



European Securities and
Markets Authority

Response form for the Consultation Paper on scrutiny and approval



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 scrutiny and approval”, 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_SAC_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_SAC_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SAC_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_SAC_1>

TYPE YOUR TEXT HERE

<ESMA_COMMENT_SAC_1>

1. : Do you agree with the criteria for determining whether a prospectus is complete (Article A(1))? Do you consider that additional completeness criteria are necessary?

<ESMA_QUESTION_SAC_1>

As stated in paragraph 35 page 17, ESMA proposes a criterion of completeness in the scrutiny of the Prospectus. ESMA specifies in paragraph 32 pages 16 that the criterion of completeness “*relates to undertaking an examination of the prospectus to ensure that it all contains all the information required*”.

The scrutiny criteria for completeness is relevant for the protection of investors since it will ensure them that all the disclosure items will be included in the prospectus, ensuring that potential investors have access to all information.

<ESMA_QUESTION_SAC_1>

2. : Do you agree that NCAs should apply different criteria when assessing the comprehensibility of retail and wholesale prospectuses? If yes, do you agree with the criteria proposed in Article A(2)? Please make an alternative proposal if you do not agree with these criteria.

<ESMA_QUESTION_SAC_2>

As stated in paragraph 36 page 17 regarding the criteria for scrutiny of comprehensibility, ESMA considers that the comprehensibility of a prospectus relates to whether the information in the prospectus is understandable for the investor.

As such, ESMA mentions several criteria that must be scrutinised by the NCA for securities available to retail and/ or wholesale investors:

- A clear and detailed table of contents and an easy readable font size
- Free of unnecessary reiterations and group related information must be presented together
- In accordance with article 7(3)(b), avoid technical language and explain any technical terms
- Constructed in a way that it helps investors to understand its content
- Should explain mathematical formulas and describe the product structure

In addition to these criteria, ESMA proposes criteria for securities which are not available to wholesale investors in order to ensure that the prospectus is understandable for retail investors:

- Prospectus written in plain language
- Should provide a straightforward description of the issuer’s operations and principal activities
- Should explain any trade or industry specific terminology used

Those criteria suggested by ESMA represent guidelines for NCA in their scrutiny of the prospectus. However, a more detailed list criteria presented for each section would give more guidance for NCAs.

As mentioned by ESMA in paragraph 47, technical advice should set out criteria with room for subjective assessment on the part of the NCA. This statement is not incorrect but one must be aware that leaving room for NCAs in their scrutiny of prospectuses could also lead to difference of scrutiny between NCAs which would be contrary to the goal of harmonizing Prospectuses and their approval in the EU : “ *this regulation should eliminate those differences by harmonising the*



criteria for the scrutiny of the prospectus and harmonising the rules applying to the approval processes of competent authorities by streamlining them”¹.

<ESMA_QUESTION_SAC_2>

3. : Do you agree with the criteria for assessing the consistency of a prospectus proposed in Article A(3)? Do you consider that additional consistency criteria are necessary?

<ESMA_QUESTION_SAC_3>

As stated in paragraph 49 page 19, ESMA considers that “*consistency relates to the relationship between different parts of a document and that a prospectus can be considered consistent when its individual parts do not contradict each other and as such form a coherent whole*”.

To ensure the consistency of the prospectus, ESMA has identified specific elements to be checked by NCAs:

- Material and specific risks included in the prospectus should also be included in the risk factors
- Information contained in the summary should be aligned with information contained elsewhere in the prospectus
- The figures in the use of proceeds section should correspond to the amount of proceeds being raised and the disclosure of the use of proceeds should be aligned with the disclosure of the issuer’s strategy
- Description of the issuer in the operating and financial review, the historical financial information, the description of the issuer’s activity and the risk factors should be aligned
- Where a working statement is required, it should be aligned with the risk factors

ESMA underlines that it is not possible to define an exhaustive list of criteria for the scrutiny of consistency. This statement is not incorrect but cooperation and exchange of best practices between NCAs would help to set more detailed criteria for the scrutiny of consistency.

<ESMA_QUESTION_SAC_3>

4. : In relation to scrutiny and review of the URD where ESMA proposes that only minimal changes be made to the generally applicable scrutiny criteria, do you consider there to be any further aspects where scrutiny and review of the URD need to differ from the general criteria?

<ESMA_QUESTION_SAC_4>

As stated in paragraph 74 page 24, ESMA states that the scrutiny criteria for the Universal Registration Document should be very similar to the scrutiny criteria for other types of prospectuses (completeness, comprehensibility and consistency).

<ESMA_QUESTION_SAC_4>

5. : Do you agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice?

<ESMA_QUESTION_SAC_5>

¹ Recital 60 of the Prospectus Regulation (2017/1129)



As stated in paragraph 89 page 27, ESMA reminds that article 9 of the Prospectus regulation is silent on whether NCAs should address partial/ repeated review of a URD.

ESMA is of the opinion that since “NCAs have discretion to decide whether it finds necessary to review the URD, it seems logical that the NCA should also be permitted to determine whether the entire URD or only selected parts of it merit review”.

Leaving discretion to NCAs to review or not partial reviews of a URD could be detrimental to investors since some elements could be of interest for investors in case of major changes (company’s organisation, business, financial position, earnings and prospects, governance and shareholder structure).

<ESMA_QUESTION_SAC_5>

6. : In order to take a proportionate approach to scrutiny and review of prospectuses, do you agree that NCAs should only be required to scrutinise information which has not already been scrutinised/reviewed/approved, as proposed in Article B(2)?

<ESMA_QUESTION_SAC_6>

As stated in paragraph 91 page 28, ESMA suggests that “where an NCA has already reviewed a URD, or parts thereof, the NCA should not be required to apply the criteria to the URD/parts of the URD once the entire prospectus is up for approval and has to be scrutinised”.

ESMA’s proposal to only require the scrutiny of those parts that have not already been subject to review seems to comply with the necessity to speed up the process to obtain approval of the prospectus. As such, it makes sense to require only the review of parts that have not been subject to review.

NCAs should however pay attention to the consistency of the URD when reviewing only certain parts.

<ESMA_QUESTION_SAC_6>

7. : Do you believe that application of the proposed criteria 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_SAC_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SAC_7>

8. : Do you have any further suggestions for harmonising the way in which NCAs scrutinise prospectuses? In your view, should ESMA propose more detailed or additional criteria for scrutiny/review in its technical advice?

<ESMA_QUESTION_SAC_8>

The Prospectus Regulation states that “*this regulation should eliminate those differences by harmonising the criteria for the scrutiny of the prospectus and harmonising the rules applying to the approval processes of competent authorities by streamlining them*”.

As such, two points must be raised:

- Firstly, NCAs should cooperate and communicate on best practices between them in order to implement the same scrutiny as much as possible
- Secondly, and even though a part of the scrutiny is subjective, more detailed criteria (section by section) would ensure more harmonization in the scrutiny and approval of the prospectuses in the EU.

<ESMA_QUESTION_SAC_8>

9. : Has ESMA identified all the necessary amendments to the existing procedures for approval of the prospectus?

<ESMA_QUESTION_SAC_9>

<ESMA_QUESTION_SAC_9>

10. : Do you agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e)?

<ESMA_QUESTION_SAC_10>

As stated in paragraphs 102 and 103 page 34, ESMA reminds that the Prospectus Regulation provides in article 26(4) that “*the approval of the registration document or universal registration document shall encompass the appendix*”.

The measure seems justified since the appendix should be reviewed at the same time with the registration document or the URD in order to ensure that the approval delivered to the issuer is based on all information relevant for investors.

<ESMA_QUESTION_SAC_10>

11. : Do you agree with the procedures for approval of the URD?

<ESMA_QUESTION_SAC_11>

As stated in paragraphs 124 to 128 page 40, ESMA describes the procedure for the approval of the URD.

The procedure is clear, detailed and ensures that the URD is delivered after careful scrutiny of the NCA.

However, the second procedure provides that after having drawn up a URD for 2 consecutive years, the issuer may file the URD with the NCA and publish it without approval. This procedure is seen as the filing of the URD without prior approval.

Even though this measure will lighten the administrative cost and burden for SMEs, it could also be to the detriment of investors since the situation of the company might have change between the last approval and the new URD.

<ESMA_QUESTION_SAC_11>

12. : Do you agree with the procedures for filing of the URD? Are there any further considerations which ESMA should take into account in this regard?

<ESMA_QUESTION_SAC_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_12>

13. : Do you believe that any of the proposed procedures for approval and filing 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_SAC_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_13>

14. : Do you agree that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer? If no, please elaborate on how ESMA should further specify the conditions already established at Level 1.

<ESMA_QUESTION_SAC_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_14>

15. : Do you have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper?

<ESMA_QUESTION_SAC_15>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_15>