that the requirement to include an alert in the advertisement should be maintained.

It ensures the investor protection but defining the level at which a product is considered as “ *not simple and difficult to understand*” depends of the investor’s financial literacy.

The advertisement must also comply with MiFID rules on fair, clear and not misleading information, which require prominent warnings in several cases.

<ESMA_QUESTION_PR_22>

Q23 : Would the issuer, offeror or person asking for admission to trading incur costs if the aforementioned provisions are adopted? If so, please specify the nature of such costs, including whether they are one-off or ongoing and, quantify them.

<ESMA_QUESTION_PR_23>
TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_23>

Supplements

Q24 : Do you agree that Article 2 of the First Commission Delegated Regulation should be carried over, in its entirety, to Level 2 under the new regime?



<ESMA_QUESTION_PR_24>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_24>

Q25 : Do you agree that the additional requirements identified from ESMA’s draft technical advice should also be included.

<ESMA_QUESTION_PR_25>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_25>

Q26 : Do you agree that the publication of audited financial statements by an issuer of retail debt or retail derivative securities should not trigger the requirement to publish a supplementary prospectus?

<ESMA_QUESTION_PR_26>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_26>

Q27 : Would the issuer, offeror or person asking for admission to trading incur costs if the aforementioned provisions are adopted? If so, please specify the nature of such costs, including quantifying them.

<ESMA_QUESTION_PR_27>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_27>

Publication

As a general comment, BETTER FINANCE believes that digital means should be used in order to ensure a wide publication and easy access to the Summary prospectus and the prospectus.

Q28 : Do you agree that only Article 6(1)(c) and 6(3) of the Second Commission Delegated Regulation need to be carried over to Level 2 under the new regime?

<ESMA_QUESTION_PR_28>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_28>



Q29 : Do you agree that no other publication provisions of the new Prospectus Regulation need to be specified by way of RTS? If not, please identify the provisions which should be specified.

<ESMA_QUESTION_PR_29>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_29>

Q30 : Do you believe that the proposed publication provisions will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

<ESMA_QUESTION_PR_30>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_PR_30>