BETTER FINANCE responds to ESMA Public Consultation on the Guidelines on Supplements Which Introduce New Securities to a Base Prospectus

Ref: https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-supplements-which-introduce-new-securities-base#form

Date: 19/05/2024

About BETTER FINANCE

BETTER FINANCE – the European Federation of Investors and Financial Services Users – is the leading voice of individual investors, savers, and users of financial services across Europe. Free from industry influence, BETTER FINANCE advocates at EU level for fairer, more transparent, and accountable financial markets. It champions the rights of citizens as retail investors – including pension savers, small shareholders, life insurance policyholders, and borrowers – to ensure that financial policies prioritise people over profit. Through policy engagement, advocacy, and independent research, BETTER FINANCE seeks to strengthen investor protection, enhance supervision, and advance sustainable finance — to secure fair returns and adequate pensions for all. The Federation unites 40 independent member organisations from the EU, Iceland, Norway, and Lebanon.

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Executive Summary

BETTER FINANCE welcomes ESMA's initiative to clarify when a supplement to a base prospectus may or may not be used to introduce new securities. We strongly support the overall aim of the Guidelines to strengthen supervisory convergence between NCAs, enhance legal certainty, and prevent the misuse of supplements — particularly when introducing new or complex product types. Our response stresses that supplements should be used solely to update information on securities already described in the base prospectus — not to expand its scope. While planning ahead is important, we believe the inclusion of anticipated product types should be encouraged but not mandatory, to avoid excessive or vague disclosures. We also call for greater granularity in defining

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what constitutes a "new type of security," and urge ESMA to explicitly treat ESG-labelled instruments — such as green or sustainability-linked bonds — as distinct, unless they are clearly anticipated as such in the original base prospectus, as those are of high greenwashing risks.
BETTER FINANCE further advocates for a proportionate, modular disclosure framework, combining a general base prospectus with short, tailored, and investor-friendly supplements. Legalistic or compliance-driven language should be avoided in favour of clarity, simplicity, and comparability, in line with MiFID II standards. While the Guidelines are a step in the right direction, they would be further strengthened by providing practical criteria to help NCAs and issuers determine when a new prospectus is needed. Finally, consistency with curent best practices and other disclosure frameworks — such as the KID — is essential to maintaining investor trust in the EU's prospectus regime.

Questions and Answers

Question 1: **Do you agree with draft Guideline 1 proposed by ESMA and ESMA's reasoning? If not, please explain why.**

BETTER FINANCE fully supports ESMA's initiative to clarify, through Guideline 1, the role and limits of a supplement under Article 23(4a) of the Prospectus Regulation. We agree that a supplement should be used only to update material information about securities already described in the base prospectus — and not to introduce new product types.

This is essential to ensure a consistent and predictable supervisory approach across Member States. As ESMA rightly highlights, current divergences in national practices have created uncertainty and regulatory fragmentation, undermining both investor protection and issuer confidence. We strongly support ESMA's efforts to harmonise supervisory outcomes and establish a level playing field, in line with the goals of the Listing Act.

We also agree that product variations based on the same issuance type (e.g. within a structured note programme) may in some cases be addressed via a supplement, but only if the underlying structure, risk-return profile, and asset class are already clearly covered in the base prospectus. Where a new security introduces materially different risks, payoffs, or underlying exposures, a new prospectus should be required — particularly in the context of distribution to retail investors.

This restriction is not only consistent with the regulatory framework, but also essential to protect investors from being exposed to products that were not properly disclosed or understood at the point of sale. It also ensures that NCAs have sufficient opportunity to scrutinise product innovations under full prospectus review rather than through a more limited supplement process. While Guideline 1 should preserves the core function of a supplement (that is, to update, not expand), we stress that clarity of wording and information is paramount to promote clarity, consistency, and investor confidence across EU capital markets. We encourage ESMA to maintain a firm stance on these principles.

Question 2: Do you agree with draft Guideline 2 proposed by ESMA and ESMA's reasoning? If not, please explain why.

BETTER FINANCE agrees with the overall objective of Guideline 2, which encourages issuers to include, ahead of time, the types of securities they reasonably expect to issue during the 12-month validity of the base prospectus. This can promote legal certainty, help prevent misuse of supplements, and support consistent supervisory practices. We acknowledge that ESMA provides useful clarifications in the explanatory text — such as encouraging issuers to describe overarching terms and risk factors for products they intend to issue, and distinguishing between limited formula adjustments (permissible via supplement) and fundamentally new instruments (which are not). This is a welcome step toward greater clarity.

However, we believe gaps remain — notably as the term "reasonably expected" is still open to interpretation, particularly for smaller issuers or those less familiar with regulatory expectations. While ESMA offers helpful examples of product types, it falls short of setting out clear criteria to formalise what qualifies as a distinct "type" of security or what level of variation remains within the permitted scope of the base prospectus for the purpose of a supplement. This creates legal and interpretative uncertainty, and may encourage overly broad or defensive (compliance-driven) drafting that ultimately reduces clarity for investors. ESMA could further define the threshold for what qualifies as "reasonably expected"; for example, by referencing whether products share a comparable risk profile, asset class, or repayment structure. Clearer guidance would assist issuers in applying this principle proportionately and would support retail investors in understanding the scope of what is being offered, outside of legal or technical language (by mandating clarity of information).

Moreover, we stress that plans to issue materially different product types are rarely finalised within a 12-month horizon, and therefore a new prospectus — rather than a supplement — should remain the norm. Supplements should not become a workaround to avoid proper scrutiny under the full prospectus regime, but rather provide flexibility for issuers when appropriate and within a clearly defined scope.

We also believe that the "planning ahead" obligation to include all expected product types should be encouraged (recommended), but absolutely not seen as mandatory, as this risks diluting key information about the base product. In this vein, issuers should be invited — in the Guideline — to describe the scope of potential product extensions in clear, investor-friendly language, not vague or overly generic compliance clauses. Overly broad or hypothetical disclosures risk undermining investor understanding. Overall, we agree with the view that supplements should remain clearly linked to the original base prospectus, to avoid misinterpretation and maintain trust in the disclosure framework. However, this may warrant a more focused and proportionate approach, fostering transparency through clear, non-misleading language, as already required under MiFID.

Question 3: Do you believe draft Guideline 2 will lead to longer and less comprehensible prospectuses? If yes, please explain why and describe how you would solve this issue.

It would greatly depend on the approach. We recognise that more detailed disclosure can help investors make better-informed decisions, particularly for complex or structured products. However, there is a risk that base prospectuses become excessively long and less comprehensible (especially for retail investors), who are unlikely to read highly technical or legalistic documents. We therefore support a modular approach: a clear, general base prospectus paired with short, tailored supplements that highlight product-specific features in simple, non-legalistic language. This approach should be recommended, and applied proportionately – that is, with more extensive disclosure required for structured products, and more focused summaries for vanilla ones.

As noted in our response to Q2, this planning ahead must not lead to defensive, "boilerplate" drafting, which dilutes meaningful information. Safeguards are also essential to ensure that flexibility in disclosure is not exploited to reduce regulatory scrutiny or mislead retail investors.

Question 4: **The explanatory text under draft Guideline 2 identifies 'green bonds' and 'sustainability-linked notes' as distinct securities for the purpose of these Guidelines. Do you agree with that, or do you think they are the same as 'regular' bonds or 'regular' structured products? To the extent you consider 'green bonds' and 'sustainability-linked notes' to be the same as 'regular' bonds or 'regular' structured products, please explain why. In particular, make clear why, for example, a currency-linked note, or index-linked note, should be treated differently to a 'sustainability-linked note' for the purpose of these Guidelines. Please also consider factors such as the oncoming Annex [21] in your response.**

BETTER FINANCE calls on ESMA to explicitly confirm that green bonds and sustainability-linked notes should be treated as distinct securities under these Guidelines, unless their specific ESG features are already clearly described in the base prospectus. Although these instruments may share structural similarities with conventional bonds, they introduce material risks and commitments; including sustainability performance targets, reputational exposure, and ESG-related coupon adjustments. Those require full and transparent disclosure. These risks are not comparable to financial underlyings like currencies or indices. ESG-linked products rely on issuer-level performance, often involving external verification and subjective criteria. Treating them as regular bonds risks under-disclosure and opens the door to greenwashing through post-hoc reclassification. Supplements should not be used to introduce ESG-labelled products not already foreseen in the base prospectus. In light of the CSRD and CSDDD frameworks (and dillution risks), clear prospectus-level ESG disclosure is essential to ensure legal certainty, investor confidence, and reliable third-party assessments.

Question 5: **Is there another way to approach the subject of these Guidelines in your opinion? If yes, please explain what it is and provide arguments to support your suggested approach. Please also provide examples to illustrate the issue(s) you are solving and how your proposed approach facilitates that end.**

BETTER FINANCE supports the adoption of these Guidelines but encourages ESMA to go further by developing a unified framework with clearer definitions and product categories.

This would help prevent divergent interpretations by NCAs and promote a more harmonised approach across Member States .A structured classification—based on risk profile, payoff structure, or underlying exposure—would clarify when a supplement is appropriate and when a new prospectus is required. This would also support legal certainty and prevent both under- and over-disclosure. Issuers should be required to present any product changes in simple, investor-friendly terms, especially in supplements. Legal verbiage and vague drafting discourage investor understanding and run counter to MiFID II standards on clarity. While broad base prospectuses can work in practice, this depends on transparent upfront disclosure and consistent supervision. Stronger, clearer Guidelines will reinforce investor trust and reduce regulatory uncertainty.

Question 6: Can you provide an estimation of the costs/benefits of these proposed Guidelines?

The proposed Guidelines are unlikely to create significant additional costs for issuers, as plans to issue fundamentally new products are rarely finalised within the 12-month validity of a base prospectus. In such cases, a new prospectus is already the appropriate and expected route — and should not be avoided via supplements. The main benefits lie in increased legal certainty, supervisory convergence, and investor protection. By clarifying when a supplement is appropriate, the Guidelines reduce the risk that firms introduce riskier or more complex products without sufficient prior disclosure. This will help avoid divergent treatment across Member States and reinforce a level playing field in EU capital markets. Most importantly, clearer disclosure boundaries will improve the quality and comparability of information for investors, particularly retail investors, and reduce the risk of confusion or mis-selling — a key step toward restoring trust and transparency in the prospectus regime.

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