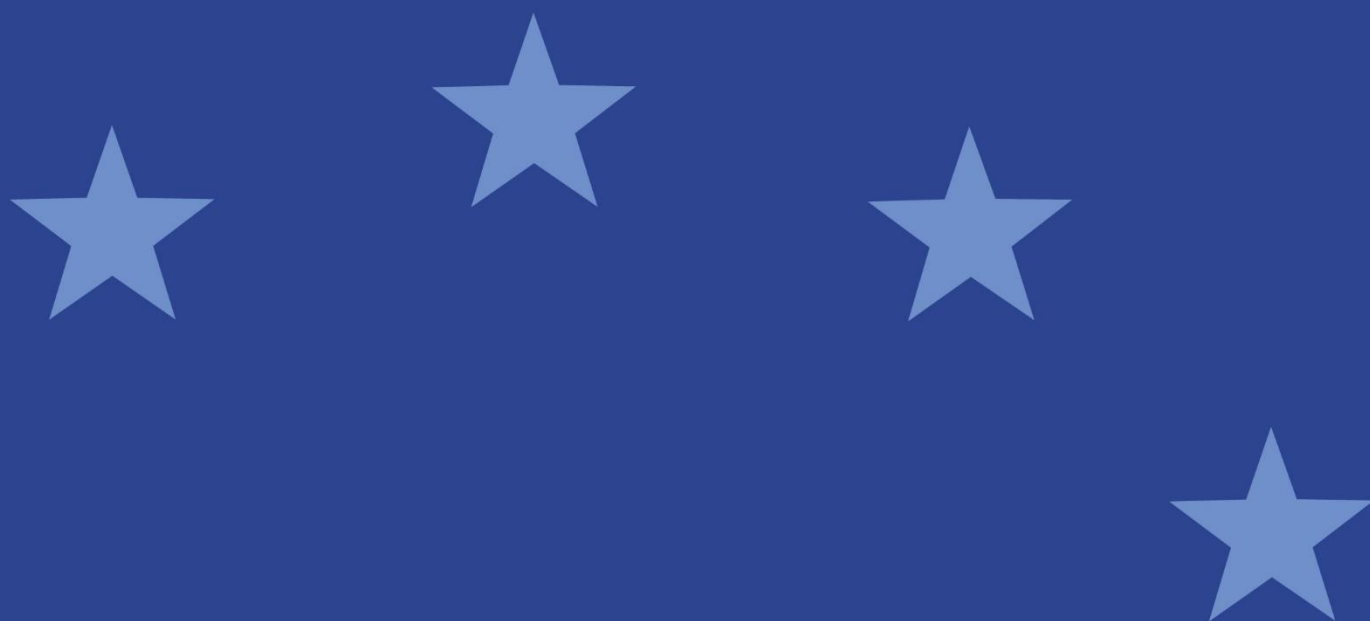


Consultation Paper

Draft regulatory technical standards under the new Prospectus Regulation



Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. 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 form “Response form_Consultation Paper on draft RTS under the new Prospectus Regulation”, available on ESMA’s website alongside the present Consultation Paper (www.esma.europa.eu → “Your input – Open consultations” → “Consultation on draft RTS under the new Prospectus Regulation”).
- 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 this Consultation Paper

This 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).

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Acronyms and definitions used in this Paper

APM	Alternative Performance Measure
APM Guidelines	ESMA Guidelines on Alternative Performance Measures (ESMA/2015/1415, 5 October 2015)
CEF	Closed end fund
CFI code	Classification of Financial Instruments code
CIR	Commission Implementing Regulation (EU) 2015/227 of 9 January 2015 amending Implementing Regulation (EU) No. 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No. 575/2013 of the European Parliament and of the Council.
CoA	Certificate of approval
Commission	European Commission
CRD IV	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
CRR	Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.
EPS	Earnings per share
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
FIRDS	Financial Instruments Reference Data System

First Commission Delegated Regulation	Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus.
FISN	Financial Instrument Short Name
ISIN	International Securities Identification Number
KFI	Key financial information
LEI	Legal Entity Identifier
MiFID	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFIR	Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
NAV	Net Asset Value
NCA	National competent authority
Omnibus I Directive	Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)
Omnibus II Directive	Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)

'Pathfinder' prospectus	A final draft of the prospectus used for marketing purposes to a limited number of investors
PRIIPs Regulation	Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance based investment products (PRIIPs)
Prospectus Directive / PD	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC
Prospectus Regulation / PR	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC
RD	Registration document
RTS	Regulatory technical standards
Second Commission Delegated Regulation	Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71 of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.
Solvency II	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
SPV	Special Purpose Vehicle
SREP	Supervisory Review and Evaluation Process
URD	Universal registration document

1. Executive summary

Reasons for publication

Regulation (EU) 2017/1129 was published in the Official Journal of the European Union on 30 June 2017 and entered into force on 20 July 2017. The Regulation requires ESMA to submit draft regulatory technical standards ('RTS') on key financial information for the prospectus summary, data for classification of prospectuses and the practical arrangements to ensure that such data is machine readable, provisions concerning advertisements and situations where a significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus require a supplement to the European Commission by 21 July 2018¹. ESMA is additionally permitted to submit draft RTS further specifying the requirements relating to the publication of the prospectus.

According to Article 10 of Regulation (EU) No 1095/2010, ESMA must conduct a public consultation before submitting draft RTS to the European Commission. This Consultation Paper therefore seeks stakeholders' views on ESMA's proposals for such RTS. The input from stakeholders will help ESMA finalise the draft RTS before submitting them to the European Commission.

Content

Section 2 of the CP addresses the draft RTS on key financial information for the prospectus summary. ESMA has set out the minimum requirements for key financial information according to the type of issuer (non-financial issuers, credit institutions, insurers, non-equity securities, special purpose vehicles in relation to asset backed securities and closed end funds) and the type of security whilst ensuring that the information produced is concise and understandable. Information as to how guarantors should set out their key financial information is addressed as is the presentation of pro forma information and for complex financial information, the requirements for specialist issuers and the use of alternative performance measures. ESMA has kept the proposed required information as succinct as possible given the page restrictions of the summary and so as to enable the issuer to include a limited amount of further key financial information of their choice.

Section 3 presents ESMA's considerations as regards draft RTS on data for the classification of the prospectus and how to ensure that such data is machine readable. ESMA proposes that in order to minimise adaptation costs NCAs continue using the existing IT platform for the purpose of submitting data to ESMA. Such platform should be expanded so that it could also be used as a storage mechanism providing the public with free of charge access and search functions as well as for the purpose of passporting notifications. Data proposed by ESMA include the variables needed for the classification of prospectuses in the storage mechanism

¹ ESMA is furthermore required to submit draft RTS on the technical arrangements for the functioning of the notification portal to be established by ESMA to the European Commission by 21 July 2018. As these technical arrangements in ESMA's view have relevance exclusively to NCAs, ESMA has decided not to subject this draft RTS to public consultation. Please refer to footnote 6 for further details in this regard.

as well as those necessary for the drafting of the annual report on prospectuses provided for by Article 47.

Section 4 addresses the draft RTS on advertisements. As ESMA delivered a draft RTS in relation to a similar mandate set out in the Omnibus II Directive, the suggested measures carry over the provisions laid down in Articles 11 and 12 of Commission Delegated Regulation (EU) 2016/301 that are compatible with the new Prospectus regime. In addition, the draft RTS further specify the provisions on advertisements requiring that they include wording to clearly identify them as such, disclose the website where the prospectus is published as well as contain information that will assist investors to trace the prospectus. Moreover advertisements circulated to retail investors should contain a small number of warnings. Finally the draft RTS establishes procedures on the cooperation between the competent authorities of the home and host Member States in order to address the new elements incorporated in the mandate in Article 22(9) of the Prospectus Regulation.

Section 5, presents ESMA's considerations in relation to the empowerment on supplements. ESMA delivered a draft RTS in 2014 in relation to a similar mandate set out in the Omnibus I Directive. The suggested measures therefore carry over the provisions in Article 2 of the First Commission Delegated Regulation. The draft RTS incorporates new provisions set out in ESMA's technical advice in relation to the format and content of the prospectus particularly as regards the extension of the requirements to provide profit forecasts and estimates to further types of issuers and to the requirement for issuers of the underlying securities relating to depositary receipts to provide a working capital statement. These in turn would require the publication of a supplementary prospectus in case of material change or the publication of a new profit forecast or estimate following the publication of the prospectus and the end of the offer or admission to trading of the securities.

Section 6 sets out ESMA's suggested approach to the draft RTS on the publication of the prospectus. ESMA delivered draft RTS on a very similar empowerment in 2015 which are set out in Articles 6 – 10 of Commission Delegated Regulation (EU) 2016/301. As the market has grown accustomed to these rules, ESMA considers that they should be carried over to the new regime insofar as they have not been made redundant by changes at Level 1. Based on an analysis of the provisions in the Commission Delegated Regulation vis-à-vis the new Level 1 text, ESMA proposes that only a few of the existing rules on publication need to be carried over to the new Level 2 regime.

Annex I sets out ESMA's empowerment to develop draft RTS in general and in relation to the five topics addressed in the Paper specifically. Annex II lists all the questions addressed to stakeholders throughout the Paper while Annex III sets out a cost-benefit analysis of the proposals made. Finally, Annex IV presents the first version of ESMA's draft RTS in relation to each of the five empowerments.

Next steps

When finalising its draft RTS, ESMA will consider all feedback which it receives in relation to this Consultation Paper by 9 March 2018.

2. Draft RTS on key financial information for the summary

2.1. Mandate

1. Article 7(13) of the Prospectus Regulation sets out a mandate for ESMA to develop draft RTS in order to specify:
 - the content and format of presentation of the key financial information referred to in point (b) of paragraph 6; and
 - the relevant key financial information referred to in point (c)(iii) of paragraph 7 included in the summary of the prospectus.
2. In developing the draft RTS, ESMA is asked to consider the various types of securities and issuers while making sure that the key financial information is concise and understandable.
3. ESMA has to submit the draft RTS to the Commission by 21 July 2018. Power is delegated to the Commission to adopt the RTS in accordance with Articles 10 to 14 of the ESMA Regulation.

2.2. Scope of the mandate

4. Article 7(1) of the Prospectus Regulation requires that a prospectus shall include a summary except in the case of non-equity securities which are traded on a regulated market, or segment of a regulated market, reserved only for qualified investors, or where the securities have a denomination of at least EUR 100,000. Article 7(6)(b) requires that the summary of a prospectus has a sub-section entitled 'What is the key financial information regarding the issuer?' which must set out a selection of historical key financial information of the issuer and where applicable pro-forma financial information and a description of the qualification in the audit report.
5. It is ESMA's understanding that Article 7(6)(b) asks for the disclosure of specific figures which would give investors key information on the issuer's financial position, financial performance and cash flows. Furthermore, to ensure consistency of this sub-section with the other parts of the prospectus, ESMA understands that the set of key financial information in the prospectus summary must be extracted from the historical financial information presented in the relevant sections of the prospectus.
6. The selection of historical key financial information in the prospectus summary under Article 7(6)(b) must include figures for each financial year required by the relevant disclosure annexes and therefore appearing in the prospectus. Comparative financial information should be given for interim financial information for the same period as the previous year, in relation to the income statement and the cash flow statement, depending on the requirements of the relevant prospectus annex. Under the annex for equity issuers, for instance, the usual requirement (barring any special circumstances) is to provide three years historical financial information plus the most recent income

statement interim figures, cash flow interim figures and comparative figures for the same period in the previous year as well as balance sheet information and interim balance sheet information. However, comparative balance sheet information is satisfied by presenting the year-end balance sheet information. For retail non-equity issuers the requirement in the retail debt annex is reduced to two years of historical financial statements plus the most recent income statement interim figures, cash flow interim figures and comparative figures for the same period in the previous year. Again two years balance sheet information is required including the most recent interim balance sheet and comparative balance sheet information is satisfied by presenting the year-end balance sheet information.

7. ESMA considered whether forward looking statements, such as profit forecasts, fall within the scope of the mandate and could be included in the KFI of the summary. While forward looking information can be valuable to potential investors, as PR 7(6)(b) explicitly requires the presentation of historical key financial information in the KFI section, ESMA came to the conclusion that forward looking statements could not be included in the KFI of the summary.
8. In addition, the key financial information must, where applicable, include (a) pro forma financial information; and (b) a brief description of any qualifications in the audit report relating to the historical financial information.
9. Furthermore, Article 7(7)(c)(iii) requires that where there is a guarantee attached to the securities, the relevant key financial information for the purpose of assessing the guarantor's ability to fulfil its commitments under the guarantee is included in the summary.

2.3. Development of the draft RTS

2.3.1. General considerations

10. The mandate covers both the content and the format of the financial information to be presented in the summary of a prospectus. ESMA has therefore considered the key financial information that investors would need to make a preliminary assessment of the investment proposal, before looking for detailed information in the prospectus, as well as the clearest means of presenting the information.

Content

11. In terms of content, Article 7(6)(b) requires that the historical key financial information in the summary must include figures for each financial year in the prospectus and any subsequent interim period. This information must be accompanied by comparative interim information for the same period in the previous financial year except for the interim balance sheet which is satisfied by presenting the year-end balance sheet information.

12. ESMA has been mindful of the constraints imposed on the length of the summary which is set at seven A4 pages, and has therefore proposed certain line items / figures which are common to most issuers' accounts. If the investor wants to review the detail behind the key line items, full information is presented in the body of the prospectus and in the issuer's audited financial statements. It is ESMA's view that the term 'summary' implies a concise description of information appearing elsewhere in the prospectus and to that end ESMA is of the opinion that only information that appears in the body of the prospectus can appear in the summary. It is therefore not possible to introduce new information in the summary when it is not disclosed in the prospectus.
13. ESMA is of the view that issuers should also be given the flexibility to highlight their key financial information in the summary section. In order to do so, they should not only use information extracted directly from their historical financial information but be able to use Alternative Performance Measures (APMs) from elsewhere in the prospectus. ESMA has previously issued Guidelines on the use of APMs (the APM Guidelines). The APM Guidelines cover financial measures of historical or future financial performance, financial position, or cash flows, other than financial measures defined or specified in the applicable financial reporting framework. Issuers are permitted to use APMs in their prospectus and therefore, should the issuer consider that an APM is key financial information, it can include the APM in its prospectus and summary.
14. In addition, ESMA considers that issuers should be permitted to include three additional line items or APMs to the summary overall on a voluntary basis. The additional line items or APMs must be key to the issuer or the securities being offered or admitted to trading.
15. ESMA is of the view that the information extracted from the historical financial information should be flagged as such in order to differentiate for investors the audited financial information from the APMs.

<p>Question 1: Do you agree that the KFI extracted from the issuer's historical financial information should be sign-posted?</p>
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16. In order to facilitate investors' understanding and the comparability of the key financial information, ESMA proposes that the key financial information should differ depending on the nature of the activity of the issuer. Moreover, the key financial information disclosed in the prospectus summary should be appropriate to investors according to whether they are investing in equity or non-equity securities. In line with this, ESMA has proposed different schedules for equity and non-equity securities. Furthermore, ESMA is of the view that where the issuer includes in the prospectus restated historical financial information, the KFI should disclose the restated figures as these would be relevant for retail investors.

Format

17. As regards format, ESMA is of the opinion that the key financial information should appear in tabular form and follow the order of information that appears in the financial statements. For example, total revenue should appear before net profit / loss, total assets should appear before total equity and so on.
18. ESMA proposes that the KFI consist of three tables, namely KFI extracted from (a) the income statement; (b) the balance sheet; and (c) the cash flow statement (where required by the relevant PR annexes). Each table should facilitate the inclusion of the mandated figures for each financial year covered by the financial statements included in the prospectus. The years should be set out at the top of the table, with the specific line items in a column on the left side of the table. The figures relating to these line items should then appear in the columns underneath the relevant financial year.
19. In order to allow issuers to include financial measures that are disclosed in the prospectus, the key financial information is further subdivided into the following categories:
 - mandatory information which appears in issuers' financial statements;
 - mandatory information where that information appears elsewhere in the prospectus.

Concise and understandable

20. The empowerment in PR Article 7(13) requires that the key financial information in the summary of the prospectus should be 'concise and understandable'. ESMA understands that 'concise' key financial information means to include information that is brief albeit comprehensive avoiding superfluous information that would make the summary unnecessarily long. Secondly, the requirement for 'understandable' key financial information entails the disclosure of information that is clear, coherent and user-friendly for retail investors as explained in Recital 30. In ESMA's opinion these conditions are satisfied by the inclusion in the key financial information of certain line items from the issuer's financial statements which ESMA believes are commonly used by most issuers as well as up to three further figures (either line items or APMs) at the issuer's discretion. ESMA has set out in Section 2.3.2. the disclosure requirements in a series of templates relating to different types of issuer and securities.

Consistent

21. As regards the inclusion of APMs in the summary, ESMA believes that the summary cannot contain APMs which do not appear in the body of the prospectus as, in ESMA's opinion, this contradicts Article 7(2) which requires that the summary is 'consistent with other parts of the prospectus'. Furthermore, if the issuer chooses to include APMs on a voluntary basis, these should be key to the issuer. To avoid absorbing a significant amount of the maximum length limit of the summary, ESMA proposes that where it is necessary to provide some explanation on the APMs in the summary, this should be

done by way of footnotes. However, in all cases a full explanation of APMs, in accordance with the APM Guidelines will, of course, be included in the prospectus where the APMs appear.

Templates for different types of issuers and securities

22. ESMA proposes that the key financial information should depend on the type of issuer and type of securities. For that reason, the following six templates have been drawn up setting out the disclosure requirements for specific issuers and securities.
 - i. Non-financial entities (equity securities);
 - ii. Non-financial entities (non-equity securities);
 - iii. Credit institutions (equity and non-equity securities);
 - iv. Insurance companies (equity and non-equity securities);
 - v. Special Purpose Vehicles (SPVs); and
 - vi. Closed end funds (CEFs).

The above templates are presented in Tables 1 to 6 in Section 2.3.2.

23. Where the issuer of the non-equity security is an entity other than a non-financial entity for example a credit institution or an insurer, ESMA is of the view that the issuer should use the specific table for that type of issuer.
24. As regards particular types of issuer, such as third countries and their regional and local authorities, public international bodies, or specialist issuer they are required to provide financial information according to their relevant disclosure annex. When issuing retail securities these issuers should use the KFI disclosure requirements for the type of securities that they are issuing such as the KFI mandated for equity or non-equity securities. Furthermore, these issuers should use comparable information where their financial information does not exactly correspond to the requirements of the tables.
25. ESMA is, nevertheless, mindful that some line items set out in the tables in Section 2.3.2. may not be included in the financial statements of an issuer (e.g. specialist issuer). Where this is the case ESMA proposes that issuers should substitute the relevant line item with an appropriate alternative line item.

Question 2: Would you suggest the inclusion of specific templates for other types of issuer? Please specify and explain your reasoning.

Key line items

26. ESMA has proposed some broad parameters that should be used as the basis for the historical key financial information. These categories set the minimum requirements for the financial information in the summary and reflect the financial information set out in the relevant annexes to the Prospectus Regulation. For example, in the proposed share

registration document annex, where an issuer prepares its audited financial statements according to IFRS or national accounting standards, the prospectus should include at least the balance sheet, income statement, a statement showing changes in equity, a statement of cash flows and the accounting policies and explanatory notes. From this, ESMA is of the view that information from the balance sheet, income statement and cash flow statement must be included in the summary. The requirements of the KFI from the financial statements are set out in the following paragraphs and are based on those for non-financial equity securities issues. However, an explanation of requirements for different types of issuers and securities are set out at the end of the description of the requirements for each financial statement.

Income Statement

27. In line with the considerations presented in paragraph 26, ESMA is of the view that, the items in the key financial information section of the summary should firstly give investors an overview of the issuer's income and profitability. In this regard, ESMA proposes the inclusion of total revenue of the issuer. ESMA considers that as revenue captures all sources of a company's income, it provides helpful information to investors on the revenue streams of the issuer. Furthermore, ESMA suggests that it be complemented by an extra metric, the year on year revenue growth where this has been included elsewhere in the prospectus. This would draw attention to revenue trends over time.
28. As regards profitability for issuers of equity securities, ESMA believes that both net profit/loss and another measure of financial performance such as operating profit, where this is included in the prospectus, should also appear in the summary. These would provide valuable insights into the company's earning potential as powerful indicators of the issuer's profit-generating capacity from its core business. In addition, net profit reveals the company's bottom line after deduction of all expenses. In relation to net profit, ESMA considers that where the issuer produces consolidated statements the relevant metric should be the net profit or loss attributed to the equity holders of the parent company, so that investors are not confused by profit attributed to the non-controlling interests.
29. To provide a fuller picture of the issuer's profitability, ESMA suggests that a small number of other metrics that would support investors in their initial assessment of the investment proposal should be included provided that they are disclosed in the prospectus. These would be the operating and net margins as well as the earnings per share (EPS)² with an explanation in the prospectus of how they are calculated where required by the APM Guidelines. These are considered helpful in terms of gauging the profitability of the issuer and, as long as the methods of calculation of APMs are included

² Depending on the circumstances, earnings per share may or may not be required by an issuer's accounting framework or other legislation and therefore may or may not be considered an APM and require reconciliation in accordance with the APM Guidelines.

in the prospectus where this is required by the APM Guidelines, making comparisons with other issuers.

30. Investors in non-equity securities require information to help assess whether or not an issuer is able to pay the interest and ultimately redeem the bonds. The financial information required is therefore different to that of an equity investor whose main priority is to determine the value of the company in order for them to receive dividend income and capital growth. For that reason, ESMA has drawn up a table (Table 2) for the line items and APMs which are considered most useful for investors in debt or derivative instruments. For non-equity securities, only net profit and loss and operating profit or loss have been required from the income statement. However, the issuer is free to include further items as part of the three voluntary items that may be included in the KFI section.
31. As mentioned in paragraph 22, ESMA has adapted the information requirements for the key financial information to be disclosed by financial entities, namely credit institutions and insurance undertakings as well as SPVs and closed end funds.
 - As regards credit institutions, ESMA is of the view that a small number of additional financial measures would provide a solid indication of the issuer's total revenue, namely net interest income, net fee and commission income, net impairment loss on financial assets and net trading income.
 - In relation to insurance companies, ESMA's proposal is to disclose net premium, net benefits and claims, operating profit, earnings per share and net profit or loss.
 - Income statement line items are expected to be less significant for SPVs issuing asset backed securities and, as a result, ESMA suggests only the inclusion of net profit/loss in the summary. However, should the SPV issuer wish to include additional income statement items they are at liberty to do so bearing in mind that further items are limited to three.
 - As regards closed end funds, ESMA proposes the inclusion of a small number of measures in the summary so as to provide investors with a succinct view of the issuer's net investment income, net profit or loss and the main categories of fees namely performance fee, investment management fee as well as any other fee material to the fund's size or investors.

Balance sheet

32. In relation to the presentation of key financial information from the balance sheet ESMA is of the opinion that the issuer's total assets should be disclosed as both a measure of the assets held by the company and an indication of how large the issuer is in terms of the assets it controls. In addition, ESMA proposes that this section of the key financial information should inform investors of the issuer's total equity as well as financial indebtedness, to provide information on the issuer's financial health and the degree of its leverage.

33. As mentioned in paragraph 30, financial information for investors in non-equity securities will differ from that required by investors in equity. For that reason, it is ESMA's opinion that the issuer should include information that will enable an investor in non-equity securities to determine if the issuer will be able to repay their commitments under the non-equity securities. These issuers should therefore include financial measures over and above those required for equity securities which are the current ratio (current assets / current liabilities), the debt to equity ratio (total liabilities / total shareholder equity) and the interest cover ratio (operating income / interest expense).
34. ESMA has considered the needs of credit institutions and insurers and has therefore adapted the KFI disclosure requirements so that they are in line with the financial disclosures for credit institutions and with those for insurers. In accordance with their particular financial reporting requirements, ESMA is of the view that credit institutions should disclose some additional balance sheet metrics, namely senior and subordinated debt, net loans and receivables to customers and deposits from customers, while insurers should also present insurance contract liabilities and total investments. Because of their particular nature credit institutions and insurers issuing non-equity securities should use the specific tables relating to their industry rather than the table for non-equity securities. However, when issuing non-equity securities, credit institutions and insurers are not obliged to provide three years of financial information only the amount required for non-equity securities i.e. two years.
35. SPVs for asset backed securities are commonly used to repackage and ring fence assets. Therefore, due to the nature of these SPVs, balance sheet information is more important than income statement information. For that reason, ESMA proposes that balance sheet disclosure for an SPV for asset backed securities should include information on a number of measures which would include financial assets, derivative financial assets, non-financial assets if material to the issuer's business, financial liabilities, derivative financial liabilities, total assets and total liabilities.
36. As regards, closed end funds ESMA sees merit in requiring the disclosure of the following financial metrics: total net assets, and a table illustrating the Net Asset Value (NAV) per share class which are in line with the requirements of investors in these funds and the nature of their financial disclosure.

Cash flow information

37. Cash flow statements provide investors with information on the issuer's cash position resulting from operating, investing or financing activities. They can also give an insight into the financial health of the company and are used, particularly by investors in non-equity securities, to determine whether the company is generating more cash than it is using and is able to pay the interest on the bonds and ultimately redeem the bonds. For non-financial entities issuing equity, ESMA is of the view that cash flow from operations provides the investor with useful information in order to make their investment decision and have therefore included this as a disclosure item in the summary.

38. For non-financial entities issuing non-equity securities ESMA considers that the cash flow statement, net cash flow from operating activities, net cash flow from financing activities and net cash flow from investing activities should be presented in their KFI on cash flow information to give investors in non-equity securities a clear picture of the issuer's ability to repay their debt.
39. On the other hand, information on cash flows is less important for credit institutions, insurers, SPVs and closed end funds and therefore a requirement for cash flow information has not been included for these types of issuers.

Question 3: 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?

Statement of changes in equity

40. As regards the statement of changes in equity, ESMA is of the opinion that given the specific page limit of the summary, information from this statement should not be necessarily disclosed in the KFI section. For this reason, ESMA has not provided a template for this statement. Where required by the Prospectus Regulation annexes, the information will appear elsewhere in the prospectus and, if the issuer is of the opinion that certain information from the statement of changes in equity is key the issuer can, on a voluntarily basis, include up to three items from this statement in the summary.

APMs / further line items

41. As APMs are used by issuers to present specific aspects of their business and by investors to assist in analysing their financial position and the performance of a company, ESMA proposes that an issuer may include additional APMs, on a voluntary basis in the prospectus summary. As all information contained in the summary must be included in the prospectus, the APMs presented in the summary should be selected from the APMs that are already disclosed in the prospectus. While the presentation of APMs in the body of the prospectus will comply with the APM Guidelines, it is also possible that an explanation of the APMs in the summary would be necessary in order to improve their comprehensibility. ESMA is of the view that this could be accommodated by the insertion of footnotes, being cognisant not to exceed the specific page limit of the summary under Level 1 and ensuring that the font of the footnote is of a readable size in accordance with Article 7(3)(a).
42. Due to the limited size of the summary, ESMA is of the view that the number of additional voluntary items which could be APMs, line items or a combination of both, should be restricted to three. ESMA sees this number as adequate to allow for the disclosure in the summary of APMs or line items that are key. Furthermore, a relatively small number of discretionary APMs ensures that they are not given more prominence than the key financial information stemming from the financial statements.

43. The voluntary items should be placed in the KFI in a position that would correspond with their position in the issuer's financial statements. For instance, if a key line item is taken from the balance sheet, the KFI item in the summary would be placed in the balance sheet KFI as it would appear in the balance sheet.
44. In relation to financial entities that are under prudential supervision, namely credit institutions and insurance companies, ESMA considers that a small number of additional line items or APMs should be disclosed in the summary so that investors are provided with information on specific aspects of these entities. ESMA has specified the key financial information, which is mandatory if it appears elsewhere in the prospectus, as explained further below.
45. For credit institutions certain prudential ratios stemming from the CRR and CRD IV and one supervisory requirement required by the CIR should be disclosed in the summary. The ratios are the Common Equity Tier I and the Total Capital Ratio, including their value at the most recent SREP and the leverage ratio calculated in accordance with the requirements of the CRR. The supervisory disclosure requirement is the disclosure non-performing loans as defined by the CIR.
46. For insurers operating profit, distinguishing life from non-life insurance, financial investments, total insurance liabilities, total financial liabilities and the loss ratio should be disclosed. Insurers should also present the solvency cover ratio for the Solvency Capital Requirement as required by Solvency II. ESMA proposes requiring this ratio as it indicates the insurer's solvency strength and is equal to eligible own funds divided by the Solvency Capital Requirement. Below a 100% solvency cover ratio, supervisory measures are taken. Non-life insurers are also required to include the combined ratio which is the sum of acquisition and administrative expenses and claims and insurance benefits incurred divided by premiums earned which is a key metric for this type of insurers.

Question 4: 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.

Question 5: 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?

Guarantor information

47. As regards the key financial information on the guarantor pursuant to Article 7(7)(c)(iii) ESMA notes that under the existing and the proposed Level 2 prospectus regime the guarantor is required to disclose information as if it were the issuer of the same type of security that is the subject of the guarantee. Therefore, the content of the key financial information on the guarantor that is presented in the prospectus summary should be the same as if the guarantor were the issuer of the securities. In the case of asset-backed

securities, this means that the guarantor information should be comprehensive and of a standard required for an issuer of the underlying securities not that of an SPV.

Pro forma information

48. The presentation of the pro forma figures should be in the form of extra columns in the templates provided in the tables in Section 2.3.2. or as a separate pro forma table. The columns shown in the templates represent the historical unadjusted information, and additional columns will be required for the pro forma adjustments and the resulting pro forma financial information. The issuer should indicate that the pro forma figures are based on the last completed financial period and / or the most recent interim period in accordance with annex relating to pro forma financial information.
49. Where pro forma information is given in the prospectus, the line items which have been adjusted in the pro forma should be included in the KFI pro forma balance sheet and the KFI pro forma income statement or the separate pro forma table in the summary depending on how the issuer chooses to present the pro forma information. If the line item figures adjusted for the pro forma are not the mandatory items set out in the tables, the issuer should use its voluntary items to include these line items in its KFI.
50. Given the page limit on the prospectus summary under the Prospectus Regulation and considering that investors will read the prospectus before making an investment decision, ESMA considers that only a brief explanation of the figures need accompany the pro forma information. There should be no requirement to include the narrative requirements, which are set out in the pro forma annex.
51. Even though ESMA is of the view that the key financial information in the summary should also present pro forma financial information as required by Article 7(6)(b)(i), it is also mindful of the restrictions related to the length of the summary. ESMA would therefore suggest that the summary should briefly state the reasons for preparing the pro forma financial information. Disclosure of the key adjustments to the financial figures and the resulting figures will be provided as additional columns in the table so that investors get a clear idea of the effect on the profitability and / or financial position of the issuer.
52. If, in case of a significant gross change, only narrative information was included in the prospectus, instead of pro forma financial information, a statement with regard to the significant gross change should be included in the key financial information section. It should be noted that the technical advice provided by ESMA sets out the definition of a 'significant gross change' which means a variation of more than 25%, relative to one or more indicators of the size of the issuer's business, in the situation of the issuer.

Question 6: 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?

Qualifications in audit report

53. Where a qualification has been included in the audit report, the nature of the qualification should be briefly described in the summary. This is to ensure that investors are aware of any potential qualifications at first glance of the prospectus. They can then decide if the audited financial statements warrant further scrutiny.
54. ESMA considers that Article 7(6)(b)(ii) is clear and does not require further explanation and therefore has not included any operative provision on qualifications in the audit report.

Complex financial history

55. ESMA considered whether or not to include disclosure requirements for complex financial history in the KFI in the summary. Where the issuer has complex financial history or has made a significant financial commitment, financial information about an entity other than an issuer may be necessary in order to provide a complete picture of the financial situation. Additional information due to complex financial history can, therefore, by its nature, be very lengthy and given the page limit for the prospectus summary, the complex financial information could consume a large part of it. ESMA then considered whether to require the inclusion of a statement in the summary in order to highlight to investors that the prospectus contains complex financial history. However, it was felt that this would not provide investors with a full picture within the summary. As a result, ESMA is of the opinion that where an issuer has complex financial history (as envisaged by Article J)³ the financial information relating to the entity or entities other than the issuer, should be presented in a manner which corresponds to the presentation of the complex financial information in the prospectus (for example, as combined financial information) and in line with the KFI set out in the tables and / or, if applicable, in the form of pro forma financial information in tabular form as described in paragraph 48.

Question 7: 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, elaborating on the connected costs and benefits.

³ Reference is made to [ESMA31-62-532](#) (Consultation Paper on the content and format of the prospectus).

Specialist issuers

56. For prospectuses issued by specialist issuers, such as mineral companies, ESMA is of the view that, if their annual financial statements do not contain the same line items as those set out in the tables in this RTS, issuers should be able to substitute the corresponding relevant line item in the key financial information in the summary. ESMA acknowledges that especially in the case of specialist issuers, it should be possible to adapt the key financial information in the summary so as to disclose the key information that is meaningful and helpful to investors.

2.3.2. Content and format of presentation of the key financial information

57. On the basis of the above considerations ESMA proposes the following content and format of presentation of the key financial information in the prospectus summary for different types of issuers namely (i) non-financial entities; (ii) non-equity securities; (iii) credit institutions; (iv) insurance companies; (v) SPVs and (vi) closed end funds.
58. The following legend applies across Tables 1 to 6:
- * (asterisk) signifies mandatory information or corresponding information where the issuer does not use IFRS. The issuer can use a different title to present substantially the same information as set out in the table, where this alternative title is used in its financial statements.
 - # (hash) denotes that if this information appears elsewhere in the prospectus, it is mandatory.
 - ~ (tilde) in relation to closed end funds signifies investments at fair value through profit or loss at the same date as the date of the NAV.
59. In addition to each of the categories of issuers or securities set out below (for example non-financial entities (equity)), the issuer is free to choose three further items which can either be additional line items, APMs that appear in the prospectus or one line item and two APMs or vice versa.

Non-financial entities (equity securities)

Table 1a: Income statement for non-financial entities (equity securities)

	<i>Year</i>	<i>Year -1</i>	<i>Year -2</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Total revenue					
*Operating profit/loss or another similar measure of financial performance used by the issuer in the financial statements					
*Net profit or loss (for consolidated financial statements net profit or loss attributable to equity holders of the parent)					
#Year on year revenue growth					
#Operating profit margin					
#Net profit margin					
#Earnings per share					

Table 1b: Balance sheet for non-financial entities (equity securities)

	<i>Year</i>	<i>Year -1</i>	<i>Year -2</i>	<i>Interim</i>
*Total assets				
*Total equity				
#Net financial debt (long term debt plus short term debt minus cash)				

Table 1c: Cash flow statement for non-financial entities (equity securities)

	Year	Year -1	Year -2	Interim	Comparative interim from same period in prior year
*Net Cash flows from operating activities					

Non-financial entities (non-equity securities)

Table 2a: Income statement for non-financial entities (non-equity securities)

	Year	Year -1	Interim	Comparative interim from same period in prior year
*Operating profit/loss or another similar measure of financial performance used by the issuer in the financial statements				

Table 2b: Balance sheet for non-financial entities (non-equity securities)

	Year	Year -1	Interim
*Net financial debt (long term debt plus short term debt minus cash)			
#Current ratio (current assets / current liabilities)			
#Debt to equity ratio (total liabilities / total shareholder equity)			

#Interest cover ratio (operating income / interest expense)			
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Table 2c: Cash flow statement for non-financial entities (non-equity securities)

	Year	Year -1	Interim	Comparative interim from same period in prior year
*Net Cash flows from operating activities				
*Net Cash flow from financing activities				
*Net Cash flow from investing activities				

Credit institutions (equity and non-equity securities)

Table 3a: Income statement for credit institutions (equity and non-equity securities)

	Year	Year -1	Year -2 ⁴	Interim	Comparative interim from same period in prior year
*Net interest income (or equivalent)					
*Net fee and commission income					
*Net impairment loss on financial assets					

⁴ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

*Net trading income					
*Measure of financial performance used by the issuer in the financial statements such as operating profit					
*Net profit or loss (for consolidated financial statements net profit or loss attributable to equity holders of the parent)					
#Earnings per share (for equity issuers only)					

Table 3b: Balance sheet for credit institutions (equity and non-equity securities)

	<i>Year</i>	<i>Year -1</i>	<i>Year -2⁵</i>	<i>Interim</i>	<i>Value as outcome from the most recent SREP</i>
*Total assets					
*Senior debt					
*Subordinated debt					
*Loans and receivables from customers (net)					
*Deposits from customers					

⁵ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

*Total equity					
#Non performing loans (based on net carrying amount) / Loans and receivables					
#Common Equity Tier 1 capital (CET1) ratio or other relevant prudential capital adequacy ratio depending on the issuance					
#Total Capital Ratio -					
#Leverage Ratio calculated under applicable regulatory framework					

- Question 8: 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.
- Question 9: 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?

Insurance companies (equity and non-equity securities)

Table 4a: Income statement for insurance companies (equity and non-equity securities)

	Year	Year -1	Year -2 ⁶	Interim	Comparative interim from same period in prior year
*Net premiums					
*Net benefits and claims					
*Earnings before tax					
*Operating profit (distinguishing between life and non-life insurance)					
*Net profit or loss (for consolidated financial statements net profit or loss attributable to equity holders of the parent)					
#Year on year revenue growth (net premiums)					
#Earnings per share (for equity issuers only)					

Table 4b: Balance sheet for insurance companies (equity and non-equity securities)

	Year	Year -1	Year -2 ⁷	Interim
*Investments including financial assets related to unit linked contracts				

⁶ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

⁷ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

*Total assets				
*Insurance contract liabilities				
*Total Financial liabilities				
*Total insurance liabilities				
*Total equity				
#Solvency Cover Ratio (Solvency II ratio - SII ratio) or other relevant other relevant prudential capital requirement ratio depending on the issuance				
#Loss ratio				
#Combined ratio (claims + expenses / premiums for the period)				

Question 10: Do you agree with the choice of measures for insurance companies?

SPVs in relation to asset backed securities

Table 5a: Income statement for SPVs in relation to asset backed securities

	Year	Year -1
*Net profit or loss		

Table 5b: Balance sheet for SPVs in relation to asset backed securities

	Year	Year -1
*Total Assets		
*Total Liabilities		
*Financial Assets designated at fair value through profit or loss		

*Derivative financial assets		
*Non-financial assets if material to the entity's business		
*Financial Liabilities designated at fair value through profit or loss		
*Derivative financial liabilities		

60. These are the main line items from the financial statements, intended to provide an overview of the SPV's holdings and state of affairs. While financial assets and liabilities at fair value show valuation of instruments at period end, derivative disclosures may give an indication of hedging applied by the SPV, as required by IFRS 7 / IFRS 9. As explained above, cash is not expected to be a significant line item for SPVs other than synthetic securitisations.

Closed end funds

61. The table for a closed end fund requires information for each year represented in the financial statements in the prospectus with the latest available net asset value (NAV) information per share class, in fund's base currency (this may be a different date from the latest published financial statements) or the latest market price of each unit or share class.

Table 6a: Additional information relevant to closed end funds

Share Class	Total NAV	No. of shares / units	~NAV/share or Market price / share / unit
A	XXX	XX	X
	Overall Total	Overall Total	

Table 6b: Income statement for closed end funds

	Year	Year -1	Year -2	Interim	Comparative interim from same period in prior year
*Total net Income / Net investment Income or total income before operating expenses					

*Net Profit / (Loss)					
*Performance fee (accrued / paid)					
*Investment management fee (accrued / paid)					
*Any other material fees (accrued / paid) to service providers					
#Earnings per share					

Table 6c: Balance sheet for closed end funds

	Year	Year -1	Year -2	Interim
*Total Net Assets				
#Leverage ratio				

- Question 11: Do you think it would be useful for retail investors to include a measure of historical performance for closed end funds in the summary?
- Question 12: Do you think that investment companies which are subject to capital requirements should be required to include regulated capital ratios in their summary?
- Question 13: Would the issuer, offeror or person asking for admission to trading incur additional costs if the proposed provisions are adopted? If so, please specify the nature of such costs, including quantifying them. Please also elaborate on the benefits coming from this proposal.

62. The proposed wording of the draft RTS on key financial information in the summary is set out in Annex IV to this Paper.

3. Draft RTS on data and machine readability

3.1. Background

3.1.1. Empowerment

63. According to Article 21(5), second paragraph of the Prospectus Regulation:

At the same time as it notifies ESMA of the approval of a prospectus or of any supplement thereto, the competent authority shall provide ESMA with an electronic copy of the prospectus and any supplement thereto, as well as the data necessary for its classification by ESMA in the storage mechanism referred to in paragraph 6 and for the report referred to in Article 47. (underline added)

64. With reference to this provision, Article 21(6) specifies ESMA's publication duties and sets out that:

ESMA shall, without undue delay, publish all prospectuses received from the competent authorities on its website, including any supplements thereto, final terms and related translations where applicable, as well as information on the host Member State(s) where prospectuses are notified in accordance with Article 25. Publication shall be ensured through a storage mechanism providing the public with free of charge access and search functions. (underline added)

65. Building on NCAs' duty to send ESMA the data needed for the classification of prospectuses and ESMA's obligation to publish this data in a storage mechanism, Article 21(13) of the Prospectus Regulation contains the following mandatory empowerment for ESMA to develop draft RTS:

ESMA shall develop draft regulatory technical standards to specify the data necessary for the classification of prospectuses referred to in paragraph 5 and the practical arrangements to ensure that such data, including the ISINs of the securities and the LEIs of the issuers, offerors and guarantors, is machine readable.

66. ESMA is obliged to submit the draft RTS to the Commission by 21 July 2018 and power is delegated to the Commission to adopt the RTS in accordance with Articles 10 and 14 of the ESMA Regulation.

3.1.2. General considerations

Objective

67. Under Article 21(13), ESMA is firstly required to identify data that is necessary to provide information on the characteristics of the prospectus received and thereby allow for classifying and searching through this information. The empowerment furthermore specifies that LEI and ISIN are required to be included in the list of variables. ESMA notes that this last requirement is based on the fact that these two identifiers are key elements to ensure that the collected information can be easily navigated and linked with other data sources.
68. In parallel with the identification of such data, under Article 21(13) ESMA is secondly required to ensure that this information is machine readable. Again, ESMA understands that machine readability has been mandated as this is essential to ensure smooth data extraction. Furthermore, it ensures linking of ESMA databases (including public ones such as FIRDS), thereby increasing the quality of available public information.

69. Thirdly, Recital 63 of the Prospectus Regulation sets out the Level 1 intention to provide investors with “*access to reliable data that can be used and analysed in a timely and efficient manner*”. By making the Prospectus Register the centralised and free of charge storage mechanism for prospectuses, ESMA aims to address this intention by providing for better data availability on public issuances in Europe.

Scope

70. As regards the scope of the data which NCAs will have to provide, ESMA is of the view that it is necessary to consider in relation to which documents the data will have to be provided. While Article 21(5) only makes explicit reference to prospectuses and supplements, given wording included elsewhere in the PR, ESMA has found it necessary to undertake further analysis of the data that might be required from other documents.
71. Firstly, as around 40% of EEA prospectuses tend to be drawn up as base prospectuses with final terms possibly filed separately⁸, ESMA considers it key to receive data on both document types. If ESMA were to not receive data in relation to final terms – which contain all information specific to the individual issuance, a number of missing fields would be generated and the completeness of ESMA’s database would therefore be compromised, thereby possibly giving a distorted view of the overall size of the market.
72. While a strict reading of Article 21(5), second paragraph of the Prospectus Regulation might seem to imply that NCAs have to submit data only in relation to prospectuses and supplements, Article 21(6) refers to publication of final terms as included in the reference to prospectuses. Additionally, data limited to prospectuses and supplements would be insufficient for the classification and search of the documents contained in the storage mechanism referred to in Article 21(6), as these will include final terms.
73. Another important argument comes from Article 21(13), which requires ISIN as a mandatory data field. As the ISIN will not be included in the base prospectus but only in the final terms, if final terms were to be excluded from the data requirement it would not be possible to comply with the Level 1 requirement.
74. Further to these considerations, while ESMA is aware that providing data for final terms is likely to have cost implications for NCAs, in particular in a small number of Member States where the use of final terms is very widespread, it considers that the set-up costs imposed by the development of the new storage mechanism would not be justified if the system were to exclude data on the important part of the market constituted by securities issued through final terms.
75. Additionally, ESMA has considered the case of registration documents (RDs) and Universal Registration Documents (URDs) which are approved without an

⁸ See ESMA’s reports on EEA prospectus activity for [2014](#), [2015](#) and [2016](#).

accompanying securities note and summary, if applicable. The question in this regard is whether these documents are included in the obligation for NCAs to submit approved prospectuses to ESMA and provide accompanying data alongside. Having analysed this question, ESMA is of the view that it would make the process more efficient if NCAs were not obliged to submit RDs and URDs approved as standalone documents to ESMA upon their approval. RDs and URDs and the related data could instead be submitted to ESMA at the time of approval of the related securities note and summary (if applicable)⁹.

3.1.3. IT platform

76. Following the above background considerations, and before embarking on identifying the data and arrangements for machine readability which ESMA will propose in its draft RTS, it is necessary to consider the IT platform which ESMA will use to receive and process the data. This platform will provide the framework for the data submission and a description of it will therefore provide a helpful backdrop to the data discussion. In addition to being needed for the submission of data, an IT platform is required in relation to other obligations which are placed on ESMA by the Prospectus Regulation, namely in relation to publication (Article 21(6)), passporting of prospectuses¹⁰ (Article 25(6) and (7)) and collecting and storing non-public sanctions (Article 43(3)).
77. While the present CP only addresses the requirement on machine readable data, ESMA envisages utilising one joint IT platform to address all its IT related obligations in the prospectus area and proposes to make use of its existing IT platform, the [Prospectus Register](#)¹¹.

ESMA's Prospectus Register

78. ESMA's Prospectus Register went live in February 2014 in response to the requirements established by the Omnibus I Directive according to which NCAs had to notify ESMA of approving and passporting prospectuses and supplements and ESMA had to publish a list of these documents, along with hyperlinks where applicable, on its website.
79. The Omnibus II Directive transferred the responsibility for communicating final terms to notified base prospectuses from the issuer to the sending NCA¹² and furthermore made

⁹ The only exception would be a situation in which an RD or URD is approved and subsequently passported as a standalone document under Article 26 of the Prospectus Regulation; in this situation, the RD/URD would need to be submitted to ESMA, however, this would be for the purpose of passporting through the notification portal required to be established under Article 25(6).

¹⁰ With reference to Article 10(1) of the ESMA Regulation which establishes that ESMA may disregard its obligation to conduct open public consultations on draft RTS if such consultations are disproportionate in relation to, inter alia, the scope and impact of the draft RTS, ESMA has decided not to subject this draft RTS to public consultation as the technical arrangements connected with it have relevance only to NCAs.

¹¹ The collection and storing of non-public sanctions will be incorporated as an add-on to the existing ESMA Sanctions Register.

¹² The traditional *home/host* Member State terminology is not accurate in all cases under the new Prospectus Regulation. When an NCA approves an RD/URD and passports it on a standalone basis under Article 26, the

it obligatory for the sending NCA to inform ESMA when communicating final terms to other NCAs. In August 2016, a new part of the Prospectus Register therefore went live, containing a component through which sending NCAs can communicate final terms to other NCAs as well as to ESMA. While ESMA is not currently obliged to take part in the communication of final terms between NCAs, facilitating communication between NCAs through one centralised system was thought to be the most efficient way for NCAs to meet their new obligations.

80. While the Register will need to undergo some amendments in order to cover the entirety of ESMA's IT obligations under the new Prospectus Regulation, the overall structure of how NCAs can up and download information is expected to remain the same. The functioning of the amended Register – covering submission of prospectus documents and data, processing by the Register, publication of information on ESMA's website and download of passports – is illustrated in the below Figure 1:

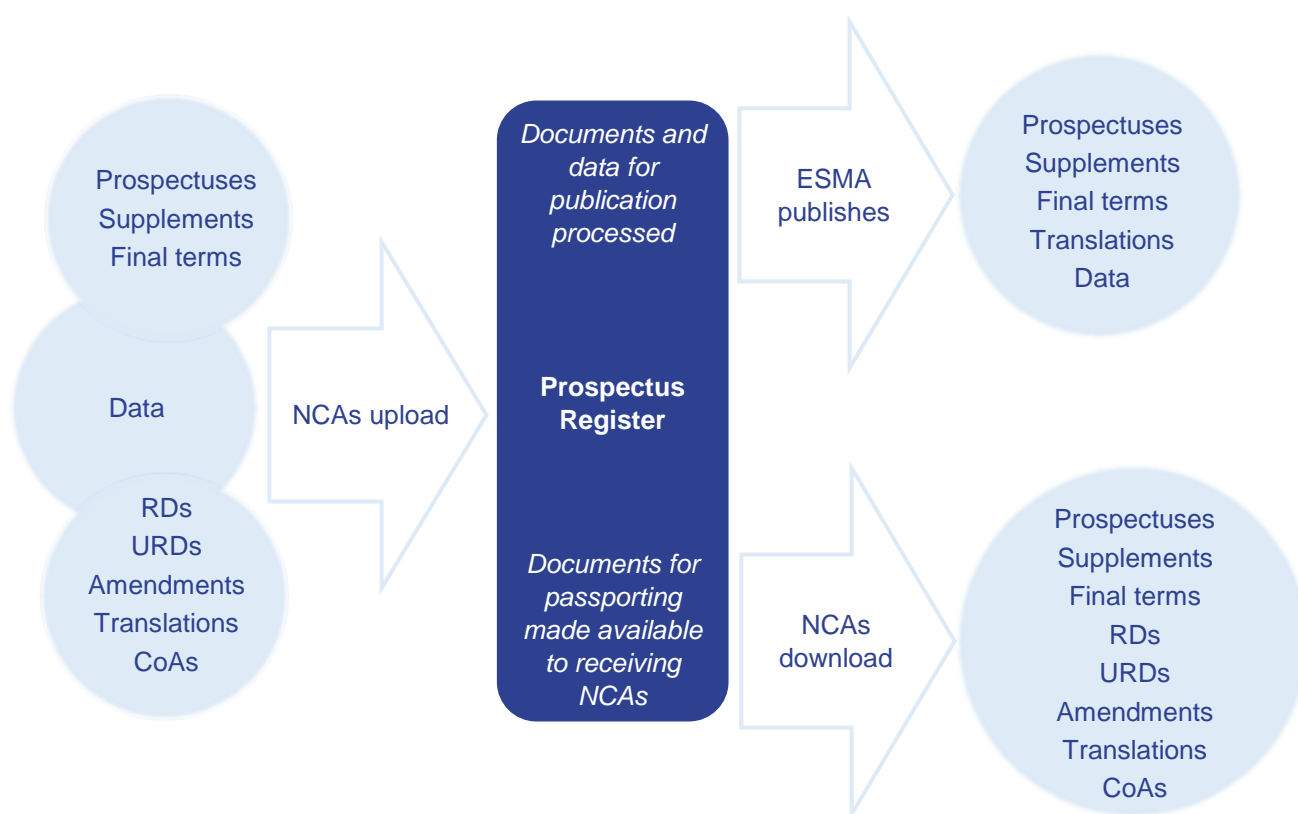


Figure 1: Functions of the new Prospectus Register

Member State to which it is passported is referred to as the home for the prospectus approval. For the remainder of Section 3, ESMA therefore uses the term *sending NCA* to denote the NCA which has approved a document or with which final terms have been filed and which is passporting the document, while the term *receiving NCA* is used to denote the NCA into whose jurisdiction a document is passported.

3.2. Development of the draft RTS

81. Having set out the general functionalities of the Prospectus Register and thereby clarified the framework which ESMA will use to receive and publish data as well as fulfil its other IT obligations under the Prospectus Regulation, it is now possible to embark on identifying the data which should be provided to ESMA and considering the practical arrangements for making this data machine readable.

3.2.1. Data

82. On the basis of the empowerment in Article 21(13), ESMA has identified a list of fields that should form part of the data to be made available. To set out this list, ESMA has firstly included the ISINs of the securities and the LEIs of the issuers, offerors and guarantors as required by the empowerment itself. ESMA has then analysed the content of Article 47 of the Prospectus Regulation which requires ESMA to publish a yearly report on prospectus activity, containing statistics on the prospectuses approved and notified in the Union and an analysis of trends. Article 47 specifically includes several elements that should be taken into account and/or contained in the report and these elements will need to be covered by the data submitted to ESMA to allow ESMA to fulfil its obligations. Furthermore, ESMA has considered the data which is currently used in the Prospectus Register in order to assess whether it should be carried over to the new version of the Register.
83. As a result, ESMA has compiled a list of proposed data items. In developing this list, ESMA has endeavoured to strike a balance between, on one side, the aim to ensure a comprehensive and stable set of data in order to allow for proper and exhaustive classification and, on the other side, the need to avoid an excessive burden for NCAs and issuers from whom the data will be obtained. The data in the list will enable ESMA to set up an online search tool that will allow external users not only to look for specific prospectuses, but also to select a sample of issuances that correspond to a number of combined criteria such as their size, market and timeframe, thereby facilitating comparisons and analysis of the relevant market.

General information

84. Starting with the general information which should be covered by the data, ESMA firstly notes that specific codes to identify the documents submitted to the Register need to be used to allow for a homogenous ordering of documents approved and published across the EU. As such, national document identifiers and document identifiers automatically assigned by ESMA – both of which are included in the current set-up of the Prospectus Register – should be used in order to guarantee consistency with the previous system and interoperability with national databases. This would in turn facilitate the functioning of the Prospectus Register, for example by linking related documents, and would also ease the passporting process.
85. Secondly, the sending NCA would need to identify the home Member State of the issuer and the Member State(s) to which the documents being uploaded should be passported.

The first of these items would be necessary in relation to all submissions of documents to the Register whereas the relevance of the second item is limited to passporting situations whereby prospectuses, supplements, RDs, URDs and amendments are notified, or final terms are communicated, to a receiving Member State.

86. A third data item which in ESMA's view should be required under general information relates to the characteristics of the submitted document. In particular, information on both the type of record (base prospectus, standalone prospectus, final terms etc.) and the type of structure (single document prospectus or prospectus consisting of several documents) should be collected as they provide useful search criteria for different types of users¹³.
87. Finally, a set of general information items that are currently in place and should be kept also in the future includes the different dates (such as approval date or filing date) which are relevant in the process. As in some jurisdictions prospectuses contain a date in the first page which may be different from approval date, and investors might wish to search the Prospectus Register based on this date, NCAs will be provided the option to fill in this information.

Information on issuer / offeror / guarantor

88. As a second category of data, ESMA considers that information related to the issuer, offeror and guarantor involved in the transaction should be provided. In this regard, ESMA takes note that LEI of the above entities must be included in the list of data, when applicable¹⁴. In order for the Prospectus Register to provide more comprehensible information, LEI should be accompanied by the name of the entity and the country where it is incorporated. In order to ensure name standardisation, ESMA furthermore proposes to use the standardised legal names of the entities as assigned by the Global Legal Entity Identifier Foundation database.

Information on the security

89. ESMA proposes that a third category of data is necessary, namely information in relation to the security being offered or proposed to be admitted to trading. While such information is not available under the current version of the Prospectus Register, ESMA believes that elements connected to the securities that are issued should be part of the data used to classify prospectuses. Firstly, this is because these elements provide important information about prospectuses, and the underlying issuances, published under the Prospectus Regulation. The idea behind enlarging the scope of the Register

¹³ When final terms will be uploaded to the system, they will relate to a base prospectus which has already been uploaded and they should therefore be linked to this base prospectus so that the two documents appear together when searching the system. This will be done by way of requiring the sending NCA to fill in both the national identifier of the final terms and the national identifier of the related base prospectus.

¹⁴ ESMA notes that – as indicated in Article 7(5), (6) and (7) of the Prospectus Regulation – the LEI is always mandatory for the issuer and the guarantor while it is mandatory for the offeror only if it has legal personality. If the offeror is a natural person not acting in a business capacity, it should not have an LEI and as such the Prospectus Register will need to permit submission of prospectuses and data without an LEI for the offeror.

to incorporate information regarding the specific transaction is therefore to make the Register a valuable tool that allows users to search for different documents on the basis of some key economic characteristics of the underlying issuance. Secondly, from a legal perspective, the great majority of these elements are required by Level 1, either directly through Article 21(13) or indirectly as part of the variables to be described in ESMA's yearly report according to Article 47(1)(b) of the Prospectus Regulation.

90. In addition to ISIN which is required by Article 21(13) of the Prospectus Regulation, in order to facilitate comprehensibility as well as effective searches in the database ESMA proposes to require the standardised name of the security, inserted in the format of ISO 18774 (so-called FISN). In line with what was done by ESMA in the context of the implementing measures for MiFIR, FISN and ISIN should be followed by the CFI code which incorporates elements connected to the taxonomy of the securities, thereby facilitating validation and consistency checks with other variables and sources. In this regard, it should be noted that at the moment of the issuance of an ISIN, a CFI code is always assigned to the securities. Therefore, while such a code is not required to be included in the prospectus, it should be possible to submit it for all securities in a very straightforward manner as it is closely connected to the submission of the ISIN¹⁵. Finally, in line with the requirement of Article 47(1)(b) for ESMA to report – inter alia – on the denomination of the security, the nominal value together with the currency in which such value is denominated should also be reported. To provide for effective searches in the Register, when available this information should be complemented with the maturity of the security and the identifier or name of the underlying instrument.
91. Furthermore, ESMA suggests that information related to the total consideration of the offer, including the number of securities and their price per unit, is particularly relevant to reach the goal of making the Register a valuable tool for users as well as to allow for a proper reporting on “*average and overall consideration of offers*” under the Prospectus Regulation, as required by Article 47(2)(c).
92. As such, ESMA has considered the possibility of including in the list of data not only the total consideration offered – as mandated by the Regulation – but also the amount that is actually raised as this is an important dimension from an economic standpoint. While requiring the amount raised as a further data item would imply the submission of data to the Register by NCAs after the offer period has ended, and unrelated to submission of any documents into the Register, ESMA is mindful that in some cases NCAs receive information on the amount of securities that have actually been placed as well as their final offer price once the offer is completed. However a variety of national practices exist when it comes to the scope and process of this data collection and therefore NCAs may bear some costs in providing this information to ESMA.
93. On this basis, ESMA suggests that it should be possible to submit the amount raised (i.e. the number of securities and their actual price per unit) to the Register as an optional

¹⁵ ESMA intends to explore technical possibilities to automate the compilation of data fields based on LEI and ISIN.

piece of data. At a technical level, this will require ESMA to put in place a facility to update records once amount raised is known.

94. Finally, ESMA proposes to include a few standard taxonomies on the issued securities which aim at reflecting the type and characteristics of the securities. This includes whether the latter are equity or non-equity and further sub-categories in line with the Prospectus Regulation taxonomy.

Question 14: Do you believe that the data related to the amount raised should be made mandatory? Please explain your reasons.

Other characteristics

95. As a last category of data, ESMA proposes to include certain qualitative elements that provide more basic information on the issuer and the issuance as well as information on the regulatory regime that was applied when the prospectus was drawn up. Firstly, it should be reported whether the issuance described in the prospectus is primary or secondary and whether the envisaged trading, if any, is on a regulated market or an MTF, including whether this latter is an SME growth market. The market identifier for the initial trading venue would complement this information with the geographical location of admissions to trading. In this context, it would also be possible to report whether the issuer was previously unlisted, as this is information that is explicitly required for ESMA's annual report under Article 47 of the Prospectus Regulation. For the same purpose, information on the use of the EU Growth prospectus should also be collected, distinguishing between the different cases in which the issuer may make use of this regime.
96. ESMA finally proposes that the data should cover which of the disclosure annexes in the Level 2 legislation of the Prospectus Regulation were utilised when drawing up the prospectus. Similarly to the above, this information will be particularly helpful for ESMA to annually report under Article 47 on the use of the EU Growth prospectus, the URD and the simplified disclosure regime for secondary issuances. This information could be complemented by the language in which the prospectus is drafted so as to monitor the use of more than one language in certain countries. Overall, this group of data will allow for a thorough ex post analysis of the use of some of the main new regulatory tools introduced by the Prospectus Regulation.

Possible data values

97. For the different data to be submitted, ESMA will define a number of response options or will provide for structured fields so that the information to be published in ESMA's Prospectus Register is collected in a harmonised way. ESMA is of the view that identifying specific and restricted lists of response options and restricting the use of free text fields to the largest extent possible is a key element to ensure the Register's effectiveness. As such, it is ESMA's intention to further detail the format indications

provided for in Annex VII to the RTS (see Annex IV to this Consultation Paper), taking into account the input received in the course of the consultation.

98. Defining response options will in turn facilitate the use of dependencies between different data fields whereby the response option selected in one data field will determine which further fields have to be filled in. As an example, the field “approval date” will be conditional on the record type not being “final terms”; for final terms, the field “filing date” will appear instead. Similarly, fields related to securities, such as the ISIN, are conditional on the document submitted not being a base prospectus. As such, the below Table 7 includes the indication of whether a certain field is “universal” (U), i.e. applicable and mandatory in all cases, or “conditional” (C), i.e. only applicable in some cases, but does not include the whole list of dependencies as this will depend on how the IT system is built. Fields which are never mandatory are marked as “optional” (O) and therefore are not included in the RTS in Annex IV. These indications are inserted for consultation purposes and will be implemented in the RTS on the basis of the feedback received.
99. Based on the considerations set out in the preceding paragraphs, Table 7 presents the data and accompanying characteristics which ESMA proposes. It should be noted that only those fields which are marked as “public” (P) are proposed to be displayed in the Prospectus Register. On the contrary, items marked as “technical” (T) should be visible only within ESMA’s IT system.
100. In order to facilitate the reading of the table and the understanding of how the new reporting duties compare with the ones under the previous version of the Prospectus Register, ESMA has separated the data in four main categories: i) the data which is generated by ESMA and therefore not included in the RTS as it is not within the scope of data that NCAs need to submit; ii) the data which is already in place under the current Prospectus Register, iii) the data which is new, in most cases because it is required by Articles 21/47 of the PR and iv) the data that is always optional and therefore not included in the RTS.

Table 7: List of data

#	Field	Description	Applicable	Status
Generated by ESMA (therefore not included in the RTS)				
1.	ESMA identifier	Unique identifier of the document being uploaded	U / P	In place
2.	Related ESMA identifier	Unique identifier of the document to which the document being uploaded relates	C / P	In place
3.	Passporting date	Date on which uploaded document was passported to one or more Member States	C / P	In place

#	Field	Description	Applicable	Status
Already in place				
1.	National identifier	Unique identifier of the document being uploaded, assigned by the sending NCA	U / T	In place
2.	Related national identifier	Unique identifier of the document to which the document being uploaded relates, assigned by the sending NCA	C / T	In place
3.	Sending Member State	Country code of the Member State which approved the uploaded document or with which the uploaded document was filed	U / P	In place
4.	Receiving Member State(s)	Country code of the Member State(s) to which the uploaded document is to be notified or communicated	C / P	In place
5.	Record type	Type of document uploaded: <ul style="list-style-type: none"> - Base prospectus with final terms - Base prospectus without final terms - Standalone prospectus - Registration document - Universal registration document - Securities note - Final terms, including the summary of the individual issue annexed to them - Summary - Supplement - Translation of summary 	U / P	In place + required by PR Article 47(2)(b)
6.	Structure type	The format chosen for the prospectus: <ul style="list-style-type: none"> - Single document prospectus - Prospectus consisting of separate documents (with or without summary) 	C / P	In place + required by PR Article 47(2)(b)

#	Field	Description	Applicable	Status
7.	Approval date or Filing date	Date on which the uploaded document was approved or filed	U / P	In place
8.	Issuer / offeror / guarantor standardised name	GLEIF standardised legal name of the issuer / offeror / guarantor	U / P	Partly in place
9.	Type of security	<p>Classification of categories of equity and non-equity securities:</p> <p>Equity</p> <ul style="list-style-type: none"> - Shares - Units or shares in closed end funds - Depository receipts - Convertible securities - Other <p>Debt</p> <ul style="list-style-type: none"> - Debt with denomination > €100.000 - Debt with denomination < €100.000 - Debt with denomination < €100.000 available only to qualified investors <p>Depository receipts</p> <p>ABS</p> <p>Derivative securities</p> <ul style="list-style-type: none"> - Derivative securities with denomination per unit of at least EUR 100,000 - Derivative securities with denomination per unit of less than EUR 100,000 - Derivative securities with denomination per unit of less than EUR 100,000 available only to qualified investors 	C / P	In place
New				
1.	LEI	Legal Entity Identifier of the issuer / offeror / guarantor	C / P	New + required by PR Article 21(13)

#	Field	Description	Applicable	Status
2.	ISIN	International Securities Identification Number	C / P	New + required by PR Article 21(13)
3.	Language	Language in which the uploaded document is drafted	U / P	New
4.	Country of registration	Country where issuer / offeror / guarantor is legally registered	U / P	New
5.	FISN	Financial Instrument Short Name of the security	U / P	New
6.	CFI code	Classification of Financial Instruments code	C / P	New + required in relation to PR Article 47(1)(b)
7.	Denomination per unit ¹⁶	Nominal value or notional value per unit in the currency of denomination	C / P	New + required by PR Article 47(1)(b)
8.	Issuance currency	Code representing the currency in which the nominal/notional value of the issue is denominated	C / P	New + required by PR Article 47(1)(b)
9.	Consideration ¹⁷ offered	Number of securities, price per unit and overall consideration offered	C / P	New + required by PR Article 47(1)(b)
10.	Identifier or name of the underlying	ISIN code of the underlying instrument/index or name of the underlying instrument/index if an ISIN does not exist	C / P	New + relevant in relation to PR Article 47(1)(b)
11.	Maturity date	Original date of expiry of the security	C / P	New + relevant in relation to PR Article 47(1)(b)
12.	Type of offer / admission	Taxonomy according to MiFID / MIFIR and PR: - Initial offer without admission to trading / listing	C / P	New + required by PR Article 47(2)(c)

¹⁶ This field is not required to be populated for Collective Investment Vehicles instruments.

¹⁷ For fields volume and price of the offer, in certain circumstances it will be possible to submit ranges of data or maximum values or indicate the criteria for the determination of the offer price. For the definition of price offered, reference will be made to RTS 22 of MiFID as applicable.

#	Field	Description	Applicable	Status
		<ul style="list-style-type: none"> - Secondary offer without admission to trading / listing - Initial admission to trading on regulated market ¹⁸ - Initial admission to trading on regulated market from previously being traded on MTF¹⁹ - Initial admission to trading on MTF with offer to the public - Secondary issuance on a regulated market or MTF 		
13.	Characteristics of the trading venue ²⁰	Taxonomy according to MiFID / MIFIR and PR: <ul style="list-style-type: none"> - RM open to all investors, - RM, or segment thereof, limited to qualified investors - MTF which is an SME growth market - MTF which is not an SME growth market 	C / P	New + required by PR Article 47(2)(c)
14.	Market identifier for the trading venue	ISO MIC code that identifies the market in which the security is admitted to trading	C / P	New + required in relation to PR Article 47(2)(c)
15.	Disclosure regime	The Level 2 annexes in accordance with which the prospectus is drafted. This covers the use of: <ul style="list-style-type: none"> - URD (PR Article 9), - Simplified disclosure regime for secondary issuances (PR Article 14), - EU Growth prospectus (PR Article 15) 	C / P	New + required by PR Article 47(2)(a)

¹⁸ Either with or without an offer.

¹⁹ Either with or without an offer.

²⁰ The fields related to the characteristics and market identifier of the trading venue will be replicated by the system to allow for the submission of further information when more than one trading venue is indicated in the prospectus.

#	Field	Description	Applicable	Status
16.	EU Growth prospectus category	Reason based on which an EU Growth prospectus regime has been used: <ul style="list-style-type: none"> - SMEs under PR Article 15(1)(a) - Issuers others than SMEs under PR Article 15(1)(b) - Issuers other than SMEs under PR Article 15(1)(c) - Offerors of securities under PR Article 15(1)(d) 	C / T	New + required by PR Article 47(1)(a)
Optional (therefore not included in the RTS list)				
1.	Consideration raised	Price per unit, number of securities and overall consideration raised at the end of the offer	O / P	New + relevant in relation to PR Article 47(1)(b) and 47(2)(c)
2.	Document date	Finalisation date of the document, stated within the document and assigned by the issuer	O / P	In place

Question 15: 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.

3.2.2. Machine readability

101. Having addressed the necessary data for the classification of the prospectus and for the annual report required by PR Article 47, this section moves on to the second part of ESMA's RTS empowerment; the requirement for the data to be machine readable (Article 21(13)). Linked with this requirement, Article 21(5), second paragraph specifies that NCAs are responsible for submitting the data to ESMA. ESMA understands that these requirements mean that it has to be possible for ESMA's Prospectus Register to receive the data in a machine readable format and display it in the publicly available storage mechanism required under Article 21(6).
102. For the purpose of allowing effective searches by market participants, data for prospectuses should be reported to ESMA in a consistent format and according to a uniform standard. NCAs currently submit data in XML format and ESMA finds that it

would help to keep adaptation costs low if they continued using the same standard, which is used as the general reporting standard in ESMA's Registers system.

103. ESMA acknowledges that other IT solutions are possible, for example to make the data machine readable directly in the prospectus (or any of its constituent parts). However, as further set out in the cost-benefit analysis (see Annex III), ESMA believes that such an approach would not prove cost-efficient for issuers, NCAs or ESMA and by requiring high one-off adjustment costs would not be sufficiently flexible to accommodate the variety of situations across different companies and markets, e.g. in terms of the different numbers of prospectuses approved or final terms filed. On the contrary, by keeping the data submission system unchanged, adaptation costs are limited for the market at large as well as for NCAs and ESMA.
104. Furthermore, ESMA has considered who should compile the data which NCAs are to submit to ESMA. The Prospectus Regulation is silent on this point. While ESMA understands that in some cases NCAs may decide to provide part or even most of the data themselves, by extracting or compiling the relevant fields and submitting it to ESMA, it should also be possible for them to ask issuers to participate in the compilation of the data which the NCA will then subsequently submit to ESMA.
105. ESMA considers that especially in Member States where the NCA approves large amounts of prospectuses, or where the base prospectus structure is popular and high numbers of final terms are consequently filed with the NCA, it would facilitate the efficiency and timeliness of the data compilation process if NCAs were to ask issuers to perform part or all of this task. Asking issuers to participate in the compilation of data in these situations should not burden them in a substantial way, as issuers – or the advisors who draw up the prospectus on their behalf – will know the content of the prospectus and it will therefore be straightforward for them to extract the required pieces of data and include them in a separate document. On this basis, ESMA is of the view that NCAs should have the option to require issuers to participate in the compilation of the data, an option they may decide not to use if they assess that they are able to compile the data themselves without any risk to data quality and timeliness.
106. The general powers of NCAs to require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents under Article 32(1)(b) of the Prospectus Regulation²¹, cater for this possibility. Based on a similar provision contained in the Prospectus Directive²², in several Member States national laws provide for a legal basis for NCAs to require issuers to participate in the compilation of data and accordingly

²¹ PR Article 32 sets out the supervisory and investigatory powers that competent authorities should have, in accordance with national law, to fulfil their duties. Specifically, paragraph (1)(b) sets out a power *"to require issuers [...] to provide information and documents"*.

²² Article 21(3)(b).

several NCAs currently collect from issuers the data necessary for the classification of the prospectuses that are submitted to them.

107. While Article 32(1)(b) of the Prospectus Regulation already provides NCAs with the power to ask issuers to provide information, ESMA considers that further clarifying how issuers should participate in the compilation of data could contribute to certainty for market participants as different national practices currently exist. As ESMA's empowerment to deliver draft RTS on machine readable data does not extend to specifying who should compile the data, and as this topic in ESMA's view is in any case more closely linked with the technical advice which ESMA has been requested to deliver to the Commission in relation to the approval of the prospectus, ESMA proposes to insert in this technical advice a possibility for NCAs to require issuers to compile the data²³. The goal of this provision is to ensure that issuers have full clarity on their role in the data compilation process.

108. ESMA therefore sets out such a provision immediately below with the proposal to include wording along these lines as Article C(2a) of its technical advice to the Commission on approval of the prospectus and approval and filing of the URD. While the overall purpose of the present CP is to consult stakeholders on the draft RTS which ESMA is going to deliver to the Commission, it will furthermore serve the purpose of consulting the market on this limited additional piece of technical advice which was not included in ESMA's original CP on the technical advice. Following the close of the consultation on the present Paper, and depending on the feedback received, ESMA will deliver the technical advice on the option of requiring issuers to compile the data as part of its overall technical advice, possibly as an add-on if necessary for timing reasons.

(2a) Where required by the competent authority, when submitting a draft prospectus to the competent authority for approval or when filing final terms, the issuer, offeror or person asking for admission to trading on a regulated market shall submit data referred to in the table of Annex VII to Commission Delegated Regulation (EU) [] in line with the format requirements set out in that Annex.

109. The wording of the draft RTS which ESMA proposes in relation to machine readable data is set out in Annex IV.

Question 16: 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

²³ Please refer to Article C on page 44-46 of ESMA's [Consultation Paper on Draft technical advice on scrutiny and approval of the prospectus](#).

that, by keeping the data submission system unchanged, adaptation costs are minimised for the market at large?

Question 17: 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?

Question 18: 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?

4. Draft RTS on advertisements

4.1. Mandate

110. Article 22 of the Prospectus Regulation sets out provisions in relation to advertisements regarding public offers or admission to trading. Article 22(9) establishes the following mandatory empowerment for ESMA:

ESMA shall develop draft regulatory technical standards to specify further the provisions concerning advertisements laid down in paragraphs 2 to 4, including to specify the provisions concerning the dissemination of advertisements and to establish procedures on the cooperation between the competent authorities of the home Member State and of the Member State where the advertisements are disseminated.

111. ESMA is obliged to submit the draft RTS to the Commission by 21 July 2018 and power is delegated to the Commission to adopt the regulatory technical standards in accordance with Articles 10 and 14 of the ESMA Regulation.

4.2. Scope of the mandate

112. In ESMA's understanding the mandate relates to the following two elements:

- Further specification of the provisions concerning advertisements laid down in paragraphs 2 to 4, including specification of the provisions concerning the dissemination of advertisements;
- Establishment of procedures on the cooperation between the competent authorities of the home Member State and Member State where the advertisements are disseminated.

Specification of the provisions concerning advertisements

113. ESMA delivered draft RTS in 2015 in relation to a similar mandate set out in the Omnibus II Directive. The draft RTS focused on the provisions relating to the dissemination of advertisements and the provisions in PD Article 15(4) on the consistency between information disclosed orally or in written form and the information in the prospectus. The draft RTS are now set out in Recitals 8 and 9 as well as Articles 11 and 12 of Commission

Delegated Regulation 2016/301. In particular, these provisions stipulate requirements in relation to:

- the circulation of amended advertisements as a result of a publication of a supplement to the prospectus;
- the inclusion of a reference to the previous advertisement in an amended advertisement;
- the dissemination of amended advertisements without undue delay and through the same means as the original advertisement;
- the deadline for the dissemination of amended advertisements;
- the inclusion of a warning in advertisements when no prospectus is required;
- the consistency between the information disclosed in an oral or written form whether for advertisement or other purposes and the information disclosed in the prospectus

114. Detailed accounts of the considerations behind the drafting of the aforementioned provisions are presented in the Consultation Paper²⁴ and the Final Report²⁵ on ESMA's work in relation to the Omnibus II Directive.

115. When the Prospectus Regulation enters into force, the Commission Delegated Regulation will no longer be applicable because it relates to Level 1 framework which will then be superseded by the Prospectus Regulation. As the market has grown accustomed to the rules on advertisements in Articles 11 and 12 of the Commission Delegated Regulation, ESMA considers that these rules should as far as possible also be applicable under the new regime, notwithstanding any changes needed on the basis of changes at Level 1.

Procedures on the cooperation between competent authorities

116. ESMA believes that there is one case of cooperation between home and host NCA, as set out in PR Article 22(6), that falls within the scope of the empowerment in PR Article 22(9). This is the situation which relates to cases where the home NCA is required to assist the host NCA in assessing that the consistency between the content of the advertisement and the information in the prospectus.

117. As regards communication between the home and host NCA pursuant to the last subparagraph of PR Article 22(6) which obliges the host NCA to communicate to the home NCA the use of its controlling powers as a result of enforcement action being

²⁴ [ESMA/2014/1186](#)

²⁵ [ESMA/2015/1014](#)

initiated under Article 32(1)(e), ESMA notes that this requirement would not necessarily constitute 'cooperation' as such. The requirement in Article 22(6) does not, on its face, appear to involve co-operation between Member States. Even where the communication by the host competent authority that it has exercised its powers may trigger similar action by the home NCA, this would not necessarily fall within the realm of co-operation and therefore ESMA's mandate, as the enforcement action of the home NCA would be undertaken on a case-by-case basis.

118. In addition, pursuant to PR Article 22(8), the home and host NCAs may conclude an agreement under which the home NCA retains control over compliance of advertising activity in cross-border situations. ESMA understands the agreement between the home and host NCAs to mean that the parties to the agreement have come to an arrangement that is agreeable to the authorities. With this in mind, ESMA is of the view that this agreement does not fall within the scope of the empowerment in PR Article 22(9) which relates to the procedure of NCAs working together as set out in paragraph 116 to achieve the common objective of enforcing the compliance of advertising activity in their individual jurisdictions.

4.3. Development of the draft RTS

119. In developing the draft RTS, ESMA has firstly considered to what extent the provisions of the Commission Delegated Regulation 2016/301 are compatible with the new Prospectus regime. In this respect, ESMA has reviewed the existing and the new provisions concerning advertisements. Furthermore, ESMA has analysed the mandate for the development of the existing Level 2 measures and compared it with the empowerment under the Prospectus Regulation for the purpose of highlighting any areas that would require further specification in the draft RTS. As a second step, ESMA has considered how to address the new elements incorporated in the mandate in PR Article 22(9).

Comparison of provisions concerning advertisements

120. To assess the compatibility of the provisions in Articles 11 and 12 of the Commission Delegated Regulation 2016/301 ESMA undertook a comparison of the existing Level 1 and Level 2 measures in relation to advertisements and the Prospectus Regulation.
121. An initial analysis highlights that the definition of advertisements under the Prospectus Regulation is now wider compared to the existing definition. More specifically, under Article 2(9) of the current Level 2 Prospectus Regulation an 'advertisement' means: announcements (a) relating to a specific offer of securities to the public or an admission to trading on a regulated market; (b) aiming to specifically promote the potential subscription or acquisition of securities whereas under PR Article 2(k) the word 'announcements' has been replaced by the word 'communication'. In ESMA's the use of the word 'communication' suggests that an advertisement is an act of transmitting and sharing of information by verbal or written means involving two or more parties

122. As regards the provisions set out in PD Article 15(1) to 15(4) and PR Article 22(1) to 22(4), ESMA is of the view that the drafting changes in Level 1 text do not appear to be of a substantive nature. In relation to PD Article 15(5), ESMA takes note that the reference to ‘qualified or special categories of investors’ was replaced with ‘selected investors’ in PR Article 22(5). Furthermore, while PD Article 15(5) refers to material information ‘including information disclosed in the context of meetings’, the wording in PR Article 22(5) is changed to ‘material information [...] addressed to one or more selected investors in oral or written form’. ESMA considers that the amended wording clarifies the scope of the provision without introducing new elements regarding the type of investors that fall under the scope of PR Article 22(5) or the context of communication.
123. The remaining provisions of PR Article 22 establish the framework for the host CA to exercise control over the compliance of advertising activity in its jurisdiction as well as request the assistance of the home NCA to assess the consistency of the advertisements with the content of the prospectus (paragraph 6), set out the conditions for the charging of fees by host NCAs (paragraph 7) and allow for the home NCA to retain control over advertising activity in cross-border situations provided that an agreement has been concluded between home and host NCA (paragraph 8). Finally the last paragraphs of PR Article 22 contain the empowerment for the development of the draft RTS as well as the development of guidelines and recommendations.

Analysis of mandate

124. The empowerment under PD Article 15(7) asks for the development of draft RTS to address two specific issues, namely the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market and the requirement, pursuant to PD Article 15(4), for consistency between the information disclosed orally or in writing, whether or not for advertisement purposes and the information in the prospectus. The empowerment under PR Article 22(9), however, has a wider scope as it requires the specification of additional elements in PR Article 22 as well as the establishment of a procedure for the cooperation of competent authorities. In addition, ESMA considers that while the mandate in PD Article 15(7) covered also exempt offers, the empowerment under the new Prospectus Regulation is limited only to situations where there is an obligation to draw up a prospectus.
125. More specifically, the mandate firstly asks that the draft RTS further specifies the provisions laid down in paragraphs 2 to 4 of PR Article 22, including the provisions concerning the dissemination of advertisements. Secondly, the draft RTS should cover the establishment of procedures on the cooperation between the NCAs home and host Member State(s) where the advertisements are disseminated.

4.3.1. Transferring the existing Level 2 provisions to the new regime

126. ESMA has reviewed Recitals 8 and 9 as well as Articles 11 and 12 of Commission Delegated Regulation 2016/301 in order to confirm that they do not incorporate elements which are incompatible with the advertisement provisions under the new prospectus

regime. For ease of reference, the following paragraphs briefly set out the measures under existing Level 2.

Recitals 8 and 9

127. Recital 8 clarifies that under certain circumstances the content of an advertisement may become inaccurate or misleading and on this basis states that it is necessary to develop rules for the amendment of advertisements. Recital 9 sets out the arguments for the consistency checks between the content of the prospectus and information that is disseminated in relation to the offer/admission, including the requirement to not present APMs unless already disclosed in the prospectus.

Article 11: Dissemination of advertisements

128. Article 11 of Commission Delegated Regulation 2016/301 stipulates several requirements in relation to the content of amended advertisements, the timing and means of publication as well as cases where no prospectus is required to be published. More specifically, paragraph 1 asks that where a supplement is published due to a significant new factor, material mistake or inaccuracy relating to the information in the prospectus, an amended advertisement should be disseminated if the significant new factor, material mistake or inaccuracy renders the content of the advertisement inaccurate or misleading. Under paragraph 2, the amended advertisement should inform investors that the previous advertisement has been amended and underline the differences between the two versions. Paragraph 3 requires that the amended advertisement is disseminated without undue delay and through the same means as the original advertisement, except where orally disseminated. This obligation applies until the final closing of the offer or the start of trading. Finally, paragraph 4 requires that advertisements include a warning when there is no obligation to publish a prospectus.

Article 12: Consistency for the purposes of PD Article 15(4)

129. Article 12 of Commission Delegated Regulation 2016/301 lays down measures regarding the consistency of information that is disclosed orally or in written form in relation to the public offer or admission to trading. As a result, all types of communication referring to an offer or admission should not contradict, or refer to information that contradicts, or present a materially unbalanced view of the information contained in the prospectus, or contain alternative performance measures unless they are contained in the prospectus.
130. On the basis of the above review, the analysis of the mandate and the comparison between the existing and new prospectus regime, ESMA takes note that excluding Article 11(4) which as set out in paragraph 124 is not covered in the mandate under PR Article 22(9) the existing Level 2 rules are still valid as they do not contain any other provisions that could be viewed as contradictory to the new regime. With this in mind ESMA proposes that with the exception of Article 11(4) the existing Level 2 measures on advertisements be carried over to the draft RTS. The references in these recitals and articles will, where relevant, be updated to refer to the new Prospectus Regulation.

4.3.2. Specification of provisions in paragraphs 2 to 4 of PR Article 22

131. In order to address the specification of provisions in paragraphs 2 to 4 of PR Article 22, ESMA has firstly considered the definition of an advertisement set out in the Prospectus Regulation. As mentioned in paragraph 121 the Prospectus Regulation contains a broader definition of advertisements compared to the existing prospectus regime. Under PR Article 2(k) an advertisement is a communication relating to a public offer or an admission to trading on a regulated market which aims to specifically promote the potential subscription or acquisition of securities. ESMA, therefore, understands the definition of advertisements to cover several ways of communicating information bilaterally or to the public ranging from traditional ones such as radio broadcasts, newspaper advertisements etc., road shows, 'pathfinder' prospectuses, emails, social media such as Twitter and Facebook and even calls from call centres.

Specification of PR Article 22(2)

132. ESMA considers that PR Article 22(2) imposes two requirements. The first one is that advertisements will inform investors whether a prospectus has been published while the second asks that the advertisement specifies where it is possible to obtain the prospectus. As regards the first requirement ESMA understands that it relates to cases where a prospectus is required and has either not been published or will be published. ESMA suggests that PR Article 22(2) is sufficiently self-explanatory on this topic and as such requires no further specification in Level 2.
133. As regards the requirement that an advertisement indicates where investors are or will be able to obtain the prospectus, ESMA believes that the advertisement, be it in oral or written form, should clearly mention the website where the prospectus may be found following publication. For advertisements that are disseminated via electronic means (e.g. on the internet, via email or through social media) ESMA suggests that when the prospectus is already published they should provide investors with a hyperlink to the prospectus, whereas if the prospectus has not been published yet a hyperlink to the specific page on the website where the prospectus would be published would suffice.
134. Furthermore, the advertisement should contain wording indicating to which prospectus and specific offer/admission it relates. ESMA considers that apart from a hyperlink to website where the prospectus is or will be published, the advertisement may contain additional information that could be helpful to investors when tracing the prospectus. These elements would include the LEI of the issuer, the ISIN of the securities, the title of the prospectus, the amount being issued, the approval or publication date of the prospectus and could be mentioned in the advertisement where available and technically feasible.
135. ESMA is mindful that some types of communication which technically would be considered as advertisements might nevertheless have specific characteristics not allowing for the inclusion of the aforementioned information. One such example would be banners that consist solely of links, mentioning simply the name of the issuer, the

offering period. Although the information set out under paragraphs 133 and 134 would not be mentioned in the banner, ESMA would, however, expect it to be added in the actual advertisement where the link embedded in the banner leads to.

136. Furthermore, ESMA takes note that some of the aforementioned information may not be suitable for all types of advertisements. For instance, a requirement to identify the issuer's LEI or the ISIN of the securities offered would not be appropriate for oral advertisements (e.g. broadcasted over the radio or the television) as investors would not be in a position to recollect such information in order to retrieve the prospectus. With this clarification in mind, ESMA considers it reasonable that any advertisement discloses at least the specific page on the website where the prospectus has been or will be published whereas advertisements disseminated through electronic means should also include additional information to facilitate investors' access to the prospectus. Considering that there are several means for the dissemination of advertisements, being overly prescriptive in Level 2 provisions would not necessarily be in the interest of investor protection. In this regard, ESMA is of the view that advertisements should clearly identify the prospectus and if they are disseminated, in electronic form, the specific offer of securities.

Question 19: 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.

Specification of PR Article 22(3)

137. In ESMA's understanding PR Article 22(3) incorporates three elements. Firstly, it asks that an advertisement should be unmistakably identifiable as such. Secondly, it requires that the advertisement should not be inaccurate or misleading and thirdly it stipulates that the advertisement should be consistent with the information in the prospectus or the information that will be included in the prospectus, where the prospectus is not already published.
138. In relation to the requirement for consistency between the advertisement and the prospectus, ESMA takes note that it has already been addressed in Article 12 of Commission Delegated Regulation 2016/301. As mentioned in paragraph 130 ESMA proposes that Article 12 is carried over to the draft RTS. As regards the obligation to not include in the advertisement information that is misleading or inaccurate, ESMA understands that some practices could render an advertisement ambiguous and misinforming. Some examples include choosing wording that creates an unduly favourable or optimistic impression of the issuer or the securities on offer, downplaying the risk factors while putting emphasis on the positive aspects of the investment proposal or producing long prospectus-like advertisements that could be confused with the actual prospectus.

139. To address these concerns ESMA sees merit in requiring the inclusion of a minimum number of warnings in a prominent place. The warnings would serve as reminders to investors regarding specific issues. In particular, ESMA would like to (a) deal with situations where the approval of a prospectus by a national competent authority may be viewed by investors as a signal in relation to the quality of the financial product itself rather than the content of the prospectus; (b) advise investors to rely on the information in the prospectus for their investment decision; and (c) include an alert for retail investors in the case of complex securities. Nevertheless, the objective of the proposed rules would not be to impose a limit on the number or type of warnings that may be included in an advertisement as ESMA acknowledges that under certain circumstances issuers may wish to include additional warnings.
140. ESMA, therefore, proposes that advertisements disseminated to retail investors contain the following warnings: (a) the approval of the prospectus is not an endorsement of the product and (b) investors should read the prospectus carefully in order to fully comprehend the risk profile and other parameters associated with the decision to invest in the securities and (c) in case of complex securities the investor is considering to purchase a security that is not simple and may be difficult to understand i.e. the comprehension alert referred to in Article 8(3)(b) of the PRIIPs Regulation where this is or will be included in the summary. ESMA believes that a security should be considered as complex when it does not meet the description set out in Article 25(4) points (i), (ii)²⁶ and (vi)²⁷ of Directive 2014/65/EU on markets in financial instruments.
141. As the overarching aim is for investors to read the prospectus carefully before deciding to invest, ESMA is of the view that the format and length of an advertisement should be appropriate for this type of document so that retail investors do not mistake it for the prospectus. ESMA acknowledges that this requirement does not need to be fulfilled in relation to marketing material which is used to test the market reaction to the offer such as a 'pathfinder' prospectus. Nor is it intended to place a restriction on the materials which might be passed to investors where there is an exemption from publishing a prospectus in, for example, Article 1(4)(b) where an offer is addressed to fewer than 150 natural or legal persons per Member State. These advertisements are circulated only to wholesale investors who are sophisticated and involved in the flotation process and therefore unlikely to misunderstand the purpose of the communication. In addition, ESMA considers that the content of the advertisement should not put undue emphasis on the positive aspects of the offer while downplaying the risks associated with it.
142. As regards the requirement to clearly identify an advertisement as such ESMA is of the view that an advertisement in written form should contain the wording "Advertisement"

²⁶ Please see the ESMA Guidelines on complex debt instruments and structured deposits (Ref: ESMA/2015/1787) for the assessment of the requirements laid down in Article 25(4)(a) point (ii).

²⁷ The requirement laid down in Article 25(4)(a) point (vi) is complemented by Article 57 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 (MiFID II Delegated Regulation).

in a prominent place. Moreover, concerning oral advertisements the nature of the communication should be clearly expressed at the beginning of the message.

- Question 20: 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?
- Question 21: Do you agree with the requirements suggested for Article 11 of the RTS? If not, please provide your reasoning.
- Question 22: 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?

Specification of PR Article 22(4)

143. PR Article 22(4) essentially carries over the provisions of PD Article 15(4) in terms of requiring consistency between the information disclosed in relation to the offer of securities or admission to trading and the information contained in the prospectus. As the mandate in the Omnibus II Directive explicitly asked that the provisions laid down in paragraph 4 be specified, the draft RTS delivered in 2015 set out specific rules on this topic in Article 12 of Commission Delegated Regulation 2016/301. Following the analysis set out paragraphs 129 and 130 ESMA is of the view that the measures set out in Article 12 are still relevant under the new Prospectus regime and should be carried over without modifications.

4.3.3. Procedure for the cooperation between competent authorities

144. Article 22(9) of the Prospectus Regulation asks that ESMA develops draft RTS in order to inter alia establish procedures on the cooperation between the competent authorities of the home Member State and of the Member State where the advertisements are disseminated. ESMA is of the view that the situation set out in sub-paragraph 2 of PR Article 22(6) where the host NCA requires assistance from the home NCA in order to verify the consistency between the advertisement and the information contained in the prospectus is within scope of the mandate
145. ESMA would therefore suggest a basic procedure of the cooperation between home and host NCAs. The procedure would be activated as necessary only when the situation set out in paragraph 144 arises and it would cover communication between the home and host competent authorities. In addition, ESMA proposes that it is up to the home NCA's discretion to decide whether to also inform other host NCAs on a case-by-case basis. Finally, with the aim of keeping the procedure simple and minimising the costs involved ESMA clarifies that where necessary the host NCA should translate the advertisement in a language customary in the sphere of international finance or the language of the prospectus.

146. Under the new Prospectus Regulation the host NCA is given the power to exercise control over compliance of advertising activity in its Member State. However, as the host NCA is not involved in the scrutiny and approval of the prospectus, it may be necessary to ask for the assistance of the home NCA to assess whether the advertisements disseminated in its jurisdiction are in fact consistent with the content of the prospectus. In this regard, ESMA is of the view that the home and host competent authorities should follow the below procedure.
147. Where the host NCA considers that there are irregularities with respect to the content of advertisements disseminated in its jurisdiction and needs assistance from the home NCA to check the consistency of the content of the advertisement with the information in the prospectus, the host NCA may submit a request for assistance to the home NCA. In doing so, the host NCA would set out its concerns and its findings – if any, to the home NCA.
148. The home NCA should make every effort to reply, as soon as practicable, to the host NCA and communicate the outcome of its supervisory analysis.

Question 23: 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.

149. The proposed wording of the draft RTS on advertisements is presented in Annex IV to this Paper.

5. Draft RTS on supplements

150. Article 23 of the Prospectus Regulation sets out provisions relating to supplements to the prospectus. Article 23(7) establishes the following empowerment for ESMA to deliver draft RTS to the Commission:

*ESMA shall develop draft regulatory technical standards to specify situations where a significant new factor, material mistake or **material** inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published.*

151. ESMA is obliged to submit the draft RTS to the Commission by 21 July 2018 and power is delegated to the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of the ESMA Regulation.
152. ESMA delivered draft RTS in 2014 in relation to a similar mandate set out in the Omnibus I Directive. The RTS are set out in recitals 2 to 13 and Articles 1 and 2 of the First Commission Delegated Regulation. However, when the Prospectus Regulation comes into force, the First Commission Delegated Regulation will no longer apply as it relates to a Level 1 framework which will have been superseded by the Prospectus Regulation.

As the market is familiar with the rules on the situations which give rise to the publication of a supplement to the prospectus as set out in the Commission Delegated Regulation, and in order to minimise costs to issuers, ESMA is of the opinion that these rules should, as far as possible, be applicable under the new regime, bearing in mind any changes at Level 1 which will need to be incorporated. ESMA has therefore used the empowerment in Article 23(7) as well as the mandatory powers in the ESMA Regulation, described above, to carry the existing Level 2 measures on supplements over into the new regime.

153. In order to carry over the Level 2 measures into the new regime using the mandatory powers in the ESMA Regulation and Article 23(7), it is necessary to determine whether the scope of the mandate is the same as that which applies to the existing measures.

5.1. Scope of the mandate

154. The empowerment employed by ESMA in 2014 to deliver draft RTS on supplements was set out in the Omnibus I Directive (Article 16(3)):

In order to ensure consistent harmonisation, to specify the requirements laid down in this Article and to take account of technical developments on financial markets, ESMA shall develop draft regulatory technical standards to specify situations where a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published.

155. In comparing the wording with ESMA's empowerment under Article 23(7) of the Prospectus Regulation with that of the empowerment set out in the Omnibus I Directive, the wording is very similar. As a result, ESMA is of the opinion that the draft RTS delivered in 2014 fall within the scope of its new empowerment in the Prospectus Regulation and that it is able to include the requirements set out in the draft RTS of 2014 in the draft RTS to be delivered to the Commission in 2018.
156. The wording of Article 16(3) of the Omnibus I Directive specifies that the aim of the empowerment is to ensure consistent harmonisation, to specify the requirements laid down in this Article and to take account of technical developments in financial markets. These aims are not expressly stated in Article 23(7), but it is ESMA's understanding that an overarching aim of the Prospectus Regulation is enhanced harmonisation and therefore it is not necessary to repeat this aim in Article 23(7). The other difference between the two empowerments is that Article 23(7) clarifies that inaccuracies, as well as mistakes, must be material. This had not been specified under PD Article 16(3). Nonetheless, the addition of the word 'material' in relation to inaccuracies seems to be a clarification of the article.

5.2. Development of the draft RTS

5.2.1. Background

157. On the basis of the considerations set out above (paragraphs 154 to 156) it is ESMA's opinion that the requirements for the publication of a supplement to the prospectus set

out in Article 2 of the First Commission Delegated Regulation can be used as the core of the draft RTS on supplements to the prospectus. The arguments for choosing these requirements are set out in the Consultation Paper²⁸ on ESMA's work in relation to the Commission Delegated Regulation. However, consideration must be given as to whether changes or additions are needed. These changes and additions may arise based on any changes in the wording of the new Prospectus Regulation from that of the Prospectus Directive, or in the light of the requirements proposed by ESMA in its technical advice on the Commission delegated acts.

5.2.2. Transferring the existing Level 2 provisions to the new regime

158. Recitals 2 to 13 and Articles 1 and 2 of the First Commission Delegated Regulation have not been moved into the Prospectus Regulation. However ESMA considers that these provisions are still valid and proposes that the provisions set out in Recitals 2 to 13 and in Articles 1 and 2 are included in the draft RTS. The references in these recitals and articles will, where relevant, be updated to refer to the Prospectus Regulation.

Question 24: 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?

5.2.3. Considerations in relation to ESMA's draft technical advice

159. In relation to ESMA's draft technical advice on the Prospectus Regulation consideration must be given as to whether the changes proposed in the technical advice would need to be reflected in the RTS on supplements to the prospectus.
160. The amendments relate to proposals made in the draft technical advice to the requirements on profit forecasts and estimates and also to the requirements in relation to the working capital statement.
161. The first of these amendments states that any outstanding profit forecast or a profit estimate must be included in a prospectus, (where profit forecasts and estimates are required to be disclosed according to the relevant annex). Therefore, if an issuer publishes a profit forecast or a profit estimate after the approval of a prospectus but before the close of the offer or the date of the admission of the securities to trading, this would trigger the publication of a supplement on the basis that this is significant new information.

²⁸ [Draft Regulatory Technical Standards on specific situations that require the publication of a supplement to the prospectus](#)

162. Another requirement in the draft technical advice relates to depositary receipts and extends the requirement to include a working capital statement in prospectuses for depositary receipts. Therefore Article 2(e) should include depositary receipts in the type of security where a change in the working capital of the issuer of the underlying securities would require a supplement to the prospectus.

Question 25: Do you agree that the additional requirements identified from ESMA's draft technical advice should also be included.

Question 26: 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?

Question 27: 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.

163. The proposed wording of the draft RTS in relation to supplements is set out in Annex IV of this Paper.

6. Draft RTS on publication

164. In addition to the mandatory empowerments for ESMA to deliver draft RTS, ESMA has considered the voluntary empowerment in Article 21(12) of the Prospectus Regulation which states that ESMA may develop draft RTS to specify further the requirements relating to the publication of the prospectus.

6.1. General considerations

6.1.1. Empowerment

165. Article 21 of the Prospectus Regulation sets out provisions regarding publication of the prospectus. In relation to these provisions, Article 21(12) establishes the following voluntary empowerment for ESMA to deliver draft RTS to the Commission:

ESMA may, or where the Commission so requests shall, develop draft regulatory technical standards to specify further the requirements relating to the publication of the prospectus.

166. Power is delegated to the Commission to adopt the draft RTS referred to above in accordance with Articles 10 to 14 of the ESMA Regulation.
167. ESMA delivered draft RTS in 2015 in relation to a similar mandate contained in the Omnibus II Directive²⁹. The draft RTS is now set out in the Second Commission

²⁹ See Article 1(4) of the [Omnibus II Directive](#).

Delegated Regulation which, when the new Prospectus Regulation becomes applicable, will no longer apply as it relates to a Level 1 framework which will by then be superseded by the new Prospectus Regulation. As the market has grown accustomed to the rules on publication laid down in the Second Commission Delegated Regulation and considering the need to minimise compliance costs, ESMA considers that these rules should as far as possible also be applicable under the new regime, notwithstanding any changes needed on the basis of changes at Level 1. For this reason, ESMA has chosen to consider the voluntary empowerment in Article 21(12) along with the mandatory empowerments described in previous sections of this Consultation Paper in order to be able to carry over the existing Level 2 measures on publication to the new regime.

168. For this purpose, however, it is necessary to examine whether the scope of the mandate corresponds to that under which the existing measures were drawn up.

6.1.2. Scope

169. The empowerment under which ESMA delivered draft RTS on publication in 2015 had the following wording, as set out in Article 1(4) of the Omnibus II Directive:

In order to ensure consistent harmonisation in relation to this Article, ESMA shall develop draft regulatory technical standards to specify the provisions relating to the publication of the prospectus in paragraphs 1 to 4.

170. Comparing this wording with ESMA's empowerment in Article 21(12) of the new Prospectus Regulation, it is clear that the two empowerments are very similar as both relate to specifying rules "*relating to the publication of the prospectus*". As such, ESMA is of the view that the draft RTS delivered in 2015 falls within the scope of its new empowerment in the Prospectus Regulation and that it is therefore possible to reiterate those draft RTS in the draft RTS it will submit to the Commission in 2018.
171. Furthermore, it seems that the empowerment in the Prospectus Regulation goes beyond that which was given to ESMA in the Omnibus II Directive. Whereas the latter limited the draft RTS to specifying the provisions set out in Article 14(1)-(4) of the Prospectus Directive, the new empowerment does not have such a restriction and it therefore seems that ESMA may specify all requirements relating to the publication of the prospectus set out in Article 21.

6.2. Development of the draft RTS

172. On the basis of the considerations set out in Section 6.1., ESMA is of the view that Articles 6-10 of the Second Commission Delegated Regulation should constitute the starting point for the draft RTS on publication. Detailed accounts of the considerations

behind the drafting of these provisions are presented in the Consultation Paper³⁰ and the Final Report³¹ on ESMA's work on draft RTS on prospectus related issues under the Omnibus II Directive. It is, however, necessary to consider whether changes to those articles are needed, based on two different considerations. Firstly, whether the new Prospectus Regulation is different from the Prospectus Directive in any way which necessitates changes to the Level 2 publication procedures. Secondly, whether there are any signals that the publication procedures set out in Articles 6-10 have had an unintended impact on the market or on NCAs or whether practical experience with the procedures has indicated that amendments are necessary.

173. In addition to transferring the existing provisions from Articles 6-10 of the Second Commission Delegated Regulation, and due to the wider scope of the empowerment given to it in the new Prospectus Regulation, ESMA considers that it is furthermore necessary to assess if any new publication requirements at Level 1 would benefit from being specified at Level 2 by way of RTS.

6.2.1. Transferring the existing Level 2 provisions to the new regime

Article 6: Publication of the prospectus in electronic form

174. Starting with Article 6 of the Second Commission Delegated Regulation, the bulk of this article has been moved into the new Prospectus Regulation. As such, the provisions on the accessibility and format of the prospectus in Article 6(1)(a), (b) and (d) of the Second Commission Delegated Regulation are set out in Article 21(3) of the new Prospectus Regulation. As the publication of final terms has been aligned with that of prospectuses in general, cf. Article 8(5) of the new Prospectus Regulation, ESMA understands that the requirements now contained in Article 21(3), first paragraph of the Prospectus Regulation also apply to final terms as well as to the summary of the individual issue connected thereto.
175. Furthermore, the requirement in Article 6(2) to include hyperlinks to all documents containing information incorporated by reference has been moved into Article 19(2) of the Prospectus Regulation and the prohibition of making access to the prospectus subject to completion of a registration process, acceptance of a disclaimer limiting legal liability or payment of a fee in Article 6(4) is now set out in Article 21(4) of the Prospectus Regulation.
176. Only the provisions in Article 6(1)(c) and 6(3) have not been included in the new Prospectus Regulation and ESMA therefore proposes that these provisions be reiterated in the draft RTS.

³⁰ [ESMA/2014/1186](#)

³¹ [ESMA/2015/1014](#)

177. As regards Article 6(1)(c), ESMA would, however, propose that the provision be amended so that it becomes significantly less restrictive. The reason for this proposal is that ESMA has received feedback from NCAs that issuers have difficulty meeting the requirement of not including hyperlinks in the prospectus, except in relation to information incorporated by reference. Issuers have complained that it is not always possible to remove hyperlinks from the information included in the prospectus and in particular from the information incorporated by reference and this requirement would therefore seem to add burden to the process of drawing up a prospectus. For this reason, ESMA proposes permitting the inclusion of hyperlinks in the prospectus, provided that a statement be included alongside which clarifies that the information on the website to which the hyperlink leads does not form part of the prospectus and has not been subject to scrutiny or approval by the NCA.³² This would furthermore be in line with the approach proposed in ESMA's draft technical advice on the content of the prospectus³³ according to which the issuer should include its website along with a disclaimer of the aforementioned nature.³⁴
178. As regards Article 6(3), ESMA has not received indications that undesirable or unintended side effects have been felt, whether by the market or by NCAs. However, an amendment to the provision needs to be made based on changes at Level 1. Currently, Article 6(3) of the Second Commission Delegated Regulation specifies that where the prospectus is made available to the public on the website of issuers, financial intermediaries or regulated markets – i.e. all possible locations for electronic publication except the website of the NCA, care shall be taken not to target investors in countries where the offer is not being made. Under the new Prospectus Regulation, the prospectus can only be made available to the public electronically, and publishing the prospectus on the website of the NCA will no longer meet the issuer's obligation to make it available to the public. On this basis, a simplification of the wording of the current Article 6(3) is proposed, as set out in Article 16(2) of the draft RTS. For the avoidance of doubt, ESMA clarifies that as this provision relates to making the prospectus available to the public on a website, the reference to a disclaimer concerns a disclaimer on the website and not in the prospectus itself.

Article 7: Publication of final terms

179. Article 21(2) and (3) of the new Prospectus Regulation require that all constituent parts of the prospectus be published on a dedicated section of the website of the issuer /

³² ESMA observes, however, that Article 22(4) of the Prospectus Regulation – according to which all information disclosed in an oral or written form concerning the offer of securities to the public or the admission to trading on a regulated market shall be consistent with the information contained in the prospectus – would still apply to such information.

³³ [ESMA31-62-532](#)

³⁴ ESMA's technical advice on the content of the prospectus also addresses the topic of disclaimers, more specifically by requiring the insertion of the issuer's website along with a disclaimer and the inclusion of a cover note which avoids the use of legal disclaimers. As the technical advice will be finalised in a separate report based on an analysis of the consultation responses received, the present Consultation Paper should not be taken as ESMA's final position on these matters.

offeror / person asking for admission to trading, of the financial intermediaries placing or selling the securities, of the regulated market where admission to trading is sought or of the operator of the MTF. According to Article 21(3), documents from which information is incorporated by reference into the prospectus, any supplements, a separate copy of the summary and, in case of a base prospectus, the final terms also have to be made available in the same section of the website.

180. These new provisions constitute a change from Article 7 of the Second Commission Delegated Regulation according to which final terms do not have to be published according to the same method as the corresponding base prospectus. While Level 1 does not directly state that the same method for publication has to be used, ESMA understands that the requirement to publish on the same dedicated section of a website is equal to requiring that the same method of publication be used.
181. As Article 7 of the Second Commission Delegated Regulation therefore conflicts with the new Level 1, ESMA is of the view that this article cannot be applicable under the new regime and should not be carried over.

Article 8: Publication in a newspaper

182. As regards Article 8 of the Second Commission Delegated Regulation which specifies the provisions for publication of prospectuses in a newspaper, the new Prospectus Regulation does not include insertion in a newspaper as a way of meeting the requirement to make the prospectus available to the public. ESMA therefore considers that Article 8 has become obsolete and that there is no need to carry it over to the new regime.

Article 9: Publication of a notice

183. Turning to Article 9 of the Second Commission Delegated Regulation, the possibility of an NCA to require the publication of a notice stating how the prospectus has been made available to the public (Article 14(3) of the Prospectus Directive) has not been included in the new Prospectus Regulation. Again, ESMA therefore considers that Article 9 has become obsolete under the new regime.

Article 10: List of approved prospectuses

184. Lastly, the content of Article 14(4) of the Prospectus Directive according to which the NCA has to publish all prospectuses approved or the list of prospectuses approved, including, if applicable, a hyperlink to the prospectus has also been superseded. The corresponding provision of the new Prospectus Regulation (Article 20(5)) requires the NCA to “[...] publish on its website all the prospectuses approved or at least the list of prospectuses approved, including a hyperlink to the dedicated website sections referred to in paragraphs 3 of this Article [...]”.
185. As the new provision obliges NCAs which choose to publish a list of approved prospectuses to include a hyperlink to the website where each prospectus is published, Article 10 of the Second Commission Delegated Regulation – which sets out that the

NCA has to mention how the prospectuses in the list have been made available and where they can be obtained – is no longer applicable and will not be carried over.

Question 28: 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?

6.2.2. Specification of further Level 1 requirements

186. In addition to the above analysis of which of the existing Level 2 provisions should be carried over to the new regime, ESMA has considered if any new Level 1 provisions on publication need to be specified further by way of RTS. However, having undertaken an assessment of Article 21 of the new Prospectus Regulation, ESMA has not identified any further provisions which it considers to be in need of specification at Level 2.

Question 29: 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.

Question 30: 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.

187. The proposed draft RTS on publication is presented in Annex IV.

Annex I: Legislative mandate to develop draft regulatory technical standards

Mandate for ESMA to develop draft RTS in general

Article 10(1) of the ESMA Regulation:

“Where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft regulatory technical standards.”

Mandate for ESMA to develop draft RTS on key financial information

Article 7(13) of the Prospectus Regulation:

“ESMA shall develop draft regulatory technical standards to specify the content and format of presentation of the key financial information referred to in point (b) of paragraph 6, and the relevant key financial information referred to in point (c)(iii) of paragraph 7, taking into account the various types of securities and issuers and ensuring that the information produced is concise and understandable.”

Mandate for ESMA to develop draft RTS on data

Article 21(13) of the Prospectus Regulation:

“ESMA shall develop draft regulatory technical standards to specify the data necessary for the classification of prospectuses referred to in paragraph 5 and the practical arrangements to ensure that such data, including the ISINs of the securities and the LEIs of the issuers, offerors and guarantors, is machine readable.”

Mandate for ESMA to develop draft RTS on advertisements

Article 22(9) of the Prospectus Regulation:

“ESMA shall develop draft regulatory technical standards to specify further the provisions concerning advertisements laid down in paragraphs 2 to 4, including to specify the provisions concerning the dissemination of advertisements and to establish procedures on the cooperation between the competent authorities of the home Member State and of the Member State where the advertisements are disseminated.”

Mandate for ESMA to develop draft RTS on supplements

Article 23(7) of the Prospectus Regulation:

“ESMA shall develop draft regulatory technical standards to specify situations where a significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published.”



Mandate for ESMA to develop draft RTS on publication

Article 21(12) of the Prospectus Regulation:

“ESMA may, or where the Commission so requests shall, develop draft regulatory technical standards to specify further the requirements relating to the publication of the prospectus.”

Annex II: Questions for consultation

Key financial information in the summary

- Question 1: Do you agree that the KFI extracted from the issuer's historical financial information should be sign-posted?
- Question 2: Would you suggest the inclusion of specific templates for other types of issuer? Please specify and explain your reasoning.
- Question 3: 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?
- Question 4: Do you think that investment companies which are subject to capital requirements should be required to include regulated capital ratios in their summary?
- Question 5: 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?
- Question 6: 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?
- Question 7: 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.
- Question 8: 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.
- Question 9: 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?
- Question 10: Do you agree with the choice of measures for insurance companies?
- Question 11: Do you think it would be useful for retail investors to include a measure of historical performance for closed end funds in the summary?

Question 12: 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.

Question 13: 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.

Data and machine readability

Question 14: Do you believe that the data related to the amount raised should be made mandatory? Please explain your reasons.

Question 15: 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.

Question 16: 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?

Question 17: 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?

Question 18: 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?

Advertisements

Question 19: 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.

Question 20: 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?

Question 21: Do you agree with the requirements suggested for Article 12 of the RTS? If not, please provide your reasoning.

Question 22: 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?

Question 23: 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.

Supplements

Question 24: 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?

Question 25: Do you agree that the additional requirements identified from ESMA's draft technical advice should also be included.

Question 26: 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?

Question 27: 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.

Publication

Question 28: 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?

Question 29: 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.

Question 30: 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.

Annex III: Cost-benefit analysis

1. Executive Summary

Reasons for publication

Regulation (EU) 2017/1129 was published in the Official Journal of the European Union on 30 June 2017 and entered into force on 20 July 2017. The Regulation requires ESMA to submit draft regulatory technical standards ('RTS') on key financial information for the prospectus summary, data for classification of prospectuses and the practical arrangements to ensure that such data is machine readable, provisions concerning advertisements and situations where a significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus requires a supplement to the European Commission ('Commission') by 21 July 2018. ESMA is additionally permitted to submit draft RTS further specifying the requirements relating to the publication of the prospectus.

According to Article 10(1), third subparagraph of the ESMA Regulation, ESMA shall analyse the potential related costs and benefits of the RTS, unless such analyses are disproportionate in relation to the scope and impact of the draft RTS concerned or in relation to the particular urgency of the matter.

The cost-benefit analysis ('CBA') aims to provide the reader with an overview of findings with regard to the potential impacts of the proposed draft RTS.

Contents

Section 2 introduces the CBA by describing ESMA's mandates and explaining the nature of the CBA along with its structure. Section 3 analyses the costs and benefits connected with the proposed draft RTS on approval, incorporation by reference, publication and advertisements, respectively.

2. Introduction

This CBA has been developed in order to assist in the drafting of the RTS which the Prospectus Regulation mandates ESMA to submit to the Commission. The Prospectus Regulation empowers ESMA to draw up RTS specifying:

- the content and format of presentation of the key financial information referred to in Article 7(6)(b), and the relevant key financial information referred to in Article 7(7)(c)(iii), taking into account the various types of securities and issuers and ensuring that the information produced is concise and understandable;
- the data necessary for the classification of prospectuses referred to in Article 21(5) and the practical arrangements to ensure that such data, including the ISINs of the securities and the LEIs of the issuers, offerors and guarantors, is machine readable;
- the provisions concerning advertisements laid down in Article 22(2)-(4), including to specify the provisions concerning the dissemination of advertisements and to establish procedures on the cooperation between the competent authorities of the home Member State and of the Member State where the advertisements are disseminated;
- situations where a significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published;
- the requirements relating to the publication of the prospectus.

The CBA aims at assessing the impact of the above RTS on different stakeholders. In addition, evidence provided in the course of the consultation will be taken into consideration for the finalisation of the RTS and CBA. The problem identification as well as the market/regulatory failure analysis have been performed by the Commission at Level 1 and therefore do not need to be replicated in this context.

The different RTS assigned to ESMA are analysed making reference to a baseline scenario under which only Level 1 text would apply. Therefore, the costs and benefits identified and assessed are those at the margin that might be caused by the way ESMA wishes to exercise its mandates at Level 2.

3. Analysis of proposed measures

3.1. Key financial information for the summary

These provisions are drawn up in response to the mandate for ESMA to specify the content and format of presentation of the key financial information in the summary of the prospectus, taking into account the various types of securities and issuers and ensuring that the information produced is concise and understandable. This includes setting out, in tabular form, the key financial information relevant to non-financial issuers, credit institutions, insurers, non-equity securities, special purpose vehicles in relation to asset backed securities and closed

end funds. Account was also taken of guarantors and the presentation of pro forma information and for complex financial information, the requirements for specialist issuers and the use of alternative performance measures. The information required by the tables has been kept as succinct as possible given the page restrictions of the summary and to allow the issuer to include a limited amount of further key financial information of their choice.

3.1.1. Technical options

Policy Objective	To draw up a brief set of key financial information for various categories of issuer and types of securities that can be accommodated within the seven page limit of the prospectus summary.
Option 1	Establish specific templates for the key financial information in the summary considering the different type of issuers and securities. Permit the issuer to include three additional items of financial information of its choice.
Option 2	Establish specific templates for the key financial information in the summary considering the different type of issuers and securities but without the additional three discretionary items.
Preferred option	Option 1 was chosen because of the benefits bestowed to both issuers and investors in terms of presenting the issuer in a more nuanced way.

3.1.2. Cost-benefit analysis

Option 1	Qualitative description
Benefits	<p>The presentation of the key financial information in the summary in specific templates is beneficial to investors as it will provide them with a succinct introduction to the financial position of the issuer and enable them to focus on specific offers and admissions to trading which they would then analyse further by reviewing the prospectus.</p> <p>The establishment of specific templates covers the majority of issuers, while a degree of flexibility is introduced to allow issuers to adapt the key financial information to information disclosed in the prospectus. This gives the issuer the opportunity to choose financial information which is specifically relevant to it and also enables investors to have a more rounded picture of the issuer and its business.</p>
Costs to regulator	There might be a small reduction of existing monitoring costs as a result of further clarity on this section of the summary.

	There might be a small increase of monitoring costs in connection to the ability of the issuer to include three additional items of financial information of its choice.
Compliance costs	In general the costs to issuers for the drawing up of this section of the summary should decrease because of further clarity on its content.
Costs to other stakeholders	Due to less but more focused information, no marginal costs to investors is foreseen

3.1.2. Cost-benefit analysis

Option 2	Qualitative description
Benefits	<p>As in the case of Option 1, the presentation of the key financial information in the summary in specific templates is beneficial to investors as it will provide them with a succinct introduction to the financial position of the issuer and enable them to focus on specific offers and admissions to trading which they would then study further by reviewing the prospectus.</p> <p>However the lack of flexibility may mean that important financial information is not presented in the summary. Investors will benefit from increased comparability but this is counteracted by the fact that there is the possibility that they will miss information which is specific to the issuer and / or its securities.</p>
Costs to regulator	As under option 1, there might be a small reduction of existing monitoring costs as a result of further clarity on this section of the summary.
Compliance costs	<p>As under option 1, in general the compliance costs for the drawing up of this section of the summary should decrease because of further clarity on its content.</p> <p>There might be a small increase of compliance costs due to the fact that the issuer is not given the flexibility to include three additional items of financial information of its choice.</p>
Costs to other stakeholders	Similar to those in Option 1.

3.2. Data and machine readability

These provisions are drawn up in response to the mandate for ESMA to specify the data for the classification of the prospectus and how to ensure that such data is machine readable.

As for the first goal, the PR requires that ESMA identifies the variables needed for the classification of prospectuses in the storage mechanism as well as those necessary for the drafting of the annual report provided for by Article 47. This corresponds to a wider set of data when compared to the status quo and as such it has an inevitable impact on costs. However, ESMA notes that costs for additional data are likely to decrease at the margin and the greatest part of the cost function is absorbed by the one-off set-up costs. The same argument applies to the scope of the documents in relation to which the data will have to be provided.

Regarding machine readability, an IT platform allowing for prospectus and related data to be submitted to ESMA in XML machine-readable form is already in place, i.e. the so-called Prospectus Register. ESMA proposes that this is maintained and expanded so that it could be used as a storage mechanism providing the public with free of charge access and search functions as well as for the purpose of passporting notifications, thereby minimising implementing costs. Additionally, ESMA notes that some NCAs already provide for an issuers' role in the compilation of data and this can also be maintained in the future when necessary to maximise efficiency and accuracy of the data collection.

As an alternative option, ESMA has also considered the possibility of using a different technical format, such as iXBRL, that would allow the data contained in the prospectus (or any of its constituent parts) to be machine readable in the first place and would in turn make it possible for issuers and NCAs not to re-enter data which are already in the prospectus. However, ESMA finds that this approach would require substantial changes to its existing database and IT infrastructure as well to those of NCAs and issuers. Furthermore, ESMA notes that some of the data necessary for classification are not included in the prospectus content and therefore should be entered through a different process, therefore duplicating the efforts of the different actors involved.

3.2.1. Technical options

Policy	Enlarge the current register to cater for a higher number of prospectuses and a broader set of data.
Objective	<p>Providing for the data necessary to ensure effective searches in the prospectus register and for ESMA to produce an annual report on prospectuses issued in the EU.</p> <p>Ensuring that such data are machine readable and facilitate an efficient process of data submission by NCAs.</p>
Option 1	Expansion of existing ESMA IT platform
Option 2	Use of different standard/format to make data contained in the prospectus machine readable

Preferred Option	Option 1: Overall, the first option of making some limited changes to the existing database is in ESMA's view more proportionate to the Prospectus Regulation's goal of ensuring that investors have adequate access to reliable data (cf. Recital 63) and the one that allows minimising aggregated costs.
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3.2.2. Cost-benefit analysis

Option 1	Qualitative description
Benefits	<p>The expansion of the current IT platform allows for a smooth and cost-efficient transition to the new system.</p> <p>A broader set of data allows for more effective searches in the ESMA register and constitutes the basis for the drafting of a comprehensive ESMA report in line with the requirements of Article 47. The public is in turn provided with a deeper, wider and accessible database on securities' issuances in the EU.</p>
Costs to regulator	While the submission system will remain unchanged, with no one-off adaptation costs implied, NCAs will need to process on an on-going basis a higher number of data in relation to a broader set of documents. Overall, this does not seem to alter significantly IT costs, while there might be a limited impact in terms of HR costs in those jurisdictions in which the NCA does not provide for issuers' support in the compilation of data.
Compliance costs	In those jurisdictions in which the NCA provides for an issuers' role in the compilation of data, these latter might bear some additional compliance costs.

Option 2	Qualitative description
Benefits	<p>Different standards/formats than those used in the current ESMA Prospectus Register would allow the data contained in the prospectus (or any of its constituent parts) to be machine readable. This would facilitate the process of data compilation and submission and therefore might allow for efficiency gains in the medium term.</p> <p>A broader set of data allows for more effective searches in the ESMA register, as mentioned under Option 1.</p>
Costs to regulator	In order to process the information included in a machine-readable prospectus ESMA IT platforms/systems should be modified, together

	with those implemented by NCAs at national level. NCAs would continue to bear costs in relation to the compilation and submission of data for classification that are not embedded in the prospectus.
Compliance costs	Issuers would bear cost in relation to making the data contained in the prospectus machine-readable in the first place.

3.3. Advertisements

These provisions are drawn up in response to the mandate for ESMA to further specify the provisions concerning advertisements laid down in paragraphs 2 to 4, including specification of the provisions concerning the dissemination of advertisements as well as to establish procedures on the cooperation between the competent authorities of the home Member State and the Member State where the advertisements are disseminated.

ESMA delivered in 2015 a draft RTS in relation to a similar mandate set out in the Omnibus II Directive. In this regard, the proposed measures carry over the existing Level 2 provisions that are compatible with the new Prospectus regime and cover the new elements incorporated in the mandate in PR Article 22(9).

3.3.1. Technical options

Policy Objective	Specify the provisions concerning the content of advertisements in the new Prospectus Regulation. Establish a procedure for the cooperation between the competent authorities of the home Member State and the Member State where the advertisements are disseminated.
Option 1	Flexible content provided that specific wording to identify the advertisement as such and a minimum number of warnings are included.
Option 2	Prescriptive content requiring the addition of more detailed information with regard to the issuer and the security such as LEI and ISIN.
Preferred Option	Option 1: Overall, the first option of allowing some flexibility in the content of advertisements is in ESMA's view more proportionate to the Prospectus Regulation's goal of ensuring clarity, accuracy and consistency with the prospectus information while at the same time avoid hampering the proper functioning of capital markets.

3.3.2. Cost-benefit analysis

Option 1	Qualitative description
Benefits	<p>The requirement to include a minimum set of information in advertisements results in adequately informing investors on the purpose of the communication and assisting them in tracing the actual prospectus. Guaranteeing a sufficient level of flexibility in the preparation of the advertisements facilitates issuers' ability to make their message tailored to their needs. At the same time, a clear and predefined minimum number of warnings provide investors with the necessary caveats they should be aware of.</p> <p>The procedure for the cooperation between the competent authority of the competent authorities of the home and host Member States ensures a streamlined process is in place allowing competent authorities to supervise advertising activity in their jurisdictions in an efficient manner.</p>
Costs to regulator	While there might be an increased cost to host NCAs in light of the cooperation procedures, the bulk of these costs comes from Level 1.
Compliance costs	The duty to inform investors on the purpose of the communication and assist them in tracing the actual prospectus comes from the Level 1. As a result, no material additional costs can be foreseen.

Option 2	Qualitative description
Benefits	<p>The requirement to include a full standard set of information in advertisements would increase comparability but not necessarily result in adequately informing investors on the purpose of the communication and assisting them in tracing the actual prospectus.</p> <p>In line with Option 1, the procedure for the cooperation between the competent authorities of the home and host Member States ensures that a streamlined process is in place allowing competent authorities to supervise advertising activity in their jurisdictions in an efficient manner.</p>
Costs to regulator	As per Option 1, the cost of supervising more standardised advertisements might be slightly lower.
Compliance costs	When compared with option 1, issuers would bear an increased cost in terms of reduced flexibility, which might undermine to a certain extent the purpose of advertisements.

3.4. Supplements

These provisions are drawn up in response to the mandate for ESMA to specify situations where a significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published. ESMA delivered a draft RTS in 2014 in relation to a similar mandate set out in the Omnibus I Directive. As the RTS underlying the Commission Delegated Regulation were delivered very recently and in order to preserve market stability, ESMA has deliberately mirrored the existing provisions to the widest extent possible.

Therefore, the proposed measures carry over the existing Level 2 provisions that are compatible with the new Prospectus regime and cover the new elements set out in ESMA's proposed technical advice on the format and contents of the prospectus, particularly with reference to supplements in relation to profit forecasts and estimates and in relation to working capital statements where these requirements have been extended to more categories of securities.

3.4.1. Technical options

Policy objective	<p>Carrying over those of the existing Level 2 provisions which have not been transferred into Level 1 or become obsolete.</p> <p>Specify the provisions concerning situations where supplements are needed under the new Prospectus Regulation and ensure consistency with ESMA's proposed technical advice on the format and contents of the prospectus.</p>
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3.4.2. Cost-benefit analysis

	Qualitative description
Benefits	The requirement to publish a supplement to a prospectus relating to further categories of securities such as depositary receipts, when there is an amendment to a profit forecast or estimate and the extension of the requirement for a supplement in case of a change in the working capital statement relating to prospectuses for depositary receipts would align the Level 2 provisions with the changes proposed in ESMA's technical advice.
Costs to regulator	No material additional costs can be foreseen.
Compliance costs	The duty to publish a supplementary prospectus when there has been a material change to the working capital statement of an issuer of depositary receipts or when a profit forecast or estimate has been published or amended for issuers of certain categories of security

	comes from the Level 2. However, issuers will bear some additional costs where required to publish a supplementary prospectus.
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3.5. Publication

These provisions are drawn up in response to the mandate for ESMA to further specify the requirements relating to the publication of the prospectus. While the mandate is voluntary, ESMA has decided to propose draft RTS in this area in order to carry over the few provisions of the current Commission Delegated Regulation 2016/301 which have not either been included directly at Level 1 or become obsolete. As the RTS underlying the Commission Delegated Regulation were delivered very recently (2015) and in order to preserve market stability, ESMA has deliberately mirrored the existing provisions to the widest extent possible.

3.5.1. Technical options

Policy objective	<p>Carrying over those of the existing Level 2 provisions which have not been transferred into Level 1 or become obsolete</p> <p>Removing ban on hyperlinks in the prospectus in response to issuers flagging problems with this provision.</p>
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3.5.2. Cost-benefit analysis

	Qualitative description
Benefits	<p>The possibility for issuers to include hyperlinks in the prospectus removes a problem which issuers have flagged to NCAs and is furthermore in line with the general movement in the Prospectus Regulation towards increasingly making use of electronic sources of information. This possibility is balanced by the requirement to clearly state in the prospectus that information on the related website has not been approved by the NCA and does not form part of the prospectus.</p> <p>The requirement to avoid targeting investors in Member States where the offer to the public of securities does not take place ensures that only investors in Member States where the prospectus is available are targeted; this contributes to investor protection.</p>
Costs to regulator	None as provisions mirror existing Level 2.
Compliance costs	None as provisions mirror existing Level 2 or are less strict.

Annex IV: Draft regulatory technical standards

Draft

COMMISSION DELEGATED REGULATION (EU) .../...

of ...

supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards for the key financial information to be included in the summary, machine readable data, advertisements, supplements and publication of the prospectus

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, and in particular Article 7(13), Article 21(12), Article 21(13), Article 22(9) and Article 23(7) thereof,

Whereas:

- (1) The inclusion of key financial information in the summary of a prospectus is to provide investors with an overview of the financial position of the issuer which is disclosed elsewhere in the prospectus. In order to ensure that such information is concise and relevant, it is necessary to identify a limited number of disclosures, specify the layout of such disclosures and calibrate the financial information to be provided to take account of different types of issuers and securities. Where issuers consider that the mandated disclosures do not provide a clear picture of their financial position, they should be entitled to include specified additional disclosures to avoid misleading investors.
- (2) In order to reduce compliance costs and administrative burdens on issuers, the key financial information in the summary should reuse information already disclosed in the body of the prospectus. Furthermore, it is appropriate to adapt the key financial information to the sphere of economic activity of the issuer, its industrial sector, the major line items of its financial statements and the type of securities being offered or issued. If the historical financial information included in the prospectus is restated, the key financial information in the summary should be taken from the restated historical financial information.

- (3) It is desirable to provide investors with the possibility to effectively have access to, and search across, prospectuses published in the EU. Therefore, prospectuses, and their constituent parts, notified or communicated to ESMA, should be accompanied by data which allows for their classification in the storage mechanism to be developed by ESMA. Consistency of format and standardisation of the data to be provided to ESMA allow direct and immediate access to the data, thereby ensuring that the information accompanying the prospectus can be made public in a timely manner.
- (4) In order to ensure the objectives above, this Regulation specifies the list of data fields to be reported and provides for the use of XML format templates as the practical arrangement to ensure that such fields are machine readable. Reporting and publication of data in an electronic, machine readable form and format facilitates the efficient use and exchange of that data. The list of data should be sufficiently comprehensive to ensure that ESMA meets its mandate under Article 47 of Regulation (EU) 2017/1129 of the European Parliament and of the Council⁽³⁵⁾ to publish a yearly report containing statistics on the prospectuses approved and notified in the EU, as well as an analysis of the trends taking into account the type of issuers and the type of issuances.
- (5) Advertisements relating to an offer of securities to the public or an admission to trading on a regulated market should be identifiable as such and should clearly identify the offer and prospectus to which they relate. Identification of the offer or prospectus may be achieved through the inclusion of a link to the website on which the prospectus is available, inclusion of the legal entity identifier (LEI) of the issuer, the offeror or the person asking for the admission to trading on a regulated market, the international securities identification number (ISIN) of the securities, the title of the prospectus, the amount of securities to be offered to the public or admitted to trading on a regulated market, the date of approval of the prospectus, the date of publication of the prospectus or a combination of these.
- (6) Often a preliminary offering document is distributed to potential investors in order to assess the level of demand for the securities on offer. This preliminary document has not been approved by the national competent authority at the time of circulation to investors and contains almost all the same information as the prospectus that will be later approved. However, this marketing material is shared only with qualified investors who are familiar with the book-building process and are unlikely to mistake it for the actual prospectus.
- (7) Advertisements relating to an offer of securities to the public or an admission to trading on a regulated market can become inaccurate or misleading where a significant new factor, material mistake or material inaccuracy relating to the information in the corresponding prospectus arises or is noted. Requirements should be established to

³⁵ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, amending Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 67)

ensure that when advertisements become inaccurate or misleading due to such a new factor, material mistake or material inaccuracy, such advertisements are amended.

- (8) As the prospectus is the authoritative source of information about an offer to the public or an admission to trading, all information circulated about such offers and admissions to trading, whether for advertising or other purposes and whether in oral or written form, should be consistent with the information contained in the prospectus. In order to ensure this, it should be required that any information circulated does not contradict, or refer to information which contradicts, the contents of the prospectus. Moreover, the information circulated should be prohibited from presenting a materially unbalanced view of the information contained in the prospectus. Furthermore, as alternative performance measures can disproportionately influence the investment decision, information about an offer to the public or an admission to trading circulated outside the prospectus should not be permitted to contain such measures, if they are not contained in the prospectus. Finally, in order to protect retail investors, three warnings should be included in an advertisement, while other warnings may be included in accordance with the Prospectus Regulation or other regulation.
- (9) Given that the host competent authority has not scrutinised the prospectus and in order to ensure that investors in host Member States are adequately protected, cooperation arrangements between home and host Member States should be established in relation to advertisements and their consistency with the prospectus.
- (10) The Prospectus Regulation requires publication of supplements to the prospectus mentioning every significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later.
- (11) The provision of full information concerning the securities and the issuers of securities promotes the protection of investors. A supplement should therefore include all material information relating to the specific situations that triggered the supplement and that must be included in the prospectus in accordance with Regulation (EU) 2017/1129 and Commission Delegated Regulation (EU) [].
- (12) In order to ensure consistent harmonisation, to specify the requirements laid down in Regulation (EU) 2017/1129 and to take account of technical developments on financial markets, it is necessary to specify situations where publication of supplements to the prospectus is required. It is not possible to identify all the situations in which a supplement to the prospectus is required as this may depend on the issuer and securities involved. Therefore, it is appropriate to specify the minimum situations where a supplement is required.
- (13) Annual audited financial statements play a crucial role for investors when making investment decisions. In order to ensure that investors base their investment decisions

on the most recent financial information, it is necessary to publish a supplement incorporating new annual audited financial statements of issuers of equity securities and issuers of underlying shares in the case of depository receipts published after the approval of the prospectus.

- (14) In order to take account of the ability of profit forecasts and profit estimates to influence an investment decision, where issuers are required to include profit forecasts and profit estimates in the prospectus, they should publish a supplement containing any amendments to implicit or explicit figures constituting profit forecasts or profit estimates already included in the prospectus or where a new profit forecast or profit estimate has been published before the end of the offer period or before admission to trading.
- (15) Information concerning the identity of the main shareholders or any controlling entity of the issuer is vital for an informed assessment of the issuer, in case of any type of security. However, a situation of a change of control of the issuer is particularly significant where the offer refers to equity securities and depository receipts as these types of securities are, in general, more price sensitive to this situation. Therefore, a supplement should be published where there is a change of control of an issuer of equity securities or an issuer of underlying shares in the case of depository receipts.
- (16) It is essential that potential investors assessing an outstanding offer of equity securities or depository receipts are in a position to compare the terms and conditions of such an offer with the price or exchange terms attached to any public takeover bid announced during the offer period. Moreover, the result of a public takeover bid is also significant for the investment decision as investors need to know whether it implies or not a change in control of the issuer. In those cases, therefore, a supplement is necessary.
- (17) Where the working capital statement is not valid anymore investors are unable to make a fully informed investment decision about the issuer's financial situation in the immediate future. Investors should be in a position to reassess their investment decisions in light of the new information on the issuer's ability to access cash and other available liquid resources to meet its liabilities. In those cases, therefore, a supplement is necessary.
- (18) There are situations where, after the approval of a prospectus, an issuer or offeror decides to offer the securities in Member States other than those referred to in the prospectus, or to apply for admission to trading of the securities on regulated markets in additional Member States other than those provided for in the prospectus. Information about those offers in other Member States or admission to trading on regulated markets therein is important for the investor's assessment of certain aspects of the issuer's securities and therefore would necessitate a supplement.
- (19) The financial position or the business of the entity is likely to be affected by a significant financial commitment. Therefore, investors should be entitled to receive additional information on the consequences of that commitment in a supplement to the prospectus.

- (20) An increase of the aggregate nominal amount of an offering programme provides information on issuers' necessity for financing or an increase in demands for the issuers' securities. Therefore, where there is an increase in the aggregate nominal amount of an offering programme included in the prospectus, a supplement to the prospectus should be published.
- (21) Investors need clarity as regards which information forms part of the prospectus and to whom an offer of securities to the public is addressed. With the exception of information incorporated by reference, where the prospectus contains hyperlinks, it should therefore inform investors that the information on the related website(s) is not part of the prospectus and has not been scrutinised or approved by the competent authority. Furthermore, measures should be taken on websites used for publication of the prospectus to avoid targeting residents in Member States or third countries where the offer of securities to the public does not take place.
- (22) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (23) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³⁶, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

- 1. This Regulation establishes regulatory technical standards that specify the following aspects of Regulation (EU) 2017/1129:
 - a) the content and format of presentation of the key financial information referred to in point (b) of Article 7(6), and the relevant key financial information referred to in point (c)(iii) of Article 7(7), taking into account the various types of

³⁶ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

securities and issuers and ensuring that the information produced is concise and understandable;

- b) the data necessary for the classification of prospectuses referred to in Article 21(5) and the practical arrangements to ensure that such data, including the ISINs of the securities and the LEIs of the issuers, offerors and guarantors, is machine readable;
 - c) situations where a significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published.
2. Additionally, this Regulation establishes regulatory technical standards that specify further the following aspects of Regulation (EU) 2017/1129:
- a) the requirements relating to the publication of the prospectus;
 - b) the provisions concerning advertisements laid down in Article 22(2) to (4), including the provisions concerning the dissemination of advertisements and procedures on the cooperation between the competent authorities of the home Member State and of the Member State where the advertisements are disseminated.

CHAPTER II

KEY FINANCIAL INFORMATION IN THE SUMMARY

Article 2

Format and minimum content of the key financial information in the prospectus summary

1. The key financial information to be included in the summary shall contain historical financial information depending on the type of the issuer or the type of securities that are the subject matter of the prospectus.
2. The key financial information shall be presented in tabular form and it shall contain information required by the relevant Annexes of Commission Delegated Regulation (EU) []. Depending on the type of the issuer and the type of the securities involved, the key

financial information shall be presented according to the tables set out in Annexes I to VI to this Regulation.

3. Where the items required in the tables are not included in the financial statements of the issuer, the issuer shall substitute such items with a corresponding item from its financial statements.
4. An issuer shall have the discretion to include three additional line items or Alternative Performance Measures (APM) to the summary overall on a voluntary basis. The additional line items or APMs must be key to the issuer or the securities being offered or admitted to trading.
5. Where pro forma information is included in the prospectus, the pro forma figures affecting the items required in the relevant table shall be presented in the summary in the form of additional columns in the templates set out in Annexes I to VI to this Regulation or as a separate table. Where necessary for the understanding of the pro forma information, a brief explanation of the figures shall accompany the pro forma table. Where in the case of a significant gross change only narrative information is included in the prospectus, a statement with regard to the significant gross change shall be included in the summary.
6. Where the issuer has complex financial information or has made a significant financial commitment as set out in Article J₃₇, the key financial information shall be presented in a manner which corresponds to the presentation of the complex financial information in the prospectus and in the format of the key financial information set out in the templates in the Annexes to this Regulation.
7. Where an issuer is of a type that is not specified by the tables in Annexes I to VI to this Regulation, such as a third country and its regional and local authorities or a public international body or a specialist issuer, it shall use the table that most closely corresponds to the type of securities that it is issuing.

Article 3

Key financial information for non-financial entities issuing equity securities

Where the issuer is a non-financial entity issuing equity securities, information shall be given in accordance with the tables set out in Annex I.

Article 4

Key financial information for non-financial entities issuing non-equity securities

Where the issuer is a non-financial entity issuing non-equity securities, information shall be given in accordance with the tables set out in Annex II.

³⁷ Commission Delegated Regulation (EU) []

Article 5

Key financial information for credit institutions

Where the issuer is a credit institution, information shall be given in accordance with the tables set out in Annex III. The key financial information shall be given for the number of years required the relevant Annexes of Commission Delegated Regulation (EU) [] according to which type of security the credit institution is issuing.

Article 6

Key financial information for insurance companies

Where the issuer is an insurance company, information shall be given in accordance with the tables set out in Annex IV. The key financial information shall be given for the number of years required the relevant Annexes of Commission Delegated Regulation (EU) [] according to which type of security the insurer is issuing.

Article 7

Key financial information for Special Purpose Vehicles in relation to asset backed securities

Where the issuer is a Special Purpose Vehicle in relation to asset backed securities, information shall be given in accordance with the tables set out in Annex V.

Article 8

Key financial information for closed end funds

Where the issuer is a closed end fund, information shall be given in accordance with the tables set out in Annex VI.

Article 9

Key financial information for guarantors

Where there is a guarantee attached to the securities, the key financial information on the guarantor shall be given as if it were the issuer of the same type of security that is the subject of the guarantee in accordance with the relevant tables set out in the Annexes to this

Regulation. Where the guarantee is given for asset backed securities, the KFI on the guarantor shall be given as if the guarantor were the issuer of the underlying securities.

CHAPTER III

MACHINE READABLE DATA

Article 10

Data for the classification of prospectuses

When notifying prospectuses, or communicating final terms, to ESMA in accordance with Regulation (EU) 2017/1129, competent authorities shall submit to ESMA the data referred to in the table of Annex VII for the classification of prospectuses.

Article 11

Practical arrangements to ensure machine readability of data

Competent authorities shall ensure that all applicable data is submitted to ESMA in a common XML format and in accordance with the table of Annex VII.

CHAPTER IV

ADVERTISEMENTS

Article 12

Specification of provisions in Article 22(2) to 22(4) of Regulation (EU) 2017/1129

1. Any advertisement relating to an offer of securities to the public or an admission to trading on a regulated market shall:
 - a) where not published electronically, clearly identify the website where the prospectus is published or will be published;
 - b) where disseminated by electronic means, include a hyperlink to the prospectus and to the relevant final terms in case of base prospectus. In case the prospectus has not been published, the advertisement shall include a hyperlink to the specific page of the website where the prospectus will be published; and
 - c) unless there is a hyperlink to the prospectus, contain information to identify the prospectus and offer of securities or admission to trading on a regulated market to which it relates.
2. Advertisements disseminated to retail investors shall contain the following warnings:

- a) the approval of the prospectus should not be understood as an endorsement of the securities offered or admitted to trading; and
 - b) potential investors should read the prospectus before making an investment decision in order to fully understand the potential risks and rewards associated with the decision to invest in the securities; and
 - c) the comprehension alert required pursuant to point (b) of Article 8(3) of Regulation (EU) No 1286/2014³⁸ where this is or will be included in the summary and where the security does not fulfil the requirements laid down in points (i), (ii) and (vi) of Article 25(4)(a) of Directive 2014/65/EU³⁹.
3. An advertisement shall contain the word 'Advertisement' in a prominent place. Where an advertisement is disseminated in an oral form, the purpose of the communication shall be clearly identified at the beginning of the message.
4. The format and length of advertisements circulated to retail investors should be appropriate for this type of document so that investors do not confuse them for the prospectus, where a prospectus is required to be published.

Article 13

Dissemination of advertisements

1. Where an advertisement relating to an offer to the public or an admission to trading on a regulated market has been disseminated, and a supplement to the prospectus is subsequently published, due to a significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus, an amended advertisement shall be disseminated if the significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus renders the contents of the previously disseminated advertisement inaccurate or misleading.
2. An amended advertisement shall make reference to the previous advertisement, specifying that the previous advertisement has been amended due to it containing inaccurate or misleading information and specifying the differences between the two versions of the advertisement.
3. An amended advertisement shall be disseminated without undue delay following the publication of the supplement. With the exception of orally disseminated advertisements,

³⁸ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 11).

³⁹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

an amended advertisement shall be disseminated, at a minimum, through the same means as the original advertisement.

The obligation to amend an advertisement shall not apply after the final closing of the offer period to the public or after the time when trading on a regulated market begins, whichever occurs later.

Article 14

Consistency for the purposes of Article 22(4) of Regulation (EU) 2017/1129

1. Information disclosed in an oral or written form about the offer to the public or admission to trading on a regulated market, whether for advertisement or other purposes, shall not:
 - a) contradict the information contained in the prospectus;
 - b) refer to information which contradicts that contained in the prospectus;
 - c) present a materially unbalanced view of the information contained in the prospectus, including by way of omission or presentation of negative aspects of such information with less prominence than the positive aspects;
 - d) contain alternative performance measures concerning the issuer, unless they are contained in the prospectus.
2. For the purposes of points (a) to (d), information contained in the prospectus shall consist of information included in the prospectus, where already published, or information to be included in the prospectus, where the prospectus is published at a later date.
3. For the purposes of point (d), alternative performance measures shall consist of performance measures which are financial measures of historical or future financial performance, financial position, or cash flows, other than financial measures defined in the applicable financial reporting framework.

Article 15

Procedure for the cooperation between competent authorities

1. In case the competent authority of a host Member State has reasonable grounds for believing that the content of an advertisement relating either to a public offer or admission to trading on a regulated market infringes the provisions of Article 22 of Regulation (EU) 2017/1129 and asks for the assistance of the competent authority of the home Member State in assessing the consistency of the advertisements with the content of the prospectus, it shall communicate to the competent authority of the home Member State its findings, the advertisement and where necessary the translation of the

advertisement in a language customary in the sphere of international finance or the language of the prospectus.

2. The competent authority of the home Member State shall reply to the competent authority of the host Member State within a reasonable period and provide information on the results of its supervisory analysis.

CHAPTER V

SUPPLEMENTS

Article 16

Obligation to publish a supplement to the prospectus

1. A supplement to the prospectus shall be published in the following situations:
 - a) where new annual audited financial statements are published by any of the following:
 - (1) an issuer where a prospectus relates to shares and other transferable securities equivalent to shares referred to in Article [Share registration document schedule] of Commission Delegated Regulation (EU) [];
 - (2) an issuer of the underlying shares or other transferable securities equivalent to shares in case of equity securities complying with the conditions set out in Article [Additional information building block on the underlying share] of Commission Delegated Regulation (EU) [];
 - (3) an issuer of the underlying shares where the prospectus is drawn up in accordance with the depository receipt schedule, set out in Annex [14] to Commission Delegated Regulation (EU) [];
 - b) where an issuer has published a profit forecast or estimate following the approval of the prospectus (in cases where profit forecasts or estimates are required to be disclosed in a prospectus) or in case of an amendment to a profit forecast or a profit estimate already included in the prospectus.
 - c) where there is a change in control in respect of any of the following:
 - (1) an issuer where a prospectus relates to shares and other transferable securities equivalent to shares referred to in Article [Share registration document schedule] of Commission Delegated Regulation (EU) [];
 - (2) an issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to equity securities complying with the conditions set out in Article [Additional information

building block on the underlying share] of Commission Delegated Regulation (EU) [];

- (3) an issuer of the underlying shares where a prospectus is drawn up in accordance with a depository receipt schedule, set out in Annex [14] to Commission Delegated Regulation (EU) [];
- d) where there is any new public takeover bid by third parties, as defined in Article 2(1)(a) of Directive 2004/25/EC⁴⁰ and the outcome of any public takeover bid in respect of any of the following:
 - (1) the equity of the issuer where a prospectus relates to shares and other transferable securities equivalent to shares referred to in Article [Share registration document schedule] of Commission Delegated Regulation (EU) [];
 - (2) the equity of the issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to equity securities complying with the conditions set out in Article [Additional information building block on the underlying share] of Commission Delegated Regulation (EU) [];
 - (3) the equity of the issuer of the underlying shares where a prospectus is drawn up in accordance with the depository receipt schedule, set out in Annex [14] to Commission Delegated Regulation (EU) [];
- e) where in relation to shares and other transferable securities equivalent to shares referred to in Article [Share registration document schedule] of Regulation [] and convertible or exchangeable debt securities which are equity securities complying with the conditions set out in Article [Additional information building block on the underlying share] of that Regulation and depository receipts referred to in Article [Depository Receipts Schedule] of Commission Delegated Regulation (EU) [] there is a change in the working capital statement included in a prospectus when the working capital becomes sufficient or insufficient for the issuer's present requirements;
- f) where an issuer is seeking admission to trading on (an) additional regulated market(s) in (an) additional Member State(s) or is intending to make an offer to the public in (an) additional Member State(s) other than the one(s) provided for in the prospectus;
- g) where a new significant financial commitment is undertaken which is likely to give rise to a significant gross change within the meaning of Article [Definitions]

⁴⁰ Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 15).

of Commission Delegated Regulation (EU) [] and the prospectus relates to shares and other transferable securities equivalent to shares referred to in Article [Share registration document schedule] of that Regulation and other equity securities complying with the conditions set out in Article [Additional information building block on the underlying share] of that Regulation;

- h) where the aggregate nominal amount of the offering programme is increased.

CHAPTER VI

PUBLICATION AND FINAL PROVISIONS

Article 17

Publication of the prospectus

1. Where a prospectus, whether a single document or consisting of separate documents, contains hyperlinks, it shall include a statement that the information on the related website(s) does not form part of the prospectus and has not been scrutinised or approved by the competent authority. This rule shall not apply to hyperlinks to information which is incorporated by reference.
2. When a prospectus for an offer of securities to the public is published in accordance with Article 21(2) of Regulation (EU) 2017/1129, measures shall be taken on the website to avoid targeting residents in Member States or third countries where the offer of securities to the public does not take place, such as the insertion of a disclaimer as to who are the addressees of the offer.

Article 18

Entry into force

This Regulation shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [date].

For the Commission

The President

[name]

ANNEX I

NON-FINANCIAL ENTITIES (EQUITY)

The following legend applies across Annexes I to VI:

- * (asterisk) signifies mandatory information or corresponding information where the issuer does not use IFRS. The issuer can use a different title to present substantially the same information as set out in the table, where this alternative title is used in its financial statements.
- # (hash) denotes that if this information appears elsewhere in the prospectus, it is mandatory.
- ~ (tilde) in relation to closed end funds signifies investments at fair value through profit or loss at the same date as the date of the NAV.

Table 1: Income statement for non-financial entities (equity securities)

	<i>Year</i>	<i>Year -1</i>	<i>Year -2</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Total revenue					
*Operating profit/loss or another similar measure of financial performance used by the issuer in the financial statements					
*Net profit or loss (for consolidated financial statements net profit or loss attributable to equity holders of the parent)					
#Year on year revenue growth					
#Operating profit margin					
#Net profit margin					

#Earnings per share					
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Table 2: Balance sheet for non-financial entities (equity securities)

	<i>Year</i>	<i>Year -1</i>	<i>Year -2</i>	<i>Interim</i>
*Total assets				
*Total equity				
#Net financial debt (long term debt plus short term debt minus cash)				

Table 3: Cash flow statement for non-financial entities (equity securities)

	<i>Year</i>	<i>Year -1</i>	<i>Year -2</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Net Cash flows from operating activities					

ANNEX II

NON-EQUITY SECURITIES

Table 1: Income statement for non-equity securities

	<i>Year</i>	<i>Year -1</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Operating profit/loss or another similar measure of financial performance used by the issuer in the financial statements				

Table 2: Balance sheet for non-equity securities

	<i>Year</i>	<i>Year -1</i>	<i>Interim</i>
*Net financial debt (long term debt plus short term debt minus cash)			
#Current ratio (current assets / current liabilities)			
#Debt to equity ratio (total liabilities / total shareholder equity)			
#Interest cover ratio (operating income / interest expense)			

Table 3: Cash flow statement for non-equity securities

	<i>Year</i>	<i>Year -1</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Net Cash flows from operating activities				
*Net Cash flows from financing activities				
*Net Cash flow from investing activities				

ANNEX III

CREDIT INSTITUTIONS (EQUITY AND NON-EQUITY SECURITIES)

Table 1: Income statement for credit institutions

	<i>Year</i>	<i>Year -1</i>	<i>Year -2⁴¹</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Net interest income (or equivalent)					
*Net fee and commission income					
*Net impairment loss on financial assets					
*Net trading income					
*Measure of financial performance used by the issuer in the financial statements such as operating profit					
*Net profit or loss (for consolidated financial statements net profit or loss attributable to equity holders of the parent)					
#Earnings per share (for equity issuers only)					

⁴¹ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

Table 2: Balance sheet for credit institutions

	<i>Year</i>	<i>Year -1</i>	<i>Year -2⁴²</i>	<i>Interim</i>	<i>Value as outcome from the most recent SREP</i>
*Total assets					
*Senior debt					
*Subordinated debt					
*Loans and receivables from customers (net)					
*Deposits from customers					
*Total equity					
#Non performing loans (based on net carrying amount) / Loans and receivables					
#Common Equity Tier 1 capital (CET1) ratio or other relevant prudential capital adequacy ratio depending on the issuance					
#Total Capital Ratio					
#Leverage Ratio calculated under applicable regulatory framework					

⁴² Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

ANNEX IV

INSURANCE COMPANIES (EQUITY AND NON-EQUITY SECURITIES)

Table 1: Income statement for insurance companies

	<i>Year</i>	<i>Year -1</i>	<i>Year -2⁴³</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Net premiums					
*Net benefits and claims					
*Earnings before tax					
*Operating profit (distinguishing between life and non-life insurance)					
*Net profit or loss (for consolidated financial statements net profit or loss attributable to equity holders of the parent)					
#Year on year revenue growth (net premiums)					
#Earnings per share (for equity issuers only)					

Table 2: Balance sheet for insurance companies

	<i>Year</i>	<i>Year -1</i>	<i>Year -2⁴⁴</i>	<i>Interim</i>
*Investments including financial assets				

⁴³ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

⁴⁴ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

related to unit linked contracts				
*Total assets				
*Insurance contract liabilities				
*Financial liabilities				
*Total liabilities				
* Total equity				
#Solvency Cover Ratio (Solvency II ratio - SII ratio) or other relevant other relevant prudential capital requirement ratio depending on the issuance				
#Loss ratio				
#Combined ratio (claims + expenses / premiums for the period)				

ANNEX V

SPVS IN RELATION TO ASSET BACKED SECURITIES

Table 1: Income statement for SPVs in relation to asset backed securities

	Year	Year -1
*Net profit or loss		

Table 2: Balance sheet for SPVs in relation to asset backed securities

	Year	Year -1
*Total Assets		
*Total Liabilities		
*Financial Assets designated at fair value through profit or loss		
*Derivative financial assets		
*Non-financial assets if material to the entity's business		
*Financial Liabilities designated at fair value through profit or loss		
*Derivative financial liabilities		

ANNEX VI

CLOSED END FUNDS

Table 1: Additional information relevant to closed end funds

<i>Share Class</i>	<i>Total NAV</i>	<i>No. of shares / units</i>	<i>~NAV/share or Market price / share / unit</i>
A	XXX	XX	X
	Overall Total	Overall Total	

Table 2: Income statement for closed end funds

	<i>Year</i>	<i>Year -1</i>	<i>Year -2</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Total net Income / Net investment Income or total income before operating expenses					
*Net Profit / (Loss)					
*Performance fee (accrued / paid)					
*Investment management fee (accrued / paid)					
*Any other material fees (accrued / paid) to service providers					
#Earnings per share					

Table 3: Balance sheet for closed end funds

	<i>Year</i>	<i>Year -1</i>	<i>Year -2</i>	<i>Interim</i>
*Total Net Assets				
#Leverage ratio				

ANNEX VII

DATA TO BE PROVIDED TO ESMA

Table 1

<i>Number</i>	<i>Field</i>	<i>Content to be reported</i>	<i>Formats and Standard to be used for reporting</i>
1.	National identifier	Unique identifier of the uploaded document, assigned by the sending NCA	Alphanumerical
2.	Related national identifier	Unique identifier of the document to which the uploaded document relates, assigned by the sending NCA	Alphanumerical
3.	Sending Member State	Country code of the Member State which approved the uploaded document or with which the uploaded document was filed	ISO 3166-1 alfa-2 country code
4.	Receiving Member State(s)	Country code of the Member State(s) to which uploaded document is to be notified or communicated	ISO 3166-1 alfa-2 country code When multiple member states shall be communicated, field 4 shall be reported as many times as necessary.
5.	Record type	The type of uploaded document	Choice from list of predefined fields: <ul style="list-style-type: none"> - Base prospectus with final terms - Base prospectus without final terms - Standalone prospectus - Registration document - Universal registration document - Securities note - Final terms, including the summary of the

			individual issue annexed to them <ul style="list-style-type: none"> - Summary - Supplement - Translation of summary
6.	Structure type	The format chosen for the prospectus	Choice from list of predefined fields: <ul style="list-style-type: none"> - Single document prospectus - Prospectus consisting of separate documents (with or without summary)
7.	Approval or filing date	The date on which the uploaded document was approved or filed	ISO 8601 date format, Dates shall be formatted in the following format: YYYY-MM-DD. Dates shall be reported in UTC
8.	Language	The language in which the uploaded document is drafted	ISO 639-1, 2 letter code
9.	Issuer standardised name	GLEIF standardised legal name of the issuer	Alphanumeric
10.	Offeror standardised name	GLEIF standardised legal name of the offeror	Alphanumeric When multiple offerors shall be communicated, field 10 shall be reported as many times as necessary
11.	Guarantor standardised name	GLEIF standardised legal name of the guarantor	Alphanumeric When multiple offerors shall be communicated, field 10 shall be reported as many times as necessary
12.	Issuer LEI	Legal Entity Identifier of the issuer	ISO 17442, 20 alphanumeric characters
13.	Offeror LEI	Legal Entity Identifier of the offeror	ISO 17442, 20 alphanumeric characters When multiple offerors shall be communicated,

			field 13 shall be reported as many times as necessary
14.	Guarantor LEI	Legal Entity Identifier of the guarantor	ISO 17442, 20 alphanumerical characters When multiple guarantors shall be communicated, field 14 shall be reported as many times as necessary
15.	Issuer registration country	Country where issuer is legally registered	ISO 3166-1 alfa-2 country code
16.	Offeror registration country	Country where offeror is registered	ISO 3166-1 alfa-2 country code
17.	Guarantor registration country	Country where guarantor is registered	ISO 3166-1 alfa-2 country code
18.	FISN	Financial Instrument Short Name of the security	ISO 18774, 35 alphanumerical characters with the following structure: Issuer short name/description of financial instrument features.
19.	ISIN	International Securities Identification Number	ISO 6166, 12 alphanumerical characters
20.	CFI	Classification of Financial Instrument code	ISO 10962, 6-character code
21.	Issuance currency	Code representing the currency in which the nominal value is denominated	ISO 4217, 3 letter currency code
22.	Denomination per unit	Nominal value or notional value per unit in the currency of denomination	Numerical value with fraction digits. Decimal separator is '.' (full stop)
23.	Identifier or name of the underlying	ISIN code of the underlying instrument/index or name of the underlying instrument/index if an ISIN does not exist	ISO 6166 or Alphanumerical

24.	Maturity date	Original date of expiry of the instrument, when applicable	ISO 8601 date format. Dates shall be formatted in the following format: YYYY-MM-DD. Dates shall be reported in UTC
25.	Volume offered	Number of securities offered	Numerical value not admitting decimals.
26.	Price offered	Price per unit offered, in monetary value	Numerical value with fraction digits. 'PNDG' in case the price is not available When non applicable, to be identified accordingly Decimal separator is '.' (full stop)
27.	Consideration offered	Overall consideration offered, in monetary value	Numerical value with fraction digits. 'PNDG' in case the consideration offered is not available When non applicable, to be identified accordingly Decimal separator is '.' (full stop)
28.	Type of security	Classification of categories of equity and non-equity securities	Choice from list of predefined fields: Equity - Shares - Units or shares in closed end funds - Convertible securities - Other Debt - Debt with denomination >100k - Debt with denomination <100k - Debt with denomination <100k available only to qualified investors

			<p>ABS</p> <p>Depository receipts</p> <p>Derivative securities</p> <ul style="list-style-type: none"> - Derivative securities with denomination per unit of at least EUR 100,000 - Derivative securities with denomination per unit of less than EUR 100,000 - Derivative securities with denomination per unit of less than EUR 100,000 available only to qualified investors
29.	Type of offer / admission	Taxonomy according to MiFID / MIFIR and PR	<ul style="list-style-type: none"> - Initial offer without admission to trading / listing - Secondary offer without admission to trading / listing - Initial admission to trading on regulated market - Initial admission to trading on regulated market from previously being traded on MTF - Initial admission to trading on MTF with offer to the public - Secondary issuance on a regulated market or MTF
30.	Characteristics of the trading venue	Taxonomy according to MiFID / MIFIR and PR	<ul style="list-style-type: none"> - RM open to all investors, - RM, or segment thereof, limited to qualified investors - MTF which is an SME growth market - MTF which is not an SME growth market
31.	Market identifier code (MIC) for the trading venue	ISO number that identifies the market in which the	ISO 10383, 4 alphanumeric character

		security is admitted to trading	
32.	Disclosure regime	The Level 2 annexes in accordance with which the prospectus is drafted	Choice from list of predefined fields: List of Level 2 annexes in accordance with which the prospectus is drafted.
33.	EU Growth prospectus category	Reason based on which an EU Growth prospectus has been used.	Choice from list of predefined fields: <ul style="list-style-type: none"> - SMEs under PR Article 15(1)(a) - Issuers others than SMEs under PR Article 15(1)(b) - Issuers other than SMEs under PR Article 15(1)(c) - Offerors of securities under PR Article 15(1)(d)