



European Securities and
Markets Authority

Response form for the Consultation Paper on EU Growth prospectus



Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

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

ESMA will consider all responses received by 28 September 2017.

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:

4. Insert your responses to the questions in the Consultation Paper in the form “Response form_Consultation Paper on EU Growth prospectus”, available on ESMA’s website alongside the present Consultation Paper (www.esma.europa.eu → ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).
5. Please do not remove tags of the type <ESMA_QUESTION_EUG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
6. 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.
7. When you have drafted your response, name your response form according to the following convention: ESMA_EUG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_EUG_ABCD_RESPONSEFORM.
8. 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 technical advice 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 standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confi-



dential 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 this Consultation Paper

This Consultation Paper may be of particular interest to investors, issuers, including issuers already admitted to trading on a regulated market or on a multilateral trading facility, 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.



General information about respondent

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

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_EUG_1>
TYPE YOUR TEXT HERE
<ESMA_COMMENT_EUG_1>

1. : **Do you consider that specific sections should be inserted or removed from the registration document and / or the securities note of the EU Growth prospectus proposed in Article A? If so, please identify them and explain your reasoning, especially in terms of the costs and benefits implied.**

<ESMA_QUESTION_EUG_1>

Article A of the proposed technical advice sets out more than 15 sections in order to structure the Prospectus.

This structure enhances the protection of the investor by providing a clear structure that will have to be followed by the issuer: “ *Harmonisation of the information contained in the prospectus should **provide equivalent investor protection at Union level**. In order to enable investors to make an informed investment decision, that information **should be sufficient and objective** including with regard to the financial circumstances of the issuer and the rights attaching to the securities, and should be provided in an **easily analysable, concise and comprehensible form**”¹.*

The proposed structure should allow the investor to easily find the information regarding the presentation of the information regarding the company.

<ESMA_QUESTION_EUG_1>

2. : **Do you agree with the proposal to allow issuers to define the order of the information items within each section? Please elaborate on your response and provide examples. Can you please provide input on the potential trade-off between benefits for issuers coming from increased flexibility as opposed to further comparability for investors coming from increased standardisation?**

<ESMA_QUESTION_EUG_2>

As stated in paragraph 27 page 18, ESMA proposes that issuers should be allowed to define the order of the individual information items in the section to present their investment proposal in a more open and accessible way and prepare a readable document. The Prospectus Regulation (2017/1129) aims at enhancing investors protection and market efficiency, by providing easier access to financing for companies.

There are 2 different views in this respect :

On the investor’s side, setting a structure to be followed by the issuer in each section would enhance comparability, transparency and the protection.

In order to provide clear and easily readable documents for investors, information displayed within the sections mentioned in Article A should follow the same order in order to harmonize the content and the format of all prospectuses.

Allowing issuers to define the order of the information items in each section would go against the aim of providing a clear, reader-friendly and harmonized EU growth prospectus. Therefore, each section should be organized on the same model.

On the SMEs’ side, the Regulation tends to lighten the administrative burden of issuing a prospectus.

¹ Council General approach on a proposal for a regulation on prospectus <http://data.consilium.europa.eu/doc/document/ST-9801-2016-INIT/en/pdf>

Giving more flexibility to issuers would allow the issuer to adapt the prospectus to its activity, as stated by the Council²: “*The information which is included in a prospectus should be adapted to reflect the nature and circumstances of the issuer and the type of securities*”. Giving more flexibility on the more detailed level would allow issuers to better highlight their distinctive characteristics and features and could make the prospectus more comprehensible for investors.

Issuers should be free to present the information in their order they want in each section of the Growth prospectus, but not in the summary Prospectus which should maintain a standardized and comparable format from one issuer to the other.

<ESMA_QUESTION_EUG_2>

- 3. : Given the location of risk factors in Annexes IV and V of the Prospectus Regulation, do you consider that this information is appropriately placed in the EU growth prospectus? If not please explain and provide alternative suggestions.**

<ESMA_QUESTION_EUG_3>

As stated in paragraph 26 page 17, ESMA lists the sections that must structure the EU growth prospectus. Risk factors is the ninth section (out of 15 sections). Considering the importance for investors to be informed of those risk, this section should maybe presented sooner in the prospectus.

<ESMA_QUESTION_EUG_3>

- 4. : Do you agree with the proposal that the cover note to the EU Growth prospectus should be limited to 3 pages? If not, please specify which would be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?**

<ESMA_QUESTION_EUG_4>

As stated in paragraph 44 page 24, the cover note is not intended to replace the summary and is only meant to provide an overview of the prospectus. It is intended to help investors to locate specific information.

As such, limiting the cover page to 3 pages seems to be in line with the article 6(2) of the Prospectus Regulation “ *the prospectus shall be written and presented in an easily analysable, **concise and comprehensible form***”. Adding a 3 pages cover note to the 6 pages of the Summary of the EU growth prospectus would be contrary to article 6(2).

<ESMA_QUESTION_EUG_4>

- 5. : Do you agree that the presentation of the disclosure items in para 81 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the disclosure items.**

<ESMA_QUESTION_EUG_5>

<ESMA_QUESTION_EUG_5>

² Council General approach on a proposal for a regulation on prospectus <http://data.consilium.europa.eu/doc/document/ST-9801-2016-INIT/en/pdf>

- 6. : Do you agree with the proposal to introduce a single registration document that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.**

<ESMA_QUESTION_EUG_6>

Since equity and non-equity issuances are of different nature, they should be subject to different rules and procedures.

<ESMA_QUESTION_EUG_6>

- 7. : Do you agree with the requirement to include in the EU Growth prospectus any published profit forecasts in the case of both equity and non-equity issuances without an obligation for a report by independent accountants or auditors? If not please elaborate on your reasoning. Please also provide an estimate of the additional costs involved in including a report by independent accountants or auditors.**

<ESMA_QUESTION_EUG_7>

As stated in paragraph 55 page 26, ESMA considers that the inclusion of “profit forecast” within the section “*Strategy, Performance and business environment*” would help investors to assess the future prospects of the company.

One of the main goal of the Prospectus regulation is to reduce the regulatory burden for profit forecasts by eliminating the requirements on SMEs. As such, it seems reasonable to not require reports from independent accounts or auditors of profit forecasts for both equity and non-equity issuances.

The issuing of a report by independent accountants or auditors would involve an extra cost and could, in certain case, deter company to include a profit forecast in their EU growth prospectus, which would go against the interest of investors.

<ESMA_QUESTION_EUG_7>

- 8. : Do you consider that the requirement to provide information on the issuer’s borrowing requirements and funding structure under disclosure item 2.1.1 of the EU Growth registration document should be provided by non-equity issuers too? If yes, please elaborate on your reasoning.**

<ESMA_QUESTION_EUG_8>

The requirement to provide information on the issuer’s borrowing requirements and funding structure would also be relevant for to non-equity-issues since it would allow an evaluation of the issuer’s solvency. This requirement on non-equity issue could be however restricted to material information.

<ESMA_QUESTION_EUG_8>

- 9. : Do you think that the information required in relation to major shareholders is fit for purpose? In case you identify specific information items that should be included or removed please list them and provide examples,. Please also provide an estimate of elaborating on the materiality of the cost to provide such information items.**

<ESMA_QUESTION_EUG_9>

Information regarding major shareholders would help investors to have a better view on the governance of the issuer, especially as SME Growth Markets are not covered by the Transparency Directive. With this information, investors would be able to know who is/are the major owner(s) of the company and who makes the decisions.

<ESMA_QUESTION_EUG_9>

10. : Do you agree that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards? If not please state your reasoning. Please also provide an estimate of the additional costs involved in preparing financial statements under IFRS.

<ESMA_QUESTION_EUG_10>

As stated in paragraph 70 page 30, ESMA suggests that, since a significant number of SMEs prepare their financial statement under national accounting standards and since the general purpose of the EU growth prospectus is to reduce the administrative burden and costs of issuing a prospectus for SMEs, they should be allowed to provide financial statement prepared under national accounting standards.

On one side, this proposition will respect the goal of reducing the cost for SMEs to access financing, especially for small issuers who will continue to use national accounting standards. Requiring IFRS would bar small issuers from accessing the capital market.

On the other side, it means that all EU Growth Prospectuses will not be completely harmonized at the EU level since financial statements would be presented according to national accountings standards.

This proposition would thus be contrary to Recitals 3 and 4 of the Prospectus Regulation:

- *“Disclosure of information in cases of offers of securities to the public or admission of securities to trading on a regulated market is vital to protect investors by removing asymmetries of information between them and issuers. **Harmonising such disclosure** allows for the establishment of a cross-border passport mechanism which facilitates the effective functioning of the internal market in a wide variety of securities”*
- *“Divergent approaches would result in fragmentation of the internal market since issuers, offerors and persons asking for admission to trading on a regulated market would be subject to different rules in different Member States and prospectuses approved in one Member State could be prevented from being used in other Member States. **In the absence of a harmonised framework to ensure uniformity of disclosure and the functioning of the passport in the Union it is therefore likely that differences in Member States’ laws would create obstacles to the smooth functioning of the internal market for securities.** Therefore, to ensure the proper functioning of the internal market and improve the conditions of its functioning, in particular with regard to capital markets, and to guarantee a high level of consumer and investor protection, it is appropriate to lay down a regulatory framework for prospectuses at Union level”.*

As a compromise, IFRS financial statements should be required if the SME issuer is offering its



securities also outside of its home Member State.

<ESMA_QUESTION_EUG_10>

11. : Do you consider that there are other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify.

<ESMA_QUESTION_EUG_11>

<ESMA_QUESTION_EUG_11>

12. : Do you consider that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

<ESMA_QUESTION_EUG_12>

<ESMA_QUESTION_EUG_12>

13. : Please indicate if further reduction or simplification of the disclosure requirements of the EU Growth registration document could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

<ESMA_QUESTION_EUG_13>

The inclusion of Key Performance Indicators (KPIs) should not be mandatory since first, it is difficult to come up with a definitive list of KPIs for all companies and for all sectors.

Key Performance Indicators should not be mandatory for SMEs and issuers should not be allowed to use whatever KPIs they consider appropriate, since “adjusted” KPIs would be of low value for investors and not comparable.

<ESMA_QUESTION_EUG_13>

14. : Do you think that the presentation of the disclosure items in para 97 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.

<ESMA_QUESTION_EUG_14>

As stated in paragraph 97 page 54, ESMA describes the list of the disclosure item that must be included in the EU Growth securities note.

Although this list tends to create a clear framework to make prospectuses more reader-friendly by specifying all elements that must be included in the EU growth prospectus, it should however be noted, that the complexity and length of the list could deter SMEs to draft such documents.

As a reminder, one of the goals behind the review of the Prospectus Directive was to lighten the



cost of the drafting of a prospectus for SMEs. In a study released in 2008³, the estimated administrative cost of drafting a prospectus was €900,000.

As such the cover note and the table contents should be used to give a general overview and a clear framework of the EU growth prospectus to help investor to understand the content of the EU growth prospectus.

<ESMA_QUESTION_EUG_14>

15. : Do you agree with the proposal to introduce a single securities note that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.

<ESMA_QUESTION_EUG_15>

<ESMA_QUESTION_EUG_15>

16. : Do you consider that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

<ESMA_QUESTION_EUG_16>

As stated in paragraph 97 page 54, ESMA lists the disclosure items that must be included in the EU growth prospectus. The list is quite detailed and ESMA does define and specify the nature and forms of the disclosure.

<ESMA_QUESTION_EUG_16>

17. : Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth securities note? If yes, please specify and provide examples. In addition, please consider whether the categorisation of disclosure items for non-equity securities is fit for purpose. If not, please specify and provide your suggestions.

<ESMA_QUESTION_EUG_17>

<ESMA_QUESTION_EUG_17>

18. : Please provide an estimate of the benefit in terms of reduced costs that the production of a single securities note implies.

<ESMA_QUESTION_EUG_18>

<ESMA_QUESTION_EUG_18>

³ Study on the Impact of the Prospectus Regime on EU Financial Markets
http://ec.europa.eu/internal_market/securities/docs/prospectus/cses_report_en.pdf

- 19. : Please indicate if further reduction or simplification of the disclosure requirements of the securities note of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

<ESMA_QUESTION_EUG_19>

<ESMA_QUESTION_EUG_19>

- 20. : Do you think that the presentation of the disclosure items in para 112 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.**

<ESMA_QUESTION_EUG_20>

As stated in paragraph 112 page 76, ESMA describes the content and format of the Summary of the EU Growth prospectus. According to article 15(2) of the Prospectus regulation, the summary of the EU growth prospectus must be shorter: “ *reduced content and the standardized format of the specific summary*”.

The items listed in the paragraph seem to answer to the goal of reducing the administrative costs and burden for SMEs for preparing a summary.

<ESMA_QUESTION_EUG_20>

- 21. : Given the reduced content of the summary of the EU Growth prospectus do you agree with the proposal to limit its length to a maximum of six A4 pages? If not please specify and provide your suggestions.**

<ESMA_QUESTION_EUG_21>

As stated in paragraph 104 page 72, ESMA suggests that the summary of the EU growth prospectus should not exceed 6 pages as provided in article 15(2) of the Prospectus Regulation.

ESMA bases this proposal on the fact that “*the EU Growth Prospectus is generally less complex and will therefore require less space to summarize*”.

We agree to this compromise in favor of SME issuers, and shorter information is not synonymous of worse.

<ESMA_QUESTION_EUG_21>

- 22. : Do you agree that the number of risk factors could be reduced to ten instead of 15? Do you think that in some cases it would be beneficial to allow the disclosure of 15 risk factors? If yes, please elaborate and provide examples. Please also provide a broad estimate of any benefits (e.g. in terms of reduced compliance costs) associated with the disclosure of a lower number of risk factors.**

<ESMA_QUESTION_EUG_22>

As stated in paragraph 100 page 71, ESMA proposes to reduce the number of risk factors from 15 in the Summary Prospectus to 10 in the Summary EU growth Prospectus. ESMA bases this proposition on the argument that “SMEs have often smaller risk or less complex and diverse businesses and therefore include fewer risk factors”.

Even though this proposition follows the requirement provided in the article 15(2) of the Prospectus regulation to reduce content and the standardised of the specific summary, it must be noted that it could also be to the detriment of investors. The argument that SMEs bear less risk than bigger companies is not incorrect but not always true, as mentioned by ESMA “SMEs have **often smaller risk**”.

Therefore, the stress should be put in the relevance and materiality of risk factors instead of the numbers. Thus, BETTER FINANCE agrees to the disclosure of ten risk factors maximum, but they then should be titled “top ten risk factors” and should be ranked in order depending of the importance in term of materiality.

<ESMA_QUESTION_EUG_22>

23. : Do you agree that SMEs are less likely to have their securities underwritten? If not, should there be specific disclosure on underwriting in the summary as set out in Article 7(8)(c)(ii) of the Prospectus Regulation?

<ESMA_QUESTION_EUG_23>

As stated in paragraph 101 page 71, ESMA proposes to not include in the Summary EU growth prospectus underwriting statement (as provided in the Summary Prospectus in article 7(8) (c) (ii)) . ESMA bases this position on the argument that “generally, smaller issuers are less likely to avail themselves of underwriting agreements”.

Even though this statement is not incorrect, it must be noted that it does not apply in all cases. In a minority of case, where an underwriting arrangement is in place, it should be included in the summary of the EU growth prospectus (Article 7 (8)(c)(ii) of the Prospectus Regulation).

<ESMA_QUESTION_EUG_23>

24. : Do you agree with the content of the key financial information that is set out in the summary of the EU Growth prospectus? If not, please elaborate and provide examples.

<ESMA_QUESTION_EUG_24>

As stated in paragraph 105 page 72, ESMA reminds that even though article 7(13) of the Prospectus Regulation provides that ESMA must draft RTS on the content and format of the Key Information Document in the Summary Prospectus, such mandate does not apply for the Summary of the EU growth prospectus.

ESMA considers that the Summary of the EU growth prospectus should nevertheless include financial statements such as “the issuer’s liquidity, indebtedness and profitability”. We agree with this approach. In particular, information on past earnings per share and dividends per share for equity issues is very a important information for investors.

<ESMA_QUESTION_EUG_24>

- 25. : Do you think condensed pro forma financial information should be disclosed in the summary of the EU Growth prospectus? Please state your views and explain. In addition, please provide an estimate of the additional costs associated with the disclosure of pro forma financial information in the summary compared to the additional benefit for investors from such disclosure.**

<ESMA_QUESTION_EUG_25>

As stated in article 15(2) of the Prospectus Regulation “ *the specific summary shall not impose any additions burdens or costs on issuers insofar as it shall only require the relevant information already included in the Eu growth prospectus (...) the Commission shall calibrate the requirements to ensure that it is shorter than the summary provided for in article 7*”.

Key financial information such as mentioned in our previous reply (Q24) must be included in the summary . Otherwise it defeats the whole purpose of a “summary” which investors must be able to read in isolation from the full prospectus (exactly as the 2 pages KIID for investment funds).

<ESMA_QUESTION_EUG_25>

- 26. : Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify and provide examples.**

<ESMA_QUESTION_EUG_26>

<ESMA_QUESTION_EUG_26>

- 27. : Do you consider that the disclosure items in the specific summary of the EU Growth prospectus are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

<ESMA_QUESTION_EUG_27>

<ESMA_QUESTION_EUG_27>

- 28. : Please indicate if further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

<ESMA_QUESTION_EUG_28>

BETTER FINANCE does not believe that any further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus would significantly reduce the cost of drawing up a prospectus.



<ESMA_QUESTION_EUG_28>