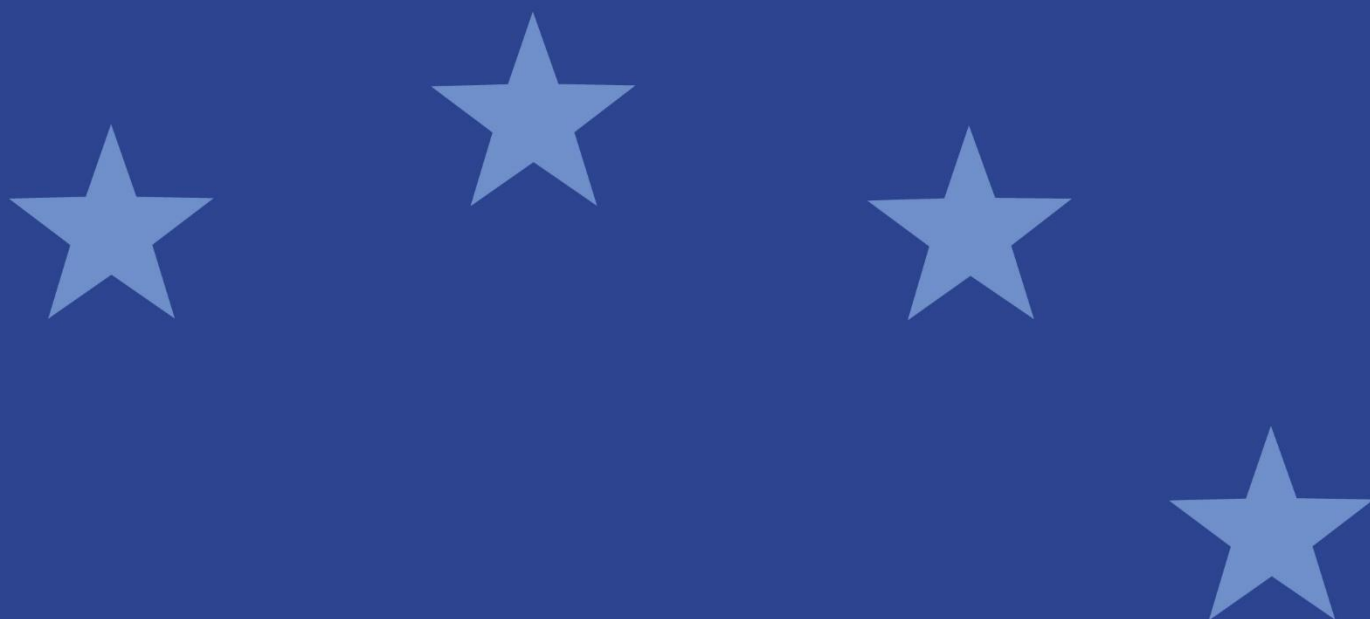


Consultation Paper

Draft technical advice on content and format of the EU Growth prospectus



Responding to this paper

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

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

ESMA will consider all responses received by 28 September 2017.

Instructions

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

- Insert your responses to the questions in the Consultation Paper in the form “Response form_Consultation Paper on EU Growth prospectus”, available on ESMA’s website alongside the present Consultation Paper (www.esma.europa.eu → ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).
- Please do not remove tags of the type <ESMA_QUESTION_EUG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- 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_EUG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_EUG_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 technical advice under the new Prospectus Regulation’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A 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, including issuers already admitted to trading on a regulated market or on a multilateral trading facility, offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the new Prospectus Regulation.

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Acronyms used

Accounting Directive	Directive 2013/34 of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
Audit Directive	Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC
Bank Recovery and Resolution Directive / BRRD	Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council
CESR	Committee of European Securities Regulators
Commission	European Commission
Commission Delegated Regulation (EU) 2017/565 of 25/4/2016	Commission Delegated Regulation (EU) 2017/565 of 25/4/2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive
Commission Regulation	Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements
EBITDA	Earnings before interest, taxes, depreciation and amortisation
ESMA	European Securities and Markets Authority

ESMA Regulation	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
International Financial Reporting Standards / IFRS	The international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002.
IPO	Initial Public Offering
ISIN	International Securities Identification Number
KPIs	Key Performance Indicators
LEI	Legal Entity Identifier
M&A	Memorandum and Articles of Association
Market Abuse Regulation / MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
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
MTF	Multilateral Trading Facility i.e. a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of Directive 2014/65/EU
NCA	National Competent Authority
OFR	Operating and Financial Review
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)

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

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

RPTs

Related party transactions

RTS

Regulatory Technical Standards

Second Commission Delegated Regulation

Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC 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

SMEs

Small and Medium-sized Enterprises

SMEs and midcaps

Issuers that fall under the scope of the EU Growth prospectus regime i.e. SMEs, companies traded on SME growth markets as long as their market capitalization does not exceed 500M€ and unlisted companies with less than 499 employees that raise below 20M€

Takeover Bids Directive

Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

Transparency Directive / TD

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (as amended by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013)

URD

Universal Registration Document

1. Executive summary

Reasons for publication

The Prospectus Regulation was published in the Official Journal of the European Union on 30 June 2017 and will enter into force 20 days after its publication. The Regulation requires the European Commission to adopt delegated acts in a number of areas within 18 months of its entry into force.

On 28 February 2017, ESMA received a request for technical advice from the European Commission in relation to content, format and sequence of the EU Growth prospectus including its specific summary.

Content

This Consultation Paper presents a draft version of ESMA's technical advice.

Section 2 addresses the background and mandate for ESMA's work. The section explains that the mandate is divided into two distinct phases and goes on to describe the part of the mandate addressed in this Consultation Paper. The section furthermore indicates the principles that ESMA is invited to take into account, the means by which the advice should be given and sets out the scope of the EU Growth prospectus and the reasons for developing a proportionate regime for the public offer of securities by SMEs.

Section 3 presents the scope and focus of ESMA's mandate in relation to the format of the EU Growth prospectus. In line with the broad disclosure requirements for equity and non-equity issuers and the additional requirements for midcaps set out in the Prospectus Regulation, this section proposes a standardised format and sequence of the specific registration document and the specific securities note. While being mindful of the requirement to have a standardised sequence of the sections of each disclosure schedule, ESMA proposes flexibility in the order of the disclosure items within the individual sections in order to enable issuers to draw up a prospectus that is easy to read.

ESMA's draft technical advice is presented in Section 3.3 and is followed by questions for the consideration of stakeholders.

Sections 4 and 5 present the scope and focus of ESMA's mandate in relation to the content of the specific registration document and the specific securities note of the EU Growth prospectus. To illustrate the background to ESMA's proposal, the sections discuss the general considerations that were taken into account for the development of the individual schedules. The proposed content of the EU Growth registration document and securities note aims to strike a balance between two sometimes competing positions, i.e. the size, needs and capabilities of issuers which are eligible to use the EU Growth prospectus, on one hand, and investor protection on the other.

To introduce a proportionate regime, ESMA proposes a single schedule that is applicable in the case of equity as well as non-equity issuances. Sections 4 and 5 set out a brief overview of the individual sections included in the EU Growth registration document and securities note and a detailed description of the disclosure requirements. Section 4 also highlights the key differences between the content of the EU Growth registration document and the registration document of the prospectus required for the full regime, the registration document of the existing proportionate disclosure regime and admission documents that are drawn up for admission to trading on MTFs.

ESMA's draft technical advice is presented in Sections 4.4 and 5.2 and is followed by questions for the consideration of stakeholders.

Section 6 contains ESMA's proposal for the specific summary of the EU Growth prospectus which is required to be based on Article 7 of the Prospectus Regulation. This section addresses the scope of ESMA's mandate to develop a specific summary and sets out general considerations in relation to the format and content of such a summary. Additionally, the detailed content of the EU Growth prospectus summary is presented.

ESMA's draft technical advice in this area is included in Section 6.3 and is followed by questions for the consideration of stakeholders.

Finally, the annexes set out the full text of the European Commission's request for ESMA to provide it with technical advice (Annex I) and questions for stakeholder consideration presented throughout the Consultation Paper (Annex II).

Next steps

When finalising its technical advice to the European Commission, ESMA will consider all feedback received in relation to this Consultation Paper by 28 September 2017. A Final Report containing a summary of all consultation responses and a final version of ESMA's technical advice will be delivered to the European Commission and published on ESMA's website in Q1 of 2018.

2. Introduction

2.1. Background

1. 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 ('the Prospectus Regulation') was published in the Official Journal of the European Union 30 June 2017.
2. As set out in the Prospectus Regulation, the European Commission ('the Commission') is obliged to adopt delegated acts in certain areas including the proportionate disclosure regime for the EU Growth prospectus. The Prospectus Regulation contains the following empowerment for the Commission in this area:

Article 15(2)

The Commission shall, by 21 January 2019, adopt delegated acts in accordance with Article 44 to supplement this Regulation by specifying the reduced content and standardised format and sequence for the EU Growth prospectus, as well as the reduced content and standardised format of the specific summary.

3. The deadline for the Commission to adopt delegated acts is expected to be in the first quarter of 2019. The Commission has requested ESMA to deliver its technical advice by 31 March 2018 (Part I) and 31 August 2018 (Part II).

2.2. Mandate

4. On 28 February 2017 ESMA received a formal request ('the mandate') from the Commission to provide technical advice to the Commission on possible delegated acts concerning the Prospectus Regulation.
5. The mandate received was structured in two parts, with Part I (the focus of this and related Consultation Papers ESMA31-62-532 and ESMA31-62-650) focusing on the format and content of prospectuses, including the EU Growth prospectus, together with the criteria for scrutiny and review of prospectuses and the procedures for their approval. Part II of the mandate, which has an extended deadline for delivery, focuses on documents containing minimum information describing a takeover by way of an exchange offer, a merger or a division together with a request for advice regarding the general equivalence criteria that should be applied in respect of the information requirements imposed by third countries.
6. For the purposes of Part I of the mandate, ESMA is requested to provide technical advice for the following delegated acts:
 - a) The measures specifying the criteria for the scrutiny of the universal registration document ('the URD') and its amendments, and the procedures for the approval,

filing and review of those documents as well as the conditions where the status of frequent issuer is lost (Article 9(14) of the Prospectus Regulation);

- b) The measures specifying the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus, including LEIs and ISINs (Article 13(1) of the Prospectus Regulation);
 - c) The measures setting out the schedule defining the minimum information contained in the URD (Article 13(2) of the Prospectus Regulation);
 - d) The measures specifying the reduced information to be included in the schedules applicable under the simplified disclosure regime referred to in Article 14(1) for secondary issuances (Article 14(3) of the Prospectus Regulation);
 - e) The measures specifying the reduced content and standardised format and sequence for the EU Growth prospectus referred to in Article 15(1), as well as the reduced content and standardised format of its specific summary (Article 15(2) of the Prospectus Regulation);
 - f) The measures specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus (Article 20(11) of the Prospectus Regulation).
7. This Consultation Paper focuses on the advice requested in paragraph 6(e). Parallel Consultation Papers, covering the same consultation period have been published in respect of the advice sought under the remaining subsections of paragraph 6¹.
8. The mandate also sets out a number of principles which ESMA is invited to take account of when developing its advice. ESMA has been asked to provide advice that takes account of the Lamfalussy principles and the need to ensure the proper functioning of the internal market and improve the conditions of its functioning, particularly as regards the financial markets and a high level of investor protection. The Commission also asks that the advice be clear, coherent, comprehensive and proportional. Advice should also be justified by evidence, including a cost-benefit analysis where a range of technical options are available.

2.3. Scope of the EU Growth prospectus regime

9. Supporting access to finance for SMEs is one of the key priorities under the Commission's Capital Markets Union Action Plan. SMEs are important drivers of growth, employment and innovation in Europe and direct investment in SMEs supports

¹ ESMA31-62-532 and ESMA31-62-650, both published on ESMA's website.

sustainable economic development. Facilitating the growth of these companies by providing easier and more cost efficient access to risk capital can empower companies and foster job creation.

10. Article 15 of the Prospectus Regulation establishes a proportionate disclosure regime for the drawing up of an EU Growth prospectus. The EU Growth prospectus is available to three types of entities in the case of offers of securities to the public, on the condition that they have no securities admitted to trading on a regulated market. These entities are:
 - (a) SMEs, i.e. enterprises which meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43 million and an annual net turnover not exceeding €50 million; or small and medium-sized enterprises as defined in Article 4(1)(13) of the Market in Financial Instruments Directive ('MiFID')²;
 - (b) Issuers, other than SMEs, whose securities are traded or are to be traded on an SME growth market, provided that those issuers had an average market capitalisation of less than €500 million on the basis of end-year quotes for the previous three calendar years;
 - (c) Issuers, other than those referred to under points (a) and (b), where the offer of securities to the public is of a total consideration in the Union that does not exceed €20 million calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499.
11. The option to draw up an EU Growth prospectus is also extended to offerors of securities issued by issuers referred to in paragraph 10 (a) and (b) above.
12. The proportionate disclosure regime aspires to facilitate access to financing on capital markets for SMEs, a key objective of the Capital Markets Union. The requirement to allow SMEs and midcaps – i.e. equity issuers with market capitalisation above €200 million – to provide reduced disclosure when assembling a prospectus takes into consideration that the cost of preparing a prospectus can be relatively high and act as a deterrent for such issuers which normally have lower fundraising needs compared to larger companies.

² Article 4(1)(13) of MiFID sets out that 'small and medium-sized enterprises' for the purposes of this Directive, means companies that had an average market capitalisation of less than EUR 200 000 000 on the basis of end-year quotes for the previous three calendar years.

3. Format of the EU Growth prospectus

3.1. Scope and focus of ESMA's mandate

13. Section 3.4 of the Commission mandate invites ESMA to provide advice on the format of the EU Growth prospectus as well as the format of its specific summary. The mandate requires that ESMA develops specific draft schedules for both registration documents and securities notes based on the high-level outlines featured in Annexes IV and V of the Prospectus Regulation. Schedules should be developed for the public offer of at least shares, debt and derivatives.
14. Furthermore, when establishing the minimum disclosure requirements for the EU Growth prospectus, ESMA is invited to define the order in which the disclosure items in the EU Growth prospectus and its summary will appear (referred to as "sequence" in Article 15). Under Article 15, the information in the prospectus shall be presented in a standardised sequence.

3.2. Order of information in the EU Growth prospectus

15. In accordance with the Level 1 text, the EU Growth prospectus has to be composed of a specific registration document and a specific securities note, together with a specific summary in accordance with Article 7. The Level 1 text also requires that the EU Growth prospectus shall have a standardised format and that the information contained therein shall be presented in a standardised sequence. Furthermore, pursuant to Article 15(2) of the Prospectus Regulation in specifying the standardised format of the specific summary, the Commission is obliged to calibrate the requirements thereof to ensure that it is shorter than the standard summary.
16. In specifying both the format and sequencing, Level 1 requires that the calibration focuses on (a) the information that is material and relevant for investors making a decision; and (b) the need to ensure proportionality between the size of the company and the cost of producing a prospectus. ESMA considers that the format of the prospectus is important from the issuer's point of view but also from that of the investor.
17. Under Article 15 of the Prospectus Regulation the delegated acts to be adopted by the Commission, and therefore the technical advice to be provided by ESMA, are to be based on a "section" approach. As set out in Annexes IV and V of the Level 1 text the registration document and securities note of the EU Growth prospectus should include a number of specific sections providing information on the issuer and the securities to be offered. Therefore ESMA has constructed its technical advice on the broad parameters described in Level 1 which establish disclosure requirements for equity and non-equity issuers and additional requirements for midcaps.
18. In line with the requirement for the Commission to take into account certain factors (significantly lighter regime in terms of cost and burden etc.), and the requirement to base the disclosure requirements on Annexes IV and V, ESMA has endeavoured to

develop such a regime for the purposes of its advice. ESMA considers that a lighter regime for SMEs does not entail reducing the quality of information but rather better adapting the disclosure requirements to the size of issuers and the complexity of their operations.

19. ESMA sees merit in including a limited number of sections in the EU Growth prospectus so that issuers will find it easy to understand the information requirements they should disclose. The order of the sections has been structured to make the EU Growth prospectus more easily readable, where investors or intermediaries can read the prospectus in sequential order and develop an understanding of the issuer's story, the key risks and the offer itself.
20. While ESMA's proposal is largely based on the disclosure requirements set out in the Prospectus Regulation, ESMA considers that the EU Growth prospectus should also include a cover note and a cross reference table illustrating the documents and/or information which are incorporated by reference. Although not mandated in Level 1 the inclusion of these elements is nevertheless in line with current market practice and would be a source of pertinent information to investors.
21. In terms of the cover note, ESMA considers that, as per Q&A 9 of the ESMA Q&A on prospectuses, it should contain some general information on the issuer and the issue, should be brief (no more than 3 pages). ESMA reiterates however that the cover note is not a substitute for the summary or the other disclosure requirements under the Prospectus Regulation.
22. As regards incorporation by reference, the option to incorporate information by reference has been extended to issuers not admitted to trading on regulated markets pursuant to Article 19 of the Prospectus Regulation. It is expected to reduce the costs of prospectus production as issuers would be in a position to reuse a large list of documents that are eligible for incorporation by reference. However, this option should be balanced with the needs of investors and not be detrimental to the comprehensibility of the prospectus. In this regard, ESMA is of the view that a cross reference table listing the documents and/or information incorporated by reference would be a beneficial tool to investors and issuers.
23. Furthermore, ESMA considers that the EU Growth prospectus should include a section titled 'General description of the programme' to be applied in case of issuers, which opt for the EU Growth regime, issue non-equity securities and draw up a base prospectus. ESMA is also of the view that in cases where the prospectus has been drawn up in the tripartite format, the specific summary should take the form of a separate document.
24. While the precise disclosure requirements are covered below in para 81 and 97, ESMA, in accordance with Annexes IV and V of the Prospectus Regulation, proposes that the following sections should form the basis for the registration document component of the EU Growth prospectus:
 - Cover note (in accordance with standard market practice);

- Table of contents;
- Information incorporated by reference (if applicable);
- Persons responsible, third party information, experts' reports and competent authority approval (who is responsible for the document, third party information and statements by experts, identity of the competent authority approving the registration document);
- Strategy performance and business environment (including structure, trends and operating and financial review (OFR) for companies with market capitalisation above EUR 200 000 000);
- Risk factors;
- Corporate Governance (how the issuer is run and governed and key relationships);
- Shareholder and security holder information (pending litigation, RPTs, conflicts, restrictions/covenants);
- Financial statements, Key Performance Indicators (KPIs) and commentary thereon (financial condition and audited financial statements).

25. As regards the format of the securities note, ESMA proposes the following sections:

- Cover note (in accordance with standard market practice);
- Table of contents;
- Information incorporated by reference (if applicable);
- General description of the programme (only in the case of a base prospectus);
- Purpose and persons responsible, third party information, experts' reports and competent authority approval (as per the registration document together with the reason for the prospectus, identity of the competent authority approving the securities note);
- Working capital statement and statement of capitalisation and indebtedness (for equity issuance by companies with market capitalisation above EUR 200 000 000 only);
- Risk factors;
- Details of the offer/admission (size of offer, pre and post capital, net proceeds, use of proceeds);

- Terms and conditions of the securities (including rights);
- Guarantor information (if any).

26. Where the EU Growth prospectus is drawn up as a single document, ESMA proposes the following sections:

- Cover note (in accordance with standard practice);
- Table of contents;
- Information incorporated by reference (if applicable);
- Summary;
- General description of the programme (only in the case of a base prospectus);
- Purpose and persons responsible, third party information, experts' reports and competent authority approval (who is responsible for the document together with the reason for the prospectus third party information and statements by experts, identity of the competent authority approving the EU Growth prospectus);
- Strategy, performance and business environment (including structure, trends, and OFR for companies with market capitalisation above EUR 200 000 000);
- Working capital statement and statement of capitalisation and indebtedness (for equity issuance by companies with market capitalisation above EUR 200 000 000 only);
- Risk factors;
- Details of the offer/admission (size of offer, pre and post capital, net proceeds, use of proceeds);
- Terms and conditions of the securities (including rights);
- Corporate Governance (how the issuer is run and governed and key relationships);
- Shareholder and security holder information (pending litigation, RPTs, conflicts, restrictions/covenants);
- Guarantor information (if any); and
- Financial statements, Key Performance Indicators (KPIs) and commentary thereon (financial condition and audited financials).

27. In line with the mandate for a standardised sequence of the schedules, ESMA proposes that the order of the sections above should not change. ESMA is, however, of the view that issuers should be able to define the order of the individual information items in the sections to present their investment proposal in a more open and accessible way and prepare a readable document.

3.3. Draft technical advice

28. On the basis of the considerations presented above, ESMA proposes the following wording for its technical advice in relation to the format of the EU Growth prospectus:

Article A: Format of the EU Growth prospectus

1. Where an issuer or an offeror of securities chooses, according to Article 15(1) of Regulation (EU) 2017/1129, to draw up an EU Growth prospectus as a single document, the prospectus or base prospectus shall be composed of the following parts in the following order:
 - a) Cover note (not to exceed 3 pages in length);
 - b) Table of contents;
 - c) Information incorporated by reference (if applicable);
 - d) Summary;
 - e) General description of the programme;
 - f) Purpose and persons responsible, third party information, experts' reports and competent authority approval;
 - g) Strategy, performance and business environment;
 - h) Working capital statement and statement of capitalisation and indebtedness;
 - i) Risk factors;
 - j) Details of the offer/admission;
 - k) Terms and conditions of the securities;
 - l) Corporate Governance;
 - m) Shareholder and security holder information;
 - n) Guarantor information (if applicable); and
 - o) Financial statements and Key Performance Indicators (KPIs).

Letter (e) of the first subparagraph shall only apply in case of a base prospectus.

Letter (h) of the first subparagraph shall only apply in case of equity issuance by companies with market capitalisation above EUR 200 000 000.

2. Where an issuer or an offeror of securities chooses, according to Article 15(1) of Regulation (EU) 2017/1129, to draw up an EU Growth prospectus as separate documents, the EU Growth registration document and the EU Growth securities note shall be composed of the following parts in the following order:

(i) EU Growth registration document

- a) Cover note (not to exceed 3 pages in length);
- b) Table of contents;
- c) Information incorporated by reference (if applicable);
- d) Persons responsible, third party information, experts' reports and competent authority approval;
- e) Strategy, performance and business environment;
- f) Risk factors;
- g) Corporate Governance;
- h) Shareholder and security holder information;
- i) Financial statements and Key Performance Indicators (KPIs).

(ii) EU Growth securities note

- a) Cover note (not to exceed 3 pages in length);
- b) Table of contents;
- c) Information incorporated by reference (if applicable);
- d) General description of the programme;
- e) Purpose and persons responsible, third party information, experts' reports and competent authority approval ;
- f) Working capital statement and statement of capitalisation and indebtedness;
- g) Risk factors;
- h) Details of the offer/admission;

- i) Terms and conditions of the securities;
- j) Guarantor information (if any).

Letter (d) under (ii) of the first subparagraph shall only apply in case of a base prospectus.

Letter (f) under (ii) of the first subparagraph shall only apply in case of equity issuance by companies with market capitalisation above EUR 200 000 000.

3. Within the order laid down in paragraphs 1 and 2, the issuer or the offeror shall be free to define the order of the required information items in each section included in the schedules and building blocks according to which the prospectus is drawn up.

3.4. Questions for consultation

- Question 1: Do you consider that specific sections should be inserted or removed from the registration document and / or the securities note of the EU Growth prospectus proposed in Article A? If so, please identify them and explain your reasoning, especially in terms of the costs and benefits implied.
- Question 2: Do you agree with the proposal to allow issuers to define the order of the information items within each section? Please elaborate on your response and provide examples. Can you please provide input on the potential trade-off between benefits for issuers coming from increased flexibility as opposed to further comparability for investors coming from increased standardisation?
- Question 3: Given the location of risk factors in Annexes IV and V of the Prospectus Regulation, do you consider that this information is appropriately placed in the EU growth prospectus? If not please explain and provide alternative suggestions.
- Question 4: Do you agree with the proposal that the cover note to the EU Growth prospectus should be limited to 3 pages? If not, please specify which would be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?

4. Content of the EU Growth prospectus

4.1. Scope and focus of ESMA's mandate

29. The Commission's request for technical advice invites ESMA to identify the minimum disclosure requirements of the EU Growth prospectus. In doing so ESMA is asked to adopt a "bottom-up" approach and build a proportionate disclosure regime from scratch, without taking as a starting point the existing annexes of the Commission Regulation.
30. Furthermore, although it should be possible to identify the tangible difference between the reduced content of the EU Growth prospectus and the content of the prospectus requirements which apply to issuers on regulated markets, the purpose of the exercise should not be to propose the disclosure items that could be omitted from the full prospectus. Instead ESMA is invited to use as benchmark for this work the content of the admission documents required by MTFs where the prospectus obligations do not apply.
31. As an aim of the EU Growth prospectus is to drive down the costs of producing a prospectus for the types of issuers referred to in Article 15 of the Prospectus Regulation, the mandate asks ESMA to factor in the possibility that issuers may wish to prepare a prospectus with little or no external advice. In this regard, ESMA is encouraged to put together the schedules and headings of the EU Growth prospectus in such a way that it should be possible for issuers to opt out of the services of professional advisors. In addition, under the mandate when calibrating the content of the EU Growth prospectus ESMA should not propose the inclusion of information that would imply high costs to issuers while being of limited added value to investors.

4.2. General considerations

Needs of SMEs and cost of access to capital

32. In designing the content requirements of the EU Growth prospectus, ESMA is of the view that it is important to take into account the needs and capabilities of SMEs and midcaps and that this be balanced with the needs of investors so that investor protection is not compromised. Furthermore, it is equally important to acknowledge the often local nature of investment in these types of company. Viability of SMEs and midcaps and their ability to grow and generate cash flow is often key to investors. While the potential scale of investment in an SME or midcap may not appeal to large institutional investors, investment in growth companies can be significantly better than traditional bank savings particularly in a low interest rate environment, thereby facilitating smaller investors in their search for yield and pension planning. SME investment, as a distinct asset class, can also facilitate investors in diversifying their portfolios.
33. A significant obstacle to SME investment, often cited by investors, has been getting the information required to assess viability of such companies and the potential returns on offer. However, in the last several years, advances in technology have made the process easier and cheaper. ESMA is of the view that by leveraging off improved information

and communications technology, the EU Growth prospectus can, like other prospectuses, make the process of accessing the capital markets easier and less costly than it has been heretofore. As technology and information sharing continue to improve, dissemination of SME information, and the channels through which SMEs can seek to raise finance, have become significantly more cost-effective.

34. As set out in Recital 51 of the Prospectus Regulation, SMEs are often dissuaded from seeking to raise capital on public markets given that the amounts they want to raise are usually relatively low whereas the costs of preparing a standard prospectus could be substantial. Considering the need to encourage capital market financing by SMEs in general and via the SME growth markets in particular, and that SMEs may carry a specific investment risk compared to larger issuers, a balance needs to be struck between investor protection and the costs that SMEs face when producing a prospectus. In this regard, Article 15 of the Prospectus Regulation makes it clear that the new EU Growth prospectus should be proportionate in terms of the information that it requires issuers to disclose.
35. To fulfil the requirement for proportionality between the size of the company and the cost of producing a prospectus, ESMA has endeavoured to create a truly bespoke disclosure regime by avoiding the inclusion of elements that would be considered excessively onerous for companies of such size and by speaking to investors in these types of company to identify the type of information that they look for when investing in SMEs. The content proposals below attempt to strike a balance between these sometimes competing positions.

MTF disclosure requirements

36. As required under the Commission mandate, ESMA has considered the content of admission documents that are prepared for admission to trading on MTFs where the prospectus regime does not apply. Given that the mere admission to trading on an MTF is not to be regarded in itself as an offer of securities to the public as set out in Recital 14 of the Prospectus Regulation, ESMA is of the view that these documents are not entirely analogous to the EU Growth prospectus.
37. Admission documents are generally drawn up by professional advisors who are certified by the MTF operators and are not used for the purposes of an offer of securities to the public. The consequence of this is that their reduced content, in comparison to a full prospectus, is produced for a different reason and is not calibrated to meet the information requirements that would apply when offering securities to the public. Furthermore they usually contain a statement to inform investors that the MTF operator has not examined or approved the content of the document.
38. MTF operators usually require applicants to comply with minimum listing requirements such as lock-ins in the case of new businesses or disclosure of a working capital statement. In addition, issuers with securities admitted to trading on MTFs have to fulfil ongoing obligations after the admission to trading of their securities such that they provide on a regular basis updated information on their financial position and

performance as well as ad hoc information on events that could have an impact on the development of their business. It is also worth noting that MTF operators reserve the right to consider the appropriateness of the applicant and may require further due diligence under certain conditions.

Materiality

39. As with all prospectuses, ESMA is of the view that the mandatory content of the EU Growth prospectus should be dictated by the principle of materiality. While having regard to the disclosure items set out below, it is ultimately for the issuer's management to determine which items are material by analysing the various aspects of information, irrespective of their positive or negative impact. In this respect, the materiality assessment, which is crucial to ensure that the prospectus focuses on the factors that significantly impact value creation and performance for shareholders, rests with the SME issuer which will decide to disclose non-mandatory items in case they are deemed significant enough to influence an investor's decision regarding whether or not to invest. As such, the EU Growth prospectus regime, and the reduced disclosure that it encompasses, is without prejudice to the overall "necessary information" test set out in Article 6 of the Prospectus Regulation.
40. As a further simplification to the proposed regime ESMA has calibrated the content of the EU Growth prospectus in such a way that a single schedule is applicable in the case of equity and non-equity issuances. On this basis, the EU Growth prospectus contains a single registration document and a single securities note in which individual items which are to be provided by only one type of issuer are appropriately marked. As regards the inclusion of non-mandatory information that the issuer considers material, this should be included in the section to which it most closely relates.
41. Finally, in order to facilitate the comparison between the content of the EU Growth prospectus and the prospectus that is applied to issuers admitted to trading on regulated markets and provide clarity on the actual disclosure requirements, ESMA has aligned the disclosure items in both regimes where the anticipated disclosure is the same. Therefore, disclosure items in the EU Growth prospectus have a different wording to that of the prospectus applied in regulated markets only when the disclosure requirement is different.

4.3. EU Growth registration document

42. A brief overview of the disclosure items of the registration document summarising its content and setting out some high level considerations for the formulation of specific sub-sections follows in the next paragraphs while a detailed description of the schedule for the EU Growth registration document is set out in para 81.

4.3.1. Considerations on content

43. As regards the schedule for the registration document it is worth highlighting the following points:

Cover note, table of contents, cross-reference table

44. ESMA is of the view that the EU Growth registration document should include a cover note, a table of contents and a cross reference table with a list of the documents and/or information incorporated by reference. The cover note and the table of contents, although not required under Level 1, would typically form part of a prospectus as a result of market practice and from a practical point of view would provide information that is relevant to the reader of a prospectus. As set out above, the cover note should not be seen as a substitute for the summary. In terms of the cross reference table, ESMA proposes that this element should be included in the prospectus since it would be helpful to investors seeking to locate specific information that is incorporated by reference.
45. ESMA has weighed the pros and cons of requiring that EU Growth prospectuses display a “warning” mentioning that the prospectus is prepared under a proportionate regime specific to SMEs and midcaps and as such its content is lighter compared to a full prospectus. However, as the disclosure regime for SMEs and midcaps is clearly set out under Level 1, ESMA considers that the requirement for a “warning” would be construed in a negative way or as a “health warning” against investing in issuers that opt to offer securities under the EU Growth regime. Nevertheless, ESMA is of the view that the cover note of the EU Growth prospectus should clearly identify the legal basis for the EU Growth prospectus by including a statement indicating that it is a prospectus drawn up pursuant to Article 15 of the Prospectus Regulation.

Section - Persons responsible, third party information, experts’ reports and competent authority approval.

46. ESMA considers that the persons responsible for the content of the prospectus should be set out clearly in the EU Growth prospectus in accordance with Annex IV of the Prospectus Regulation which requires that the issuer and its representatives, other individuals involved in the company’s offer as well as the persons responsible for the drawing up of the prospectus are explicitly identified. Furthermore, ESMA is of the view that this section should also contain disclosure relating to consent statements by experts and Third Party information. This section should provide investors with transparency and comfort about the persons responsible for the information included in the prospectus. Broadly similar information is contained in the admission documents prepared for the purposes of admission to trading on MTFs. This section should also include a statement setting out the competent authority who approved the prospectus and the scope of such approval.

Section - Strategy, performance and business environment

47. Under the high-level outline set out in Annex IV of the Prospectus Regulation the EU Growth prospectus should include information on the company’s strategy and objectives

related to its development and future performance, the company's business operations, the products it makes and/or the services it provides, its investments, the factors which affect the business and relevant trend information. Based on these requirements, ESMA considers that the key objective of the current section would be to provide insight into the issuer's business, its main objectives and strategy, describe the market and any changes to the issuer's financial performance due to e.g. a change in its competitive position or market share and explain its vision for the future.

48. ESMA is of the view that this section should provide basic details on their business model featuring several elements that are deemed essential for investors (e.g. material investments and organisational structure) to gain a better understanding of the structure of an issuer's business, its activities and prospects and assess whether to invest. The section also asks issuers to give an overview of their principal activities and markets, an indication of significant trends together with any forward looking statements (such as profit forecasts).
49. At the beginning of the section, ESMA proposes the issuer should disclose information on its "identity". This should be simple information on who the issuer is such as legal and commercial name, legal entity identifier, place of registration, legal structure, location, address, telephone number and website. The issuer should set out its vision for the future, its financial and non-financial growth objectives and the necessary steps to move the business forward. ESMA considers that from an investor's point of view, it is important that the issuer can articulate its own vision in such a way that it conveys a clear understanding of the business and potential challenges that it faces.
50. Following the elaboration of its strategy and objectives, ESMA is of the view that the issuer should identify its industry and type of business, elaborate on the products and / or services it provides as well as the ones that have been recently introduced and describe any material investments undertaken within the period covered by the financial statements in the prospectus and (if applicable) ones that are in progress. The level of detail in this section will vary depending on the stage that the issuer is in. However, it should be comprehensive enough to explain the issuer's purpose and its future growth goals.
51. In proposing the content of this section ESMA has been mindful that, while trying to minimise disclosure requirements to what is material, much of this information is readily available to issuers and can be included in a prospectus with minimal cost. In addition, the type of information that is sought in this section is similar in many ways to that included in the presentations that management makes to investors during roadshows. Issuers will therefore be able to reuse this information in management presentations and roadshows, thereby reducing costs incurred in marketing activities associated with offers of securities.

Organisational structure

52. In terms of assessing the issuer's investment proposal, an investor would need to have a clear understanding of the issuer's organisational structure as this information is

directly linked to the issuer's strategy and underlines the opportunities and limitations the issuer is faced with. ESMA considers that the organisational structure of the issuer may be presented in the form of a diagram. As regards information on subsidiaries and holdings, in ESMA's view the prospectus should provide investors with a description of any such entities that are deemed material for the issuer's operation to the extent that this topic is not already covered in the financial statements. In general, ESMA considers this requirement not to be burdensome as this information should be well known to issuers, inexpensive to produce and often part of the information that will be included in the presentation that management will give to potential investors at a roadshow.

Operating and financial review (OFR)

53. Under the Prospectus Regulation the disclosure requirements in this section apply only for equity securities issued by companies with market capitalisation above EUR 200 000 000. The OFR applies where the Management Report presented and prepared in accordance with Article 19 or 29 of Directive 2013/34/EU is not included in the EU Growth prospectus.
54. In general the OFR is considered costly to produce for smaller issuers, given that investors will still have extensive financial information disclosed in the prospectus. The key objective of these requirements is for the issuer to provide a balanced and comprehensive analysis of the issuer's development and performance and highlight to investors the views of the issuer's management on the way forward and the key drivers of the business as well as enhance investors' understanding of the complexities facing the issuer.

Profit forecasts or estimates

55. ESMA considers that profit forecasts – if prepared with due diligence and a well-founded basis – may help investors make a reasonable assessment of the issuer and its future economic prospects. On this basis and where an issuer of equity or retail debt has published a profit forecast or estimate, ESMA proposes that this information should be presented in the EU Growth prospectus. ESMA understands that in some cases issuers may wish to disclose a profit forecast or estimate in the EU Growth prospectus, even if they there is no previously published profit forecast or estimate. In this regard, ESMA is of the view that issuers should be allowed to make such disclosure when they consider it would be pertinent information for investors.
56. Under the current prospectus regime where a profit forecast is included in a prospectus there is a requirement to also include a report by independent accountants or auditors to confirm that the basis of accounting is consistent with the accounting policies of the issuer and that the forecast has been properly prepared on the basis stated. This requirement is costly and it is in ESMA's view questionable whether these costs are justified and proportionate considering the limited comfort provided to investors by such reports. The requirement for a report and the relevant costs may also be a disincentive for including profit forecasts or estimates in a prospectus, while such information could often constitute valuable information for investors. In line with the Commission's

mandate not to propose information items which would imply high costs for SMEs with only a limited added value for investors, ESMA proposes not including a requirement for a report by independent accountants or auditors on profit forecasts or estimates.

57. Along with the considerations above, ESMA is of the view that the assumptions upon which the forecast or estimate has been based should be clear, understandable, specific, precise and draw the investor's attention to those uncertain factors which could materially change the outcome of the forecast. Furthermore, ESMA considers that the prospectus should include an explanation of the calculation of the profit forecast or estimate.

Section - Risk factors

58. As set out at Level 1, in order to be included in the prospectus risk factors should be both material and specific to the issuer and should be corroborated by the content of the registration document. The obligation set out in Article 16 of the Prospectus Regulation to assess the materiality of risk factors based on the probability of their occurrence and the expected magnitude of their negative impact applies to the EU Growth prospectus as well. Considering the higher risk / reward profile of SMEs, it is especially important for persons investing in such companies to have a thorough understanding of the potential risks facing the issuer. In an effort to give more prominence to this topic, ESMA proposes that information on risk factors should be set out in a standalone section to drive the message that potential investors should carefully read its content and weigh the risks along with the expected future returns in order to make an informed decision.
59. The disclosure requirement is different for non-equity issuers as in the latter case risk factors should focus on the issuer's ability to meet its obligations. ESMA also proposes that the information on risk factors should follow the disclosure on the issuer's strategy, performance and business environment. In this regard, investors would be able to place the risk factors in the context of the issuer's business.

Section - Corporate Governance

60. The purpose of this section as set out in Annex IV of the Prospectus Regulation is to provide information on the company's directors and managers that will allow investors to assess their experience, qualifications and level of remuneration as well as their relationship with the company. In this regard, in ESMA's view, the key objectives of this section are:
 - To describe the composition and organisation of the issuer's governance structure;
 - To set out the remuneration paid to the management of the issuer.
61. ESMA considers that one of the key elements that investors take into account when deciding to invest is the trustworthiness of the issuer's management and their ability to create value for shareholders. To provide investors with sufficient information on the qualifications of senior management, ESMA proposes that the issuer should be required

to present in the prospectus the persons who are responsible for the implementation of the business strategy and disclose their qualifications, management expertise and experience in order to illustrate their suitability to steer the company.

62. Another element that is of particular relevance to investors is the remuneration paid to managers by the issuer and the shares (including options over shares) in the issuer held by them. As these are tools for aligning the interest of management and shareholders and an indication of management's commitment to the issuer's objectives and vision, the issuer should disclose information on management's remuneration and benefits as well as shareholdings and stock options.

Section - Shareholder and security holder information

63. Under Annex IV of the Prospectus Regulation, the EU Growth registration document should contain a section titled Shareholders' which will inform investors of the following:
- the existence of any legal and arbitration proceedings;
 - the issuer's shareholder structure;
 - the existence of conflicts of interest;
 - related party transactions;
 - material contracts;
 - Memorandum and Articles of Association (M&A).
64. In ESMA's view this section should present important features of the issuer which investors would consider when making an investment decision in order to assess the protection provided to minority shareholders and the issuer's ability to create value for them. However, some of this information such as related party transactions would not necessarily be repeated in this section to the extent it would already be covered in the financial statements that are included in the prospectus. A cross-reference to that part of the prospectus could be provided in its place.
65. ESMA acknowledges that the provisions for the disclosure of notifications of major holdings under the Transparency Directive do not apply to issuers not admitted to trading on regulated markets and as such not to issuers eligible to draw up an EU Growth prospectus. However, a topic that should be addressed in the EU Growth prospectus is who owns the issuer prior to the public offer and who makes vital decisions in relation to its future. ESMA is of the view that the names of shareholders holding, directly or indirectly, more than five percent of the total voting rights and / or capital should be included in the prospectus, in so far as this information is known to the issuer. In general, information on the owners of the company is a key element that potential investors weigh up before making an investment decision. Therefore, ESMA considers that the inclusion

of this disclosure item in the EU Growth prospectus is not overly burdensome for issuers as it will be provided in all cases when an issuer seeks funding.

66. Furthermore, ESMA proposes including a number of additional topics in this section with the aim of showcasing issues that may have particular relevance for the decision to invest. The existence of conflicts of interest or significant legal and arbitration proceedings, the extent of related party transactions and whether they are concluded at arm's length as well as the nature and impact of material contracts that the issuer has entered into, may underline areas of concern or specific challenges in the implementation of the issuer's business plan. ESMA considers that an issuer trying to secure financing would be required to be explicit and disclose information on the aforementioned topics. Investors, on the other hand, should be mindful of this information when deciding whether to invest, as it complements the disclosure on the issuer's strategy and prospects set out in other sections.

Memorandum and Articles of Association (M&A)

67. In relation to M&A, ESMA is of the view that issuers who opt for the EU Growth prospectus should disclose information on their objects and purposes and where these can be found in the memorandum and articles of association. In addition, ESMA suggests that issuers disclose a brief description of the up to date M&A provisions in relation to takeover prevention measures as this information would be relevant to investors while not being overly burdensome to issuers.

Section - Financial Statements and key performance indicators (KPIs)

68. ESMA is of the view that the key objectives of this section are to provide potential investors with the issuer's up-to-date financial information, key performance indicators (KPIs) and information on dividend policy. In other words, this section should present the issuer's past performance and sets out the "numbers" that in a way back up the issuer's business story.
69. In general, ESMA considers that the information set out in this section will provide investors with a clear understanding of the issuer's past income generating ability, its capital structure and assets. These elements will be factored in when assessing whether to invest in the issuer. On the other hand, the issuer does not incur extra costs as this section leverages information that has already been drawn up under national law requirements. Under the Prospectus Regulation compliance with this requirement will be achieved through the inclusion of financial statements covering the last two years for equity issuers and the last year for non-equity issuers³ together with the audit report for each year (this could be done by incorporating them by reference under the conditions set out in Article 18 of the Prospectus Regulation).

³ Under Annex IV of the Prospectus Regulation, the EU Growth prospectus should include financial statements covering the latest two financial years for equity issuances or the last financial year for non-equity issuances.

70. Although there are SMEs and midcaps that prepare their annual financial statements in accordance with IAS/IFRS, ESMA acknowledges that a significant number would produce such under national accounting standards. As one aim is to drive down the costs of producing a prospectus, and issuers of smaller size would usually be the focus of local market participants who would be familiar with the national level of corporate reporting, ESMA proposes that, for the purposes of the EU Growth prospectus, it should be possible to use the annual financial statements prepared under national accounting standards which in some cases may not include the same level of information required under IAS/IFRS.
71. ESMA is of the view that where the issuer intends to change its accounting standards framework and adopt a new one in its next published financial statements the EU Growth registration document should include at least one complete set of financial statements, including comparatives. This disclosure requirement will provide investors with financial information that will be presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements. In this regard, ESMA considers that this information to be pertinent and proposes that it should be provided by all issuers that opt for the EU Growth regime irrespective of size.
72. Furthermore, this section also contains pro forma financial information as necessary and where relevant also includes information relating to an entity other than the issuer, i.e. in cases of complex financial history. As regards pro forma financial information, ESMA considers it unnecessary to draw up a building block for pro forma financial information to be used specifically by SMEs and midcap. Regarding complex financial history, ESMA is of the view that the provisions which apply to the full prospectus are equally relevant for the content of the EU Growth prospectus. Based on these considerations, ESMA considers that the revised building block for pro forma financial information and the relevant provisions for complex financial history need not be alleviated for the purposes of the EU Growth prospectus as it is important for investors to be given a minimum set of information in order to understand the complexities of specific transactions before reaching an informed decision.
73. ESMA has considered whether a requirement in relation to the minimum age of financial information that is included in the prospectus would be overly burdensome to issuers. Under existing market practice potential investors would rely on updated information before reaching an investment decision and issuers are incentivised to provide such to support their business proposal. In this context ESMA considers that this disclosure item would provide valuable comfort to investors without at the same time imposing additional costs to SMEs and midcaps and proposes to include in the EU Growth prospectus a requirement regarding the age of financial information in order to avoid a situation where investor protection is compromised by the inclusion of financial information that is not up-to-date. Therefore, under the proportionate regime the age of financial information should not be older than 18 months or 16 months from the date of the registration document depending on whether audited, unaudited or no interim financial statements are included in the prospectus.

Key Performance Indicators (KPIs)

74. KPIs are used by issuers, their management and industry for internal (i.e. management/corporate governance) or external (i.e. investor relations) purposes and as such they are pertinent information to investors. Under the Prospectus Regulation the EU Growth prospectus should include key performance indicators (KPIs) covering the same period as the financial statements. KPIs provide an insight into the performance of an issuer against the key drivers of the issuer's strategy and can be financial (such as EBITDA, working capital ratio or free cash flow) and non-financial.
75. In terms of balancing the interests of issuers and investors, ESMA would expect issuers to include those KPIs which they use and are material to the investment decision with the inclusion of at least one KPI based on liquidity such as current ratio, acid-test ratio, cash ratio, quick ratio, cash conversion cycle⁴ and at least one based on indebtedness such as debt to total assets ratio, debt to equity ratio or other measures of liquidity and indebtedness that are appropriate for the issuer and/or its industry.
76. ESMA is of the view that the number of KPIs used should be relatively small and that, where possible, issuers should use KPIs which are typical in their industry or sector. Using commonly used and understood KPIs will facilitate investor understanding and allow comparability across issuers and industries.

Dividend policy

77. Where the registration document is being prepared on a standalone basis, or where an EU Growth prospectus is being used for the issuance of shares, ESMA proposes that the issuer's dividend policy be included in this section.

4.3.2. Key differences between the EU Growth registration document and the registration documents for equity and retail debt

78. The key differences between the EU Growth registration document and the registration documents for equity and retail debt can be summarised as follows:

- Disclosure not required on a number of disclosure items:

⁴ The current ratio is used to give an idea of the company's ability to pay back its liabilities and is calculated by dividing a company's current assets with its current liabilities. The acid-test ratio (or quick ratio) is an indicator of a company's short-term liquidity and is calculated as follows: (Current assets – inventories)/(Current liabilities). The cash ratio is the ratio of the company's total cash and cash equivalents to its current liabilities and measures the company's ability to repay its short-term debt. The cash conversion cycle measures how fast a company can convert cash on hand into even more cash on hand and is calculated as follows: Days Inventory Outstanding + Days Sales Outstanding - Days Payable Outstanding.

- Statutory auditors;
- Important events in the development of the issuer's business;
- Research and development;
- Patents and licenses;
- The basis for any statements by the issuer regarding its competitive position;
- Information relating to joint ventures and undertakings;
- Capital resources (with the exception of information on the issuer's borrowing requirement and funding structure);
- Board practices;
- Employees (with the exception of shareholdings and stock options in relation to members of the administrative, management and supervisory bodies and senior management);
- Cash flow statement and a statement of changes in equity (where not required under the applicable financial reporting framework).
- Reduced information requirements in relation to the following disclosure items:
 - Principal activities;
 - Principal markets;
 - Organisational structure;
 - Trend information;
 - Regulatory environment;
 - Administrative, management and supervisory bodies and senior management;
 - Conflicts of interest;
 - Memorandum and Articles of Association;
 - Interim and other financial information;
 - Dividend policy.

4.3.3. Key differences between the EU Growth registration document and the proportionate disclosure regime

79. The key differences between the EU Growth registration document and the existing proportionate disclosure regime for SMEs as set out in Annexes XXV to XXVI of the Commission Regulation can be summarised as follows:

- Disclosure not required on a number of information items such as:
 - Selected Financial Information;
 - Statutory Auditors;
 - The important events in the development of the issuer's business;
 - Research and development, patents and licenses;
 - Board practices;
 - Employees (with the exception of shareholdings and stock options in relation to members of the administrative, management and supervisory bodies and senior management).
- Inclusion of an independent accountant's report for profit forecasts and estimates not required.
- Reduced replication of the provisions of an issuer's Memorandum and Articles of Association.
- Reduction in the information requirements as regards a number of disclosure items such as: Investments, Principle Activities, Principal Markets; Capital resources, Organisational structure, Trend information, Administrative, management and supervisory bodies and senior management, Material contracts.

4.3.4. Key differences between the EU Growth registration document and admission documents

80. The key differences between the EU Growth registration document and admission documents⁵ can be summarised as follows:

- Admission documents usually include the following information that is not required by the EU Growth registration document such as:
 - Board Practices, Employees, Subsidiaries and Holdings⁶, Important events in the development of the issuer's business, Property, plants and equipment.
 - In addition, admission documents that are drawn up for the purposes of admission to trading on an SME growth market will include a working capital statement as required by Article 78 of Commission Delegated Regulation (EU) 2017/565 of 25/4/2016. This requirement under the EU Growth regime applies only to midcaps.
- The EU Growth prospectus includes the following information that is not usually required by admission documents:
 - Pro forma financial information (for equity issuances), Statement of Capitalisation and indebtedness (for midcaps), information on admission to trading and dealing arrangements and the Terms and conditions of the offer.

4.4. Draft technical advice

81. The following table details the disclosure items of the EU Growth registration document for equity and non-equity issuances:

ITEM	ANNEX 1: EU GROWTH REGISTRATION DOCUMENT
1.	PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL
1.1.	All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons

⁵ Admission documents such as those on AIM, Spanish MAB and MARF, NASDAQ First North.

⁶ Under the proposed schedule, a list of subsidiaries and holdings will be required only if material to the issuer's business.

	including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2.	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
1.3.	Where a statement or report attributed to a person as an expert is included in the registration document, provide such person's: • name; • business address, • qualifications • material interest if any in the issuer If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the registration document for the purpose of the prospectus.
1.4.	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
1.5.	A statement that: - the registration document has been approved by the [insert name of NCA], as competent authority under Regulation (EU) 2017/1129; - the [name of NCA] only approves this registration document as meeting the standards of completeness,

	comprehensibility and consistency imposed by Regulation (EU) 2017/1129; - such approval should not be considered as an endorsement of the issuer that is the subject of this registration document; - that the [registration document / prospectus] has been drawn up as an EU Growth prospectus in accordance with Article 15 of Regulation (EU) 2017/1129.
2.	STRATEGY, PERFORMANCE AND BUSINESS ENVIRONMENT
2.1.	Information about the issuer: • The legal and commercial name of the issuer; • The place of registration of the issuer, its registration number and Legal Entity Identifier if any; • The date of incorporation and the length of life of the issuer, except where indefinite; • The domicile and legal form of the issuer, the legislation under which the issuer operates and its country of incorporation and the address, telephone number of its registered office (or principal place of business if different from its registered office) and website with a disclaimer that the information on the website does not form part of the prospectus;
Non-equity securities only	• any recent events particular to the issuer and which are to a material extent relevant to an evaluation of the issuer's solvency; • credit ratings assigned to an issuer at the request or with the cooperation of the issuer in the rating process. A brief explanation of the meaning of the ratings if this has previously been published by the rating provider.
2.1.1. Equity securities only	Information on: (a) the changes in the issuer's borrowings and funding structure during the last financial year; (b) description of the expected financing of its activities; and, (c) a summary of any material limitations on the issuer's method of financing.
2.2.	<u>Business overview</u>
2.2.1.	<u>Strategy and objectives</u> A description of the issuer's business strategy and objectives (both financial and non-financial - if any). This description shall take into account the issuer's future challenges and prospects.

2.2.2.	<u>Principal Activities</u> A description of the issuer's principal activities, including: - the main categories of products sold and/or services performed; - an indication of any significant new products, services or activities that have been introduced since the publication of the latest audited financial statements.
2.2.3.	<u>Principal Markets</u> A description of the principal markets in which the issuer competes.
2.3.	<u>Organisational structure</u>
2.3.1.	If the issuer is part of a group, a brief description of the group and the issuer's position within the group. This may be in the form of, or accompanied by, a diagram of the organisational structure if this helps to clarify the structure.
2.3.2.	If the issuer is dependent upon other entities within the group this must be clearly stated together with an explanation of this dependence.
2.4.	<u>Investments⁷</u>
2.4.1.	A description, (including the amount) of the issuer's material investments for each financial year for the period covered by the historical financial information up to the date of the registration document.
2.4.2.	A description of any material investments of the issuer's that are in progress or for which firm commitments have already been made, including if material to the issuer's business the geographic distribution of these investments (home and abroad) and the method of financing (internal or external).
2.5. Equity securities by issuers with market capitalisation above EUR 200 000 000 only	<u>Operating and financial review</u> (to be provided by equity issuers with market capitalisation above EUR 200 000 000 only when the Annual Reports presented and prepared in accordance with Articles 19 and 29 of Directive 2013/34/EU are not included in the EU Growth prospectus)

⁷ This is a requirement for equity and non-equity issuers under Annex IV (section II – Strategy, performance and business environment).

2.5.1.	<u>Financial Condition</u> To the extent not covered elsewhere in the registration document and to the extent necessary for an understanding of the issuer's business as a whole, a fair review of the development and performance of the issuer's business and of its position for each year for which historical financial information is required, including the causes of material changes. The review shall be a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position consistent with the size and complexity of the business. To the extent necessary for an understanding of the issuer's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business. The analysis shall, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.
2.5.2.	To the extent not covered elsewhere in the registration document and to the extent necessary for an understanding of the issuer's business as a whole, the review shall also give an indication of : a) the issuer's likely future development; b) activities in the field of research and development. Item 2.5.1 may be satisfied through the inclusion of the management report referred to in Articles 19 and 29 of Directive 2013/34/EU.
2.5.3.	<u>Operating results</u> Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected. Where the annual financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.
2.6. Equity securities only	<u>Regulatory Environment</u>
2.6.1.	To the extent that the issuer operates in a business sector that is under specific regulatory requirements, a description of the regulatory environment that the issuer operates in and that may materially affect its business.

2.7.	<u>Trend information⁸</u>
2.7.1.	A description of:
Equity securities only	the most significant recent trends in production, sales and inventory and costs and selling prices since the end of the last financial year to the date of the registration document;
Non-equity securities only	- any material adverse change in the prospects of the issuer since the date of its last published audited financial statements; and - any significant change in the financial performance of the group since the end of the last financial period for which financial information has been published to the date of the registration document. If the above are not applicable then the issuer should include (an) appropriate negative statement(s).
2.8.	<u>Profit forecasts or estimates</u>
2.8.1.	Where an issuer has published a profit forecast or a profit estimate (which is still outstanding and valid) that forecast or estimate shall be included in the registration document. If a profit forecast or profit estimate has been published and is still outstanding, but no longer valid, then provide a statement to that effect and an explanation of why such forecast or estimate is no longer valid. Such an invalid forecast or estimate is not subject to the requirements in items 2.8.2 to 2.8.3.
2.8.2.	Where an issuer chooses to include a new profit forecast or a new profit estimate, or where the issuer includes a previously published profit forecast or a previously published profit estimate pursuant to point 2.8.1, the profit forecast or estimate shall be clear and unambiguous and contain a statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate. The forecast or estimate shall comply with the following principles: there must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the

⁸ This is a requirement for equity and non-equity issuers under Annex IV of the Prospectus Regulation (section II – Strategy, performance and business environment).

	influence of the members of the administrative, management or supervisory bodies; - the assumptions must be reasonable, readily understandable by investors, specific and precise and not relate to the general accuracy of the estimates underlying the forecast; and - in the case of a forecast, the assumptions shall draw the investor's attention to those uncertain factors which could materially change the outcome of the forecast.
2.8.3.	The prospectus shall include a statement that the profit forecast or estimate has been compiled on the basis stated and prepared on a basis i) comparable with the annual financial statements and ii) consistent with the issuer's accounting policies.
3.	RISK FACTORS
Equity securities only	A description of the material risks that are specific to the issuer, in a limited number of categories, in a section headed 'Risk Factors'.
Non-equity securities only	A description of the material risks that are specific to the issuer and that may affect the issuer's ability to fulfil its obligations under the securities, in a limited number of categories, in a section headed 'Risk Factors'.
Equity and non-equity securities	In each category the most material risks, in the assessment of the issuer or offeror, taking into account their impact on the issuer and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the registration document.
4.	CORPORATE GOVERNANCE
4.1.	<u>Administrative, management, and supervisory bodies and senior management</u>
4.1.1.	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuers where these are significant with respect to that issuer: (a) members of the administrative, management and/or supervisory bodies; (b) partners with unlimited liability, in the case of a limited partnership with a share capital;

Equity securities only.	(c) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business. The nature of any family relationship between any of the persons referred under (a), (b) and (c).
4.1.2.	In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (c) of the first subparagraph, details of that person's qualifications, relevant management expertise and experience⁹ and the following information: (a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies; (b) any convictions in relation to fraudulent offences for at least the previous five years; (c) details of any bankruptcies, receiverships, liquidations or companies put into administration with which a person described in (a) and (c) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (c) of the first subparagraph was associated for at least the previous five years; (d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years. If there is no such information to be disclosed, a statement to that effect is to be made.

⁹ This is a requirement for equity and non-equity issuers under Annex IV of the Prospectus Regulation (section III, Corporate Governance).

4.2.	<u>Remuneration and benefits¹⁰</u> In relation to the last full financial year for those persons referred to in points (a) and (c) of the first subparagraph of item 4.1.1.
4.2.1.	The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country or is not otherwise publicly disclosed by the issuer.
4.2.2.	The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.
4.3.	<u>Shareholdings and stock options¹¹</u> With respect to each person referred to in points (a) and (c) of the first subparagraph of item 4.1.1 provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.
5.	SHAREHOLDER AND SECURITY HOLDER INFORMATION
5.1.	<u>Major shareholders</u>
5.1.1. Equity securities only	In so far as known to the issuer, the name of any person who, directly or indirectly, has an interest in the issuer's capital or voting rights which is equal or above 5% of capital or total voting rights, together with the amount of each such person's interest, as at the date of the registration document or, if there are no such persons, an appropriate negative statement.
5.1.2. Equity securities only	Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.
5.1.3. Non-equity securities	To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of

¹⁰ This is a requirement for equity and non-equity issuers under Annex IV of the Prospectus Regulation (section III, Corporate Governance).

¹¹ This is a requirement for equity and non-equity issuers under Annex IV of the Prospectus Regulation (section III, Corporate Governance).

	such control and describe the measures in place to ensure that such control is not abused.
5.1.4. Non-equity securities	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in or prevent a change in control of the issuer.
5.2.	<u>Legal and arbitration proceedings¹²</u>
5.2.1.	Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
5.3.	<u>Administrative, Management and Supervisory bodies and Senior Management conflicts of interests¹³</u>
5.3.1. Equity securities only	Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 4.1.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 4.1.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management. Details of any restrictions agreed by the persons referred to in item 4.1.1 on the disposal within a certain period of time of their holdings in the issuer's securities.
5.4.	<u>Related party transactions¹⁴</u>
5.4.1.	If International Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 do not apply to the issuer, the following

¹² This is a requirement for both equity and non-equity issuers under Annex IV of the Prospectus Regulation (section VI "Shareholders' information").

¹³ This is a requirement for both equity and non-equity issuers under Annex IV of the Prospectus Regulation (section VI "Shareholders' information").

¹⁴ This is a requirement for both equity and non-equity issuers under Annex IV of the Prospectus Regulation (section VI "Shareholders' information").

	information must be disclosed for the period covered by the historical financial information and up to the date of the registration document: (a) The nature and extent of any related party transactions¹⁵ which are – as a single transaction or in their entirety – material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arm's length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding. (b) The amount or the percentage to which related party transactions form part of the turnover of the issuer. If international Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 apply to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information have been published.
5.5.	<u>Share capital</u>
5.5.1.	The following information as of the date of the most recent balance sheet included in the annual financial statements:
5.5.2. Equity securities only	The amount of issued capital, and for each class of share capital: (a) the total of the issuer's authorised share capital; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of the capital has been paid for with assets other than cash within the period covered by the annual financial statements, state that fact.
Non-equity securities only	The amount of the issued capital, the number and classes of the shares of which it is composed with details of their principal characteristics, the part of the issued capital still to be paid up, with an indication of the number, or total nominal value, and the type of the shares not yet fully

¹⁵ Related party transactions for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002.

	paid up, broken down where applicable according to the extent to which they have been paid up.
5.5.3. Equity securities only	- If there are shares not representing capital, state the number and main characteristics of such shares; - The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer; - The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription; - Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital; - Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate; and - A history of share capital, highlighting information about any changes, for the period covered by the annual financial statements.
5.6. Equity securities only	<u>Memorandum and Articles of Association</u>
5.6.1.	The register and the entry number therein, if applicable, and a brief description of the issuer's objects and purposes and where they can be found in the up to date memorandum and articles of association.
5.6.2.	A brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.
5.7.	<u>Material contracts</u>
5.7.1. Equity securities only	A brief summary of any material contracts, other than contracts entered into in the ordinary course business, to which the issuer or any member of the group is a party, for the last year immediately preceding publication of the registration document.
5.7.2. Non-equity securities only	A brief summary of any material contracts that are not entered into in the ordinary course of the issuer's business which could result in any group member being under an obligation or entitlement that is material to the

	issuer's ability to meet its obligations to security holders in respect of the securities being issued.
6.	FINANCIAL STATEMENTS AND KEY PERFORMANCE INDICATORS (KPIs)
6.1.	<u>Annual financial statements</u>
6.1.1.	Audited financial statements covering the latest two financial years (for equity securities) or the last financial year (for non-equity securities) (or such shorter period as the issuer has been in operation) and the audit report in respect of each year.
6.1.2.	<u>Change of accounting reference date</u> If the issuer has changed its accounting reference date during the period for which annual financial statements are required, the audited annual statements shall cover at least 24 months (for equity securities) or 12 months (for non-equity securities) or the entire period for which the issuer has been in operation, whichever is shorter.
6.1.3.	<u>Accounting Standards</u> The financial <u>statements</u> must be prepared according to <u>International Financial Reporting Standards (IFRS) as endorsed in the EU based on Regulation (EC) No 1606/2002.</u> If <u>IFRS</u> is not applicable <u>the financial statements must be prepared according to:</u> (a) a Member State's national accounting standards for issuers from the <u>EEA, as required by the Accounting Directive</u>; or (b) a third country's national accounting standards equivalent to <u>IFRS for third country issuers</u>. If such <u>third country's national accounting standards are not equivalent to IFRS</u> <u>the financial statements shall be restated in IFRS.</u>
6.1.4.	<u>Change of accounting framework</u> The last audited annual financial statements, containing comparative information for the previous year, must be presented and prepared in a form consistent with the accounting standards framework that will be adopted in the issuer's next published annual financial statements. Changes within the accounting framework applicable to the issuer do not require the audited financial statements to be restated. However, if the issuer intends to adopt a new accounting standards framework in its next published financial statements, at least one complete set of financial statements, including comparatives, must be prepared in a form consistent with that which will be adopted in the issuer's next published

	annual financial statements, having regard to accounting standards and policies and legislation applicable to such annual financial statements.
6.1.5.	Where the audited financial statements are prepared according to national accounting standards, they must include at least the following: a) the balance sheet; b) the income statement; c) the accounting policies and explanatory notes.
6.1.6.	<u>Consolidated financial statements</u> If the issuer prepares both stand-alone and consolidated financial statements, include at least the consolidated financial statements in the registration document
Equity securities only	<u>Age of Financial Information</u> The balance sheet date of the last year of audited financial statements may not be older than one of the following: (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; (b) 16 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document. Where the registration document contains no interim financial information, the balance sheet date of the last year of audited financial statements may not be older than 16 months from the date of the registration document.
Non-equity securities only	The last year of audited financial statements may not be older than 18 months from the date of the registration document.
6.2.	<u>Interim and other financial information</u>
6.2.1.	If the issuer has published quarterly or half-yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half-yearly financial information has been audited or reviewed, the audit or review report must also be included. If the quarterly or half-yearly financial information is unaudited or has not been reviewed, state that fact. Interim financial information should be prepared in accordance with the requirements of the Accounting Directive or IFRS as the case may be.

	For issuers not subject to either the Accounting Directive or IFRS, the interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year's end balance sheet in accordance with the applicable financial reporting framework.
6.3.	<u>Auditing of annual financial statements</u>
6.3.1.	The historical annual financial information must be independently audited. The audit report shall be prepared in accordance with the Audit Directive and Audit Regulation. Where the Audit Directive and Audit Regulation do not apply: • The historical annual financial information must be audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with the auditing standards applicable in a Member State or an equivalent standard. • If audit reports on the annual financial statements contain qualifications, modifications of opinion, disclaimers or an emphasis of matter, such qualifications, modifications, disclaimers or emphasis of matter must be reproduced in full and the reasons given.
6.3.2.	Indication of other information in the registration document, which has been audited by the auditors.
6.3.3.	Where financial information in the registration document is not extracted from the issuer's audited financial statements state the source of the information and state that the information is unaudited.
6.4.	<u>Key Performance Indicators (KPIs)</u>
6.4.1.	Description of the issuer's key performance indicators (KPIs), financial and/or operational, for each financial year for the period covered by the historical financial information with at least one based on liquidity and one on indebtedness. KPIs must be calculated on a comparable basis. Where the KPIs have been audited by the auditors, mention that fact.
6.5.	Significant change in the issuer's financial position A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for

	which either audited financial statements or interim financial information have been published, or provide an appropriate negative statement.
6.6. Equity securities only	<u>Dividend policy</u> A description of the issuer's policy on dividend distributions and any restrictions thereon. If not disclosed in the financial statements, the amount of the dividend per share for each financial year for the period covered by the annual financial statements adjusted, where the number of shares in the issuer has changed, to make it comparable.
6.7. Equity securities only	<u>Pro forma financial information</u> In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This requirement will normally be satisfied by the inclusion of pro forma financial information. This pro forma financial information is to be presented as set out in Annex 12 and must include the information indicated therein. Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.
7.	DOCUMENTS AVAILABLE
	A statement that during the validity of the registration document the following documents, where applicable, can be inspected: (a) The up to date memorandum and articles of association of the issuer; (b) All reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document. An indication of the website on which the documents may be inspected.

4.5. Questions for consultation

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

- Question 6: Do you agree with the proposal to introduce a single registration document that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.
- Question 7: Do you agree with the requirement to include in the EU Growth prospectus any published profit forecasts in the case of both equity and non-equity issuances without an obligation for a report by independent accountants or auditors? If not please elaborate on your reasoning. Please also provide an estimate of the additional costs involved in including a report by independent accountants or auditors.
- Question 8: Do you consider that the requirement to provide information on the issuer's borrowing requirements and funding structure under disclosure item 2.1.1 of the EU Growth registration document should be provided by non-equity issuers too? If yes, please elaborate on your reasoning.
- Question 9: Do you think that the information required in relation to major shareholders is fit for purpose? In case you identify specific information items that should be included or removed please list them and provide examples,. Please also provide an estimate of elaborating on the materiality of the cost to provide such information items.
- Question 10: Do you agree that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards? If not please state your reasoning. Please also provide an estimate of the additional costs involved in preparing financial statements under IFRS.
- Question 11: Do you consider that there are other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify.
- Question 12: Do you consider that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.
- Question 13: Please indicate if further reduction or simplification of the disclosure requirements of the EU Growth registration document could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

5. Content of EU Growth securities note

82. In relation to the securities note and in accordance with the minimum disclosure requirements set out in Annex V of the Prospectus Regulation, ESMA proposes five sections which will be applicable for all issuances together with an additional section only for equity issuances by companies with market capitalisation above EUR 200 000 000. As the securities note can be used for both equity and non-equity issuance, ESMA proposes making several alternatives available for the disclosure of terms and conditions of the offer and only requiring the issuer to include details corresponding to the securities being issued.
83. As regards the issuance of derivatives, ESMA is of the view that the information items in the revised derivatives building block, which is described in a parallel Consultation Paper¹⁶, are also suitable for use in the EU Growth securities note. In order to make schedules more readable for practitioners, ESMA proposes not to replicate the content of the derivatives building block in the securities note of the EU Growth prospectus. Therefore, issuers will add the derivatives building block to the securities note, where necessary.

5.1. Considerations on content

84. A brief overview of the content of the EU Growth securities note is set out in the following paragraphs while a detailed description of the EU Growth securities note is set out in para 97.

Cover note, table of contents, cross-reference table

85. While not required under the Commission Regulation, ESMA understands that under standard market practice prospectuses contain a cover note and a table of contents in order to improve their readability. ESMA is of the view that this practice is helpful to readers of the prospectus and proposes that these items are included in the EU Growth securities note. ESMA also considers that a cross reference table illustrating a list of the documents and/or information incorporated by reference should be disclosed in the securities note when necessary to assist investors in tracing relevant information. Furthermore, in line with the similar requirement for the EU Growth registration document, ESMA proposes that the EU Growth securities note should include a statement setting out the legal basis for the EU Growth prospectus indicating that it is drawn up pursuant to Article 15 of the Prospectus Regulation.

General description of the programme

86. The existing Commission Regulation requires that, in the case of a base prospectus issuing non-equity securities, a base prospectus should include a general description of the programme in addition to the information required by the relevant schedules. This

¹⁶ ESMA31-62-532, published on ESMA's website.

section of the document provides a generally overview of the parties to the programme, the types of notes to be issued, together with redemption provisions and any selling restrictions that may apply. ESMA considers that such a section provides investors with useful information in a succinct way and therefore it should be incorporated into the requirements for a base prospectus drawn up in accordance with the disclosure mandated for an EU Growth prospectus.

Section – Purpose, Persons Responsible, Third Party Information, Expert Reports and Competent Authority Approval

87. ESMA considers that this section should provide information on the persons responsible the content of the prospectus and the persons involved in the public offer or admission to trading as required under section I of Annex V of the Prospectus Regulation. In addition, ESMA is of the view that this section should set out any interests that the persons involved in the offer may have as well as provide investors with information on the purpose of drawing up the prospectus.
88. ESMA considers that this section should also disclose the reasons for the offer, the use of proceeds and the expenses of the offer. Potential investors should be able to establish from the outset of the securities note what types of funds are being raised and brief details of the offer. ESMA proposes that this information should include the type and number of securities that are to be offered to the public and the offer period, the reasons for the offer and breakdown of the use of proceeds and the amount of net proceeds.
89. In order to align with the general requirement that all information included in the summary is contained in the prospectus itself, ESMA proposes to include a disclosure requirement making it clear that where a PRIIPs KID is used as part of a summary, the information contained in that KID (e.g. summary risk indicator) must also be included in the body of the prospectus. In cases where the prospectus has been drawn up as a base prospectus, the information contained in the KID, which is not included in the base prospectus, should be included in the related final terms.
90. Where the EU Growth prospectus is drawn up as a standalone document, ESMA suggests that this section should be combined with the corresponding section required in the registration document and contain the details set out above in para 26. Where the securities note is drawn up separately and combined with a registration document, issuers would need to include the information that is required under this section of the securities note. A statement regarding the scope of approval of the competent authority should also be included.

Section – Working capital statement and statement of capitalisation and indebtedness

91. As set out in Annex V of the Prospectus Regulation in the case of equity securities being issued by companies with market capitalisation of over EUR 200 000 000, details of the responsible persons should be followed by disclosure of the working capital statement and statement of capitalisation and indebtedness. This section will allow issuers to provide investors with information on the issuer's capitalisation and indebtedness and

information as to whether the working capital is sufficient for the issuer's present requirements or, if not, how the issuer proposes to provide the additional working capital needed.

92. ESMA understands that under Commission Delegated Regulation (EU) 2017/565 of 25/4/2016¹⁷ issuers seeking admission to trading on an SME growth market are required to include a working capital statement in the admission document. It is however clear that the requirement to produce an admission document for an SME Growth Market only applies where the prospectus regime does not apply.

Section – Risk Factors

93. This section should provide a description of the risk factors which are specific to the securities being offered. According to the requirements set out in Article 16 of the Prospectus Regulation, risk factors have to be presented in a small number of categories and within each category the most material risks – according to the issuer's assessment – in terms of impact and probability of occurrence should be mentioned first.

Section – Details of the offer

94. Information in relation to the size of the offer, the amount of the proceeds and the proposed uses of the proceeds is of paramount importance to potential investors. With this in mind, and notwithstanding the brief disclosure above in relation to the purpose of the prospectus, this section is to provide detailed information regarding the offer and, where applicable, the admission to trading on an SME Growth Market, including the final offer price and amount of securities (whether in number of securities or aggregate nominal amount) which will be offered, the plan for distribution of the securities, the use of proceeds of the offer and the expenses of the issuance and offer. Furthermore, the section will require an explanation of how the price of the securities has been determined and who the target investor is (if any) and information about dilution when the prospectus relates to equity securities, in accordance with the requirement set out in Annex V of the Prospectus Regulation. ESMA considers that a simple method of calculation which captures the reduction of voting power of existing shareholders as well as the reduction in their capital holdings is fit for this kind of issuer and issuance.

Section – Terms and conditions of the securities

95. Having been informed of the details of the offer, investors will need to understand the terms and conditions of the securities. In this section, ESMA therefore proposes that issuers should be required to provide, amongst other information, details of the securities such as the type and class of the securities, their unique identification number

¹⁷ Article 78 of the Commission Delegated Regulation states that the issuer should be required "to state, in the admission document referred to under point (c), whether or not, in its opinion, its working capital is sufficient for its present requirements or, if not, how it proposes to provide the additional working capital needed".

(ISIN), the legislation under which they are created, whether they are registered or bearer, in a certificated or book-entry form, their currency, the rights attached to them and any restrictions regarding their free transferability. ESMA understands that information on taxes on the income from the securities would be costly to produce especially in the case of cross-border offers as it would cover not only the country of the registered office of the issuer but also the countries where the offer is being made. Based on this ESMA suggests that the securities note of the EU Growth prospectus should only include a warning on the impact that the tax legislation may have on the income received on the securities. However, and in line with the Level 1 text, where investment in the securities entails a specific tax regime, appropriate information on such should be disclosed in the EU Growth prospectus..

Section – Guarantor information (if any)

96. ESMA is of the view that a guarantee of the principal, the interest or both will be an important consideration for investors. If applicable, this section requires a description of the guarantee, the terms and conditions and scope of the arrangement and provides information on the guarantor. ESMA considers that the disclosure requirements in the Guarantees building block under the full regime¹⁸ is equally applicable in the EU Growth prospectus. Where the guarantor would not qualify to use the EU Growth prospectus proportionate regime, disclosure under section 6 of the securities note should be as if it were an issuer of the same type of security that is the subject of the guarantees.

5.2. Draft technical advice

97. The following table details the disclosure items of the EU Growth securities note for equity and non-equity issuances. For the purpose of issuers drawing up a base prospectus, an additional column is included in the table to indicate whether disclosure items for non-equity securities qualify as category A, B or C¹⁹ and so whether the information must be included in the base prospectus or whether it may be included only in the final terms.

ITEM	ANNEX 2: EU GROWTH SECURITIES NOTE	CATEGORY
1.	PURPOSE, PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL	
1.1.	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of	A

¹⁸ Please refer to the Consultation Paper ESMA31-62-532, published on ESMA's website.

¹⁹ For the definition of Categories A, B and C please refer to section 3.8 of the Consultation Paper ESMA31-62-532, published on ESMA's website.

	such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	
1.2.	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	A
1.3.	Where a statement or report attributed to a person as an expert is included in the prospectus, provide: • such person's name, • business address, • qualifications • material interest if any in the issuer If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the prospectus for the purpose of the prospectus.	A
1.4.	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.	C
1.5.	A statement that: - this [securities note / prospectus] has been approved by the [insert name of	A

	NCA], as competent authority under [insert name of new Prospectus Regulation]. - the [name of NCA] only approves this [securities note / prospectus] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation 2017/EU/1129. - such approval should not be considered as an endorsement of the quality of the securities that are the subject of this [securities note / prospectus]; - Investors should make their own assessment as to the suitability of investing in the securities; and - that the [securities note / prospectus] has been drawn up as an EU Growth prospectus in accordance with Article 15 of Regulation (EU) 2017/1129.	
1.6.	Interest of natural and legal persons involved in the issue/offer A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.	C
1.7.	Reasons for the offer, use of proceeds and expenses of the issue/offer	
Equity securities only	Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness. The total net proceeds and an estimate of the total expenses of the issue/offer.	

Non-equity securities only	Reasons for the offer to the public if different from making profit and/or hedging certain risks. Disclosure of the estimated total expenses of the issue/offer and the estimated net amount of the proceeds. These expenses and proceeds shall be broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed.	C
1.8.	Additional information	
1.8.1.	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	C
1.8.2.	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.	A
1.8.3. Non-equity securities only	Credit ratings assigned to the securities at the request or with the co-operation of the issuer in the rating process. A brief explanation of the meaning of the ratings if this has previously been published by the rating provider.	C
1.8.4.	Where the summary is substituted in part with the information set out in Article 8, paragraph 3, points (c) to (i) of Regulation (EU) n. 1286/2014, all such information to the extent it is not already disclosed elsewhere in the securities note	C
2.	WORKING CAPITAL STATEMENT AND STATEMENT OF CAPITALISATION AND INDEBTEDNESS	
2.1. Equity securities by issuers with market capitalisation above	<u>Working capital Statement</u> Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present	

EUR 200 000 000 only	requirements or, if not, how it proposes to provide the additional working capital needed.	
2.2. Equity securities by issuers with market capitalisation above EUR 200 000 000 only	<u>Capitalisation and indebtedness</u> A statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed debt, collateralised and non-collateralised loans) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness. In the case of material changes in the capitalisation and indebtedness position of the issuer within the 90 day period, additional information shall be given through the presentation of a narrative description of such changes or through the updating of those figures.	
3.	RISK FACTORS	
3.1.	A description of the material risks that are specific to the securities being offered in a limited number of categories, in a section headed 'Risk Factors'. In each category the most material risks, in the assessment of the issuer or offeror taking into account their impact on the issuer and the securities and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the securities note.	A
Non-equity securities only	Risks to be disclosed shall include: - those resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities under bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring in accordance with Directive 2014/59/EU (BRRD); and - in cases where the securities are guaranteed, the specific and material risks related to the guarantor to the extent they	A

	are relevant to its ability to fulfil its commitment under the guarantee.	
4.	DETAILS OF THE OFFER/ADMISSION	
4.1.	Terms and conditions of the offer of securities to the public (Conditions, offer statistics, expected timetable and action required to apply for the offer)	
4.1.1.	Conditions to which the offer is subject	C
4.1.2. Equity securities only	Total amount of the issue/offer distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, an indication of the maximum amount of securities to be offered (if available) and a description of the arrangements and time for announcing to the public the definitive amount of the offer. Where the maximum amount of securities cannot be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the amount of securities to be offered to the public has been filed.	
4.1.3. Non-equity securities only	Total amount of the securities offered to the public. If the amount is not fixed, an indication of the maximum amount of the securities to be offered (if available) and a description of the arrangements and time for announcing to the public the definitive amount of the offer. Where the maximum amount of securities to be offered cannot be provided in the prospectus, the prospectus shall specify that acceptances of the purchase of subscription of securities may be withdrawn for not less than two working days after the amount of securities to be offered to the public has been filed.	C
4.1.4.	The time period, including any possible amendments, during which the offer will be open and description of the application process.	C
4.1.5. Equity securities only	An indication of when, and under which circumstances, the offer may be revoked or	

	suspended and whether revocation can occur after dealing has begun.	
4.1.6.	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.	C
4.1.7.	Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).	C
4.1.8. Equity securities only	An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	
4.1.9.	Method and time limits for paying up the securities and for delivery of the securities.	C
4.1.10.	A full description of the manner and date in which results of the offer are to be made public.	C
4.1.11.	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.	C
4.2.	Plan of distribution and allotment	
4.2.1.	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.	C
4.2.2. Equity securities only	To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.	
4.2.3. Equity securities only	Pre-allotment Disclosure: a) The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches;	

	b) The conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches; c) The allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches; d) A description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups. e) Whether the treatment of subscriptions or bids to subscribe in the allotment may be determined on the basis of which firm they are made through or by; f) A target minimum individual allotment if any within the retail tranche; g) The conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest; h) Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.	
4.3.	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	C
4.4.	Pricing	
4.4.1.	An indication of the price at which the securities will be offered;	C
Equity securities only	An indication of the amount of any expenses and taxes charged to the subscriber or purchaser;	

4.4.2. Non-equity securities only	or a description of the method of determining the price, pursuant to Article 17 of [the Prospectus Regulation] and the process for its disclosure.	B
4.4.3. Equity securities only	If the price is not known or if there is no established and/or liquid market for the securities, indicate: - the maximum price as far as it is available, or - the valuation methods and criteria, and/or conditions, in accordance with which the final offer price <u>has been or will be</u> determined and an explanation of any valuation methods used. Where neither (a) or (b) can be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price of securities to be offered to the public has been filed.	
4.4.4. Non-equity securities only	Indicate the amount of any expenses, including those contained in the price and taxes charged to the subscriber or purchaser,.	C
4.4.5. Equity securities only	Process for the disclosure of the offer price. If the issuer's equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, indication of the basis for the issue price if the issue is for cash, together with the reasons for and beneficiaries of such restriction or withdrawal. Where there is or could be a material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offer and the effective cash contributions of such persons.	
4.5.	Placing and Underwriting	
4.5.1.	Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to	C

	the extend known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.	
4.5.2.	Name and address of any paying agents and depository agents in each country.	C
4.5.3.	Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.	C
4.5.4.	When the underwriting agreement has been or will be reached.	C
4.6.	Admission to trading and dealing arrangements	
4.6.1.	An indication as to whether the securities offered are or will be the object of an application for admission to trading on an SME growth Market or an MTF, with a view to their distribution in an SME Growth Market or an MTF with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.	B
4.6.2.	All the SME growth Markets or MTFs on which, to the knowledge of the issuer, securities of the same class of the securities to be offered tor admitted to trading are already admitted to trading.	C
4.6.3. Equity securities only	If, simultaneously or almost simultaneously with the creation of the securities for which admission on an SME growth Market or MTF is being sought or which are offered to the public, securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations	

	and of the number and characteristics of the securities to which they relate.	
4.6.4.	In the case of an admission to trading on an SME growth market or an MTF, details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	C
4.6.5.	The issue price of the securities	C
4.6.6.	An estimate of the total expenses related to the admission of trading.	C
4.6.7. Equity securities only	Stabilisation: in the case of an admission to trading on an SME growth market or an MTF, where an issuer or a selling shareholder has granted an over-allotment option or it is otherwise proposed that price stabilising activities may be entered into in connection with an offer:	
4.6.7.1.	The fact that stabilisation may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;	
4.6.7.2.	The fact that stabilisation transactions aim at supporting the market price of the securities during the stabilisation period;	
4.6.7.3.	The beginning and the end of the period during which stabilisation may occur;	
4.6.7.4.	The identity of the stabilisation manager for each relevant jurisdiction unless this is not known at the time of publication;	
4.6.7.5.	The fact that stabilisation transactions may result in a market price that is higher than would otherwise prevail; and	
4.6.7.6.	The place where the stabilisation may be undertaken including, where relevant, the name of the trading venue(s).	
4.6.8.	Over-allotment and 'green shoe'	

Equity securities only	In the case of an admission to trading on an SME growth market or an MTF: a) The existence and size of any over-allotment facility and/or 'green shoe'; b) The existence period of the over-allotment facility and/or 'green shoe'; and c) Any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.	
4.7. Equity securities only	Selling securities holders	
4.7.1.	Name and business address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three years with the issuer or any of its predecessors or affiliates.	
4.7.2.	The number and class of securities being offered by each of the selling security holders.	
4.7.3.	<u>Lock-up agreements</u> The parties involved. Content and exceptions of the agreement. Indication of the period of the lock up.	
4.8. Equity securities only	Dilution	
4.8.1.	A comparison of participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the assumption that existing shareholders do not subscribe for the new shares.	
4.8.2.	Where existing shareholders will be diluted regardless of whether they subscribe for their entitlement, because a part of the relevant share issue is reserved only for certain investors (e.g. an institutional placing coupled with an offer to shareholders), an indication of the dilution existing shareholders will experience should also be	

	presented on the basis that they do take up their entitlement (in addition to the situation in 4.8.1 where they do not).	
5.	TERMS AND CONDITIONS OF THE SECURITIES	
5.1.	Information concerning the securities to be offered:	
5.1.1.	A description of the type and the class of the securities being offered,	A
	including the ISIN (international security identification number).	C
5.1.2.	Legislation under which the securities have been created.	A
5.1.3.	An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form.	A
	In the latter case, name and address of the entity in charge of keeping the records.	C
5.1.4.	Currency of the securities issue.	C
5.1.5. Non-equity securities only	The relative seniority of the securities in the issuer's capital structure in the event of insolvency, including, where applicable, information on the level of subordination of the securities and the potential impact on the investment in the event of a resolution under Directive 2014/59/EU.	A
5.1.6.	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.	B
5.1.7. Equity securities only	a) Dividend rights: a.1. Fixed date(s) on which the entitlement arises; a.2. Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates; a.3. Dividend restrictions and procedures for non-resident holders;	

	a.4. Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. b) Voting rights; c) Pre-emption rights in offers for subscription of securities of the same class; d) Right to share in the issuer's profits; e) Right to share in any surplus in the event of liquidation; f) Redemption provisions; g) Conversion provisions.	
5.1.8. Non-equity securities only	a) The nominal interest rate;	C
	b) Provisions relating to interest payable;	B
	c) The date from which interest becomes payable;	C
	d) The due dates for interest;	C
	e) The time limit on the validity of claims to interest and repayment of principal;	B
	Where the rate is not fixed:	
	a) A statement setting out the type of underlying;	A
	b) A description of the underlying on which it is based; and	C
	c) Of the method used to relate the two;	B
	d) An indication where information about the past and the further performance of the underlying and its volatility can be obtained by electronic means;	C
	e) A description of any market disruption or settlement disruption events that affect the underlying;	B
	f) Adjustment rules with relation to events concerning the underlying;	B

	g) Name of the calculation agent;	C
	h) If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident.	B
5.1.9. Non-equity securities only	Maturity date	C
	Arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating amortisation terms and conditions	B
5.1.10. Non-equity securities only	An indication of yield.	C
	Describe the method whereby that yield is calculated in summary form	B
5.1.11. Non-equity securities only	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of the website where the public may have free access to the contracts relating to these forms of representation.	B
5.1.12.	In the case of new issues a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	C
5.1.13.	The issue date (for non-equity securities) or in the case of new issues the expected issue date of the securities.	C
5.1.14.	A description of any restrictions on the free transferability of the securities.	A
5.1.15.	Where the investment entails a specific tax regime a summarized description of such regime. In all other cases, a warning that that the tax legislation of	A

	the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities.	
5.1.16.	If different from the issuer, the identity and contact details of the offeror of the securities and/or the person asking for admission to trading, including LEI where the offeror has legal personality.	C
5.1.17. Equity securities only	- Statement on the existence of national legislation or rules on takeovers applicable to the issuer and the possibility for frustrating measures if any. - A brief description of the shareholders' rights and obligations in case of mandatory takeover bid, and/or squeeze-out or sell-out rules in relation to the securities. - An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. the price or exchange terms attaching to such offers and the outcome thereof must be stated.	
5.1.18.	Where applicable, the potential impact on the investment in the event of resolution under the BRRD.	A
5.1.19.	<u>Information on derivatives</u> In case of issuance of derivatives the EU Growth prospectus shall present the information that is required in the derivative securities building block in Annex 7.	
6.	GUARANTOR INFORMATION (IF APPLICABLE)	
6.1.	In case of a guarantee attached to the securities, the EU Growth securities note shall present the information that is required in the building block for guarantees in Annex 13.	

5.3. Questions for consultation

- Question 14: Do you think that the presentation of the disclosure items in para 97 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.
- Question 15: Do you agree with the proposal to introduce a single securities note that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.
- Question 16: Do you consider that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.
- Question 17: Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth securities note? If yes, please specify and provide examples. In addition, please consider whether the categorisation of disclosure items for non-equity securities is fit for purpose. If not, please specify and provide your suggestions.
- Question 18: Please provide an estimate of the benefit in terms of reduced costs that the production of a single securities note implies.
- Question 19: Please indicate if further reduction or simplification of the disclosure requirements of the securities note of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

6. Summary of the EU Growth prospectus

6.1. Scope and focus of ESMA's mandate

98. Section 3.4 of the Commission mandate invites ESMA to provide its technical advice to the Commission on the content and standardised format of the specific summary of the EU Growth prospectus. Under the mandate the content of the specific summary should be a considerably shorter version of the summary set out in Article 7 of the Prospectus Regulation. In addition the information in the specific summary should not correspond to disclosure items which are not required in the EU Growth prospectus. In this regard, ESMA has considered how it would be possible to reduce the content of the specific summary included in EU Growth prospectus, as required under Article 15(2) of the Prospectus Regulation which states that “the Commission shall calibrate the requirements to ensure that it is shorter than the summary provided for in Article 7”, ESMA acknowledges that there is room to develop a schedule for the format and content

of the specific summary which would be to a certain degree reduced compared to the summary of the full prospectus.

6.2. Considerations on content and format of the summary

99. ESMA has reviewed the requirements for the prospectus summary under Article 7 of the Prospectus Regulation against the format and content of the EU Growth prospectus as set out in Article 15(2) of the Prospectus Regulation. Based on this review, ESMA is of the view that a number of changes to the general summary requirements should be effected to streamline the content of the specific summary and bring it in to line with the disclosure items that are included in the EU Growth prospectus.

Risk factors

100. Starting with the risk factors, ESMA proposes to set the maximum number of risk factors included in the specific summary of the EU Growth prospectus to ten as opposed to the limit of 15 set out in Article 7 of the Prospectus Regulation for the normal summary. This may be justified on the basis that SMEs often have smaller or less complex and diverse businesses and therefore include fewer risk factors in a prospectus. In addition, requiring an issuer to include a more limited number of risk factors in the EU Growth summary will highlight to investors which ones are considered by the issuer as more material and therefore may provide more useful disclosure to investors. Also, limiting the number of risk factors to 10 will be conducive to shortening the length of the summary which is a requirement at Level 1.

Underwriting agreement

101. ESMA also sees scope for simplification as regards the information requirements set out in para 8(c)(ii)²⁰ of Article 7 of the Prospectus Regulation and proposes that the EU Growth summary does not need to include information on whether the offer is subject to an underwriting agreement. ESMA is of the opinion that, generally, smaller issuers are less likely to avail themselves of underwriting agreements, partly on grounds of cost and so this requirement seems superfluous for the majority of smaller issuers. If an underwriting agreement is in place, it is ESMA's view that the issuer would include this information in the prospectus as it would be seen as providing a further safeguard to investors. As a result, the cases covered by the provisions of Article 7(8)(c)(ii) would not normally seem to refer to smaller issuers so that removing this information from the specific summary should not materially impact investor protection.

Information in the PRIIPs KID

102. Pursuant to Article 7 of the Prospectus Regulation, and subject to Article 7(7)(second subparagraph), it is possible to substitute information set out in Article 7(7) with the

²⁰ Article 7(8)(c)(ii) requires that the summary includes an indication of whether the offer is subject to an underwriting agreement on a firm commitment basis.

information included in the PRIIPs KID. This possibility, which applies to the full regime, encourages issuers to use the KID in the summary and better aligns the disclosure that issuers provide in relation to their securities.

103. The Commission's mandate for ESMA to deliver technical advice states that it should be possible to offer derivative securities to the public using an EU Growth prospectus. As such, ESMA believes that the benefits relating to the use of a KID in a summary should also be provided to issuers drawing up an EU Growth prospectus. In order to avoid confusion, ESMA considers it appropriate to take a consistent approach to the use of the KID in the summary in relation to the EU Growth prospectus.

Length of the specific summary

104. The second subparagraph of Article 15(2) of the Prospectus Regulation requires the Commission to calibrate the requirements for the summary of the EU Growth prospectus to ensure that it is shorter than the summary of a full prospectus. ESMA considers that the length of the specific summary could be reduced from seven to a maximum of six sides of A4-sized paper, considering that the EU Growth prospectus is generally less complex and will therefore require less space to summarise. Given that the requirements for the summary are, according to Article 15 of the Prospectus Regulation, to be based on the summary requirements in Article 7 of the same Regulation, it must nevertheless be comprehensive and for that reason ESMA suggests that issuers should be given the opportunity to use up to 6 pages for their summary.

Key financial information and KPIs

105. Under the empowerment provided in Article 7(13) of the Prospectus Regulation ESMA is required to draft regulatory technical standards (RTS) in relation to the content and order of presentation of the key financial information that should be inserted in the summary of a prospectus. However, the scope of the draft RTS does not cover the key financial information and KPIs to be included in the summary of the EU Growth prospectus. In this regard, ESMA has considered which historical financial information should be included in the specific summary to provide investors with a high level overview of the issuer's financial position and income generating ability. In addition, ESMA understands that the content of the key financial information on the guarantor, where the guarantor would not qualify to opt for the alleviated regime, will be covered by the forthcoming draft RTS on the key financial information for the summary that will be developed pursuant to Article 7(13) of the Prospectus Regulation.
106. While investors would turn to the issuer's financial statements for more in depth information, ESMA is of the view that the basic measures to be presented in the summary should cover the issuer's liquidity, indebtedness and profitability. ESMA therefore proposes that the summary should include selected financial information for each financial year for the period covered by the annual financial information and interim financial information, if included in the prospectus. The information need not be too detailed but should cover the following elements in the following order:

Profit and loss information

- Total revenue (or equivalent);
- Operating profit or loss (or a financial performance measure defined in the accounting framework used by the issuer in the financial statements);
- Net profit or loss
- Operating profit margin;
- Net profit margin.

Balance sheet information

- Total assets;
- Share capital and reserves;
- Net financial debt (long term debt plus short term debt minus cash).

Financial KPIs

- Year on year revenue growth;
- Up to three KPIs of the issuer's choice including one KPI for liquidity and one for indebtedness.

107. For specific industries where the aforementioned financial data is not available, ESMA suggests that equivalent information should be provided by the issuer. The key financial information should, where applicable, include (condensed) pro forma income statement(s) and pro forma balance sheet and a brief explanation of what the pro forma financial information illustrates and the material adjustments done as well as a brief description of any qualifications in the audit reports relating to the historical financial information.

108. Even though there is an explicit requirement under Article 15(2) of the Prospectus Regulation not to impose additional burdens or costs on issuers, ESMA would advise against further reducing the information included in the specific summary of the EU Growth prospectus. This will usually be the first section that a potential investor reads and a clear picture of the issuer needs to be established at this point. It would, therefore, seem unwise to reduce the information included in the summary so much that it does not clearly cover key points that an investor would require or rely on.

Inclusion of a statement in the specific summary

109. There will be significant differences between the content requirements of the different disclosure schedules under the new prospectus regime and ESMA considers it

important that these differences are signalled to the reader of a prospectus. ESMA is therefore considering whether it would be beneficial to include a statement in the introduction to the EU Growth summary stating 'This is an EU Growth prospectus that has been drawn up pursuant to Article 15 of Prospectus Regulation.' This statement is intended to focus investors on the fact that EU Growth prospectuses may contain less information than other prospectuses, while at the same time avoiding any stigma associated with an explicit warning.

6.3. Draft technical advice

110. On the basis of the considerations presented above, ESMA proposes the following wording for its technical advice in relation to the format of the specific summary of the EU Growth prospectus which will be incorporated in the EU Growth prospectus instead of the summary under Article 7 of the Prospectus Regulation:

Article B: The summary for the EU Growth prospectus

1. The EU Growth prospectus shall include a summary that provides the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered, and that is to be read together with the other parts of the prospectus to aid investors when considering whether to invest in such securities.
2. The content of the summary shall be accurate, fair, clear and not misleading. It is to be read as an introduction to the EU Growth prospectus and it shall be consistent with the other parts of the prospectus.
3. The summary shall be drawn up as a short document written in a concise manner and of a maximum length of six sides of A4-sized paper when printed. The summary shall:
 - (a) be presented and laid out in a way that is easy to read, using characters of readable size;
 - (b) be written in a language and a style that facilitate the understanding of the information, in particular, in language that is clear, non-technical, concise and comprehensible for investors.
4. The summary shall be made up of the following four sections:
 - (a) an introduction, containing warnings;
 - (b) key information on the issuer;
 - (c) key information on the securities;
 - (d) key information on the offer of securities to the public and, where applicable, the dealing arrangements.

5. Where a key information document is required to be prepared under Regulation (EU) No 1286/2014, the issuer, the offeror or the person asking for admission to trading on an MTF may substitute the content set out in section 3 of the summary with the information set out in points (c) to (i) of Article 8(3) of Regulation (EU) No 1286/2014. Where Regulation (EU) No 1286/2014 applies, each Member State acting as a home Member State for the purpose of this Regulation may require issuers, offerors or persons asking for admission to trading on an MTF to substitute the content set out in this paragraph with the information set out in points (c) to (i) of Article 8(3) of Regulation (EU) No 1286/2014 in the EU Growth prospectuses approved by its competent authority.

Where there is a substitution of content pursuant to the second subparagraph, the maximum length set out in paragraph 3 shall be extended by three additional sides of A4-sized paper. The content of the key information document shall be included as a distinct section of the summary. The page layout of that section shall clearly identify it as the content of the key information document as set out in points (c) to (i) of Article 8(3) of Regulation (EU) No 1286/2014.

Where, in accordance with the third subparagraph of Article 8(9), a single summary covers several securities which differ only in some very limited details, such as the issue price or maturity date, the maximum length set out in paragraph 3 shall be extended by two additional sides of A4-sized paper. However, in the event that a key information document is required to be prepared for those securities under Regulation (EU) No 1286/2014 and the issuer, the offeror or the person asking for admission to trading on an MTF proceeds with the substitution of content referred to in the second subparagraph of this paragraph, the maximum length shall be extended by three additional sides of A4-sized paper for each additional security.

Where the summary contains the information referred to in point (c) of the first subparagraph, the maximum length set out in paragraph 3 shall be extended by one additional side of A4-sized paper.

6. Under each of the sections 2, 3 and 4 of the summary, the issuer may add sub-headings where deemed necessary.
7. The total number of risk factors included in the sections 2.3, 3.3 and 3.4 of the summary shall not exceed 10.
8. The summary shall not contain cross-references to other parts of the EU Growth prospectus or incorporate information by reference.
9. Where a key information document is required to be prepared for securities offered to the public under Regulation (EU) No 1286/2014 and a home Member State requires the issuer, the offeror or the person asking for admission to trading on an MTF to substitute the content of the key information document in accordance with the second sentence of paragraph 5 of this Article, the persons advising on or selling the securities on behalf of the issuer, the offeror or the person asking for admission to trading on an MTF shall be deemed to have fulfilled, during the offer period, the

obligation to provide the key information document in accordance with Article 13 of Regulation (EU) No 1286/2014 , provided that they instead provide the investors concerned with the summary of the EU Growth prospectus under the timing and conditions set out in Articles 13 and 14 of that Regulation.

111. As regards the content of the specific summary of the EU Growth prospectus ESMA proposes that it should contain the following four sections:

- Introduction including warnings;
- Key information on the issuer including key financial information and information on the main risks specific to the issuer;
- Key information on the securities setting out the main features of the securities, the key risks specific to the securities and if applicable information on the guarantee attached to the securities;
- Key information on the offer of securities to the public and if applicable the admission to trading.

112. The following table details the disclosure items of the EU Growth summary:

ITEM	ANNEX 3 – SUMMARY OF THE EU GROWTH PROSPECTUS
1.	INTRODUCTION
1.1.	Name and international securities identification number (ISIN) of the securities.
1.2.	Identity and contact details of the issuer, including its legal entity identifier (LEI).
1.3.	Identity and contact details of the competent authority that approved the prospectus and, where different, the competent authority that approved the registration document.
1.4.	Date of approval of the EU Growth prospectus.
1.5.	A statement that this is an EU Growth prospectus that has been drawn up pursuant to Article 15 of Regulation (EU) 2017/1129.
1.6.	<u>Warnings</u>
	Statements by the issuer with regard to the following: - The summary should be read as an introduction to the <u>EU Growth</u> prospectus;

	- Any decision to invest in the securities should be based on a consideration of the <u>EU Growth</u> prospectus as a whole by the investor; - Where applicable, that the investor could lose all or part of the invested capital and, where the investor's liability is not limited to the amount of the investment, a warning that the investor could lose more than the invested capital and the extent of such potential loss; - Where a claim relating to the information contained in an <u>EU Growth</u> prospectus is brought before a court, the plaintiff investor might, under the national law of the Member States, have to bear the costs of translating the <u>EU Growth</u> prospectus before the legal proceedings are initiated; - Civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only where the summary is misleading, inaccurate or inconsistent when read together with the other parts of the <u>EU Growth</u> prospectus, or where it does not provide, when read together with the other parts of the <u>EU Growth</u> prospectus, key information in order to aid investors when considering whether to invest in such securities; - Where applicable, the comprehension alert required in accordance with point (b) of Article 8(3) of Regulation (EU) No 1286/2014;
2.	KEY INFORMATION ON THE ISSUER
2.1.	<u>Who is the issuer of the securities?</u>
	<u>Information about the issuer:</u> - Its legal form, the law under which it operates and its country of incorporation; - Its principal activities; - Its controlling shareholder(s), including whether it is directly or indirectly controlled; - Name of the Chief Executive Officer (or equivalent).
2.2.	<u>What is the key financial information regarding the issuer?</u>
	Key financial information presented for each financial year of the period covered by the historical financial information, and if included in the prospectus any subsequent interim financial period accompanied by comparative data from the same period in the prior financial year. The requirement for comparative balance sheet information shall be satisfied by presenting the year-end balance sheet information. The key financial information shall include the following items in the following order:

	<i>Profit and loss information</i> - Total revenue (or equivalent); - Operating profit or loss (or a financial performance measure defined in the accounting framework used by the issuer in the financial statements); - Net profit or loss; - Operating profit margin; - Net profit margin. <i>Balance sheet information</i> - Total assets; - Share capital and reserves; - Net financial debt (long term debt plus short term debt minus cash). <i>Financial KPIs</i> - Year on year revenue growth; - Up to three KPIs of the issuer's choice including one KPI for liquidity and one for indebtedness. Where, due to the specific sector in which the issuer operates, any of the above key financial information is not applicable to the issuer or not relevant, the issuer may replace it, in consultation with the competent authority, with an appropriate substitute which is equivalent or which serves a similar financial reporting purpose in that sector.
	The key financial information shall, where applicable, include a brief description of any qualifications in the audit report relating to the historical financial information.
2.3.	<u>What are the key risks that are specific to the issuer?</u>
	A brief description of the most material risk factors specific to the issuer contained in the EU Growth prospectus.

3.	KEY INFORMATION ON THE SECURITIES
3.1.	<u>What are the main features of the securities?</u>
	<u>Information about the securities:</u> - Their type and class; - Where applicable, their currency, denomination, the number of securities issued and the term of the securities; - The rights attached to the securities; - The relative seniority of the securities in the issuer's capital structure in the event of insolvency including, where applicable, information on the level of subordination of the securities. - Where applicable, the dividend or pay-out policy.
3.2.	<u>Where will the securities be traded?</u>
	Where applicable, information as to whether the securities are or will be the subject to an application for admission to trading on an MTF or an SME Growth market, the identity of all the markets where the securities are or are to be traded and the details of the admission to trading on an MTF or an SME Growth market.
3.3.	<u>Is there a guarantee attached to the securities?</u>
	- A brief description of the nature and scope of the guarantee; - A brief description of the guarantor, including its LEI; - The relevant key financial information for the purpose of assessing the guarantor's ability to fulfil its commitments under the guarantee; and - A brief description of the most material risk factors pertaining to the guarantor contained in the EU Growth prospectus in accordance with Article 16(3).
3.4.	<u>What are the key risks that are specific to the securities?'</u>
	A brief description of the most material risk factors specific to the securities contained in the EU Growth prospectus.
4.	KEY INFORMATION ON THE OFFER OF SECURITIES TO THE PUBLIC
4.1.	<u>Under which conditions and timetable can I invest in this security?</u>
	Where applicable, the general terms, conditions and expected timetable of the offer, the plan for distribution, the amount and percentage of immediate dilution resulting

	from the offer and an estimate of the total expenses of the issue and/or offer, including estimated expenses charged to the investor by the issuer or the offeror.
4.2.	<u>Why is this prospectus being produced?</u>
	A brief description of the reasons for the offer as well as, where applicable: - The use and estimated net amount of the proceeds; - Whether material conflicts of interest pertaining to the offer or the admission to trading exist and are described in the prospectus.
4.3.	<u>Who is the offeror and/or the person asking for admission to trading?</u>
	If different from the issuer, a brief description of the offeror of the securities and/or the person asking for admission to trading on an MTF, including its domicile and legal form, the law under which it operates and its country of incorporation.

6.4. Questions for consultation

Question 20:	Do you think that the presentation of the disclosure items in para 112 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.
Question 21:	Given the reduced content of the summary of the EU Growth prospectus do you agree with the proposal to limit its length to a maximum of six A4 pages? If not please specify and provide your suggestions.
Question 22:	Do you agree that the number of risk factors could be reduced to ten instead of 15? Do you think that in some cases it would be beneficial to allow the disclosure of 15 risk factors? If yes, please elaborate and provide examples. Please also provide a broad estimate of any benefits (e.g. in terms of reduced compliance costs) associated with the disclosure of a lower number of risk factors.
Question 23:	Do you agree that SMEs are less likely to have their securities underwritten? If not, should there be specific disclosure on underwriting in the summary as set out in Article 7(8)(c)(ii) of the Prospectus Regulation?
Question 24:	Do you agree with the content of the key financial information that is set out in the summary of the EU Growth prospectus? If not, please elaborate and provide examples.
Question 25:	Do you think condensed pro forma financial information should be disclosed in the summary of the EU Growth prospectus? Please state

your views and explain. In addition, please provide an estimate of the additional costs associated with the disclosure of pro forma financial information in the summary compared to the additional benefit for investors from such disclosure.

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

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

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

Annex I: Mandate to deliver technical advice to the European Commission

REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE DELEGATED ACTS
CONCERNING THE REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ON THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE
OFFERED TO THE PUBLIC OR ADMITTED TO TRADING ON A REGULATED
MARKET

(UPDATED 01.06.2017)

With this mandate to ESMA, the Commission seeks ESMA's technical advice on possible delegated acts to supplement certain elements of the Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "**Regulation**")²¹. These delegated acts should be adopted in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final policy decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**")²², the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**")²³, and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (the "**Interinstitutional Agreement**")²⁴.

This request for technical advice will be made available on DG FISMA's website once it has been sent to ESMA.

The formal mandate consists of two parts.

Part I

The technical advice for the following delegated acts should be received by the Commission within 13 months following the receipt of this mandate:

a) The measures specifying the criteria for the scrutiny and review of the universal registration document and any amendments thereto, and the procedures for the approval and filing of those documents as well as the conditions under which the status of frequent issuer is lost (Article 9(14) of the Regulation);

²¹ Reference is made to the text approved by the European Parliament on 5 April 2017 and adopted by the Council on 16 May 2017 (<http://data.consilium.europa.eu/doc/document/PE-63-2016-INIT/en/pdf>).

²² Communication of 9.12.2009. COM (2009) 673 final.

²³ 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 L331/84, 15.12.2010, p.84.

²⁴ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L123/1, 12.05.2016, p.1.

- b) The measures specifying the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus, including LEIs and ISINs (Article 13(1) of the Regulation);
- c) The measures setting out the schedule defining the minimum information contained in the universal registration document (Article 13(2) of the Regulation);
- d) The measures specifying the reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances (Article 14(3) of the Regulation);
- e) The measures specifying the reduced content and standardised format and sequence for the EU Growth prospectus, as well as the reduced content and standardised format of its specific summary (Article 15(2) of the Regulation);
- f) The measures specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus (Article 20(11) of the Regulation).

Part II

The technical advice for the following delegated acts should be received by the Commission within 18 months following the receipt of this mandate:

- g) The measures setting out the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of Article 1 (documents containing minimum information describing a takeover by way of exchange offer, a merger or a division) (Article 1(7) of the Regulation);
- h) The measures establishing general equivalence criteria, based on the requirements laid down in Articles 6, 7, 8 and 13 (equivalence of information requirements imposed by third countries) (Article 29(3) of the Regulation).

The European Parliament and the Council have been duly informed about this mandate.

The powers of the Commission to adopt delegated acts are subject to Article 44 of the Prospectus Regulation.

1. CONTEXT

1.1 Scope

On 30 November 2015, the Commission published its proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading. On 7 December 2016 the European Parliament and the Council reached political agreement on a compromise text of the Regulation. This compromise text was endorsed by the COREPER on 20 December 2016 and approved by the ECON Committee of the European Parliament on 25 January 2017.

The main objectives of the Regulation are to reduce the administrative burden for issuers when drawing up a prospectus, in particular for SMEs, frequent issuers of securities and secondary issuances; to make the prospectus a more relevant disclosure tool for potential investors, especially when investing in SMEs; and to avoid overlaps between the EU prospectus and other EU disclosure rules.

Certain elements of the Regulation need to be further specified in delegated acts to be adopted by the Commission no later than 18 months after the entry into force of the Regulation.

The Regulation emphasizes a number of high level principles and objectives the Commission should take into account when exercising its delegated powers, in particular as regards investor protection, transparency in financial markets, proportionality, innovation in financial markets, reduction of administrative burden and cost and easier access to capital markets for issuers, including SMEs²⁵.

1.2 Principles that ESMA should take into account

In developing its technical advice, ESMA should take account of the following principles:

- **Lamfalussy:** The principles set out in the de Larosi re Report and the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- **Internal Market:** The need to ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regards to the financial markets, and a high level of investor protection.
- **Proportionality:** The technical advice should not go beyond what is necessary to achieve the objectives of the Regulation. It should be simple and avoid creating divergent practices by national competent authorities in the application of the Regulation.
- **Comprehensive:** ESMA should provide comprehensive advice on all subject matters covered by the mandate regarding the delegated powers included in the Regulation.
- **Coherent:** While preparing its advice, ESMA should ensure coherence within the wider regulatory framework of the Union.
- **Autonomy in working methods:** ESMA will determine its own working methods, including the roles of ESMA staff or internal committees. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different strands of work being carried out by ESMA.

²⁵ See Recital 83.

- **Consultation:** ESMA is invited to consult market participants (practitioners, consumers and end-users) in an open and transparent manner. ESMA should provide advice which takes account of different opinions expressed by the market participants during their consultation. ESMA should provide a feed-back statement on the consultation justifying its choices vis-à-vis the main arguments raised during the consultation.
- **Evidenced and justified:**
ESMA should justify its advice by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each. The results of this assessment should be submitted alongside the advice to assist the Commission in preparing its delegated acts. Where administrative burdens and compliance costs on the side of the industry could be significant, ESMA should where possible quantify these costs.

ESMA should provide sufficient factual data backing the analyses and gathered during its assessment. To meet the objectives of this mandate, it is important that the presentation of the advice produced by ESMA makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the possible delegated acts.

ESMA should provide comprehensive technical analysis on the subject matters described below, covered by the delegated powers included in the relevant provisions of the Regulation, in the corresponding recitals as well as in the relevant Commission's request included in this mandate.

- **Clarity:** The technical advice carried out should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology used in the field of securities markets and company law at European level.
- **Advice, not legislation:** ESMA should provide the Commission with a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology used in the field of securities markets in the Union.
- **Responsive:** ESMA should address to the Commission any question it might have concerning the clarification on the text of the Regulation, which it should consider of relevance to the preparation of its technical advice.

2. PROCEDURE

The Commission requests the technical advice of ESMA for the purpose of the preparation of the delegated acts to be adopted pursuant to the legislative act and described in section 3 of this mandate.

The Commission reserves the right to revise and/or supplement this mandate if needed. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**"), the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA**

Regulation"), and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (the **"Interinstitutional Agreement"**).

The European Parliament and the Council have been duly informed about this mandate.

After the delivery of the technical advice by ESMA, in accordance with the Annex to the Interinstitutional Agreement, signed on 13 April 2016, the Commission will continue to consult experts designated by the Member States in the preparation of draft delegated acts.

In accordance with the Annex to the Interinstitutional Agreement, the Commission services will state the conclusions they have drawn from the discussions of any meeting with Member States' experts on draft delegated acts, including how they will take the experts' views into consideration and how they intend to proceed. When they consider this necessary, the European Parliament and the Council may each send experts to these meetings.

The powers of the Commission to adopt delegated acts are subject to Article 44 of the Prospectus Regulation.

When preparing and drawing up the delegated act, the Commission will ensure a timely and simultaneous transmission of all documents, including the draft acts, to the European Parliament and the Council at the same time as Member States' experts.

As soon as the Commission adopts delegated acts, it will simultaneously notify to the European Parliament and the Council.

3. ISSUES ON WHICH ESMA IS INVITED TO PROVIDE TECHNICAL ADVICE

3.1 The format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus (Article 13(1) of the Regulation)

Since Directive 2003/71/EC (the Prospectus Directive) will be repealed when the Prospectus Regulation comes into application, so will Regulation (EU) No 809/2004 and all the schedules and building blocks it contains. It is therefore necessary to establish a new and complete set of disclosure schedules for different types of securities and issuers.

ESMA is invited to reassess whether the information items currently required in the existing schedules and building blocks are still fit for purpose, provide benefits to investors that are commensurate with their associated cost, or whether they should be deleted. ESMA should also reassess the general order of presentation of the information items, based on the experience gained by competent authorities.

- ESMA is invited to provide technical advice on the format of the prospectus and the schedules defining the specific information which must be disclosed in a prospectus.
- ESMA should follow the "building block approach" established by Regulation (EU) No 809/2004, distinguishing between the schedules for registration documents and those for securities notes, as well as any other appropriate building blocks.
- Specific schedules should be established for different types of securities (shares, non-equity securities with a denomination per unit above or below 100 000 EUR, asset-backed securities, depositary receipts on shares, units or shares of closed-ended collective investment undertakings). In a spirit of simplification, ESMA could explore ways to streamline these schedules in order to reduce the overall number of annexes compared to those currently included in Regulation (EU) No 809/2004.
- ESMA should evaluate whether specific schedules should be established for certain types of issuers such as issuers with a complex financial history, issuers which have made a significant financial commitment, or so-called "specialist issuers". If ESMA concludes that specific schedules are needed for some or all of such types of issuer, it should provide technical advice accordingly.
- ESMA is invited to carry forward the disclosure items currently required by Regulation (EU) No 809/2004 into the new schedules only once it has verified that they represent an appropriate balance between investor protection and cost to the issuers. For example, when disclosed in a prospectus, profit forecasts or estimates (Items 13.2 of Annexes I and X, 9.2 of Annex IV, and 8.2 of Annex XI of Regulation (EU) No 809/2004) must currently be accompanied by a report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. ESMA is invited to consider the effects of repealing such requirement by assessing the benefits of such report to investors against the cost this entails for issuers to have them produced.
- When drafting the required minimum information items of the prospectus schedules, ESMA should ensure consistency and adequate alignment with the disclosure requirements of other pieces of EU legislation, like Directive 2004/109/EC (TD) and Directive 2013/34/EU²⁶, so that issuers may easily incorporate by reference in their prospectus all or parts of the content of documents required under those acts (e.g. management reports, corporate governance statements, remuneration reports). In this respect, ESMA is asked to revisit the drafting of the section on the operating and financial review to ensure that the corresponding contents of the issuer's management report

²⁶ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

drawn up under Directive 2004/109/EC can easily be incorporated by reference in that section of the prospectus.

- ESMA is also invited to provide technical advice on the format of the base prospectus and the final terms. In that context, ESMA should preserve the flexibility of the base prospectus regime and aim to considerably decrease compliance costs for issuers using base prospectuses.
- To ensure a consistent application of the Regulation across the Union, ESMA is asked to carry forward in its advice the principles currently laid out in Regulation (EU) No 809/2004 whereby issuers are entitled to include additional information going beyond the information items of the schedules and building blocks, while competent authorities may not require that a prospectus contain information items which are not included in such schedules and building blocks.

3.2 The schedule defining the minimum information contained in the universal registration document (Article 13(2) of the Regulation)

The universal registration document (URD) is designed as an optional shelf registration for companies that expect to frequently issue securities ("frequent issuers"). It is based on the premise that an issuer that draws up, every year, a complete registration document in the form of a URD should benefit from a fast-track approval (5 working days, instead of 10) when the competent authority approves a prospectus consisting of separate documents.

The logic behind the URD is to grant procedural alleviations to those issuers that intend to have frequent recourse to capital markets and choose to commit to draw up a URD every year. In exchange, those issuers will be able to swiftly seize market opportunities.

A URD functions as a registration document that can be used by issuers to offer securities, irrespective of their type (shares, debt, derivatives) or of the nature of the issuer (large company or SME). It follows that the content of a URD must be aligned with the disclosure standard for a share registration document and should be similar, in terms of the range of information covered, to what would be required in the context of an initial public offering on a regulated market.

A URD should be a comprehensive source of reference for investors, consolidating in one single document all information investors may need to know about a particular issuer, and avoiding duplicative disclosures by issuers. The Regulation allows frequent issuers to use the URD as a medium to publish the periodic information required by Directive 2004/109/EC (Transparency Directive).

- ESMA is invited to provide technical advice on the schedule defining the minimum information to be contained in the URD, taking into account recitals 39 to 45 of the Regulation. ESMA should base its work on the disclosure standard appropriate for a share registration document.
- When establishing the schedule defining the content of the URD, ESMA is asked to ensure that the information items that correspond to the content of the annual financial report and half-yearly financial report required under the Transparency Directive (historical financial information, operating and financial review, corporate governance) are drafted in a way that is aligned as much as possible with the relevant parts of Directive 2004/109/EC and Directive 2013/34/EU, enabling frequent issuers to incorporate such information by reference or to disclose them directly in the URD according to the arrangements set out in Article 9(12) and (13) of the Regulation.

3.3 The reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances (Article 14(3) of the Regulation)

A new alleviated prospectus regime will apply for issuers which have had securities admitted to trading on a regulated market or an SME growth market continuously for at least 18 months. When proceeding with a secondary issuance, such issuers will have the option to draw up a simplified prospectus taking into account the information they have already disclosed to the market on an ongoing basis under Regulation (EU) No 596/2014 (MAR)²⁷, and where applicable, under Directive 2004/109/EC (TD) or the market rules of the SME growth market.

Issuers who opt to draw up this simplified prospectus are subject to a distinct "disclosure test", set out in Article 14(2) of the Regulation. This article defines the reduced information they are expected to disclose and clarifies that the simplified prospectus should be an autonomous document enabling investors to make an informed investment decision based on a more limited and focused set of relevant information. Recital 48 highlights that the rationale for simplifying the content of the prospectus: information already made available to investors by the issuer under its ongoing disclosure obligations (MAR and TD) need not be repeated in the prospectus.

²⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance

- ESMA is invited to provide technical advice on the schedules applicable under the simplified disclosure regime for secondary issuances, taking into account recitals 48 to 50 of the Regulation. ESMA should develop specific draft schedules for both registration documents and securities notes, at least for shares and debt securities. When defining the information items of these schedules, ESMA shall take into account ongoing disclosure requirements of TD and MAR that would enable investors to have access to such items elsewhere than in a prospectus.
- ESMA is invited to clarify what form the concise summary of the relevant information disclosed under Regulation (EU) No 596/2014 (MAR) over the past 12 months²⁸ should take in order for issuers to adequately inform their potential investors in a relevant and cost-efficient way, without merely repeating the contents of previous disclosures made under MAR.

3.4 The content, format and sequence of the EU Growth prospectus including its specific summary (Article 15(2) of the Regulation)

The EU growth prospectus is designed for offers of securities by three types of issuers: SMEs, companies traded on SME growth markets as long as their market capitalization does not exceed 500M€ and unlisted companies with less than 499 employees that raise below 20M€²⁹ (jointly referred to as "SMEs and midcaps"). The EU growth prospectus is optional and cannot be used for an admission to trading on a regulated market.

The EU growth prospectus aims at facilitating access to financing on capital markets and reducing the administrative costs of raising capital for SMEs and midcaps. Its information content should be reduced compared to the prospectus used by issuers admitted to regulated markets, without compromising investor protection.

- ESMA is invited to identify the minimum disclosure requirements of the EU growth prospectus and to define the order of presentation of such disclosures (referred to as "sequence" in Article 15(2)).
- ESMA should adopt a "bottom-up approach" and avoid taking the existing Annexes of Regulation (EC) No 809/2004 as a starting point. This means that the exercise should not consist in identifying information which could be omitted from a full prospectus. Instead, ESMA should devise a new, substantially alleviated standard of disclosure from scratch without being guided by the content and format of the prospectus which applies to issuers on regulated markets. In particular, ESMA should take as a benchmark the content of admission documents required by markets where the prospectus obligation does not apply, e.g. the rules of MTFs that cater for SMEs and midcaps.

²⁸ Referred to in letter (c) of the second subparagraph of Article 14(3) of the Regulation

²⁹ As defined in Regulation (EU) 2015/1017 on the European Fund for Strategic Investments.

- When calibrating the content of the EU growth prospectus, ESMA should aim to ensure that SMEs and midcaps are obliged to disclose sufficient information on their strategy and prospects to allow investors to take an investment decision. ESMA should not propose information items which would imply high costs for SMEs with only a low corresponding added value for investors (e.g. items involving statements by independent accountants or auditors).
- There should be a tangible difference between the reduced content of the EU growth prospectus and the content of the prospectus which applies to issuers on regulated markets.
- ESMA should develop specific draft schedules for both registration documents and securities notes, based on the high-level outlines featured in Annexes IV and V of the Regulation. Schedules should be developed at least for shares, debt and derivatives.
- ESMA should develop the minimum disclosure requirements for the EU Growth prospectus, following a standardized sequence.
- To make it easy for SMEs and midcaps to draw up an EU growth prospectus, ESMA should aim to create schedules and headings that allow SMEs to prepare their prospectus with no or little external advice, if they wish to do so.
- ESMA is also invited to advise the Commission on the content and standardized format applying to the specific summary of an EU growth prospectus. Such content should be a considerably shorter version of the summary set out in Article 7, and should not include the key information corresponding to disclosure items which are not required in the EU growth prospectus.

3.5 The criteria for the scrutiny of prospectuses and URDs and the procedures for their approval (Articles 9(14) and 20(11) of the Regulation)

The decision of the competent authority to approve a prospectus involves analysis of, and changes to, the draft prospectus on the part of the issuer to ensure that the prospectus meets the requirement of completeness, consistency and comprehensibility.

The reform of the EU prospectus regime aims to create a single rulebook that ensures a coherent implementation throughout the EU. The practices of competent authorities concerning scrutiny and approval should be aligned so as to avoid supervisory forum shopping.

A swift and efficient scrutiny of prospectuses is conducive to facilitating fundraising on capital markets, allowing issuers to seize market windows speedily.

- ESMA is invited to provide technical advice on the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus.

- ESMA's technical advice is expected to accommodate a proportionate approach by competent authorities in the scrutiny of prospectuses based on the specific circumstances of the issuer and the issuance.
- Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 specifies the requirements regarding the procedures for approval of prospectuses. Since that Regulation will cease to apply when the new Prospectus Regulation comes into application, ESMA is invited to incorporate the content of that Regulation, bearing in mind that some of the requirements of that Regulation have already been introduced in the Prospectus Regulation.
- With respect to scrutiny and approval, ESMA is invited to provide technical advice that is the same for both URDs and prospectuses. This is without prejudice to ESMA's technical advice on the procedures for the filing and (ex-post) review of URDs and on the conditions where the status of frequent issuer is lost.

3.6 The procedures for the filing of the URD, the criteria for the review of the URD and the conditions under which the status of frequent issuer is lost (Article 9(14) of the Regulation)

After a frequent issuer has had a URD approved by a competent authority for two consecutive financial years, subsequent URDs may be filed with the competent authority without prior approval. Following such filing, the competent authority may, at any time, review the contents of a filed URD and of any amendments thereto. The Regulation acknowledges that it is up to competent authorities to decide if and when such ex-post review should be carried out. As indicated in Recital 40, each competent authority may decide the frequency of such review taking into account its assessment of the risks of the issuer, the quality of its past disclosures, or the length of time elapsed since a filed URD has been last reviewed.

In essence, the scrutiny and the review of a URD should involve the same kind of work from a competent authority (checking the completeness, the consistency and the comprehensibility of the information given in the universal registration document and amendments thereto), the only difference being that scrutiny occurs ex ante, before the approval of a URD, whilst a review occurs ex post, following the filing of a URD and subject to a decision of the competent authority to conduct such a review.

The status of frequent issuer is gained from the moment an issuer submits its first URD for approval to the competent authority. Yet, due to the conditions set out in Article 9(11) of the Regulation, such status may be challenged at various points in time thereafter. Indeed, upon each filing or submission for approval of a URD, and every time an application for approval of a prospectus consisting of separate documents (including a URD) is made, the provision of certain statements and, where applicable, amendments to the URD will be required for such a frequent issuer to keep its status and benefit from the fast-track approval.

- ESMA is invited to provide technical advice on the procedures for the filing and the criteria for the review of the URD and the conditions under which the status of frequent issuer is lost.
- In doing so, ESMA should take into account the fact that the objectives and criteria of the ex-post review of URD are aligned with those of an ex-ante scrutiny and relate to the completeness, the consistency and the comprehensibility of the information provided by the issuer.

3.7 The minimum information content of documents describing a merger or a takeover by way of exchange offer (Article 1(7) of the Regulation)

Points (f) and (g) of Article 1(4) and points (e) and (f) of the first subparagraph of Article 1(5) of the Regulation grant a prospectus exemption where the following securities are either offered to the public or admitted to trading on a regulated market (or both):

- securities offered in connection with a **takeover** by means of an exchange offer,
- securities offered, allotted or to be allotted in connection with a **merger or division**.

Such an exemption is conditional on a document being made available to the public containing information *"describing the transaction and its impact on the issuer"*.

This represents an alleviation compared to the corresponding exemptions of Directive 2003/71/EC – set out in points (b) and (c) of Article 4(1) and points (c) and (d) of Article 4(2) of that Directive – where the precondition to be fulfilled was that a document be available containing information *"which is regarded by the competent authority as being equivalent to that of a prospectus"*.

The Commission notes that the information provided to the public in the context of takeovers and mergers, as well as the way such information is controlled by competent authorities, is prescribed in national corporate laws, including laws implementing Directive 2004/25/EC on takeover bids³⁰. The implementing measures to be taken by the Commission in that field under the empowerment of Article 1(7) are therefore not intended to interfere with these laws, and their focus should be limited to ensuring a minimum harmonisation of these documents for the purpose of applying the exemption granted in points (f) & (g) of Article 1(4) and points (e) & (f) of the first subparagraph of Article 1(5) of the Regulation, without prejudice to the ability of national laws to require more information from issuers involved in takeovers and mergers for other purposes (including supplying adequate information to existing shareholders in the context of a vote in an annual general meeting).

³⁰ Article 6(2) of that Directive requires the initiator of a bid to submit to its competent authority *"an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid"*, before making such offer document public. Such an offer document may be subject to the prior approval of the competent authority. Article 6(3) of that Directive prescribes a minimum content for such offer document.

- ESMA is invited to provide technical advice on the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of Article 1, taking into account recital 16 of the Regulation. In particular, ESMA is invited to define how the impact of the transaction on the issuer should be presented in such documents.

3.8 General equivalence criteria for prospectuses drawn up under the laws of third countries (Article 29(3) of the Regulation)

Issuers domiciled in a third country may only carry out an offer of securities to the public or an admission to trading on a regulated market in the EU using a prospectus drawn up under the laws of that third country provided that the Commission has taken a decision stating that the information requirements contained in the laws of such third country are equivalent to the information requirements of the Prospectus Regulation (an "equivalence decision").

Such issuers can then elect a home Member State, among those allowed under Article 2 (m) (ii) and (iii) of the Regulation. Provided it has concluded cooperation arrangements with the relevant supervisory authorities of the third country, the competent authority of this home Member State can then approve the prospectus drawn up under the laws of that third country. Such a prospectus is subject to the language rules of the Regulation and can benefit from the EU passport.

An equivalence decision by the Commission must rely on general equivalence criteria based on the requirements of the Regulation applying to the general disclosure test (Article 6), the summary (Article 7), the base prospectus (Article 8) and the minimum information and format of registration documents and securities notes (Article 13).

- ESMA is invited to provide technical advice on general equivalence criteria to guide future assessments of national laws of third countries in relation to disclosures when securities are either offered to the public or when an admission to trading on a regulated market is sought. These criteria should reflect the requirements laid down in Articles 6, 7, 8 and 13 of the Prospectus Regulation.
- As regards the general equivalence criteria reflecting Article 13 of the Regulation, the Commission does not expect ESMA to proceed schedule by schedule. Instead, ESMA should focus on the minimum content and format of prospectuses for equity securities and for non-equity securities (potentially distinguishing between debt and derivatives).

4. INDICATIVE TIMETABLE

This mandate takes into consideration the expected date of application of the Regulation, that ESMA needs enough time to prepare its technical advice, and that the Commission needs to

adopt the delegated acts in accordance with Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Article 44 of the Regulation.

The delegated acts provided for by the Regulation and addressed under **points 3.1 to 3.6** of this mandate should be adopted no later than 18 months following the entry into force of the Regulation. Therefore the deadline set to ESMA to deliver the technical advice is **thirteen (13) months** after the date of receipt of this mandate, i.e. 31 March 2018.

The Regulation does not envisage any deadline for the adoption of the delegated acts addressed under **points 3.7 and 3.8** of this mandate. Therefore, the Commission asks ESMA to deliver its technical advice on these two items **eighteen (18) months** after the date of receipt of this mandate.

Indicative timetable for the delegated acts referred to in points 3.1 to 3.6

Deadline	Action
Entry into force of Prospectus Regulation [June 2017, (expected)]	Date of entry into force of the Regulation (twentieth day following that of its publication in the Official Journal of the European Union)
March 2018 (13 months after date of receipt of the request)	ESMA provides its technical advice on points 3.1 to 3.6 .
Until June 2018	Preparation of the draft delegated acts by Commission services on the basis of the technical advice by ESMA. The Commission will consult with experts appointed by the Member States within the Expert Group of the European Securities Committee (EG ESC) on the draft delegated acts.
Until October 2018	Translation and adoption procedure of draft delegated acts.
Until April 2019	Objection period for the European Parliament and the Council (three months which can be extended by another three months)
June 2019 (24 months after entry into force)	Date of application of the Prospectus Regulation and delegated acts.

Annex II: List of questions for consultation

Format of the EU Growth prospectus

- Question 1: Do you consider that specific sections should be inserted or removed from the registration document and / or the securities note of the EU Growth prospectus proposed in Article A? If so, please identify them and explain your reasoning, especially in terms of the costs and benefits implied.
- Question 2: Do you agree with the proposal to allow issuers to define the order of the information items within each section? Please elaborate on your response and provide examples. Can you please provide input on the potential trade-off between benefits for issuers coming from increased flexibility as opposed to further comparability for investors coming from increased standardisation?
- Question 3: Given the location of risk factors in Annexes IV and V of the Prospectus Regulation, do you consider that this information is appropriately placed in the EU growth prospectus? If not please explain and provide alternative suggestions.
- Question 4: Do you agree with the proposal that the cover note to the EU Growth prospectus should be limited to 3 pages? If not, please specify which would be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?

Content of the EU Growth registration document

- Question 5: Do you agree that the presentation of the disclosure items in para 81 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the disclosure items.
- Question 6: Do you agree with the proposal to introduce a single registration document that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.
- Question 7: Do you agree with the requirement to include in the EU Growth prospectus any published profit forecasts in the case of both equity and non-equity issuances without an obligation for a report by independent accountants or auditors? If not please elaborate on your reasoning. Please also provide

an estimate of the additional costs involved in including a report by independent accountants or auditors.

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

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

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

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

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

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

Content of the EU Growth securities note

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

- Question 15: Do you agree with the proposal to introduce a single securities note that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.
- Question 16: Do you consider that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.
- Question 17: Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth securities note? If yes, please specify and provide examples. In addition, please consider whether the categorisation of disclosure items for non-equity securities is fit for purpose. If not, please specify and provide your suggestions.
- Question 18: Please provide an estimate of the benefit in terms of reduced costs that the production of a single securities note implies.
- Question 19: Please indicate if further reduction or simplification of the disclosure requirements of the securities note of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

Summary of the EU Growth prospectus

- Question 20: Do you think that the presentation of the disclosure items in para 112 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.
- Question 21: Given the reduced content of the summary of the EU Growth prospectus do you agree with the proposal to limit its length to a maximum of six A4 pages? If not please specify and provide your suggestions.
- Question 22: Do you agree that the number of risk factors could be reduced to ten instead of 15? Do you think that in some cases it would be beneficial to allow the disclosure of 15 risk factors? If yes, please elaborate and provide examples. Please also provide a broad estimate of any benefits (e.g. in terms of reduced compliance costs) associated with the disclosure of a lower number of risk factors.

- Question 23: Do you agree that SMEs are less likely to have their securities underwritten? If not, should there be specific disclosure on underwriting in the summary as set out in Article 7(8)(c)(ii) of the Prospectus Regulation?
- Question 24: Do you agree with the content of the key financial information that is set out in the summary of the EU Growth prospectus? If not, please elaborate and provide examples.
- Question 25: Do you think condensed pro forma financial information should be disclosed in the summary of the EU Growth prospectus? Please state your views and explain. In addition, please provide an estimate of the additional costs associated with the disclosure of pro forma financial information in the summary compared to the additional benefit for investors from such disclosure.
- Question 26: Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify and provide examples.
- Question 27: Do you consider that the disclosure items in the specific summary of the EU Growth prospectus are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.
- Question 28: Please indicate if further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.