

Final Report

Draft regulatory technical standards under the Prospectus Regulation

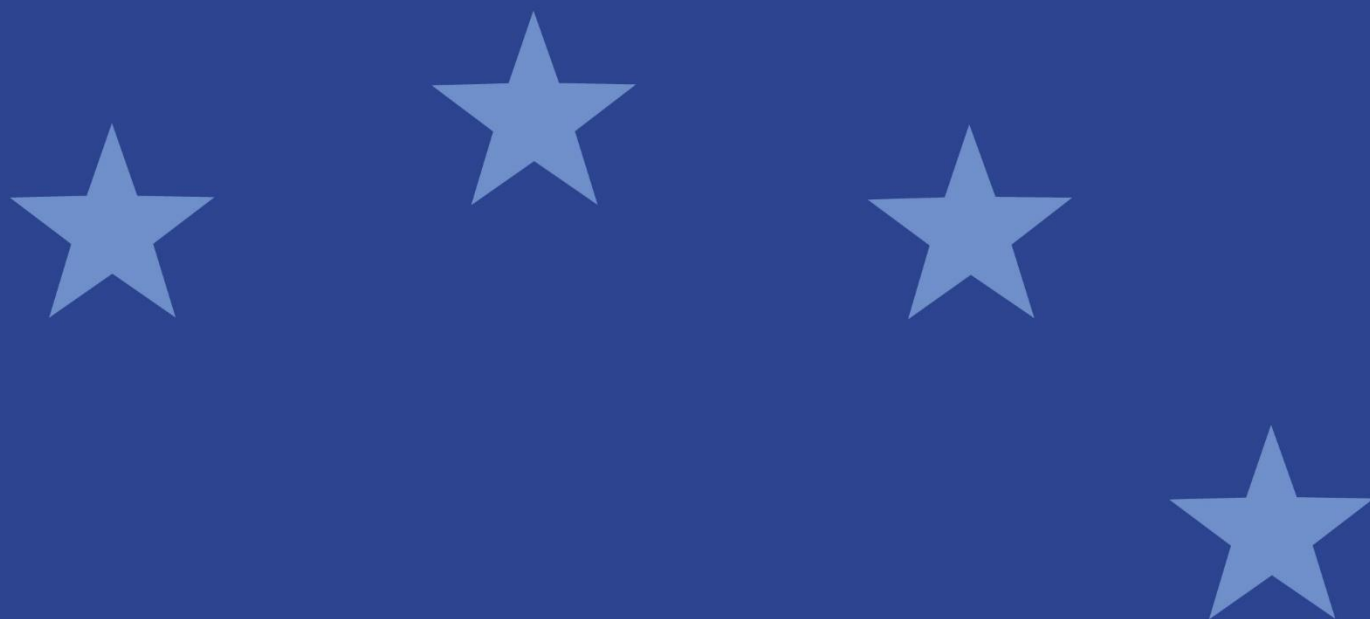


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Acronyms and definitions used in this Paper

ABS	Asset Backed Securities
APM	Alternative Performance Measure
APM Guidelines	ESMA Guidelines on Alternative Performance Measures (ESMA/2015/1415, 5 October 2015)
Benchmark Regulation	Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014
CAR	Capital Adequacy Ratio
CEF	Closed end fund
CET1	Common equity tier 1
CFI code	Classification of Financial Instruments code
CIR	Commission Implementing Regulation (EU) 2015/227 of 9 January 2015 amending Implementing Regulation (EU) No. 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No. 575/2013 of the European Parliament and of the Council.
CMU	Capital Markets Union
CoA	Certificate of approval
Commission	European Commission
Consultation Paper	ESMA Consultation Paper on Draft regulatory technical standards under the new Prospectus Regulation (ESMA31-62-802, 15 December 2017)
CRD IV	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive

	2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
CRR	Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.
EPS	Earnings per share
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
FIRDS	Financial Instruments Reference Data System
First Commission Delegated Regulation	Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus.
FISN	Financial Instrument Short Name
ISIN	International Securities Identification Number
KFI	Key financial information
KPI	Key performance indicator
LCR	Liquidity Coverage Ratio
LEI	Legal Entity Identifier
MIC	Market Identifier Code
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

MiFIR	Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
MREL	Minimum requirement for own funds and eligible liabilities
NAV	Net Asset Value
NCA	National competent authority
Omnibus I Directive	Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)
Omnibus II Directive	Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)
'Pathfinder' prospectus	A final draft of the prospectus used for marketing purposes to a limited number of investors
PRIIPs Regulation	Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance based investment products (PRIIPs)
Prospectus Directive / PD	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC
Prospectus Regulation / PR	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or

admitted to trading on a regulated market, and repealing Directive 2003/71/EC

RD	Registration document
RTS	Regulatory technical standards
Second Commission Delegated Regulation	Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71 of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.
Solvency II	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
SMSG	Securities and Markets Stakeholders Group
SPV	Special Purpose Vehicle
SREP	Supervisory Review and Evaluation Process
URD	Universal registration document

1. Executive summary

Reasons for publication

Regulation (EU) 2017/1129 was published in the Official Journal of the European Union on 30 June 2017 and entered into force 20 days after its publication on 20 July 2017. The Regulation requires ESMA to develop draft regulatory technical standards ('RTS') covering specific areas, namely the content of the key financial information for the prospectus summary, the data for classification of prospectuses and the practical arrangements to ensure that such data is machine readable, provisions concerning advertisements and situations where a supplement to a prospectus is required as well as the technical arrangements for the functioning of the notification portal to be established by ESMA.

The draft RTS should be submitted to the European Commission ("Commission") by 21 July 2018. ESMA is additionally permitted to submit draft RTS further specifying the requirements relating to the publication of the prospectus.

ESMA published a Consultation Paper on 15 December 2017¹. This Final Report is the follow-up to that Consultation Paper.

Content

The Final Report is organised into a number of sections as well as a number of annexes.

Sections 2 to 6 relate to the five topics on which ESMA has consulted on for its technical standards. These topics are: key financial information to be provided in a summary; data and machine readability; advertisements; supplements and publication. Each section summarises the feedback provided by stakeholders to ESMA's 2017 Consultation Paper. Furthermore, it contains ESMA's responses in relation to the proposed amendments to the technical standards. Section 7 relates to the draft RTS on the notification portal.

Annex I includes a list of the respondents, grouped by category. Annex II contains the Commission mandate to ESMA for technical standards. Annex III provides a cost-benefit analysis, while Annex IV sets out the opinion provided by ESMA's Securities and Markets Stakeholder Group ('SMSG') and Annex V contains ESMA's technical standards. Annex VI contains a proposed amendment to the Technical Advice on Scrutiny and Approval.

Next steps

This Final Report will be delivered to the Commission and published on ESMA's website.

¹ As the draft RTS on the technical arrangements for the functioning of the notification portal to be established by ESMA has in ESMA's view relevance exclusively to NCAs, ESMA has decided not to subject this draft RTS to public consultation.

2. Draft RTS on key financial information for the summary

2.1. Introduction

1. According to PR Article 7(13) ESMA is required to specify the content and format of presentation of the key financial information in a summary to a prospectus. In doing so, ESMA must take account of the various types of securities and issuers and ensure that the information included in the summary is concise and understandable.
2. In addition, PR Article 7(6)(b) sets out the financial periods and the type of financial information, such as pro forma financial information, to be included in the summary.
3. To that end, ESMA has produced a set of key financial information according to the type of issuer and the type of securities. This information includes mandatory items, if included in the prospectus, but also gives the issuer flexibility to choose further KFI that it considers material for investors. The KFI can include APMs.

2.2. Summary of feedback and amendments to the draft RTS on the key financial information in the summary

2.2.1. General remarks

4. In addition to responding to the specific questions, a number of respondents have provided general input on various topics touched upon in the Consultation Paper². This input is set out in this section³.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
1	2	-	5	-	2	-	-

5. Ten respondents gave their general remarks to the part of the consultation relating to KFI in summaries.

² Consultation Paper on draft Regulatory Technical Standards under the new Prospectus Regulation ([ESMA31-62-802](#) | 15 December 2017)

³ Where respondents have provided input on topics addressed in other sections of the Consultation Paper, their input is summarised under the appropriate question rather than in the current section.

6. The majority of respondents were concerned about the restriction on the number of voluntary KFIs and asked for flexibility in this regard. They commented that because the page length of the summary at Level 1 was stringent, ESMA should not limit the number of KFIs that an issuer could include on a voluntary basis. They argued that this could lead to inconsistency between the summary and the body of the prospectus. They asked that ESMA set a small number of mandatory KFIs extracted from the issuer's historical financial data and allow the issuer the flexibility to include whichever additional KFIs including APMs that they wished. These additional KFIs have to have been included in the body of the prospectus. Also, these additional items in the summary can only be included if their inclusion does not result in the summary exceeding the seven page limit. On the other hand, one respondent thought that the number of voluntary APMs should be increased to between five and seven.
7. One respondent commented that the draft RTS for KFI in the summary was too prescriptive and this may give rise to unexpected results in practice. This in turn would increase costs for issuers in trying to comply with prescriptive requirements that do not fit their business. Another respondent was concerned that the KFI proposed by ESMA would not be suitable for all types of issuer and that this would result in numerous requests for waivers as the information was not relevant to the business.
8. One stakeholder invited ESMA to allow an exception to the cross-referencing rule from the summary to the body of the prospectus in the case of an explanation of an APM. This would entail inserting the cross reference as a footnote indicating where the explanation of the APM appears in the body of the prospectus. Alternatively they asked for a bespoke warning when an APM is included in the summary without a full explanation.
9. Two respondents also mentioned that companies should be given flexibility in the format in which they present their KFI. They commented that ESMA's proposed tables take up too much space and suggested that the KFI should be grouped in a single table which would include profit and loss, balance sheet and cash flow statements. In their view ESMA's tables should be used as guidance but that ESMA should only specify very high level requirements.
10. One respondent representing investors considered that the KFI in summaries should be in a standardized format defining a small number of mandatory KFI while leaving flexibility for companies to highlight their distinct characteristics and features. There should not be a limited number of additional KFI and issuers should be free to include APMs of their choice as long as these are extracted from the historical financial information in the prospectus.

Input from the SMSG

11. The SMSG appreciated the intent to make summaries both more relevant and easier for investors to understand. However, it had reservations about potential legal costs for issuers, which are further explained in the SMSG's response to Question 4, and the fact that the new provisions may be unnecessarily prescriptive.

ESMA's response

12. In relation to the requests to withdraw the limit on the number of voluntary KFIs in the summary, ESMA accepts the arguments that this could be restrictive and has therefore removed the restriction on the number of voluntary KFIs. However, ESMA notes that the issuer must be mindful to comply with the page length limit of the summary and with the APM guidelines which state that the APMs should not receive more prominence than the figures extracted from the historical financial statements.
13. In response to those stakeholders who felt that ESMA was too prescriptive in its choice of KFI and that these KFI may not be suitable for all types of issuer, ESMA points out that if an issuer does not use the particular measures that ESMA has included in the tables, the issuer is free to include an alternative, equivalent measure. While ESMA believes that the vast majority of issuers will be covered by the proposed templates, even with minor adaptations, it acknowledges that some types of issuer will need to fit the KFI to their specific industry. In relation to the cost impact of the draft RTS on KFI, ESMA has provided its response under Question 13.
14. As regards comments inviting ESMA to allow for an exception to the prohibition on cross referencing from a summary to the prospectus in the case of the explanation of APMs, ESMA points out that such cross referencing is not allowed pursuant to Article 7(11) of the Prospectus Regulation and it is not therefore within ESMA's power to exempt issuers from Level 1 provisions. On the proposal for the mandatory inclusion of a bespoke warning in the summary, ESMA does not consider such inclusion necessary in all cases but, where appropriate, an issuer may voluntarily include one if the page limit allows. ESMA points out that issuers are not obliged to provide an explanation of the APM in the summary as long as the explanation is given in the body of the prospectus.
15. With regard to the request to allow issuers to present their KFI in the summary in a format of their choice, PR Article 7(13) requires ESMA to provide the format of the KFI in summaries. Therefore, based on this, the draft RTS cannot give issuers complete flexibility in this regard. As mentioned, ESMA considers that PR Article 7(13) requires the development of key financial information for the summary including profit and loss, balance sheet and cash flow statements. With regard to providing one table or three, ESMA considers that, as long as the relevant information is included, issuers can have the flexibility to present the information in one table if they so wish. Also, the table or tables for each type of issuer should not take up more than one page of the summary and is deemed to be key information for investors. By removing the cap on the number of additional KFIs, ESMA has introduced an additional element of flexibility into the KFI in summaries. In Article 2, paragraph 3 of the draft RTS, issuers may substitute items in the KFI where these items are not included in their financial statements. In addition, the draft RTS allows issuers to adapt the content of the KFI as necessary, while maintaining sufficient comparability of this information.

2.2.2. General considerations

16. This section summarises the feedback which ESMA received in relation to Questions 1 to 7 of the Consultation Paper on the draft RTS on the key financial information in the summary and presents ESMA's response to this feedback.

Question 1: Do you agree that the KFI extracted from the issuer's historical financial information should be sign-posted?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
9	4	2	4	-	4	1	3

17. 27 respondents provided input to Question 1. The majority of respondents (19) agreed with the suggestion to sign-post KFI that is extracted from the issuer's historical financial information in order to differentiate the audited financial information from those KFI which are not. One stakeholder, representing financial market participants, pointed out that this practice is consistent with current EU best practice for equity capital markets where information extracted from the historical financial information is marked as such. Another remarked that sign-posting KFI assists the user of the summary to identify which information refers back to the published financial statements and which information is referenced from other sources, such as some APMs.
18. Although supportive of the proposal to sign-post KFI extracted from the financial statements, one market participant queried how this would be implemented in practice. On the same topic, another respondent remarked that the method of sign-posting should be left at the issuer's discretion.
19. Seven respondents, mostly representing issuer associations, did not support ESMA's proposal. These respondents considered sign-posting would bring very limited added value to the information disclosed. They favoured a flexible approach which would allow issuers to sign-post only those items considered necessary by the issuer and helpful for investors. Some of the respondents argued that sign-posting was unnecessary as investors would be able to distinguish historical financial information from APMs.
20. Two respondents remarked that sign-posting seemed reasonable when the issuer included both audited financial information and unaudited APMs in the summary. However, they considered that when the issuer only referred to audited financial information, any additional flagging would be burdensome. Therefore, they suggested

that it would be sufficient to flag APMs that are not contained in the audited financial information rather than the other way around.

21. Lastly, two stakeholders remarked that the method of sign-posting should be clarified.

ESMA's response

22. ESMA welcomes the input provided by respondents and agrees that, as pointed out in the responses, it is best practice to identify information extracted from the financial statements. ESMA does not consider this requirement to be burdensome for issuers, and believes that it will provide valuable information to retail investors.
23. As to concerns about how information extracted from the issuer's financial statements would be identified, ESMA would prefer to leave the method to the individual issuer. However, ESMA considers that sign-posting could be as simple as stating that, unless otherwise indicated, all KFI's are extracted from the issuer's financial statements.
24. In response to the comment that identification of the information extracted from historical financial information would be of limited value and that investors would themselves be able to distinguish this from APMs, ESMA is of the opinion that, for a retail investor, the difference may not be immediately obvious. Identification of information extracted from the historical financial information is considered useful and in the interests of investor protection.
25. Where respondents stated that sign-posting is only useful where an issuer includes both unaudited APMs and historical financial information in their summary, and that only the unaudited APMs should be flagged, ESMA is of the view that an issuer will include a statement such that the information in the table is from historical financial information unless otherwise stated. Alternatively, if the summary contains no APMs the issuer can state that all the information is extracted from the historical financial information. That way, it will therefore be clear which of the items is unaudited APMs and which is from the historical financial statements.
26. ESMA has therefore included a requirement to identify the information extracted from the issuer's financial statements in the summary. Lastly, ESMA acknowledges that the use of a simpler term may be more appropriate as non-native English speakers may not be familiar with the meaning of the term "sign-posting". ESMA has therefore revised the draft RTS to replace "sign-post" with "identify".

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

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	4	-	5	-	2	2	2

27. 21 stakeholders provided their views to Question 2. The majority (15) were not in favour of developing specific templates for other types of issuer other than those already included in the draft RTS. They argued that the inclusion of more templates would add needless complexity, while it was unlikely that it would be possible to cover all types of issuers. Moreover, they remarked that such an approach would require frequent updates to ensure that new industries were covered, such as e-commerce and peer-to-peer lending, which did not exist several years ago. In their view, the suggested approach in the draft RTS, which allows issuers a degree of flexibility in the selection of appropriate alternative line items, was more suitable.
28. Some stakeholders, stressed that issuers should be given some flexibility to add information. They pointed out that this is particularly relevant in the case of holding companies with subsidiaries that are active in different sectors e.g. the financial sector and non-financial sector or insurance, asset management and banking, and the same would apply to conglomerates.
29. One respondent was of the view that further guidance would be beneficial on more complex financial institutions that have insurance operations. In addition, it was also suggested that a definition of “non-financial entities” and “credit institutions” would be useful. The same respondent suggested modifying the title of Annex II to reflect the fact that it concerns “Non-financial entities (non-equity securities)”. As regards the meaning of the term "Special Purpose Vehicles" one respondent pointed that the draft RTS should clarify that Special Purpose Vehicles, which are consolidated by a financial entity should be treated as "financial entity" for these purposes, while another suggested that in the case of SPVs which are not ABS-related the template for Non-Financial entities (Non-equity) should apply or alternatively a template for such SPVs should be provided.
30. Respondents who favoured the development of additional templates provided the following suggestions:

- i. Templates for the issuance of covered bonds for non-financial entities and credit institutions, as covered bonds are usually subject to specific regulation and require specific KPIs;
 - ii. Separate templates for financial institutions issuing non-equity securities to ensure that such disclosure is less burdensome;
 - iii. Templates for specialist issuers, including property, mineral, shipping companies as well as for new companies with less than 3 years of existence.
31. Lastly, one respondent remarked that for retail non-equity securities the KFI for a guarantor should be included where its financial statements have been included in the prospectus, and where the financial statements and KFI for the issuer are not required or not available.

ESMA's response

32. ESMA shared the view of the majority of correspondents who considered it unnecessary to include more templates for different types of issuers. ESMA has therefore included in the draft RTS the requirements set out in the Consultation Paper and has not drawn up any further templates. However, it has modified as suggested in para 28 the title of Annex II.
33. Addressing the concerns of the stakeholder who asked for more flexibility, ESMA points out that flexibility is included in the draft RTS which explicitly states that where particular line items do not apply to an issuer, an alternative can be used. On this basis, in the case of conglomerates or issuers with both banking and insurance elements, it is up to the issuer to determine which voluntary KFI are most representative of the business and which are most useful for investors. The issuer can include further items which it considers representative or use more than one of the categories of tables, as long as it remains within the page limit of the summary.
34. In relation to the request to define certain terms used in the Consultation Paper, ESMA points out that most of the terms have been defined at Level 1 or in the technical advice on the Prospectus Regulation. The only term in the list which has not been defined is 'non-financial entity' which ESMA considers to be a commonly used term. As regards SPVs, ESMA has identified that SPVs for asset-backed issuances have a separate template, therefore other SPVs should use the non-financial entity template.
35. To those respondents who asked for ESMA to develop separate templates for covered bonds, ESMA points out that there is no securities schedule relating to covered bonds for which there may be various types of issuer and therefore various types of financial information. It is therefore not possible to develop mandatory requirements for a summary where none exist for a prospectus as a whole. ESMA does not agree that a financial institution issuing non-equity securities should have a separate template. The summary would reflect the information provided in the body of the prospectus and therefore the information disclosed would reflect which items of the financial institution

template the issuer has complied with. ESMA does not believe it is appropriate to develop a template for specialist issuers at Level 2 when the requirements for these issuers are set out at Level 3. ESMA will, however, reflect on the information provided by respondents and consider developing Level 3 measures. Finally, ESMA has allowed flexibility to substitute relevant information in the key financial information in the summary so that if a financial information in the prospectus is in relation to the guarantor, this information should be included in the summary.

Question 3: Do you agree that cash flow from operations is the most useful measure of cash flow for non-financial entities issuing equity and that cash flow from financing activities and cash flow from investing activities are not so relevant for investors in equity securities?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
4	5	-	6	-	3	-	1

36. 19 stakeholders provided their views to Question 3. The majority of respondents (12) disagreed with ESMA’s proposal to require cash flows from operations in the case of all non-financial entities issuing equity, in the KFI section of the summary. Their argument was that, depending on the issuer’s circumstances, cash flows from operations may be less relevant for investors than cash from financing activities and cash flow from investing activities.

37. In general, stakeholders agreed that cash flow from operations is typically a useful measure. It was nevertheless pointed out that the usefulness of this measure is dependent on its corporate purpose. In cases where a non-financial entity does not have substantial cash flows from operations, the disclosure of this item in the summary would provide little added value for investors. On the other hand, disclosure of the cash flow from financing activities or cash flow from investing activities may be a more useful measure for investors, depending on the nature of the entity, as it would give investors a better overview of the financial situation of the company and would give the issuer more flexibility in the presentation of its financials. This could be the case for certain types of non-financial issuers such as issuers in the oil and gas sector engaged in sizeable hedging arrangements. They argued, therefore, that both cash flows from investing and financing could be relevant to investors under specific situations and were in favour of giving issuers discretion to decide whether KFI extracted from the cash flow statement are or are not relevant for the summary of the prospectus.

38. One respondent commented that cash flow figures are less important for closed ended funds and there should be no requirement to include these figures for these issuers, while another suggested including the three metrics from the cash flow statement.

Input from the SMSG

39. The SMSG considers that although cash flows from operations are important, cash flow from financing activities and from investing activities could also be relevant for certain issues. The SMSG therefore considers that issuers should be given the flexibility to decide whether the KFI extracted from the cash flow statement is relevant or not.

ESMA's response

40. ESMA notes the responses from stakeholders, including the SMSG, that there should be flexibility in deciding which type of cash flow, is most relevant for a non-financial entity and therefore presented in the summary. ESMA agrees that cash flow disclosure may differ depending on the type of issuer, therefore ESMA has decided to allow non-financial entities the flexibility to determine which cash flows items are included in the extract of the cash-flow statement in the summary depending on which are relevant to the investor in making their investment decision. If all three cash flows are deemed key then they should all be included in the summary. In relation to closed end funds, ESMA has not included cash flow statements in the key financial information for closed end funds. If an issuer wishes to include this information in the summary it may do so as part of the voluntary disclosure items.

Question 4: Given the page limit for the summary please provide your views on which items of historical financial information would be most useful for retail investors.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
4	4	1	2	-	4	-	4

41. 19 respondents provided their views in response to Question 4. The majority argued in favour of a less prescriptive approach that would allow the disclosure in the summary of key financial information that issuers deem helpful to investors depending on the activity of the issuer, its organisation, business model and the way it operates. Therefore, they argued that ESMA should refrain from providing specific guidance on the inclusion of specific balance sheet and profit and loss items in the summary. Furthermore, it was suggested that, given the broad diversity of issuers and their businesses, it would be

impossible to establish measures for KFI in summaries which were relevant to all types of business issuing equity or debt securities to retail investors. In particular, one stakeholder noted that mandating a set of measures for all issuers with the same type of business could create challenges for issuers which do not publish exactly the same line items, for example because of differences in the accounting standards applied. They therefore suggested as an alternative the requirement or a reference to the type of measure that should be included in the summary and the reason for including such measure. These should be accompanied by examples of measures that would satisfy the requirement and its objectives. This would give issuers the flexibility to include metrics in their summaries that would satisfy the same disclosure objectives.

42. Moreover, some respondents were of the view that if an issuer considered several line items to be key for investors and that disclosure of all of those line items was needed in order to comply with its obligations pursuant to PR Article 7, it should not be prevented from disclosing all those line items by virtue of Level 2 measures. Several stakeholders remarked that limiting the number of line items and APMs could potentially raise liability issues if there is inconsistency between information disclosed in the summary, the prospectus and other reports and disclosures made public by the issuer (e.g. annual financial reports, registration documents or press releases). In addition, it was suggested that given that the length of the summary was limited to seven pages and that there would be a significant number of other disclosure requirements besides key financial information, the issuer would be already restricted from disclosing lengthy key financial information in the summary. These stakeholders therefore saw no need for a cap on the number of additional line items or APMs that could be included in the summary.
43. One stakeholder suggested a number of line items as useful for retail investors investing in equity securities, namely total revenue, net earnings/losses (for consolidated financial statements net earnings/losses attributable to equity holders of the parent company), net earnings per share (undiluted), total assets, total liabilities, shareholders equity, gross dividend, and end of year closing price of the share. Another respondent pointed out the limits placed on the presentation of financial information in a fixed-page document.
44. Lastly, one respondent commented that as regards ABS SPV issuers, ESMA should recognise that the definition of ABS captures a wide range of deals, meaning that a “one size fits all” approach with prescribed mandatory financial information disclosure, as proposed in Annex V of the draft RTS, does not sit well with the diverse nature of ABS transactions and the ABS SPV issuers involved in such transactions. To illustrate this point they noted that the proposed summary requirements do not take into account specific cases such as the derogation from financial disclosure provided to an ABS issuer that has not commenced operations since the date of its incorporation under the existing and the proposed Level 2 prospectus regime or the case of ABS SPV issuers established in certain jurisdictions where they are not required under national laws to produce audited statutory accounts. This stakeholder, therefore, suggests that every line item in Annex V of the draft RTS should be marked with # (hash) denoting the flexibility to only include such disclosure if it appears elsewhere in the prospectus.

Input from the SMSG

45. The SMSG commented that the number and presentation of KFI in the summary should not be prescribed but should be left to the issuer's discretion. It was concerned that limiting the number of KFI could lead to liability issues by creating inconsistencies between information disclosed in the summary, the body of the prospectus and other reports and documents published by the issuer.
46. It stated that flexibility would not lower investor protection as there would be no advantage to issuers in including irrelevant KFI. It also argued that the page limit of the summary would prevent the inclusion of unnecessary information.
47. Nevertheless the SMSG agrees with ESMA that the KFI should correspond to the positions set out in the issuer's financial statements and that APMs should not be given more prominence than the KFI stemming from the issuer's financial statements.

ESMA's response

48. ESMA notes stakeholders' concerns that issuers should be able to include information which they deem relevant for investors and that ESMA should not prescribe which line items should be disclosed. However, ESMA's mandate is to provide regulatory technical standards to specify the content and format of the KFI in the summary. To that end, ESMA considers that it is required to state which KFI must be included and that it then has some leeway to allow issuers some discretionary items.
49. In response to the observation that ESMA should not mandate a set of measure for all issuers of a particular type of business as not all those issuers will publish the same line items, ESMA has already enabled issuers to substitute relevant, alternative, items if they do not include those mandated by ESMA in their historical financial information or in the prospectus.
50. ESMA notes the concerns of respondents who feel that, because of the page length restriction of the summary, their key financial information may not be representative and that there may therefore be liability issues. ESMA has pointed out that the page limit is set by PR Article 7. Also, ESMA has given issuers the flexibility to include further KFI which they feel are most representative of their business. Lastly, ESMA points to PR Article 7 (5) (e) which sets out where civil liability will apply, that is, where the summary, when read with other parts of the prospectus, is misleading, inaccurate or inconsistent.
51. In response to the stakeholder who raised concerns that not all issuers publish the same line items and that the KFI mandated by ESMA would create challenges for some issuers, ESMA points out that it has stated, in the Consultation Paper, that where issuers do not use a particular line item they can substitute it for an appropriate alternative item. A similar response can be given to the stakeholder who was concerned that where SPVs issuing asset backed securities are not required to publish accounts or have been given a derogation from doing so that should be marked on the template. ESMA has pointed out that if information is not given in the body of the prospectus, it cannot be presented

only in the summary. However, SPVs who have not produced financial statements should state this fact in the summary.

52. In response to the stakeholder who suggested some specific items of historical financial information that would be most useful for retail investors, ESMA points out that many of the suggested items, such as total revenue, net earnings per share and total assets are included in the table for equity issuers. ESMA is concerned that the inclusion of further mandatory items would impinge on the length of the summary. Also, the majority of respondents asked for more flexibility for the issuer. As a result, ESMA has decided to lift the cap on the number of additional items that an issuer can include at its discretion ESMA refers readers to its response in the General Remarks section.

Question 5: Do you agree with the proposal to allow the use of footnotes to describe APMs or could this result in lengthy footnotes and complicated explanations?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
9	6	1	6	-	4	2	3

53. 31 market participants responded to the Question 5. More than half (18) supported ESMA’s suggestion to allow the use of footnotes for the description of Alternative Performance Measures (APMs) where necessary, as this would enable issuers to explain the APMs presented in the summary. They viewed this as a pragmatic approach to balance the possible need to explain APMs given the restrictions on the length of the summary. They also pointed out that it would enhance the readability of the KFI section of the summary. In addition, investors would be able to understand how this information had been prepared.
54. Regarding the length of these footnotes, which might affect the clarity of presentation of the summary, some respondents suggested that the draft RTS should allow a cross-reference to the explanation of the APM in the main body of the prospectus. This would avoid duplication of the explanations of APMs, which are usually quite technical. It was also proposed to require a bespoke warning to inform investors that the summary contains APMs and they should, therefore, read the summary together with the rest of the prospectus.
55. Some respondents queried whether it was possible not to include any APM-related explanation in the summary at all. Alternatively, they requested that either the draft RTS

explicitly refers to the use of footnotes or that ESMA develops other Level 3 guidance in relation to these explanatory footnotes.

56. As regards respondents who were not supportive of the use of footnotes, they considered that footnotes were not necessary to describe APMs and felt that this practice could result in lengthy footnotes and complicated explanations. Their main argument was that, as the summary is an introduction to the prospectus, the detailed explanations regarding APMs would be provided in the prospectus.

Input from the SMSG

57. The SMSG were concerned that footnotes may not be read and therefore should not contain material information or complex explanations. It suggests an alternative approach by including a warning that the summary contains APMs and that investors should read the summary along with the rest of the prospectus.

ESMA's response

58. ESMA notes that the majority of stakeholders who responded to Question 5 were supportive of the use footnotes to describe the APMs. In response to the respondents who suggested that a cross-reference is included in the summary to the explanation of the APM in the body of the prospectus, ESMA points out that Article 7(11) of the Prospectus Regulation forbids the use of cross referencing in the summary.
59. As regards the suggestion to include a warning that the summary should be read together with the rest of the prospectus, ESMA refers readers to its response in the General Remarks section.
60. As to concerns on whether or not the issuer must include an explanation of APMs in the summary, ESMA considers that the summary is a part of the prospectus as a whole rather than a separate document. As such, if the explanation of the APM is given in the body of the prospectus, ESMA expects that it may not be necessary in all cases to duplicate the same explanation in the summary. However, where an issuer considers that it would be beneficial for investors' understanding to have a brief explanation of the APM in the summary, the issuer may do so. They can choose to include a brief explanation accompanying the tables or by way of a footnote if constrained by the page limit imposed on the summary by Level 1.
61. To clarify the point ESMA does not consider that a footnote explanation should be considered mandatory as the body of the prospectus will include an explanation of the APM in accordance with the APM guidelines. Therefore should an issuer feel that an explanation would be helpful in the summary, it can include a concise explanation accompanying the tables or in a footnote where constrained by the length restriction of the summary. In response to the stakeholder who requested that footnotes are explicitly

mentioned in the RTS or that ESMA develop guidance for the use of footnotes, ESMA will consider whether guidance is required at Level 3.

Question 6: Do you agree that issuers should be given flexibility to present pro forma financial information as additional columns to the relevant tables or as a separate table? If not, should a format be mandated, bearing in mind the page limit for the summary as well as the requirement for the summary to be comprehensible?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
8	5	1	6	-	4	2	3

62. 29 market participants responded to Question 6. ESMA's proposal to allow issuers flexibility on the presentation of pro forma financial information in the summary received broad support as 24 respondents agreed that a specific format should not be mandated. A few respondents, however, remarked that in practice it might be difficult for issuers to present pro forma financial information as additional columns. They nevertheless maintain, that it would be useful to have some flexibility in the rules that would allow for different approaches.
63. A few respondents commented that pro forma financial information often includes APM items, which do not fall within scope of the ESMA Guidelines on APMs. They queried, therefore, whether the selective disclosure of APMs extracted from the pro forma section of the prospectus and disclosed in the summary could bring such APM disclosure within the scope of the ESMA Guidelines on APMs.
64. Of the remaining respondents, four considered that, in order to clarify the presentation of the pro forma financial information, it should be presented as an additional column as they were concerned that adding another table to the existing ones would be potentially confusing. It was suggested that the format of those additional columns should be mandated in order to allow comparability between prospectus summaries. One respondent recommended that the draft RTS should mandate a separate pro forma table in the interests of readability as this would encourage issuers to consider carefully whether the pro forma information is genuinely necessary for inclusion in the summary.
65. Lastly, one respondent suggested that the number of pro forma line items should not be counted in the maximum number of additional line items. This would allow issuers required to disclose pro forma financial information the flexibility to choose the line items that are most relevant.

ESMA's response

66. ESMA welcomes the broad support by respondents who agreed with the suggestion to allow issuers the flexibility to choose whether to include pro forma financial information as an additional column in the relevant table or as a separate table.
67. In response to the concerns around whether the inclusion of an APM in the pro forma in a summary would bring the APM within the scope of the APM guidelines, ESMA reiterates that the summary forms part of the prospectus and points out that the APM Guidelines do not apply to the pro forma information in a prospectus. As a result, any APM presented in the pro forma in the summary will be treated in the same way as that in the body of the prospectus. As above, the issuer may choose to include an explanation either in the narrative of the summary or by way of footnote.
68. In response to the stakeholders who asked for ESMA to mandate the format of the pro forma columns in the table, ESMA considers although the mandate requires ESMA to set out the format of the KFI, the pro forma is not standardised. Also it is of importance to investors and for these reasons, ESMA would prefer to allow issuers flexibility in the presentation of the most material pro forma information in the summary. ESMA also considers that as pro forma information is produced for specific circumstances it is not practical or desirable to mandate a separate table for the pro forma information.
69. ESMA has pointed out in the response to Question 4 above that the cap on the number of KFI has been lifted so that the stakeholder who requested that pro forma line items should not be counted in the maximum number of additional line items can be assured that they will not be counted.
70. After careful consideration of the arguments provided by stakeholders, ESMA has decided to follow the line set out in the consultation paper and allow issuers to decide whether to present their pro forma information as an additional column to the relevant table or as an additional table.

Question 7: Do you agree that complex financial information in the summary should be presented according to its presentation in the prospectus? If not, please specify and provide alternative ways of presentation, elaborating on the connected costs and benefits.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
7	4	1	6	-	3	-	3

71. 24 stakeholders responded to Question 7. The majority (13) were supportive of the suggestion to present complex financial history in the KFI section of the summary according to the presentation in the prospectus. Although cognisant that complex financial information is by its nature lengthy and could take up a large part of the prospectus summary, they nevertheless considered that this approach would provide clarity to investors and be consistent with the information disclosed in the main body of the prospectus.
72. One respondent, however, pointed out that, in the case of financial information about another entity, which is presented in the prospectus both on a standalone basis and in combination with the financial information of the issuer, it should be possible to present its complex financial information in the summary in the form of the combined KFI only. They also considered that where the mandatory inclusion of complex financial information and/or pro forma financial information in the summary takes up a relatively large part of the summary, the competent authority should have discretion to allow issuers to not comply with the page limit of the summary.
73. On the whole, the remaining respondents considered that complex financial history was not suitable for disclosure in the summary. Moreover, it was pointed out that it was not appropriate to attempt to replicate particularly complex financial histories presented in the full prospectus in the summary document, especially considering the specific page limit of the summary. One stakeholder suggested that in these complex cases, investors should be presented with a summary of the complex financial history and a strong warning that the summary cannot provide a comprehensive account of that history, and that referral to the full prospectus is necessary. Other respondents favoured a flexible approach which would give issuers discretion regarding the presentation of complex financial information. These respondents considered that it would be difficult to summarise a complex financial history in a meaningful way, without exceeding the summary length limit.

74. Lastly, one respondent considered that it was unclear how situations, where the body of the prospectus included multiple financial track records in accordance with the complex financial history requirements, would be dealt with, especially in relation to the specific page limit and the maximum number of the additional discretionary items.

ESMA's response

75. ESMA notes the concerns around presenting combined KFI rather than information on another entity or entities on a stand-alone basis and also in combination with the financial information of the issuer. ESMA points out that the Level 1 mandate requires the summary to present selected historical key financial information. ESMA considers that complex financial information is extracted from historical financial information of the issuer and other entities and therefore is of the opinion that presentation of only the key complex financial information does not contradict the Level 1 requirements. To that end, ESMA agrees that where the complex financial history is of most value to investors, the key complex financial history only could be included and has revised the draft RTS accordingly. This should also allay concerns of those respondents who felt that the inclusion of complex financial history in the summary could be too lengthy given the page limit of the summary and gives issuers a certain element of flexibility in the presentation of the complex financial history
76. ESMA points out that as the page length of the summary is set at Level 1 ESMA cannot give competent authorities the power to waive the maximum page limit for the summary.
77. For those respondents who consider that complex financial history is not suitable for the summary, ESMA understands that this is mainly on the grounds of the length that an explanation of complex financial history may take. However, this information may be the most material KFI for investors and create the most representative picture of the issuer going forward. To that end, ESMA will accept that on occasion only the combined KFI giving the complex financial history may be presented if this is material to investors. For those who consider the information too complex to be included in the summary, ESMA is concerned that non-inclusion could be misleading for investors and therefore considers that the complex financial history should be given in the summary.
78. In response to the stakeholder who suggested that the summary should contain a warning that the prospectus contains complex financial history and a referral to the full prospectus, ESMA points out that cross-references from the summary to the body of the prospectus are prohibited in Level 1. In addition, the prospectus will contain a statement that the summary should be read as an introduction to the prospectus.
79. Where the body of the prospectus includes multiple financial track records, ESMA considers the flexibility given by only requiring inclusion of the combined KFI, should go some way to alleviating the stakeholders concerns. ESMA is aware of the difficulty posed by inclusion of complex financial history in the summary and will consider whether it is necessary to provide guidance at Level 3.

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

80. This section summarises the feedback which ESMA received in relation to Questions 8 to 13 and presents ESMA's response to this feedback.

Question 8: Which financial measures are most useful for retail investors to determine the health of a credit institution? Do you consider that the CET1 is comprehensible for retail investors? Please specify.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	4	1	2	-	1	1	2

81. 17 respondents provided input to Question 8. Several respondents considered that CET1 is comprehensible for retail investors. Nevertheless, even some respondents who held the opposite view, considered that CET1 should still be disclosed in the summary, as CET1 is a widely used measure of financial health which can be easily compared and is disclosed by credit institutions in prospectus summaries.

82. Regarding the disclosure of other metrics which would help retail investors determine the health of a credit institution, some stakeholders argued CET1 is simple and factual measure suitable for retail investors, while other ratios might be too technical and difficult to understand. Other respondents, however, provided a number of alternative suggestions.

83. One respondent noted that the SREP requirements are an important indication of the supervisory view on minimum solvency requirements and therefore suggested the mandatory disclosure of: a) CET1 and Total Capital Ratio; and b) SREP requirements for CET1 and Total Capital Ratio. Another respondent indicated that useful financial measures are CET, tangible shareholders' equity and reported liquidity reserves.

84. Other suggestions for key metrics that should be included in the KFI section of the summary are: CAR, CET1, Cost: Income, Loans: Deposits, LCR as well as net banking income, net cost of risk, assets and liabilities and equity.

85. Lastly, some stakeholders were of the view that the use of CET1 or other figures should be voluntary. They considered that issuers should be given the flexibility to decide how best to meet the general requirement for summary disclosure under Article 7 of the

Prospectus Regulation and disclose their key financial information in a way that is accurate, fair and clear and not misleading. As retail investors may not fully understand regulated capital ratios and how they interact with relevant bail-in tools or, indeed, with the risk profile of the institution, these respondents argued that issuers should have discretion to determine the most appropriate way to disclose key financial information in the context of their own businesses and the particular securities they are issuing.

ESMA's response

86. ESMA welcomes the agreement from respondents on the choice of CET1 as a financial measure suitable for retail investors.
87. With regard to the alternative measures proposed, ESMA points out that, in relation to SREP, Annex III, Table 2 includes a column for 'Value as outcome from the most recent SREP' and therefore considers SREP requirements to be included. As regards the mandatory disclosure of CET1 and Total Capital Ratio and SREP requirements for CET1 and Total Capital Ratio, ESMA has included these in Table 2 and has stated that where these ratios appear in the body of the prospectus, disclosure in the summary is mandatory. Other disclosures such as liquidity reserves, income, loans, deposits and so on, could make the mandatory section of the disclosure too long. If an issuer deems that this information is important for investors they can include it as voluntary additional information.
88. In response to the stakeholders who felt that CET1 and other financial measures should be voluntary, ESMA reminds readers that its mandate is to provide technical standards on the format and content of the KFI and therefore believes that some financial measures such as CET1 must be included in the technical standards in order to provide clarity to issuers and investors alike on the disclosure required in the KFI section of the summary.
89. ESMA has therefore decided to maintain these requirements which are set out in the Consultation Paper in the Technical Standards. For credit institutions these are CET1, total capital ratio and leverage ratio and for insurers, solvency cover, loss ratio and the combined ratio.

Question 9: Do you agree that it should be mandatory for credit institutions to disclose SREP information in relation to Common Tier One Equity, the minimum prudential capital requirements, the Total Capital Ratio and the Leverage Ratio in the summary?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	3	1	2	-	2	1	2

90. 17 respondents provided their views to Question 9. Ten stakeholders considered that disclosure of SREP information in the KFI section should be mandated as this information is already provided by credit institutions, while five respondents favoured optional disclosure of this information where it was beneficial considering the target investor profile.
91. Some respondents mentioned that clarification should be given that there is no obligation to include a 'mandatory' measure when that information is not applicable to the issuer and there is no comparable information.
92. Lastly, one respondent considered that the disclosure obligations should not require the inclusion of regulatory ratios in the summary which are not within scope of PR Article 7. Another remarked that the information envisaged in the Pillar 2 Guidelines of the Supervisory Authority should not be mandatory, although currently included in the summary where requested by the NCA.

Input from the SMSG

93. The SMSG considers that credit institutions should disclose SREP information and a measure related to liquidity such as the Liquidity Cover Ratio.

ESMA's response

94. ESMA notes that the majority of the respondents agreed that SREP information should be mandatory in the KFI section of the summary. However, it should be borne in mind that if an issuer does not include SREP information in the body of the prospectus it cannot be included in the summary. Therefore the item has been included in the table as one which is mandatory if included in the body of the prospectus.
95. As regards the inclusion of regulatory ratios in the summary ESMA considers that these could be considered KFI and therefore could be within the scope PR Article 7.

96. In relation to the information in the Pillar 2 Guidance, ESMA does not consider that it is mandatory to include this information in the summary as it is not normally disclosed in the prospectus. However credit institutions and insurers should be aware of changes to legislation and include information arising from such legislation (for example MREL information) in the summary where it represents key historical financial information for investors.
97. ESMA welcomes the input from the SMSG and confirms that the disclosure on the SREP will be retained. However, ESMA has not included a mandatory disclosure item on liquidity because of concerns about the length of the summary and the number of disclosure items already required. Issuers can include the liquidity cover ratio if it is considered key for investors.

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

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
1	2	-	3	-	1	-	1

98. Eight stakeholders responded to Question 10. The majority of these (6) agreed with the suggested metrics for insurance companies. In general, they considered them a sensible choice of financial measures provided that the suggested categorisations remain in the final RTS. As regards more specific comments, one stakeholder recommended splitting the financial investment and insurance contract liabilities between common insurance contracts and unit linked contracts.
99. While agreeing with the choice of measures for insurance companies, three respondents, pointed out that the definitions provided for IFRS based KFIs cannot apply to KFIs based on local GAAP. Therefore, they suggested that issuers would have to be provided with the flexibility to name the corresponding KFIs in accordance with the local accounting standards. In addition, they remarked that flexibility should be provided when it comes to the definitions of APMs.
100. Lastly, one respondent referred to concerns raised in its response under Question 2 in relation to complex financial institutions that have both credit and insurance operations.

ESMA's response

101. In response to the point that definitions provided for in IFRS based KFIs cannot apply to KFIs based on local accounting standards, ESMA points out that under Article 2(3) of

the draft RTS issuers have the discretion to provide an alternative equivalent measure to those set out in the tables. ESMA is therefore of the view that the flexibility requested by the respondent has already been provided.

102. As regards the point raised in relation to financial institutions with both credit and insurance operations, it has been addressed in ESMA's its response to Question 2 in paragraph 32.
103. In relation to splitting the financial investment and the insurance contract liabilities between common insurance contracts and unit linked contracts, again ESMA is concerned with requiring too much mandatory information given the page restrictions in the summary. As mentioned before, if the issuer considers that this split is key for investors and should be included in the summary, they are free to do so.
104. ESMA has included the KFI for insurance companies as set out in the consultation paper.

Question 11: Do you think it would be useful for retail investors to include a measure of historical performance for closed end funds in the summary?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
1	3	1	1	-	1	1	-

105. Eight stakeholders responded to Question 11. Six were of the view that the disclosure of a measure of historical performance for closed end funds in the KFI section of the prospectus summary would provide an additional layer of transparency for retail investors. One stakeholder, however, considered that where the closed end fund approach referred explicitly or implicitly to a benchmark, the past performance of the benchmark should be also be disclosed in the summary. They pointed out that the suggested disclosure was already a legal requirement for open ended UCITS funds.
106. One respondent favoured a more flexible approach which would allow companies to assess the most useful measure of historical performance for shareholders, if any, to be included in the summary. This stakeholder provided examples such as the inclusion of historic dividend payments where a company has a published objective to pay a progressive dividend to its shareholders, or the disclosure of historic share price total return or net asset value total return figures where the objective of the company is securing long-term capital growth.

107. While not expressing an opinion on the usefulness of the proposed measures for retail investors, another stakeholder reiterated its general comment that the approach in the proposed draft RTS is overly prescriptive.

ESMA's response

108. ESMA notes the responses in relation to the inclusion of a measure of historical past performance in the summary. ESMA is of the view that such a measure should be included but it is for the issuer to determine which measure to include. In response to the comment that where a closed end fund made reference to a benchmark, the past performance of the benchmark should be presented in the summary ESMA wishes to clarify that this information cannot be included in the summary unless explicitly referred to in the prospectus. Moreover, considering the page limit that applies to the summary under Level 1, ESMA is reluctant to make this disclosure mandatory particularly as this information is not among the required disclosure items of the closed end fund schedule in ESMA's technical advice on the format and content of the prospectus. However, if a measure of performance against a benchmark is included in the prospectus, then it should be included in the summary. ESMA also highlights that the Benchmark Regulation merely requires the disclosure in the prospectus of whether the benchmark administrator is registered and a statement setting out details of where information about an index (where the investment objective is to track the index) can be obtained. The annex requirement (Annex 15 item 2.10) does not go so far as to require the past performance of the benchmark or index to be included in the prospectus and therefore ESMA cannot make this a mandatory item in the summary. Nevertheless, if the issuer has included this information in the prospectus it must be included in the summary.
109. As regards the measures suggested by one stakeholder including the disclosure of historic dividend payments and historic share price total return ESMA acknowledges that they are important measures. Therefore where key to investors, ESMA expects that the issuer should include them as voluntary additional disclosure items. However, ESMA is concerned about the length of the KFI in the summary and the fact that these measures are not set out in the annex disclosure for closed end funds. Also, inclusion of further measures would seem to be unacceptable to the respondent who found the disclosure items overly prescriptive. ESMA would therefore reiterate that it is required to provide the format and content of the KFI in the summary and considers that the KFI chosen are important for investors and generally representative of the KFI for closed end funds. To that end ESMA has maintained the KFI for closed end funds as set out in the Consultation Paper.

Question 12: Do you think that investment companies which are subject to capital requirements should be required to include regulated capital ratios in their summary?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
2	1	-	2	-	1	-	2

110. Eight respondents provided their views to Question 12⁴. Two stakeholders considered that it would be a logical approach to mandate investment companies to include regulated capital ratios in the prospectus summary if they are required to include them in their financial statements. Other respondents, however, were not supportive of this suggestion as they commented that the disclosure of regulatory capital ratios should be left at the discretion of the issuer, who may include them if deemed useful for investors.

ESMA's response

111. ESMA agrees with the majority of respondents who consider that the inclusion of regulatory capital ratios should be left to the discretion of the issuer. If an issuer considers the information to be key to an investor, the investment company should probably disclose its regulated capital ratios in the summary. However, ESMA does not consider it necessary to mandate these capital ratios as this may make the KFI in the summary overly long.

⁴ ESMA notes that in the Consultation Paper questions 4 and 12 were inadvertently swapped in the reply form.

Question 13: Would the issuer, offeror or person asking for admission to trading incur additional costs if the proposed provisions are adopted? If so, please specify the nature of such costs, including quantifying them. Please also elaborate on the benefits coming from this proposal.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
5	3	-	6	-	2	1	1

112. 18 stakeholders provided input in response to Question 13. While three respondents did not expect any additional costs to the issuer in case of adoption of the proposed measures, the remaining respondents considered that issuers would be likely to incur additional costs in order to adjust to the new regime on the disclosure of KFI in the summary and comply with the general obligations imposed by the draft RTS. In particular, some stakeholders remarked that issuers would incur costs related to the request for additional information and adjusting to the new formats. These costs would be related to increased workload (legal work, financial information, auditors, information technology).
113. While respondents were not able to quantify the related costs, some pointed out that the proposed measures were, in their view, overly prescriptive and could generate additional costs in drafting prospectuses because issuers and their legal advisors would need to consider how best to meet the general obligation to provide key information in the summary in line with the requirements set out in the draft RTS. Furthermore, it was argued that the additional costs would be reduced if the cap on the number of additional line items or APMs were removed, because issuers would then have more flexibility.

ESMA's response

114. ESMA notes the responses which state that additional costs would be incurred in the initial period whilst issuers adjusted to the new format. However, in response to the view that the additional costs would be reduced if ESMA removed the cap on the number of additional line items or APMs, ESMA reiterates that on the basis of the arguments provided it has decided to remove the cap as long as the issuer complies with the APM guidelines. The APM guidelines state that the APMs should not be given more prominence than the figures extracted from the historical financial information.
115. The proposed wording of the draft RTS on key financial information in the summary is set out in Annex V to this Paper.

3. Draft RTS on data and machine readability

3.1. Introduction

116. Under Article 21(13), ESMA is firstly required to identify data that is necessary to provide information on the characteristics of the prospectus received and thereby allow for classifying and searching through this information. In parallel with the identification of such data, under Article 21(13) ESMA is secondly required to ensure that this information is machine readable.
117. ESMA proposed in the Consultation Paper a draft RTS addressing data and machine readability. ESMA also indicated its intention to enlarge its Prospectus Register and make it a centralised hub for prospectus information in the EU, in line with the objective set out in PR Recital 63 to provide investors with “*access to reliable data that can be used and analysed in a timely and efficient manner*”. By making the Prospectus Register the centralised and free of charge storage mechanism for prospectuses, ESMA aims to address this intention and provide for better data availability on public issuances in Europe.

3.2. Summary of feedback and amendments to the draft RTS on data and machine readability

3.2.1. General remarks

118. Overall, respondents to the consultation have agreed with the proposed practical arrangements to ensure that data for classification is machine readable. Moreover they considered that the majority of the proposed data items is necessary to comply with the mandate.
119. A more critical position was expressed by respondents in connection to the proposed amendment to the technical advice on prospectus approval in order to harmonise the interaction between NCAs and issuers on data submission (please see below under Question 17). Several respondents agreed that the proposal could contribute to provide clarity on data submission, however the majority of stakeholders highlighted that issuers should not be involved in this process. While ESMA has taken note of this latter concern, it reiterates that the amendment does not aim at shifting reporting duties but simply attempts at standardising the data submission processes that NCAs are free to shape at national level under the powers conferred by Article 32 PR.
120. A few respondents also casted doubts on the possibility for ESMA to collect data for the purpose of reporting under Article 47. In response to this comment, ESMA wishes to reiterate that under Article 21 (5) it should receive ‘*an electronic copy of the prospectus and any supplement thereto, as well as the data necessary for its classification by ESMA in the storage mechanism referred to in paragraph 6 and for the report referred to in Article 47*’. (underline added)

121. In addition to responding to the specific questions, a number of respondents have provided general input on various topics touched upon in the Consultation Paper⁵.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
2	2	0	2	0	1	1	1

122. Nine stakeholders provided general comments with reference to the draft RTS on data and machine readability. These were mainly aimed at providing input on topics covered under specific questions and are as such summarised under the appropriate question rather than in the current section.

3.2.2. Data

123. This section summarises the feedback which ESMA received in relation to Questions 14 to 15 of the Consultation Paper on the draft RTS on data and presents ESMA’s response to this feedback.

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

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
9	4	1	7	-	1	3	1

124. 25 stakeholders provided input in response to Question 14. The majority of respondents believed that the submission of data related to the amount raised should not be made mandatory. The reasons that were indicated to motivate this preference are mainly

⁵ Consultation Paper on draft Regulatory Technical Standards under the new Prospectus Regulation ([ESMA31-62-802](#) | 15 December 2017).

based on the argument that, as the amount raised is not known at the time of approval of prospectus but only after the closing of the offer or admission to trading, this piece of data would imply a costly duplication of the submission process. While market participants acknowledged that ESMA would alternatively collect maximum amounts or price ranges that are known at the time of approval of the prospectus, it was argued that the maximum amount is generally not fully used and therefore it might end up being an unreliable source of information for the investors. On a more general note, it was advocated that the ESMA storage mechanism should not be seen as a tool that allows investors to compare securities, but simply as a search tool for prospectuses.

125. An opposite view was held by a few respondents indicating that this information would be of great interest for market participants and other stakeholders, notably in terms of sound market understanding, and it would constitute a valuable input for the analysis included in the ESMA report to be published under PR Article 47. One of these respondents also indicated that such disclosure should not in fact create material additional burden as data on the amount raised is available to the issuers.

Input from the SMSG

126. The SMSG highlighted that any new requirements regarding the collection of data should not result in an increase of administrative burdens and costs for issuers.

ESMA's response

127. ESMA welcomes the feedback received and takes note of the suggestions made by respondents. ESMA is of the view that the data related to the amount raised is an important metric that would increase the statistical value of the data collected. However, ESMA agrees that for the purposes of the new ESMA Register there might be a merit in keeping this field optional so as to avoid a mandatory two-step submission process (i.e. that data would need to be updated at a later stage once the offer price and amount of securities sold is known - where Art 17 of the PR applies - and once the offer is closed) that would impose further adaptation costs to the new system.
128. Furthermore, ESMA acknowledges that under Art 17 PR NCAs might not necessarily be provided with the necessary information on the final amount of securities that have been actually sold. On this basis, information regarding these data items should be filled in only by those NCAs that wish to do so. In the medium term, it might be worth analysing whether such approach has led to a sufficient level of disclosure in this area and the extent to which technological changes could help limit the costs arising from a two-step process as well as its practical feasibility.

Question 15: Do you agree with the data items that have been identified as necessary for the purpose of classification as well as to allow for the compilation of the annual report under Article 47 of the Prospectus Regulation? Would you like to propose any additional items or suggest items that should in your view be deleted? Please explain your reasons.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
9	3	-	6	-	2	3	1

129. 25 stakeholders provided input in response to Question 15. Overall, the majority of respondents agreed with the data items that have been identified by ESMA. However, several of them – mainly issuer associations - pointed out that the collection of data should not impose additional burden to issuers.

130. A minority of the respondents suggested that some of the identified data could be removed from the list of information to be provided to ESMA and could possibly be retrieved by ESMA through other data sources such as FIRDS, i.e. the ESMA Financial Instruments Reference Data System. Some key fields that several respondents suggested for removal are:

- Language;
- Registration country;
- Maturity date;
- Underlying instrument;
- Market identifier of the trading venue (MIC); and
- Volume/price/consideration offered.

131. Some further fields that were suggested as candidates for deletion include approval/filing date, document date, trading venue characteristics, FISN and CFI.

132. At the other end of the spectrum, a few respondents argued that the current list is fine and one added that it should be complemented with other important information helping investors to identify and search for documents, for example the use of certain specific prospectus disclosures. One respondent stressed in particular the point that a wide data

collection would increase market efficiency and enable investors to make an informed investment decision. He also argued that data for the classification of securities issued under the Prospectus Regulation contribute to building a CMU and are not only needed by public authorities but also by private stakeholders and the public. A few stakeholders suggested the inclusion of further fields (such as offer period, subscription period, duration (from/to)) and a more granular classification of others (e.g. type of securities).

Input from the SMSG

133. The SMSG reiterated their response to Question 14.

ESMA's response

134. ESMA welcomes the feedback received and takes note of the suggestions made by respondents. ESMA notes that while the list of data items that have been identified could in principle be reduced, the room for manoeuvre is limited as the great majority of the fields are necessary for the purpose of classification and/or to allow for the compilation of the annual report under Article 47 of the Prospectus Regulation. ESMA also notes that retrieving information through FIRDS can be seen only in a few circumstances as a sound alternative solution as the scope of application of the relevant different pieces of legislation does not fully overlap. However, ESMA notes that the scope of securities that are covered under MIFID II and PR fully overlaps in the case of the MIC code and as such this could be automatically retrieved via the FIRDS database.
135. Coming to the specific fields that appear most controversial, ESMA has explored the possibility to retrieve some of this data via other sources of information. In particular, ESMA is aiming at retrieving information on the 'standardised name' and 'registration country' of the Issuer/Offeror/Guarantor through their LEI by accessing the GLEIF database that includes LEIs and all the associated information for the issuance of these metrics.
136. As for the field 'language', ESMA notes that while not specifically mentioned at Level 1, this is a key variable to monitor market integration as well as the development of CMU. At the same time, filling in this information appears quite straightforward and as such the additional cost imposed seems minimal. ESMA is therefore of the view that this variable should be included in the list of mandatory data provided for under this RTS.
137. A different point should be made with reference to the field 'total consideration offered'. In accordance with Article 17 PR, definite amounts are not always included in the prospectus and on the contrary maximum or ranges are often included. However, as total consideration is one of the mandatory variables that should be included in the annual report provided by PR Article 47, it is necessary to collect this information via the Register. To be sure, it would seem inefficient and disproportionately burdensome if ESMA were to retrieve this information by manually analysing the thousands of prospectuses issued every year in the EU, rather than rely on a decentralised way of collecting this information by means of the Register. Furthermore, while ESMA acknowledges that several practical concerns exist with reference to the two-step

process necessary to populate the field 'total consideration raised' and that as such this can be made a non-mandatory data (see above under Question 14), the same reasoning cannot apply to the amount offered, which is normally known at the time of the prospectus approval.

138. Furthermore, ESMA will make sure that the system can accommodate the filing of a range of values or a maximum amount rather than a single number, when this is not available. Similarly, a specific options (PNDG) will apply to those instances in which an issuer chooses to make use of Article 17 (1) (b) (ii) (on the valuation criteria) rather than Article 17 (1)(b)(i) of the PR (on the maximum price and maximum amount of securities) and therefore these fields would not be available but pending. Finally, ESMA wishes to reiterate that to properly collect the total consideration offered, both the price and the number of securities should separately be collected so as to guarantee data quality on this particularly important variable. However, ESMA acknowledges potential difficulties connected to the filing of this information for certain securities and as such will limit the scope of these two fields to the issuances of equity securities.
139. ESMA believes that the maturity of a security and the information on its underlying are important variables to provide meaningful searching tools as well as to properly analyse capital issuances across European markets. While maturities are especially key to assess the time horizon of debt issuances, the underlying is needed to evaluate the nature of specific securities such as derivative contracts or depository receipts. ESMA observes that the maturity of a security is a straightforward concept and its collection should not pose practical problems, as this information is required to be included in the prospectus. The same applies in principle to underlying instruments or indexes to which a security is linked to. However ESMA acknowledges that, as indicated by some market participants responding to the consultation, in some cases underlyings are composed by baskets of securities and in such cases the compilation of these fields might pose costs that are more sizable. As such, ESMA proposes that in the case of baskets (i.e. two or more underlying securities) there is no requirement to include all the ISINs of the relevant securities included therein and a generic indication of such circumstance would suffice (See Annex VII to the draft RTS).
140. Coming to other fields that were mentioned by one or a few respondents as potential candidates for deletion, ESMA preliminary notes that approval date is an existing field in the current system and that document date will be considered an optional field, as such no additional costs seem to come for these two data items. Coming to the trading venue classification, this information must be collected for the purposes of publishing the information required by PR Article 47 (2) (c), therefore ESMA has included it in the list of Annex VII to the draft RTS.
141. Furthermore, ESMA acknowledges that CFI and the FISN standardised name of the securities could in principle be retrieved through external databases, but their publication by ESMA is prone to some risks in terms of governance and reliability of the process and the legal responsibilities that follow. Nonetheless, ESMA will access such data in order to perform quality checks and improve the information received. Finally, ESMA

notes that the marginal cost for communicating this information is negligible, provided that FISN and CFI codes are provided together with the ISIN of a certain security and they are often incorporated in the prospectus as well.

142. As a more general comment, ESMA wishes to highlight that, as indicated in section 3.2 of the Consultation Paper, the great majority of the data proposed is either already collected through the current Register or it is required directly by PR Article 21 (13) or indirectly by Article 47 of the Prospectus Regulation. As such, the bulk of the additional costs imposed come from the L1 provisions. In response to a few comments questioning the legal basis for the collection of data needed for the drafting of the Annual Report pursuant to PR Article 47, ESMA also highlights that under PR Article 21 (5), second subparagraph, ESMA must be provided with the data necessary both for the classification of prospectuses in the storage mechanism referred to in paragraph 6 of the same Article and for the purpose of drafting the report referred to in PR Article 47.

3.2.3. Machine readability

143. This section summarises the feedback which ESMA received in relation to Questions 16 to 18 and presents ESMA's response to this feedback.

Question 16: Do you agree with the ESMA proposal to maintain the current system in place whereby NCAs submit data to ESMA in XML format as the practical arrangement to ensure that such data is machine readable? Do you agree that, by keeping the data submission system unchanged, adaptation costs are minimised for the market at large?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
7	2	-	4	-	1	3	1

144. 18 stakeholders provided input in response to Question 16. The great majority of respondents indicated that they agree with ESMA's proposal to keep the XML format as the practical arrangement to ensure machine readability of the information sent by NCAs to ESMA, considering that the current system has worked well and allows to minimise adaptation costs for the market at large. Two respondents added that making the data contained in the prospectus machine-readable in the first place could be a solution to be considered for the medium term, as it would allow for efficiency gains and reduction of costs.

Input from the SMSG

145. The SMSG reiterated their response to Question 14.

ESMA's response

146. ESMA welcomes the feedback received and takes note of the suggestions made by respondents. ESMA understands that market participants agree with the practical arrangements to ensure readability that are proposed in the draft RTS. ESMA acknowledges that in the medium term other solutions, including the possibility to ensure machine readability of specific fields directly from the prospectus, could be considered.

147. As for the format used for the submission of prospectuses and other documents that need to be submitted to ESMA in connection to the data for classification, ESMA takes this opportunity to clarify that documents will normally be submitted in pdf format. As an exception to this rule, the submission of RDs/URDs compiled in inline-XBRL format will be also accepted by the IT system.

Question 17: Do you agree that the proposed amendment to the technical advice on prospectus approval could contribute to provide clarity on the way data referred to in Annex VII are collected by NCAs?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
9	2	-	5	-	1	3	1

148. 20 stakeholders provided input in response to Question 17. Overall, while several respondents agreed that the proposed amendment to the technical advice on prospectus approval could contribute to provide clarity on data submission, the majority of stakeholders highlighted that issuers should not be involved in this process, which should be entirely managed by the NCAs. Some respondents provided input that in a few cases it would be possible to retrieve information through other reporting frameworks, such as FIRDS (see above under Question 15).

149. Several respondents recognised, however, that NCAs may need to require some information that would not be public at the time of the approval and as such some form of cooperation with issuers may be needed. A different point was made by one respondent suggesting that the proposed amendment should clarify that a request under Article C (2a) should only take place if the NCA has no other legal basis for such data collection at national level.

150. A few respondents indicated that should ESMA decide that data be submitted by issuers anyway this should be done in text format rather than in XML. Moreover, they invited ESMA to provide guidance on how issuers should submit data to the relevant NCA. Finally, some respondents from the banking industry indicated that the production of final terms is often automated. Therefore, they remarked that should banks be required to collect and transmit the requested data, this would generate costly IT changes.

Input from the SMSG

151. The SMSG reiterated their response to Question 14.

ESMA's response

152. ESMA welcomes the feedback received and takes note of the suggestions made by respondents. In connection to the above points raised by respondents, ESMA firstly notes that several NCAs already require issuers to submit some or all of the data for classification that are needed to feed the Prospectus Register, based on their powers under Article 21(3)(b) of the PD⁶. Furthermore, as mentioned in the CP, based on Article 32(1)(b) of the Prospectus Regulation, ESMA is of the view that NCAs continue to have the power to require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them to provide information (including data).
153. In ESMA's understanding, cooperation on data collection between NCAs and issuers varies across countries depending on specific circumstances and is most frequent in those jurisdictions where the number of documents submitted to NCAs is particularly high. Issuers are generally required to take a broader role where NCAs could not be expected to have sufficient resources to collect this data by themselves, mainly due to the sheer volume of prospectus documents filed with them, especially final terms.
154. As regards the issue of whether the proposed amendment to the technical advice on prospectus approval could contribute to provide clarity on the way data referred to in Annex VII of the proposed RTS are collected by NCAs, ESMA takes note of the comments received by market participants, in particular with regard to the appeal to minimise administrative burdens. ESMA observes that while NCAs review and approve prospectuses and as such they are aware of the information therein, the same does not apply to final terms. On the contrary, NCAs simply receive final terms and do not necessarily review their content. Especially in jurisdictions where the volume of final terms is particularly high, for NCAs to deal with their classification might be disproportionate and excessively burdensome.

⁶ As indicated in the CP, ESMA reiterates that in several Member States national laws provide for a legal basis for NCAs to require issuers to participate in the compilation of data and accordingly several NCAs currently collect from issuers the data necessary for the classification of the prospectuses that are submitted to them.

155. As a general comment, ESMA also notes that issuers are the owner of prospectus information and as such they are in most cases inevitably the immediate source for its attributes. For example, certain data items, such as the FISN code, are sometimes not included in the prospectus while they are available to the issuers. ESMA also observes that final terms are generally issued by big corporates and their production is highly automatized. While ESMA acknowledges that any changes to existing IT systems create relevant costs, these tend to be mainly one-off and with limited correlation to the number of data fields that need to be communicated.
156. ESMA is finally of the view that it is key to ensure that the overall data collection process is efficient and costs are minimised at an aggregated level, especially considering that many NCAs are financed by the supervised entities. As such, ESMA understands that different arrangements in terms of how NCAs and issuers cooperate on data collection might be found at national level in order to reach the most efficient outcomes for the market as a whole. To clarify this point, ESMA has inserted some further wording in the proposed amendment to the technical advice, indicating that NCAs are free set the right scope of data requests taking into account the data which are available to them (cf. Annex VI).
157. On a more specific issue raised by a few stakeholders, ESMA stresses that for the data transmission system to function efficiently and effectively, a simple but standardised IT format such as XML should be consistently used by all parties involved. As this standard is already used in the current Prospectus Register and it has functioned well, ESMA does not believe this approach should be changed. Moreover, ESMA will in the implementation phase ensure that ISO 20022 standardisation is applied to the widest extent possible. ESMA believes that this can ensure increased efficiency and reliability of the data submission process.
158. On the basis of the above reasoning, ESMA considers that the proposed amendment to Article C(2a) of the technical advice should be maintained. This is presented in Annex VI.

Question 18: Do you have suggestions in relation to how the efficiency, accuracy and timeliness of the data compilation and submission process can be further improved? In your experience, is there any specific reporting format or standard that you would deem most appropriate in this context?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others ⁶
9	2	-	5	-	1	3	1

159. 21 stakeholders provided input in response to Question 18. One group of respondents, mainly representing issuers, highlighted under this question that requiring issuers to provide additional data would increase administrative costs without tangible benefits for them. These respondents remarked that the data collection task would be best carried out by NCAs. They also noted that prospectuses are currently published on a number of different websites (NCA, OAM, stock exchange, the issuer), all which normally provide search functions.
160. Another set of respondents, mainly from the banking industry, made the point that a procedural improvement could be achieved in the context of multi-issuances by allowing issuers to provide one single data list for all securities included in one set of final terms rather than multiple data lists, one per security contained in the final terms as identified by its ISIN. They also suggested that approved RDs/URDs should be submitted to ESMA after approval and published in the Prospectus Register, thereby avoiding multiple submissions of the same document.
161. A few respondents from the stock exchange industry added that newly established databases such as FIRDS already allow investors to obtain information on securities admitted to trading on EU markets (see ESMA's response above under Question 15). Finally, one respondent reiterated that some data is not available at the date of approval of prospectus, therefore the submission should be postponed to the time of the offer (see ESMA's response above under Question 14).

Input from the SMSG

162. The SMSG reiterated their response to Question 14.

ESMA's response

163. ESMA welcomes the feedback received and takes note of the suggestions made by respondents. ESMA notes that several key aspects regarding the prospectus register

have been set at Level 1. As such, some of the suggestions made by respondents under this question would not necessarily be compatible with the legislative framework. This seems particularly the case for comments questioning the need for a Prospectus Register that operates as a centralised hub for information connected to all securities' issuances in Europe, which is explained in PR Recital 63, and the timing of data submission, which is provided for under PR Article 21 (5).

164. In relation to the suggestion to also require the upload of stand-alone RDs/URDs to the system, ESMA notes that stand-alone RDs and URDs are not necessarily associated with any offer that is currently in place. While ESMA acknowledges that the Level 1 provisions do not necessarily address this point and from a market perspective it is seen as preferable that RDs and URDs are submitted to ESMA in the first place, in line with what indicated in the CP it reiterates that the submission process would be more efficient if NCAs were not obliged to submit RDs and URDs approved or published as standalone documents to ESMA. Instead, RDs and URDs and the accompanying data could be submitted to ESMA at the time of approval of the related securities note and summary. The only exception to this rule would be a situation in which an RD or URD is approved and subsequently passported as a standalone document under Article 26 of the Prospectus Regulation; in this situation, the RD/URD would need to be submitted to ESMA.
165. Coming to the possibility to provide one single data list for all securities included in one set of final terms rather than per security (ISIN) contained in the final terms, ESMA agrees that this would in certain cases allow to avoid duplications, despite it can also make the process more complex. Nevertheless ESMA wishes to flag that, as the data collection system will be automatized, whether the information is provided through a list of multiple ISINs or per single ISIN does not seem to materially impact on the costs borne by the issuers submitting the data. As such, ESMA would like to confirm that data for classification should be provided per each single security/ISIN and has reflected this in the applicable data items included in Annex VII to the draft RTS.
166. The wording of the draft RTS which ESMA proposes in relation to machine readable data is set out in Annex V.

4. Draft RTS on advertisements

4.1. Introduction

167. Article 22(9) of the Prospectus Regulation requires ESMA to develop RTS to specify the provisions concerning the dissemination of advertisements and establish procedures on the cooperation between the competent authorities of the home Member State and of the Member State where the advertisements are disseminated.
168. ESMA delivered draft RTS in 2015 in relation to a similar mandate set out in the Omnibus II Directive. The draft RTS focused on the provisions relating to the dissemination of advertisements and on the consistency between advertisements in oral and/ or written and the information in the prospectus. The provisions are set out in Recitals 8 and 9 as well as Articles 11 and 12 of the Commission Delegated Regulation (EU) 2016/301.
169. When drawing up the new RTS provisions for advertisements, save for some minor adjustments, ESMA carried over the text from the two articles of Commission Delegated Regulation (EU) 2016/301, namely Articles 11 and 12. In terms of new content, ESMA has drawn up an RTS in respect of the procedure for cooperation between competent authorities, as envisaged by Article 22(6) of the Prospectus Regulation, and also an RTS on the specification of provisions in Article 22(2) to 22(4) of the Prospectus Regulation.

4.2. Summary of feedback and amendments to the draft RTS on advertisements

170. This section summarises the feedback which ESMA received in relation to Questions 19 to 23 of the Consultation Paper on the draft RTS on advertisements and presents ESMA's response to this feedback.

4.2.1. General remarks

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
-	2	-	-	-	1	1	-

171. ESMA received general remarks from four respondents in relation to advertisements.
172. Overall respondents provided similar remarks which related to the definition of advertisements at Level 1. In particular, one respondent provided a detailed illustration

of what, in their view, should and should not be construed as an advertisement, by reference to the two requirements of Article 2 (k) of the Prospectus Regulation for qualification as an advertisement. This respondent focused on pre-deal research distributed in connection with exempt offers to investment professionals, prior to launch of an IPO (“pre-deal research”) which they argued should not be considered an advertisement on the basis that it does not relate to a specific offer or admission and that equally it does not aim to specifically promote the subscription or acquisition of securities. Inversely, this same respondent considered that marketing documents, slides or materials relating to a specific offer or admission distributed after the book-building for a deal and before a prospectus is approved, would in principle fall under the scope of the new definition. This same respondent sought clarification with respect to the format and length restrictions applicable to advertisements and whether these applied in the context of pathfinder prospectuses. They furthermore sought more clarity regarding the scope of advertisement provisions relating to exempt public offers.

173. Another respondent recommended restricting some of the draft RTS requirements to written advertisements, particularly due to practical implications in the case of oral advertisements. Additionally, this same respondent expressed concerns in relation to the new approach set out in the Prospectus Regulation providing host competent authorities with an empowerment to exercise control over the compliance of advertising activity in their jurisdiction. However, this respondent continued by noting that this is a Level 1 feature and cannot be changed at Level 2.
174. Lastly, one respondent suggested that the provision carried forward from Delegated Regulation 2016/301, into Article 13 of the draft RTS, requiring the issuer to disseminate an amended advertisement following the production of a supplement was overly burdensome for issuers. This respondent believed that this requirement should not be maintained and argued that the current approach of requiring an amended advertisement following the production of a supplement is not pragmatic considering the timeframes for the preparation of a supplement. They suggested that Article 13 should be amended in order to specify that where a supplement is produced, it should be accessible to investors on the issuer’s website.

ESMA’s response

175. As a general response to concerns raised related to the definition of advertisements and the exercise of control of host competent authorities of advertising activity, ESMA highlights that these are matters outside of its remit. However, in terms of one point raised in paragraph 172, ESMA will clarify in the draft RTS in which circumstances the requirements apply to written advertisements by insertion of the word ‘written’ where necessary.
176. Noting the submissions of one respondent, in relation to pre-deal research distributed in connection with exempt offers to investment professionals, ESMA highlights that under PR Article 22(1) exempt offers are outside the scope of paragraphs 2 to 4 and point (b) paragraph 5 of PR Article 22. ESMA therefore considers that exempt offers are not

covered by the draft RTS, as specified in paragraph 124 of the Consultation Paper. On a general note, ESMA believes that the test determining whether or not a communication constitutes an advertisement is two-pronged, and requires satisfaction of both characteristics outlined in Article 2(k) of the Prospectus Regulation. As for the confirmations requested by this same respondent, ESMA confirms that the format and length restrictions on advertisements outlined in Article 12(4) of the draft RTS do not apply to pathfinder prospectus advertisements and relate only to advertisements concerning retail investors, which is in line with the text contained in paragraph 141 of the Consultation Paper. Further, ESMA confirms that the scope of the advertisement requirements do not apply to exempt offers.

177. ESMA appreciates the concerns raised by one respondent in relation to the dissemination of amended advertisements following the publication of a supplement to the prospectus. However, ESMA considers that this is a practice known to the market and is in the interest of investor protection. Therefore, ESMA does not see merit in amending this requirement which has been carried over from the existing Delegated Regulation 2016/301 into Article 13 of the draft RTS. Furthermore, under existing Level 1 provisions, information contained in an advertisement should be consistent with the information contained in a prospectus. Therefore, in ESMA’s view, a factually incorrect advertisement, rendered such by virtue of the production of a supplement to a prospectus, should be revised on such grounds.

4.2.2. Responses to specific questions

Question 19: Do you consider that an advertisement should contain at least a hyperlink to the website where it is published and where available and technically feasible additional information that would facilitate tracing the prospectus? Please provide examples of the additional information that you think would be helpful to include in the advertisement.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	4	1	6	-	2	1	2

178. ESMA received 22 responses to Question 19.

179. With the exception of oral advertisements, there was consensus regarding inclusion of a hyperlink to the website upon which the prospectus was/will be published. In relation to situations where a prospectus has not yet been published, a number of respondents

suggested inclusion of a hyperlink to the specific page upon which the prospectus is to be published; however, one respondent pointed out that advertisements should only contain a hyperlink once the prospectus has been published to avoid technical/operational issues. This respondent cited the case on an IPO, arguing that at the time of the advertisement it may not be known where the publication of the prospectus will take place. Following that, a number of respondents suggested that where the prospectus has not yet been published, the requirement for a link to a specific page can be overcome by virtue of a link to a general webpage upon which the prospectus will be published. In circumstances where a prospectus has been published, respondents were largely in agreement about the inclusion of a hyperlink to the specific page upon which the prospectus is to be published. Furthermore, a small number of respondents pointed out that the inclusion of a hyperlink should extend to where the final terms, linked to base prospectuses, are to be published.

180. Lastly, another respondent suggested that issuers should be allowed flexibility to provide a general link to the prospectus or page of the website where the prospectus is published or will be published. This respondent argued that issuers of non-equity securities, who typically publish their prospectuses on the website of a regulated market are unlikely to have control over the direct link to the prospectus, and also stated that it would not be significantly more burdensome for investors to find the prospectus than if a hyperlink to a specific webpage is given.
181. As regards the inclusion in advertisements of additional information that would facilitate tracing the prospectus, there were few suggestions regarding what said information should consist of. Overall, most respondents saw little value in requiring additional information for the purpose of tracing a prospectus. However, one respondent stated that in a situation where an advertisement does not contain a hyperlink to the prospectus, it may be advantageous for an investor for such additional information to be included. Another respondent felt that as much information as possible should be included, such as: hyperlinks; LEIs; ISINs; title of the prospectus; issue amount and approval or publication date. Moreover two respondents, elaborating on paragraphs 135 and 136 of the Consultation Paper, expressed a view that it may not be possible to add all this additional information in the advertisement. They suggested that ESMA should consider whether the additional information is adequate and proportionate to the format of the advertisement, with an explicit request that ESMA include wording in Article 12(1) of the RTS making reference to 'adequate and proportionate'.
182. Two respondents provided detailed comments in relation to the definition of advertisement illustrating examples of situations which could potentially fall within said definition. One of these respondents referred, as an example, to a situation whereby a retail investor has a conversation with a broker. In this respondent's outlook some parts of that conversation between the retail investor and the broker may constitute an 'advertisement' in view of the wide definition and interpretation. Accordingly, this respondent felt that the term 'communication' in the Prospectus Regulation should be interpreted to mean a communication that is of general import or is widely disseminated and not bilateral communication, and that paragraph 131 detailing ESMA's

understanding of the definition of advertisements should not incorporate bespoke or specific bilateral communication and should be limited only to the examples provided, at paragraph 131, which relate exclusively to widely disseminated advertisements. The second of the two respondents mirrored the former's sentiments and further suggested that interpretation going beyond widely disseminated or public communication appears contrary to the spirit and principle of the advertisements regime and would create significant burdens and complexity for market participants.

Input from the SMSG

183. The SMSG agreed that advertisements, other than those communicated orally, should contain a hyperlink to the specific page of the website where the prospectus was published or will be published

ESMA's response

184. As regards hyperlinks in advertisements, ESMA considers their inclusion necessary and welcomes respondents' agreement regarding their use for the purpose of indicating where the prospectus was/will be published. In response to the stakeholder who suggested that advertisements should only contain a hyperlink once the prospectus has been published and that it may not be known prior to publication where the prospectus will be published, ESMA believes that in the interest of investor protection a hyperlink to a general webpage should at least be provided. The timing of the advertisement i.e. prior or post publication of the prospectus, was considered an important factor in determining whether the hyperlink should be to a specific or general webpage. In order to address this practical concern, ESMA will revise Article 12(1) sub-paragraph (b) to reflect this distinction of circumstances. In relation to the point concerning final terms, ESMA sees merit in requiring a specific link to where final terms can be accessed. Finally, for the purpose of clarity, ESMA does not consider the requirement to produce a hyperlink necessary for oral advertisements, in any circumstance.
185. In the event that there is no hyperlink, ESMA believes that the advertisement should contain information to identify the prospectus and offer of securities or admission to trading on a regulated market. ESMA takes note of the suggestion to include a reference to 'adequate and proportionate' in Article 12(1). While ESMA appreciates the reasoning behind the aforementioned proposal, ESMA clarifies that the requirements set out in Article 12 of the draft RTS do not mandate the inclusion of additional information. As explained in paragraph 136 of the Consultation Paper, ESMA is aware that mandating the inclusion of additional information such as ISIN, LEI etc. may not be practical nor in the interest of investor protection. ESMA therefore sees no merit in revising the draft RTS to include the suggested wording.
186. As regards the definition of advertisements, ESMA reiterates that the definition of the term 'communication' is set at Level 1. ESMA points out that the interpretation of this definition does not fall within its mandate. In relation to the examples covered in paragraph 131 of the Consultation Paper, these were merely provided in order to

illustrate some situations that could potentially be deemed as advertisements, subject to the Level 1 test.

Question 20: Do you consider that the definition for complex securities set out in para 140 provides clarity to issuers and would be helpful in deciding when the comprehension alert referred to in Article 8(3)(b) of the PRIIPs Regulation should be included in an advertisement?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	3	1	6	-	1	1	2

187. ESMA received 20 responses to Question 20.
188. Responses to this question were mixed. A number of respondents expressed no comment and the remainder were mostly against the proposed definition of complex securities, with dissenting views based primarily on the same theme and supporting views being unequivocal as to their support in favour of ESMA's proposal in paragraph 140.
189. Those respondents who expressed disapproval of ESMA's proposal, all advised against the combined use of MiFID text pertaining to complex securities with that of the PRIIPS Regulation i.e. using MiFID criteria in order to include a warning in an advertisement premised on the PRIIPS comprehension warning. Certain respondents highlighted that Recital 18 of the PRIIPS Regulation contains the criteria to determine when an instrument should be qualified as a 'complex security' and therefore the definition under MiFID should not be used to determine what type of securities fall under the scope of PRIIPS. As for the MiFID text itself, certain respondents pointed out that MiFID is silent on the definition of 'complex securities' and that instead of providing a definition of complex securities, the text provides a negative statement outlining what is not complex rather than an explicit reference to what is complex. In light of this, one respondent proposed redrafting the current requirement as follows: '*...and where the security does not fall within the scope of the exemption provided in Article 25(4)(a), points (i), (ii) and (v) [...]*'.
190. One respondent pointed out the requirement was merely a refinement of the PRIIPs Delegated Regulation 2017/653 and was therefore in agreement with the proposed draft of Article 12(2)(c). This respondent, however, qualified its support on the basis that Article 12(2) should be amended to reflect that only written advertisements should be

captured by the proposal. This same respondent sought clarity regarding the application of the proposal and whether a comprehension alert was required where:

- The summary includes or will include a PRIIPs KID (and therefore a comprehension alert);
- Where the product is complex under MiFID II; and
- Where the summary includes, or will include, a PRIIPs KID and the product is complex under MiFID II.

191. Lastly, another respondent raised a point concerning national rules pertaining to complex securities. This respondent felt that the inclusion of a comprehension alert, when a product is considered as complex for the purposes of MiFID criteria, would not be helpful. The basis for this respondent's comments was that banks in certain jurisdictions have to comply with national policies surrounding complex securities when distributing these products and that there may be some overlap between ESMA's proposal and the jurisdiction to which this respondent referred.

ESMA's response

192. ESMA notes the points raised concerning Recital 18 of the PRIIPS Regulation, the matter of cross-over and using MiFID criteria for the purpose of providing a comprehension alert in advertisements and also the matter of silence in MiFID as to the definition of 'complex security'. However, ESMA wishes to highlight that Commission Delegated Regulation (EU) 2017/653, which supplements the PRIIPS Level 1 text, already contains a requirement which requests the use of comprehension alerts where similar MiFID criteria are not fulfilled (see Article 1 subparagraph 2(b) of Commission Delegated Regulation (EU) 2017/653). For the purpose of consistency between different pieces of EU legislation, ESMA wishes to maintain this proposal. Additionally, as pointed out by one respondent, the RTS proposal is merely a refinement of Delegated Regulation (EU) 2017/653.

193. In response to the stakeholder who requested clarification as regards the situations that would require the inclusion of the comprehension alert in an advertisement, ESMA considers that the requirement applies where the security is deemed complex under MiFID i.e. where it does not fulfil the requirements laid down in points (i), (ii) and (vi) of Article 25(4)(a) and where the comprehension alert is or will be included in the summary under Article 7, paragraph 5, point f of second subparagraph of Prospectus Regulation, regardless of the fact that part of the summary is substituted by part of the PRIIPs KID. The comprehension alert required is described in Article 8(3) of Regulation (EU) No 1286/2014 (i.e. the statement contained therein).

194. ESMA acknowledges the point raised in relation to a conflict between national rules related to complex securities and the requirements of the RTS. However, where such a conflict exists, this matter should be addressed by the national legislator. Where advertisements are produced for the purpose of a prospectus prepared in accordance

with the Prospectus Regulation, any overlapping national rules related to risk warnings for complex securities must be consistent with the EU legal framework.

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

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	4	-	5	-	1	1	2

195. ESMA received 19 responses to Question 21.
196. Of the 19 responses received, nine respondents were satisfied with the proposed content of Article 12 of the RTS. However, a number of respondents reiterated concerns previously raised under Questions 19 and 20 and made further points related to Question 22 with regard to the inclusion of warnings.
197. Two respondents called for clarification in relation to Article 12(1)(b) to the extent that the language should state: ‘where disseminated by ‘written’ electronic means”. This reference to ‘written’ was felt necessary on the basis that oral advertisements do not form part of this requirement. Further, a similar request to insert a reference to ‘written’ in the context of 12(1)(c) was raised on the basis of the content of paragraph 136 of the Consultation Paper, which one respondent felt was the message being conveyed in said paragraph. On the same theme, this same respondent suggested to clarify that the requirements in Articles 12(2) should apply where the advertisement is written (on the basis of the impracticality of the application of such a requirement in the context of oral advertisements). Further, in relation to 12(3) one respondent suggested to remove the reference to oral advertisements altogether via deletion of the second sentence, and called for the insertion of the word ‘written’ in the first sentence. Another suggestion, in relation to 12(3), was that the requirement should not be limited to the word ‘Advertisement’ in a communication viewed as an advertisement. This respondent stated that the insertion of any other equivalent wording required in accordance with local regulation should be permitted.
198. A number of respondents raised a comment in respect of Article 13 of the RTS in response to Question 21. The points raised concerned potential issues arising in relation to dissemination of amended advertisements following the publication of a supplement to the prospectus. Firstly, it was pointed out that due to the scope of the interpretation of what constitutes an advertisement, such an amendment would be difficult to apply in

practice regarding certain types of advertisements. Secondly, another point raised was that inclusion of the word 'materially' should also be considered in relation to Article 13(1) and that it should be included at the end of said Article, reading as follows: '[...] render the contents of the previously disseminated advertisement 'materially' inaccurate or misleading'. This suggestion was provided on the premise that such an amended advertisement should only be prepared on the basis that the new factor, material mistake or inaccuracy, outlined in the supplement, has rendered the advertisement 'materially inaccurate or misleading'.

199. Two respondents made reference to roadshow presentations with regard to the requirements of Article 13(3) of the RTS. Both respondents provided a similar request for retention of the position confirmed by ESMA's Q&A 99, which confirms there is no need to reschedule the roadshow presentation, if there is a requirement to disseminate an amended advertisement through the same means as the original advertisement.
200. In relation to Article 12(2) one respondent felt there was no added-value for investors, in terms of protection, by requiring the factual repetition of warnings which already form part of the prospectus. Another respondent provided a further comment in relation to Article 12(2) which touches again upon the theme of interpretation of advertisements, highlighting that some of the information required under this provision may not be suitable for all types of advertisements; accordingly, this respondent felt that it is important to explain that the warning would have to be adequate and proportionate to the format and type of advertisement.
201. One respondent called for a deletion of Article 12(4) on the basis that this respondent felt the language in Article 22(3) of the Prospectus Regulation already catered for this requirement: 'Advertisements shall be clearly recognisable as such'. In relation to Article 12.4 there was a further call to specify that constraints on format and length of advertisements should not apply to marketing materials.
202. One respondent also provided a general comment stating that it was not clear how the advertisement provisions will apply to a securities note that might be circulated without the relevant registration document or URD and *vice versa*. This respondent stated that from the definition of advertisement, there is a risk that there are scenarios in which those documents might be interpreted to be advertisements. If production of these documents meant that compliance with the RTS requirements would be necessary, this respondent felt it would be confusing for investors. However, the respondent assumed that where documents are component parts of a prospectus and are subject to the prospectus requirements, they would not be subject to the advertisements regime and would not need to comply with the draft RTS.

ESMA's response

203. In relation to the responses calling for the inclusion of a reference to 'written electronic means', in Article 12(1) sub-paragraph (b), ESMA acknowledges the arguments provided by respondents and will amend the RTS in order to avoid imposing the requirement on communications that are made electronically but are nevertheless oral,

such as Skype calls. As regards Article 12(1) sub-paragraph (c) and ESMA's intention in paragraph 136 of the Consultation Paper, this was indeed ESMA's intention and in order to address this point, ESMA will revise the RTS to include this wording in Article 12(1)(c). In relation to the point raised concerning the inclusion of other equivalent wording to the word 'Advertisement', ESMA wishes to reiterate the position outlined in the final paragraph of the ESMA response to question 20. ESMA expects that the word 'Advertisement' will be included in compliance with Article 12(3) and any other wording included subsequent to the fulfilment of this EU requirement may only be produced to the extent that it is consistent with the applicable EU legal framework. Any inconsistency should be addressed at national level.

204. On the points raised concerning Article 13 of the draft RTS, ESMA wishes to reiterate that the interpretation of the Level 1 text, regarding what constitutes an advertisement, is outside ESMA's remit and at all times it should be noted that the relevant test is set out therein. As regards the request to include the word 'materially' in Article 13(1), ESMA will include this language to highlight that an amended advertisement is only required where a supplement renders the initial advertisement's content materially inaccurate.
205. As for the points raised concerning roadshow presentations, with regard to the requirements of Article 13(3) of the draft RTS, ESMA takes note of the suggestion to carry forward the position reflected in existing Q&A 99. ESMA clarifies that it intends to undertake a revision of Level 3 guidance (including Q&As) to ensure that they are in line with the new prospectus regime.
206. ESMA notes some of the criticisms regarding Article 12(2). However, despite the suggestion that such warnings do not provide any added-value for investors in relation to investor protection, ESMA believes that risk warnings in advertisements constitute an important part of the principle of investor protection and will not remove the requirement to provide such warnings in advertisements. Further, current market practice often involves production of warnings in prospectuses themselves, therefore ESMA disagrees with the suggestion that this practice is not of added-value for investors and wishes to highlight that their inclusion in advertisements is more suitable due to their prominence. In terms of the size of the warnings produced in advertisements, ESMA does not anticipate that the risk warning requirements should lead to advertisements which are disproportionate to the format and type of the advertisement. Given the scope of the definition of advertisements if, for example, a tweet satisfied the Level 1 test, ESMA understands that issuers may circumvent the character restrictions for tweets used to advertise an offer, by using an image containing the risk warnings to retail investors.
207. In relation to the call from one respondent to delete the requirement of Article 12(4) of the draft RTS, this requirement has been specifically included in the context of retail advertisements in order to ensure a sufficient level of transparency and investor protection for such class of investor. ESMA will not delete this requirement.
208. Finally, in response to the general comment seeking clarification, in paragraph 201, on the application of the RTS provisions with regard to a securities note that might be

circulated without the relevant registration documents or the URD (or vice versa) ESMA highlights that the advertisement provisions are engaged once there is any communication which relates specifically to the offer of securities to the public or to an admission to trading on a regulated market aiming to specifically promote the potential subscription or acquisition of securities. This response is entirely based on the Level 1 requirement and ESMA understands that the advertisement provisions are only relevant in circumstances where the communication comprises all of the elements of the Level 1 test. Consequently, ESMA does not believe that advertisement provisions will apply to the registration document, URD or securities note in isolation.

Question 22: In particular, do you agree with the requirement to include warnings in advertisements? Do you consider that the suggested warnings are fit for purpose in terms of investor protection?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	4	1	6	-	2	-	3

209. ESMA received 22 responses to Question 22.

210. Overall 12 views expressed by respondents, in relation to Question 22, were supportive of the ESMA proposal. However, those who expressed dissenting views made a number of points which were critical of the proposal.

211. Firstly, the matter of ensuring that the requirements relating to warnings should only apply to written warnings was re-raised. A number of respondents queried the necessity for including such warnings within advertisements, on the basis that the prospectus itself shall contain such citing, in particular, the use of warnings contained in the summary of a prospectus. Further, the majority of dissenting opinions suggested that inclusion of such lengthy warnings may unnecessarily obscure advertisements and lead to the production of overly lengthy advertisements. Expanding on the latter, a number of respondents made a reference to Commission Delegated Regulation (EU) 2016/958, which supplements Regulation (EU) 596/2014, and Article 3(2) of that Delegated Regulation which indicates that where disclosure of conflicts of interest information is disproportionate in relation to the length or form of an investment recommendation, the producer of the recommendation should state (in the advertisement) where the required information can be directly and easily accessed by recipients – the prompt being that a similar cross-reference approach should be endorsed in the context of warnings pertaining to advertisements. Another, expanding on the matter of format and length,

suggested that some room should be granted to issuers to comply with this requirement and that they can adapt the warnings in light of the risk of the advertisement being too excessive in size.

212. Additionally, one respondent who disagreed with warnings being included in advertisements passed two remarks that encapsulated both previous points raised by other respondents in stating that a simple reference, that the document constitutes an advertisement, as per Article 12(3), should be sufficient; and that at most, the proposed warning in Article 12(2)(b) is all that needs to be included in advertisements since it provides a reference to the prospectus containing all necessary information for investors (especially all risk factors). This aforementioned response underlined both the calls raised by other dissenting parties to refer to the prospectus as the key document from the perspective of warnings, in addition to the matter of condensing the length of advertisements raised by same. Moreover, one respondent remarked that inclusion of warnings may effectively prevent the use of other modern means of communication such as SMS, app, emails or tweets which may not allow for a large number of characters. On the same topic, another stakeholder mentioned that should the requirement to include warning apply this may mean that certain types of potential advertisement (e.g. webpage banners) may not be feasible.
213. As part of further calls to ESMA to keep the Level 2 requirements as simple as possible and to avoid potential confusion in the context of warnings, many of the dissenting respondents outlined that the product governance requirements of Article 9 of the Commission Delegated Directive (EU) 2017/593 are intended to ensure that investors will be sufficiently protected as a general matter. Additionally, a number of references were made to the requirements of MiFID II Article 24(3) and the Delegated Regulation (EU) 2017/565 Article 44, stating that neither foresee that advertisements have to contain special warnings (only that the additional information addressed is fair, clear and not misleading).
214. Two respondents suggested that the requirements should be linked to advertisements relating to non-exempt offers on the basis that the term 'retail investor', as it is used by ESMA, is generally not used in the operative provisions of the Prospectus Regulation. A further respondent suggested that warnings should be strictly limited to advertisements disseminated to retail investor.

Input from the SMSG

215. The SMSG suggested that in written advertisements relating to securities aimed for retail investors, issuers should include a statement recommending such category of investors to seek prior advice from licensed financial intermediaries for the purposes of assessing suitability in accordance with their requirements and portfolio diversification.

ESMA's response

216. As for the matter concerning the conflict between written and oral advertisements, ESMA shall amend the draft RTS at Article 12(2) in order to reflect the requirements related to advertisements produced in each circumstance.
217. ESMA notes the SMSG's suggestion to add an additional requirement under Article 12(2). However, on the basis that the risk warning section requires sufficient detail in terms of achieving the goal of investor protection, ESMA does not believe this additional requirement is necessary.
218. In relation to the concerns of a number of respondents who queried the necessity for including risk warnings within advertisements, ESMA's position is that this provision is in the interest of investor protection. ESMA notes that this particular category of investor is treated distinctly and consequently so too are the requirements pertaining to purchases of securities by retail investors. ESMA does not agree with the arguments raised by respondents suggesting that use of warnings within the prospectus itself should serve as a basis for removing the requirements proposed in the draft RTS related to risk warnings. ESMA's approach is that investor protection begins with the advertisements.
219. As for the arguments related to the length of advertisements, ESMA does not believe that the requirements outlined in Article 12(2) will lead to disproportionately long advertisements, particularly in view of the requirements in Article 12(4) which explicitly outline that the format and length of the advertisements circulated to retail investors should not be drawn up to the extent that they can be misinterpreted as a prospectus. ESMA acknowledges the suggestions regarding a cross-reference approach similar to that used for conflicts of interests' information in the context of MAR, however, the example provided relates to one specific matter and the risk factor warning requirements in the draft RTS are more broadly linked to the notion of risk connected to investment as a whole. Therefore, on the basis of retail investor protection, ESMA wishes to pursue the inclusion of the requirements on risk warnings in advertisements.
220. ESMA notes the responses provided which refer to product governance requirements under Article 9 of the Commission Delegated Directive (EU) 2017/593 which are intended to ensure that investors will be sufficiently protected as a general matter and furthermore is aware of both Article 24(3) of MiFID and Article 44 of the Delegated Regulation (EU) 2017/565. However, whereas each of the aforementioned provisions do refer to marketing of securities, target markets for securities and general risk concerns linked to securities as a whole, the requirements of the draft RTS in Article 12(2) are specifically related to the prospectus. Consequently, ESMA wishes to maintain this Article of the draft RTS as drafted.
221. In relation to the responses suggesting that the requirements should be linked to advertisements concerning non-exempt offers and advertisements concerning retail investors only, ESMA confirms that this is the case.

Question 23: Would the issuer, offeror or person asking for admission to trading incur costs if the aforementioned provisions are adopted? If so, please specify the nature of such costs, including whether they are one-off or ongoing and, quantify them.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
5	4	-	5	-	1	1	1

222. ESMA received 17 responses to Question 23.

223. Most respondents were of the belief that no significant new costs were envisaged by the proposals. However, a number of respondents did raise concerns pertaining to costs which emanate from points raised in relation to Questions 19 to 22.

224. None of the respondents could quantify the costs envisaged, but in terms of points raised one of the key matters concerned the definition of advertisements. Widening the definition of advertisements to verbal communications was seen as a step which could lead to an increase in costs. In relation to this, one respondent made an argument in relation to compliance and staff training costs on an ongoing basis which issuers and financial intermediaries could be subjected to.

225. The requirement to amend advertisements following the production of a supplement, regardless of whether it renders the advertisement pre-dating the supplement materially inaccurate, or not, was seen as potentially creating an unnecessary cost. One respondent, as suggested in Question 21, recommended inclusion of the word 'materially' within Article 13(1), before the word 'accurate or misleading' in order to circumvent this.

226. In addition to not understanding how this would work in practice, one respondent remarked that fragmentation of control over advertising, by different NCAs, was also a potential area for an increase in costs. In relation to Article 15 of the RTS, two respondents explained their wish that NCAs should bear the costs of any translations required pursuant to Article 15, in order to avoid further costs being borne by issuers.

227. One respondent also argued that the proposals could contribute to costs for retail investors on the basis that requirements relating to advertisements disseminated to retail investors could be viewed as a further disincentive to issuances of bonds directly to retail investors. This respondent argued that a potential decline in the availability of bonds that can be bought directly by retail investors would increase on the basis that such investors

would have to access these products via funds and be subject to any associated costs of purchasing via funds thereof.

ESMA's response

228. ESMA notes that none of the respondents provided a quantitative indication of costs envisaged in response to the Consultation Paper, despite there being some concerns raised. In relation to the matter concerning verbal communications, as mentioned in ESMA responses throughout this section on advertisements, this is a matter linked to Level 1 and is outside ESMA's remit.
229. As for the matter concerning amendment of advertisements following the production of a supplement, ESMA will update the draft RTS and Article 13(1) to contain such a reference to 'materially', as per the response under Question 21.
230. In relation to the fragmentation of control over advertising by different NCAs and the point raised concerning costs of any translations pursuant to Article 15 of the draft RTS, ESMA refers the respondents to the Level 1 text and specifically Article 22(7) which outlines that competent authorities of host Member States may only charge fees linked to the performance of supervisory tasks pursuant to Article 22.
231. Finally, in relation to one respondent's suggestion that the proposal in the draft RTS relating to advertisements could indirectly contribute to increased costs for retail investors, on the basis of a market shift away from direct issuances of bonds to retail investors due to associated costs, this is certainly a point which ESMA acknowledges; but in terms of the principle of investor protection, it is difficult to reduce the requirements on a speculative matter, particularly without any tangible data as to costs.
232. The proposed wording of the draft RTS on advertisements is presented in Annex V to this Paper.

5. Draft RTS on supplements

5.1. Introduction

233. PR Article 23(7) requires ESMA to develop RTS to specify under which circumstances a significant new factor, material mistake or material inaccuracy would trigger the requirement to publish a supplementary prospectus.
234. ESMA delivered draft RTS on supplements under an empowerment under Omnibus I Directive. ESMA has compared the empowerment under Article 23(7) of the Prospectus Regulation with that under Omnibus I Directive and considers that it has not changed substantially. The earlier RTS was provided in the Commission Delegated Regulation (EU) No. 382/2014. Nevertheless, ESMA has provided new disclosure requirements in its technical advice on the PR which it considers fall within the parameters set out in 2014. ESMA has therefore included these requirements in these technical standards. These include, for example, the publication of a supplement when there are changes to a working capital statement for underlying issuers of depositary receipts.

5.2. Summary of feedback and amendments to the draft RTS on supplements

235. This section summarises the feedback which ESMA received in relation to Questions 24 to 27 of the Consultation Paper on the draft RTS on supplements and presents ESMA's response to this feedback.

5.2.1. General remarks

236. In addition to responding to the specific questions, a number of respondents have provided general input on various topics touched upon in the Consultation Paper⁷. This input is set out in this section⁸.

⁷ Consultation Paper on draft Regulatory Technical Standards under the new Prospectus Regulation ([ESMA31-62-802](#) | 15 December 2017)

⁸ Where respondents have provided input on topics addressed in other sections of the Consultation Paper, their input is summarised under the appropriate question rather than in the current section.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
1	-	-	-	-	1	-	-

237. Two respondents gave their general remarks to the part of the consultation relating to supplements. The respondents asked for reassurance that withdrawal rights should not apply in the context of admission-only prospectus supplements

ESMA's response

238. In response to the concerns that withdrawal rights should not apply to admission-only prospectus supplements, ESMA is of the opinion that Article 23(2) of the Prospectus Regulation makes it clear that withdrawal rights only apply to offers to the public and not to admission only supplements. The wording of the requirement for withdrawal rights is 'where the prospectus relates to an offer of securities to the public' which ESMA considers clearly relates to offers and not to situations where there is only an admission to trading and not an offer.

5.2.2. Responses to specific questions

Question 24: Do you agree that Article 2 of the First Commission Delegated Regulation should be carried over, in its entirety, to Level 2 under the new regime?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	4	-	5	-	2	3	2

239. ESMA received 22 responses to Question 24.

240. All respondents were in unanimous agreement that Article 2 of the First Commission Delegated Regulation should be carried over, in its entirety, to Level 2 of the new regime. The principal point was that market participants were familiar with the current requirements and therefore continuity would be ensured by virtue of the proposed

approach. In addition, such continuity would suppress any potential increase in cost that change in the requirements could bring about.

241. One respondent did refer to its previously held view (provided in the Prospectus Directive consultation on supplements) to the extent that: ‘the issuer should decide whether a specific situation meets the test for publishing a supplement and that it is not necessary for legislation prescribing specific instances of when a supplement is required’. However, said respondent was satisfied with maintaining continuity of approach.

ESMA’s response

242. ESMA welcomes stakeholders’ agreement with its suggestion to carry over Article 2 of the First Commission Delegated Regulation into Level 2 of the new prospectus regime.
243. In response to the stakeholder who suggested that the issuer should be free to decide when a supplement is required, ESMA points out that Level 1 provides a mandate for ESMA to develop technical standards to specify situations where a supplement is required.
244. ESMA has therefore included Article 2 of the First Commission Delegated Regulation in its technical standards.

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

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	3	-	6	-	2	3	1

245. ESMA received 21 responses to Question 25.
246. In relation to the inclusion of a requirement regarding changes in the working capital statement, of the issuer of the underlying securities linked to depository receipts, virtually all respondents that commented on this new requirement were in agreement with this addition.
247. On the matter of profit forecasts and profit estimates almost all respondents agreed with the approach of requiring issuers to produce a supplement, where either of the aforesaid are published after the approval of a prospectus, but before the close of the offer or the date of admission of the securities to trading. A number of respondents strongly

remarked, however, that this obligation should not apply in circumstances where discretion is provided to the issuer regarding the inclusion of profit forecasts or estimates, adding that the obligation should not apply in the context of non-equity issuances in particular. As a number of respondents pointed out, the matter concerning situations where a profit forecast or profit estimate is necessary, is to be determined in the technical advice on the format and content of the prospectus.

248. One respondent remarked that in the context of the requirement to publish in a timely manner, the existing requirement in item 13.2 of Annex I of the Commission Regulation 809/2004, regarding preparation of an independent accountant's report is too burdensome and should be abolished. Another respondent suggested that the requirement for audit reports linked to profit forecasts or profit estimates should be removed completely.

ESMA's response

249. ESMA notes that respondents agreed that profit forecasts or estimates published after the approval of the prospectus but before the end of an offer period or the date of admission of securities to trading, should trigger the obligation to produce a supplement. ESMA also appreciates the concern of respondents that this should not be extended to circumstances where an issuer is not obliged to include a profit forecast in a prospectus. ESMA points out that it does not require a supplement to be produced where the issuer is under no obligation to include a profit forecast in a prospectus. Nevertheless, ESMA expects that if an issuer of non-equity securities has chosen to include a profit forecast in its prospectus, and that profit forecast is subsequently amended a supplement would be required. Moreover, ESMA would like to clarify that where the issuer is under an obligation to include its outstanding profit forecast or otherwise includes a profit forecast in the prospectus it should also produce a supplement when it withdraws a published profit forecast in order to fully inform investors of the relevance of such information.
250. In response to the comment concerning the auditing of profit forecasts, ESMA would like to remind stakeholders that this matter was dealt with in ESMA's technical advice on the format and content of the prospectus.

Question 26: Do you agree that the publication of audited financial statements by an issuer of retail debt or retail derivative securities should not trigger the requirement to publish a supplementary prospectus?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
7	4	-	5	-	1	2	2

251. ESMA received 21 responses to Question 26.

252. The views expressed by respondents were more or less unanimous and were in favour of ESMA’s proposal to include the provisions of Recitals 2 to 13 and Articles 1 and 2 of the First Commission Delegated Regulation in the technical standards, particularly in relation to the requirement to supplement a prospectus when annual audited financial statements are published only in the case of issuers of equity securities and issuers of underlying shares in the case of depositary receipts. There were no dissenting opinions and respondents were satisfied that issuers could maintain discretion on the matter of determining materiality to assess whether publication of a supplement is necessary. A recurring point raised by respondents was that when an issuer holds information regarding its financial situation and its capacity to pay interest or redeem bonds, this would constitute price sensitive information. Under the provisions of MAR, the issuer would have to disclose without delay such information and accordingly the publication of financial statements should therefore not systematically require publication of a supplement.

253. One respondent agreed with the proposal, on condition that there was an appropriate company announcement which also highlighted any particular material event that might have happened that would affect the issuer’s performance.

254. Another respondent agreed with the proposal but wondered why it was limited to the issuer of retail debt or retail derivative securities. If this obligation was not imposed in the case of retail issuances, this respondent argued that it should not be imposed either in the case of issuances to non-retail investors for situations requiring the production of a prospectus.

Input from the SMSG

255. The SMSG agreed with the proposal that publication of audited financial statements by an issuer of retail debt or derivatives should not trigger the requirement to publish a

supplement. It points out that if an issuer is in possession of price sensitive information it has an obligation under MAR to publish such information without delay.

ESMA's response

256. ESMA welcomes the respondents' agreement in relation to the proposal not to mandate issuers of retail non-equity securities to produce a supplement on publication of audited financial statements in all circumstances.
257. Furthermore ESMA considers that the requirements of Recitals 2 to 13 and Articles 1 and 2 of the First Commission Delegated Regulation should be carried forward. These limit the requirement to produce a supplement when audited financial statements are published to issuers of equity securities and issuers of underlying shares in the case of depositary receipts. However, issuers of any type of security are still under an obligation to produce a supplement if the financial statements represent a material new factor.

Question 27: Would the issuer, offeror or person asking for admission to trading incur costs if the aforementioned provisions are adopted? If so, please specify the nature of such costs, including quantifying them.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
5	4	-	5	-	2	-	1

258. ESMA received 17 responses to Question 27.
259. As the proposals primarily carry over the contents of the current Delegated Regulation (EU) No 382/2014, the majority of respondents did not feel that there was major scope for an increase in costs.
260. A small number of respondents raised the point that increased costs may arise surrounding items where there is potential uncertainty as to whether the mandatory requirements meet the Level 1 obligations under Article 23 of the Prospectus Regulation. On this point clarification was sought regarding the definition of 'offer of securities to the public' and the application of withdrawal rights.
261. One respondent felt that the imposition of an obligation to produce a supplement to a profit forecast or profit estimate would increase the number of supplements considerably. As a general comment, this respondent felt that any new requirements would cause considerable costs.

262. One respondent sought clarity on a number of points for the purpose of avoiding costs linked to uncertainty surrounding supplements. On grandfathering, this respondent asked for confirmation that a supplement after the 21 July 2019 to an existing prospectus approved prior to 21 July 2019 will not trigger a requirement to prepare that supplement in compliance with the new Prospectus Regulation but that the supplement could be prepared under the Commission Delegated Regulation. As regards withdrawal rights, clarification was sought on whether the investor withdrawal right will be triggered where a wholesale prospectus is supplemented. On notifications of a supplement to investors the respondent pointed out that the obligation on financial intermediaries to inform investors of the possibility of a supplement being published and contacting investors on the day when the supplement is published may be challenging for underwriters, who may not be aware that a supplement is going to be published by the issuer. Finally, regarding the updating of securities note information by means of a supplement, clarity was sought on whether supplements may be used to amend securities note information in a base prospectus, for example, for the purpose of adding a change of control provision or provisions related to index-linked notes to a base prospectus that did not previously include these provisions.
263. Another respondent commented that additional costs would be incurred if the requirements to publish supplements in the case of new audited financial statements, changes in control and public takeover bids were extended to debt securities.
264. Lastly, one respondent stated that when a supplement needs to be published, this would entail agency and publication costs. Further, this respondent remarked that if the issue period has already commenced, the supplement may need to be sent to the applicants, or applicants need to be contacted which would entail additional costs. However, this respondent concluded by stating that such costs cannot be quantified at this stage and can only be known depending on the characteristics of the issue, or how it is being distributed, etc.

ESMA's response

265. In relation to the comment concerning the definition of offer of securities to the public and withdrawal rights, ESMA would like to remind stakeholders that both these terms are used at Level 1 and that any definition provided at Level 2 would therefore risk changing the meaning that the co-legislators intended. As such, ESMA is unable to provide a definition of offer of securities to the public and withdrawal rights.
266. Concerning the input regarding the production of a supplement in relation to a profit forecast or estimate, ESMA refers to its response to Question 27.
267. With respect to the request for a grandfathering provision, ESMA is of the opinion that Article 46 of the Prospectus Regulation applies to supplements as well as prospectuses and therefore considers that a grandfathering provision for supplements is unnecessary.
268. As regards withdrawal rights, ESMA believes that they do not apply to prospectuses for the admission to trading of wholesale non-equity securities as these do not fall within

Article 23 (2) of the Prospectus Regulation, under which withdrawal rights relate to offers of securities to the public. This, in ESMA's view does not encompass exempt offers of wholesale securities being admitted to trading.

269. ESMA wishes to remind stakeholders that the obligation of financial intermediaries to inform investors that a supplement is to be published is beyond the scope of ESMA's mandate as it is set out at Level 1.
270. In relation to changing securities note information in a base prospectus by way of a supplement, ESMA points out that information on the security should be included in the base prospectus or in the final terms. ESMA only envisages a limited number of situations where such information be amended via a supplement, such as a mistake or new event in relation to the securities note information or where an issuer seeks admission to trading on an additional regulated market etc. The supplement should not be seen as a vehicle for introducing a new type of security to a base prospectus. In particular, Recital 36 of the Prospectus Regulation states: *Neither the final terms nor a supplement should be used to include a type of security not already described in the base prospectus.*
271. On the basis of the input provided ESMA does not consider it necessary to amend the draft RTS.
272. The proposed wording of the draft RTS in relation to supplements is set out in Annex V of this Paper.

6. Draft RTS on publication

6.1. Introduction

273. As mentioned in the Consultation Paper, in addition to the mandatory empowerments for ESMA to deliver draft RTS, ESMA has considered the voluntary empowerment in Article 21(12) of the Prospectus Regulation which states that ESMA may develop draft RTS to specify further the requirements relating to the publication of the prospectus.
274. ESMA delivered draft RTS in 2015 in relation to a similar mandate contained in the Omnibus II Directive⁹. The draft RTS is now set out in the Second Commission Delegated Regulation which, when the new Prospectus Regulation becomes applicable, will no longer apply as it relates to a Level 1 framework which will by then be superseded by the new Prospectus Regulation. As the market has grown accustomed to the rules on publication laid down in the Second Commission Delegated Regulation and considering the need to minimise compliance costs, ESMA has considered that these rules should as far as possible also be applicable under the new regime, notwithstanding any changes needed on the basis of changes at Level 1. For this reason, ESMA has chosen to consider the voluntary empowerment in Article 21(12) along with the mandatory empowerments described in previous sections of this Final Report in order to be able to carry over the existing Level 2 measures on publication to the new regime.

6.2. Summary of feedback and amendments to the draft RTS on publication

6.2.1. General remarks

275. In addition to responding to the specific questions, a number of respondents have provided general input on various topics touched upon in the Consultation Paper¹⁰.

⁹ See Article 1(4) of the [Omnibus II Directive](#).

¹⁰ Consultation Paper on draft Regulatory Technical Standards under the new Prospectus Regulation ([ESMA31-62-802](#) | 15 December 2017).

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
-	2	-	1	-	-	-	-

276. Three stakeholders provided general comments with reference to the draft RTS on publication. These were mainly aimed at providing input on topics covered under specific questions and are as such summarised under the appropriate question rather than in the current section.

6.2.2. Responses to specific questions

277. This section summarises the feedback which ESMA received in relation to Questions 28 to 30 of the Consultation Paper on the draft RTS on publication and presents ESMA’s response to this feedback. Overall, market participants agreed that previous provisions included in the Second Commission Regulation should be carried over and they furthermore welcomed the changes proposed by ESMA with respect to the use of hyperlinks. All proposals are seen as contributing to reducing burdens associated to prospectus drafting.

278. One more general comment coming from market participants responding to the consultation highlighted the technological change that has taken place since the adoption of the Prospectus Directive. These respondents pointed out that widespread electronic dissemination and storage of regulated information raises issues in terms of security and liability that need to be addressed. ESMA takes note of this comment and will duly monitor security and liability issues in the implementation phase.

Question 28: Do you agree that only Article 6(1)(c) and 6(3) of the Second Commission Delegated Regulation need to be carried over to Level 2 under the new regime?

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
6	3	-	6	-	1	2	2

279. 20 stakeholders provided input in response to Question 28. The great majority of respondents agreed that only Article 6(1)(c) and 6(3) of the Second Commission Delegated Regulation needs to be carried over to Level 2 under the new regime. A few respondents specified that they welcome the proposed changes by ESMA in respect of the usage of hyperlinks as these would reduce costs related to prospectus drafting. A similar comment was provided in relation to the clarification on the usage of a disclaimer on the website of the issuer for those investors that are not targeted by the offer.
280. One respondent added that guidance from ESMA would be important as to how to reconcile restrictions on publication in foreign jurisdictions which are currently used in practice to avoid breaches of local securities laws and regulations with the requirement to publish electronically and not to restrict access to such publications.

ESMA's response

281. ESMA welcomes the wide support for the approach chosen and confirms that only Article 6(1)(c) and 6(3) of the Second Commission Delegated Regulation will be carried over to Level 2 under the new regime.
282. ESMA takes note of the comment raised by one respondent that restrictions on publication in foreign jurisdictions should be reconciled with the requirement to publish electronically and not to restrict access to such publications. ESMA appreciates the input provided by the stakeholder. While in ESMA's understanding Article 17 of the proposed RTS already addresses this issue, ESMA will monitor if Article 17 will provide for sufficient clarity so as to ensure proper market functioning and will consider specific work at Level 3 should this be needed.

Question 29: Do you agree that no other publication provisions of the new Prospectus Regulation need to be specified by way of RTS? If not, please identify the provisions which should be specified.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
3	3	-	5	-	2	3	-

283. 16 stakeholders provided input in response to Question 29. The great majority of respondents agreed that no other publication provisions of the Prospectus Regulation need to be specified by way of RTS and considered the proposed Article 17 (1) and (2) to be sufficient. However, a few stakeholders responding to the question indicated that technology and means of publication and dissemination of information have changed extensively since the transposition of the Prospectus Directive. As such, they argued that security and liability issues should be addressed, for example with reference to the integrity of data. One respondent added that following the entry into application of the PR on 21 July 2019 new issues might inevitably come up in the implementation phase and those might need to be addressed by amendment to this RTS or via other publication provisions.

Input from the SMSG

284. In line with the feedback provided by a few respondents, the SMSG highlighted the importance of considering technological evolution and state of the art solutions that could ease disclosure and make it more user friendly. In the SMSG's view, issuers of prospectuses should look at all presentation and media formats to find solutions as to how the information can be made available.

ESMA's response

285. ESMA welcomes the broad agreement that no other publication provision of the Prospectus Regulation needs to be specified at this stage. ESMA also takes note of the importance to monitor the impact of technological changes, together with the relevant security and liability aspects, as well other possible issues coming up in the implementation phase of the new prospectus regime. ESMA will in due time consider if on such basis other publication provisions are justified.

Question 30: Do you believe that the proposed publication provisions will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

Stakeholder feedback

Banking	Investment services	Investor associations	Issuer associations	Issuers	Legal and accountancy	Regulated markets, exchanges and trading systems	Others
4	3	-	4	-	2	1	1

286. 15 stakeholders provided input in response to Question 30. All respondents agree that the proposed publication provisions either do not impose any additional costs on stakeholders or impose very minor costs on issuers, namely of an IT nature.

ESMA's response

287. ESMA takes note of the feedback received on this question and acknowledges that it is widely recognised that proposed provisions in this area will generate negligible costs for the issuers, if any.

288. The proposed draft RTS on publication is presented in Annex V.

7. RTS on notification portal

7.1. Background

7.1.1. Empowerment

Notification portal

289. In the context of the passporting regime, Article 26 of the Prospectus Regulation establishes the requirement that the home NCA shall, where requested by the issuer, offeror, person asking for admission to trading on a regulated market or person responsible for drawing up the prospectus, notify the prospectus to one or multiple other Member States and at the same time notify ESMA. The same requirement applies to supplements that are passported and the home NCA also has to communicate final terms to base prospectuses which have been notified to the relevant host Member State(s), again notifying ESMA at the same time.
290. Furthermore, Article 26 requires that a Member State which has approved a registration document (RD) or a universal registration document (URD) for an issuer, offeror or person asking for admission to trading on a regulated market which according to Article 2(m)(ii) or (iii) may chose its own home Member State shall, on request, notify those documents, any amendments to the URD and any translations to the home Member State for the prospectus approval.¹¹
291. In relation to these provisions, according to Article 25(6),
- “ESMA shall establish a notification portal into which each competent authority shall upload the certificates of approval and electronic copies referred to in paragraph 1 of this Article and in Article 26(2), and the final terms of base prospectuses, for the purpose of the notifications and communications referred to in paragraphs 1, 3 and 4 of this Article and in Article 26.*

All transfers of those documents between competent authorities shall take place through that notification portal.”

292. Closely connected with this requirement for ESMA to set up a notification portal, Article 25(7) establishes the following mandatory empowerment for ESMA to deliver draft RTS:

¹¹ For the remainder of Section 7, ESMA uses the term ‘sending NCA’ to denote the NCA which has approved a document or with which final terms have been filed and which is passporting the document(s) in question to one or several other NCAs. Furthermore, ESMA uses the term ‘receiving NCA’ to denote the NCA which receives one or more documents via passport.

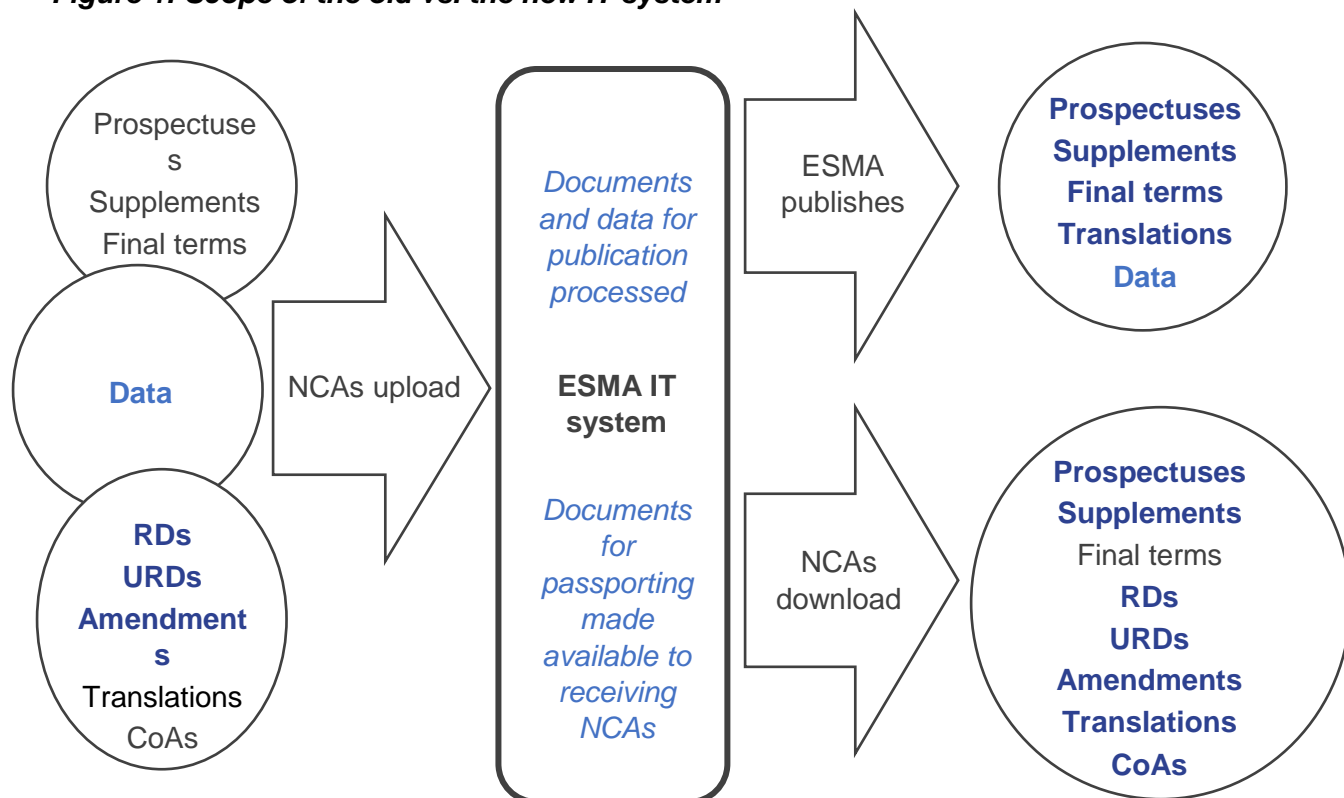
“ESMA shall develop draft regulatory technical standards to specify the technical arrangements necessary for the functioning of the notification portal referred to in paragraph 6.”

293. ESMA is obliged to submit the draft RTS to the Commission by 21 July 2018 and the Commission is empowered to adopt them in accordance with Articles 10 and 14 of the ESMA Regulation.
294. Based on Article 10(1) of the ESMA Regulation, ESMA did not consult on this RTS as its scope is narrowly related to the ESMA IT system and its impact will be entirely on NCAs. While issuers will be the ones requesting NCAs to passport a prospectus to one or several host Member States, only NCAs will up- and download information via the portal while issuers, as well as other stakeholders, will have no direct interaction with it.

7.1.2. Link between notification portal and machine readable data mandates

295. The empowerment pursuant to Article 25(7), together with that under Articles 21(13) (see section 3.1.3. of the Consultation Paper), relates to IT solutions which ESMA has to put in place regarding the submission, publication, classification and passporting of prospectuses and are as such closely interlinked. While the first empowerment requires ESMA to establish a portal through which NCAs will have to upload all documents which are to be notified or communicated along with the associated certificate of approval, if applicable, the second requires ESMA to define the data to be provided when NCAs submit approved prospectuses and supplements to ESMA for their publication.
296. While not all prospectuses will be passported and will as such not mandatorily have to be fed into the notification portal, the notification portal will have to be able to provide for the submission of all the document types which NCAs are required to submit to ESMA and which ESMA is required to publish – prospectuses, supplements, final terms and related translations (Article 21(6) of the PR). ESMA furthermore has to publish information on the host Member State(s) to which prospectuses are passported and this information will clearly also be covered by the notification portal.
297. The empowerment on data for classification seems naturally connected to the empowerment on a notification portal. ESMA, therefore, proposes that the notification portal be linked with the mechanism through which NCAs will provide ESMA with prospectuses and associated data and with which ESMA will publish this information. As explained in section 3.1.3 of the Consultation Paper, this would mean that one large IT system, rather than two separate ones, be established for use in the prospectus area, permitting NCAs to only submit prospectuses and other documents once, whether for submission to ESMA and subsequent publication, notification/communication to other NCAs or both. The below Figure 1 summarises the functions which this IT system should serve.

Figure 1: Scope of the old vs. the new IT system



7.1.3. ESMA’s IT System

298. For this joint IT system for submission of machine readable data and notification/communication of prospectuses, as well as for publication of prospectuses, ESMA intends to provide a new IT application based on its Register platform. The Registers platform also hosts other databases under ESMA’s remit.

7.2. Development of draft RTS on notification portal

7.2.1. General considerations

299. As Article 25(7) of the Prospectus Regulation requires ESMA to establish the “*technical arrangements necessary for the functioning*” of the notification portal, ESMA considers that the empowerment calls for ESMA to establish a set of rules for the practical operation of the portal. ESMA understands that such rules should cover at a high level the key obligations underlying: (a) how a sending NCA should upload information to the portal; (b) how such information is to be handled once uploaded; and (c) the download process undertaken by the receiving NCA in order to receive the passport.

300. Before addressing these three aspects, ESMA considers that it is necessary to define the precise list of documents which the notification portal should cover. According to the provisions which Article 25(6) makes reference to the following documents have to be notified or communicated through the portal:
- i. Documents which are being notified: prospectuses, registration documents (including any appendix under Art 26(4) of the PR), URDs (including any appendix under Art 26(4) of the PR), securities notes, amendments to URDs, supplements;
 - ii. Any translations (of a summary, prospectus, registration document, URD, amendment to the URD, supplement, final terms or an appendix to a registration document or URD);
 - iii. Certificates of approval;
 - iv. Final terms.
301. This list clarifies the scope of the documents which the notification portal should be able to receive from sending NCAs and make available to receiving NCAs. With this clarification in mind, it is possible to address the rules which should apply to the notification portal.
302. As mentioned, in ESMA's view, an important consideration in the development of the new notification portal is that the IT System operates as a single hub for passporting, publication and storage of prospectus information in the EU.

7.2.2. Upload of information by sending NCA

303. This section sets out considerations in relation to the part of the notification/communication process in which the NCA which has approved a prospectus (or any of its constituent document or a supplement) or with which final terms have been filed uploads the document, along with the certificate of approval if applicable, into the Notification Portal in order to send it to one or several other NCAs.

IT interface used by sending NCA

304. Under the current prospectus regime, NCAs carry out their passporting obligations in relation to approved prospectuses and supplements via email and only final terms connected with already approved and passported base prospectuses are communicated via a centralised system. As Article 25(6) of the new Prospectus Regulation requires that

all notification/communication be conducted through ESMA's new notification portal, the manner in which prospectuses and supplements are passported will have to change.¹²

305. ESMA believes that NCAs should continue to have the option available in the current IT System of uploading documents and accompanying data either in a user-to-application (i.e. the ESMA extranet) or application-to-application mode. Requiring all NCAs to use the same option would not be efficient, as smaller NCAs would incur disproportionate IT costs if required to adapt to the application-to-application system while it would be inconvenient for NCAs with larger approval numbers to perform manual uploads via the user-to-application system. However, ESMA believes it is not necessary to address this issue in the RTS as technological change might allow for different and more efficient solutions in the medium term and flexibility to adapt to such change should be retained.

Documents to be provided by sending NCA

306. As regards the documents being notified/communicated in the passporting process, ESMA is of the view that the sending NCA should always upload the document which is being notified or communicated, whether it be a prospectus, a supplement, a registration document, a URD, an amendment to a URD, a summary, a securities note (forming part of a prospectus or a tripartite prospectus), a CoA, a translation or a set of final terms¹³.
307. As regards the form in which documents should be uploaded, ESMA understands that all prospectuses, supplements and final terms uploaded by the sending NCA should be in searchable electronic format that cannot be modified, in line with the provision of Article 21(3). The submission of RDs/URDs compiled in inline-XBRL format should as such be accepted by the IT system.

Data to be provided by sending NCA

308. According to Article 21(5), third subparagraph of the Prospectus Regulation, “[t]he competent authority of the host Member State shall publish information on all notifications received in accordance with Article 25 on its website”. ESMA understands that this obligation is a continuation of the existing obligation in Article 18(3), second subparagraph of the Prospectus Directive for the receiving NCA to publish a list of certificates of approval of received prospectuses and supplements. The obligation in Article 21(5) of the Prospectus Regulation does not require the receiving NCA to publish the documents which have been notified or communicated to it, and the existing requirement to publish hyperlinks to the published prospectus or supplement has furthermore not been carried over to the new regime. The receiving NCA is simply required to publish information on incoming notifications.

¹² NCAs will, however, still have to make use of email to notify issuers of the passport having been undertaken. Articles 25(1) and 26(2) of the Prospectus Regulation require the sending NCA to notify the issuer at the same time as it notifies the receiving NCA.

¹³ This does not include information incorporated by reference in accordance with Article 19 of the Prospectus Regulation which the sending NCA is not required to send to the receiving NCA.

309. ESMA has considered whether it would be helpful to specify the information which the receiving NCA should publish in order to make this information harmonised across Member States. However, defining requirements in this regard appears to fall outside ESMA's empowerment in Article 25(7) which mandates the specification of the technical arrangements necessary for the functioning of the notification portal. ESMA therefore does not propose to address this topic in the draft RTS.
310. However, ESMA does consider that in order to enable publication on incoming notifications on the side of the receiving NCA, it is necessary to ensure that the receiving NCAs are provided with information regarding the document being passported into their jurisdiction. ESMA therefore considers that when a document is notified, the receiving NCA should receive all the accompanying data items submitted to ESMA alongside the notified document.

Timing

311. As regards the timing of upload of documents to be notified or communicated, according to Article 25(1) the sending NCA shall notify the receiving NCA "*within one working day following receipt of [the request to passport] or, where the request is submitted together with the draft prospectus, within one working day following the approval of the prospectus*". The same time frame applies to notification of registration documents and URDs on a standalone basis under Article 26. On this basis, ESMA understands that NCAs should consistently be required to upload documents and accompanying data for notification/communication to the Prospectus Register no later than the working day after the request to passport was received or where the request is submitted together with the draft prospectus, within one working day following the approval of the prospectus. As for final terms that are communicated to an NCA, Article 25(4) requires that they are communicated to ESMA as soon as practicable after their filing with the NCA. As these obligations are already provided by Article 25, they do not need to be repeated in the RTS.

Security and integrity of upload process

312. Lastly in relation to the actions performed by the sending NCA, ESMA is of the view that the upload of documents and accompanying data to the Notification Portal should abide by certain principles in order to safeguard the security and integrity of the upload process.
313. As a very basic measure to ensure the integrity of the upload process, ESMA should be able to identify the NCA undertaking an upload. Furthermore, it should be a general rule that only the NCA which has approved a document or, in the case of final terms, with

which a document has been filed can notify or communicate the document to other NCAs.¹⁴

7.2.3. Processing in the notification portal

314. This section presents ESMA's proposals in relation to the steps which the notification portal will undertake in order to make uploaded data available to one or more receiving NCAs.
315. Preliminarily, ESMA considers that the sending NCA should be responsible for the data which it uploads in relation to any given document and that ESMA, to respect this designation of responsibility, should not in any way change or amend information submitted to it during the processing of the notification/communication. Instead, if the Notification Portal detects an error in the upload by an NCA, this should be communicated to the sending NCA with a view to rectification and resubmission.

Data verification

316. When a sending NCA has submitted a set of documents and accompanying data to the notification portal, ESMA considers that the portal should subject the information to certain checks in order to verify that it is consistent with the requirements applicable to uploaded documents and accompanying data.
317. The IT system on which the notification portal is based should perform a series of checks and inform in detail the sender of the outcome of the submission. Depending on the outcome, the IT system can decide whether to accept or reject the information submitted, to passport it, to publish it.

Entry into notification portal and availability to receiving NCA

318. If there are no errors in the documents and data uploaded in the notification portal by the sending NCA, the upload should be accepted and a new record should be made¹⁵.
319. Concerning timing, according to Article 25(1) and as already explained in section 7.2.2, the sending NCA is required to notify a document within one working day of receiving a passporting request or, where the request is submitted together with the draft prospectus or supplement, within one working day following the approval of the prospectus or supplement. ESMA understands this to mean that the sending NCA should be permitted up to one working day to carry out the upload to the notification portal. As for final terms,

¹⁴ The only exception to this rule would be a situation in which an NCA approves a registration document or URD and passports this as a standalone document, and the receiving NCA approves the accompanying securities note and summary, if applicable, and passports the entire prospectus, including the registration document/URD, to one or more other NCAs.

If the RD/URD approved by the sending NCA is supplemented, the sending NCA should notify ESMA of such supplement adding a CoA. The system will then make the information available (i.e. the supplement and related information) to both the receiving NCA and any third MS NCA.

¹⁵ A successful joint submission of documents and accompanying data constitutes a record.

following Level 1 wording these should be sent to ESMA “as soon as practicable” after they are filed.

320. ESMA also understands from Article 25(1) that it was the intention of the co-legislators to ensure a timely passporting process. While a later paragraph of Article 25 requires that notifications and communications be effectuated through a centralised portal, the timeline in Article 25(1) does not seem to foresee a delay beyond one working day due to the use of such a portal. ESMA is therefore of the view that the IT system should make the notified/communicated information available to the receiving NCA(s) as soon as the data are successfully processed by the system. Again, as these obligations are already provided by Article 25, they do not need to be repeated in the RTS.

7.2.4. Download of passports by receiving NCA

321. This section sets out ESMA’s considerations in relation to how receiving NCAs should be able to retrieve the documents and data notified or communicated to them.

IT interface used by receiving NCA

322. As indicated in relation to the process for uploading information to the Prospectus Register (par. 7.2.2), ESMA believes that when receiving notifications or communications and having to download information from the Register, NCAs should have the option of using either the user-to-application or application-to-application functionalities, depending on their individual preference.
323. ESMA proposes that incoming notifications/communications be made available with a *push* mechanism on the side of the IT system. While the *pull* approach has been used in the existing final terms component of the IT system where it has functioned fine, a *push* system should be able reduce the risk that NCAs will not become aware of incoming documents.
324. The IT system should make available to the receiving NCA, together with the passported document(s), the data accompanying the document that is being passported. This amounts to all the data notified by the sending NCA as well as those generated by the IT system. When accessing their incoming passports, the IT system should enable receiving NCAs to identify when passports were made and to download passported documents and data.
325. On the basis of the considerations in Section 7, ESMA proposes the draft RTS set out in Section V.

Annex I: List of respondents¹⁶

1	ESMA Securities and Markets Stakeholder Group
	Banking
2	Oesterreichische Kontrollbank AG
3	CBA Czech Banking Association
4	DDV
5	Deutsche Bank
6	European Savings and Retail Banking Group
7	French Banking Federation
8	German Banking Industry Committee
9	Italian Banking Association
	Investment services
10	AMAFI
11	Association for Financial Markets in Europe
12	International Capital Market Association (ICMA)
	Investor associations
13	BETTER FINANCE
	Issuer association
14	Deutsches Aktieninstitut
15	European Issuers
16	Polish Association of Listed Companies
17	Quoted Companies Alliance
18	Assonime
19	AFEP

¹⁶ Certain respondents asked that their names were not made public and therefore have not been included in this list of respondents.

	Legal and accountancy
20	De Brauw Blackstone Westbroek
21	Joint Working Party of the Law Society and City of London Law Society
	Regulated markets, exchanges and trading systems
22	FESE
23	Irish Stock Exchange
24	London Stock Exchange Group
	Others
25	Association of National Numbering Agencies
26	CFA Institute
27	Global Legal Entity Identifier Foundation (GLEIF)
28	Austrian Federal Economic Chamber
29	CNMV Advisory Committee

Annex II: Legislative mandate to develop draft regulatory technical standards

Mandate for ESMA to develop draft RTS in general

Article 10(1) of the ESMA Regulation:

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

Mandate for ESMA to develop draft RTS on key financial information

Article 7(13) of the Prospectus Regulation:

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

Mandate for ESMA to develop draft RTS on data

Article 21(13) of the Prospectus Regulation:

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

Mandate for ESMA to develop draft RTS on advertisements

Article 22(9) of the Prospectus Regulation:

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

Mandate for ESMA to develop draft RTS on supplements

Article 23(7) of the Prospectus Regulation:

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

Mandate for ESMA to develop draft RTS on publication

Article 21(12) of the Prospectus Regulation:

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

Mandate for ESMA to develop draft RTS on notification portal

Article 25(7) of the Prospectus Regulation:

“ESMA shall develop draft regulatory technical standards to specify the technical arrangements necessary for the functioning of the notification portal referred to in paragraph 6.”

Annex III: Cost-benefit analysis

1. Executive Summary

Reasons for publication

Regulation (EU) 2017/1129 was published in the Official Journal of the European Union on 30 June 2017 and entered into force on 20 July 2017. The Regulation requires ESMA to submit draft regulatory technical standards ('RTS') on key financial information for the prospectus summary, data for classification of prospectuses and the practical arrangements to ensure that such data is machine readable, provisions concerning advertisements and situations where a supplement to a prospectus is required as well as the technical arrangements for the functioning of the notification portal to be established by ESMA.

The draft RTS should be submitted to the European Commission ('Commission') by 21 July 2018. ESMA is additionally permitted to submit draft RTS further specifying the requirements relating to the publication of the prospectus.

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

The cost-benefit analysis ('CBA') aims to provide the reader with an overview of findings with regard to the potential impacts of the proposed draft RTS. ESMA has updated the analysis on the basis of the input received by respondents to the consultation, which was mainly of a qualitative nature.

Contents

Section 2 introduces the CBA by describing ESMA's mandates and explaining the nature of the CBA along with its structure. Section 3 analyses the costs and benefits connected with the proposed draft RTS on KFI, machine readable metadata, advertisements, supplements, publication and notification portal, respectively.

2. Introduction

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

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

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

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

3. Analysis of proposed measures

3.1. Key financial information for the summary

These provisions are drawn up in response to the mandate for ESMA to specify the content and format of presentation of the key financial information in the summary of the prospectus, taking into account the various types of securities and issuers and ensuring that the

information produced is concise and understandable. This includes setting out, in tabular form, the key financial information relevant to non-financial issuers, credit institutions, insurers, non-equity securities, special-purpose vehicles in relation to asset-backed securities and closed-end funds. Account was also taken of guarantors and the presentation of pro forma information and complex financial information, as well as the requirements for different types of securities and the use of alternative performance measures. The information required by the tables has been kept as succinct as possible given the page restrictions of the summary and to allow the issuer to include further key financial information of their choice.

3.1.1. Technical options

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

3.1.2. Cost-benefit analysis

Option 1	
Benefits	<p>The presentation of the key financial information (KFI) in the summary of specific templates is beneficial to investors as it will provide them with a succinct introduction to the financial position of the issuer and enable them to focus on specific offers and admissions to trading which they would then analyse further by reviewing the prospectus.</p> <p>The establishment of specific templates covers the majority of issuers, while a degree of flexibility is introduced to allow issuers to adapt the key financial information to information disclosed in the prospectus. This gives the issuer the opportunity to choose financial information which is specifically relevant to it and also enables investors to have a more rounded picture of the issuer and its business. Following the consultation, ESMA has removed the limit on the additional KFI that</p>

	an issuer can include in the summary to provide a clearer picture of the issuer's business.
Costs to regulator	<p>There might be a small reduction of existing monitoring costs as a result of further clarity on this section of the summary.</p> <p>There might be a small increase of monitoring costs in connection to the ability of the issuer to include additional items of financial information of its choice, e.g. as a result of the review of what KFI have been chosen by the issuer and their consistency with the rest of the document.</p>
Compliance costs	<p>In general the costs to issuers for the drawing up of this section of the summary should decrease because of further clarity on its content and as mandatory KFI can be substituted by equivalent measures where appropriate.</p> <p>Some of the respondents indicated that issuers would be likely to incur additional costs in order to adjust to the new regime on the disclosure of KFI in the summary and comply with the general obligations imposed by the draft RTS. In particular, some stakeholders remarked that issuers would incur costs related to the request for additional information and adjusting to the new formats. These costs would be related to increased workload (legal work, financial information, auditors, information technology).</p>
Costs to other stakeholders	Due to less but more focused information, after an initial period adapting to the new requirements, no ongoing marginal costs to investors are foreseen.

Option 2	Qualitative description
Benefits	<p>As in the case of Option 1, the presentation of the key financial information in the summary in specific templates is beneficial to investors as it will provide them with a succinct introduction to the financial position of the issuer and enable them to focus on specific offers and admissions to trading which they would then study further by reviewing the prospectus.</p> <p>However, the lack of flexibility may mean that important financial information is not presented in the summary. Investors will benefit from increased comparability but this is counteracted by the fact that there is the possibility that they will miss information, which is specific to the issuer and / or its securities.</p>

Costs to regulator	As under option 1, there might be a small reduction of existing monitoring costs as a result of further clarity on this section of the summary.
Compliance costs	As under option 1, in general the compliance costs for the drawing up of this section of the summary should decrease because of further clarity on its content. There might be a small increase of compliance costs due to the fact that the issuer is not given the flexibility to include three additional items of financial information of its choice. This reduces the ability to tailor the information published to the specifics of the issuer.
Costs to other stakeholders	Similar to those in Option 1.

3.2. Data and machine readability

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

As for the first goal, Article 21 (5) second subparagraph of the PR requires that ESMA identifies the variables needed for the classification of prospectuses in the storage mechanism referred to in Article 21 (6) and those necessary for the drafting of the annual report provided for by Article 47. This corresponds to a wider set of data when compared to the status quo and as such it has an inevitable impact on costs. However, ESMA notes that costs for additional data are likely to decrease at the margin and the greatest part of the cost function is absorbed by the one-off set-up costs. The same argument applies to the scope of the documents in relation to which the data will have to be provided.

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

As an alternative option, ESMA has also considered the possibility of using a different technical format, such as inline-XBRL, that would allow the data contained in the prospectus (or any of its constituent parts) to be machine readable in the first place and would in turn make it possible for issuers and NCAs not to re-enter data which are already in the

prospectus¹⁷. However, ESMA finds that this approach would require substantial changes to its existing database and IT infrastructure as well to those of NCAs and issuers. Furthermore, ESMA notes that some of the data necessary for classification are not included in the prospectus content and therefore should be entered through a different process, therefore duplicating the efforts of the different actors involved.

ESMA has committed to making use in the implementation phase of ISO 20022 standardisation to the widest extent possible. While ESMA appreciates that this might increase one-off set-up IT costs, ESMA nevertheless believes that this would be more than compensated by ongoing benefits in terms of increased efficiency and reliability of the data submission process.

3.2.1. Technical options

Policy Objective	<p>Providing for the data necessary to ensure effective searches in the prospectus register and for ESMA to produce an annual report on prospectuses issued in the EU.</p> <p>Ensuring that such data are machine readable and facilitate an efficient process of data submission by NCAs.</p>
Option 1	Expansion of existing ESMA IT platform and increased use of ISO 20022 standardisation
Option 2	Use of different standard/format to make data contained in the prospectus machine readable
Preferred Option	Option 1: Overall, the first option of making some limited changes to the existing database is in ESMA's view more proportionate to the Prospectus Regulation's goal of ensuring that investors have adequate access to reliable data (cf. Recital 63) and the one that allows minimising aggregated costs.

3.2.2. Cost-benefit analysis

Option 1	
Benefits	<p>The expansion of the current IT platform allows for a smooth and cost-efficient transition to the new system. Increased use of ISO 20022 will favour standardisation and comparability.</p> <p>A broader set of data allows for more effective searches in the ESMA register and constitutes the basis for the drafting of a comprehensive</p>

¹⁷ It should be acknowledged, however, that tagging is generally a manual process that as would require direct compliance costs for the issuers.

	<p>ESMA report in line with the requirements of Article 47. The public is in turn provided with a deeper, wider and accessible database on securities' issuances in the EU.</p> <p>This benefit was confirmed by a few respondents to the consultation.</p>
Costs to regulator	<p>While the submission system will remain unchanged, with minimal one-off adaptation costs implied due to increased use of ISO standardisation, NCAs will need to process on an on-going basis a higher number of data in relation to a broader set of documents. Overall, this does not seem to alter significantly IT costs, while there might be a limited impact in terms of HR costs in those jurisdictions in which the NCA does not provide for issuers' support in the compilation of data.</p>
Compliance costs	<p>In those jurisdictions in which the NCA provides for an issuers' role in the compilation of data, these latter might bear some additional compliance costs.</p> <p>Respondents have broadly indicated that requiring issuers to provide data would cause sizable additional costs.</p> <p>Respondents to the consultation have confirmed that the number of final terms filed with a certain NCA can be quite extensive (up to over 500k per issuer per year).</p>

Option 2	
Benefits	<p>Different standards/formats than those used in the current ESMA Prospectus Register would allow some the data contained in the prospectus (or any of its constituent parts) to be machine readable. This would facilitate the process of data compilation and submission and therefore might allow for efficiency gains in the medium term.</p> <p>A broader set of data allows for more effective searches in the ESMA register, as mentioned under Option 1.</p>
Costs to regulator	<p>In order to process the information included in a machine-readable prospectus ESMA IT platforms/systems should be modified, together with those implemented by NCAs at national level. NCAs would continue to bear costs in relation to the compilation and submission of data for classification that are not embedded in the prospectus.</p>
Compliance costs	<p>Issuers would bear costs in relation to making the data contained in the prospectus machine-readable in the first place by manually tagging the relevant documentation.</p>

3.3. Advertisements

These provisions are drawn up in response to the mandate for ESMA to further specify the provisions concerning advertisements laid down in paragraphs 2 to 4 of PR Article 22, including specification of the provisions concerning the dissemination of advertisements as well as to establish procedures on the cooperation between the competent authorities of the home Member State and the Member State where the advertisements are disseminated.

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

3.3.1. Technical options

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

3.3.2. Cost-benefit analysis

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

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

Compliance costs	When compared with Option 1, issuers would bear an increased cost in terms of reduced flexibility, which might undermine to a certain extent the purpose of advertisements.
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3.4. Supplements

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

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

3.4.1. Technical options

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

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

Compliance costs	The duty to publish a supplementary prospectus when there has been a material change to the working capital statement of an issuer of depositary receipts or when a profit forecast or estimate has been published or amended for issuers of certain categories of security may create some additional costs for issuers. In this regard, one respondent indicated that the imposition of an obligation to produce a supplement to a profit forecast or profit estimate might increase the number of supplements considerably. However, most of the costs borne by issuers come from the current Delegated Regulation (EU) No 382/2014. Some respondents confirmed that continuity with current requirements will pre-empt the risk of additional costs.
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3.5. Publication

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

3.5.1. Technical options

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

Benefits	The possibility for issuers to include hyperlinks in the prospectus removes a problem that issuers have flagged to NCAs and is furthermore in line with the general movement in the Prospectus Regulation towards increased use of electronic sources of information. This possibility is balanced by the requirement to clearly state in the prospectus that information on the related website has not been approved by the NCA and does not form part of the prospectus. Respondents to the consultation have confirmed that removing the ban on hyperlinks generates benefits for issuers.

	The requirement to avoid targeting investors in Member States where the offer to the public of securities does not take place ensures that only investors in Member States where the prospectus is available are targeted; this contributes to investor protection.
Costs to regulator	None as provisions mirror existing Level 2.
Compliance costs	None as provisions either mirror existing Level 2 or are less strict. This point is broadly confirmed by respondents to the consultation that indicate costs arising from these provisions will be either null or minor.

3.6 Notification Portal

Based on Article 10(1) of the ESMA Regulation, ESMA did not consult on the RTS requiring to specify the technical arrangements for the functioning of the notification portal as its scope is narrowly related to the ESMA IT system and its impact will be entirely on NCAs. While issuers will be the ones requesting NCAs to passport a prospectus to one or several host Member States, only NCAs will up- and download information via the portal while issuers, as well as other stakeholders, will have no direct interaction with it. Furthermore, the technical arrangements for the notification portal broadly replicate those in place to ensure the final terms' passporting function of the current Prospectus Register. As such, ESMA has simply expanded the scope of such tool to cover the whole set of documents to be passported through the notification portal under Article 25 and 26 PR.

Annex IV: SMSG opinion

ADVICE TO ESMA

Response to ESMA's Consultation Paper on draft regulatory technical standards under the new Prospectus Regulation

Executive summary

The SMSG welcomes the proposed RTS under the new Prospectus Regulation. We strongly believe that a successful review of the Prospectus rules should result in an increased level of investor protection and a true reduction of costs for issuers, without additional burdens imposed.

We believe that issuers should be given flexibility with regard to the number and format of the KFI to be included in the summary, e.g. flexibility to decide to include KFI extracted from the cash flow statement or not. The limit on the number of pages will already prevent unnecessary information being included in the summary.

Lastly, we recommend finding a balance between the technological evolution and state of the art solutions that could ease disclosure of information for investors and potential related issues in terms of security and liability for issuers.

Background

The role of the SMSG

1. The Securities and Markets Stakeholder Group (SMSG) advises ESMA on all regulatory and supervision matters. In compliance with EU Law, it is composed of expert representatives of financial market participants operating in the Union, of their employees, of consumers, of users of financial services and of independent top-ranking academics.

Purpose of this Advice

2. The SMSG welcomes the publication of ESMA's Consultation Paper on draft regulatory technical standards under the new Prospectus Regulation and wishes to comment on the issues set out below.
3. The SMSG believes that, in order to be successful, the review of the Prospectus rules should be designed in such a way that it improves investor protection by ensuring information produced is concise and understandable, while truly alleviating requirements and avoiding complexity of rules. Such complexity leads to excessive costs which discourages companies (especially smaller ones) from entering public capital markets, and results in disclosure of an excessive number of risk factors and boiler plate language not helpful to investors.

The SMSG recommends retaining flexibility for companies as this would allow them to better highlight to investors their distinct characteristics and features. Flexibility is also key to avoid duplication of information and make prospectuses more comprehensible. It takes on even more importance in the case of SMEs since they do not have as many resources to spend on disclosing information as large companies.

Summary of SMSG Views on ESMA’s Consultation Paper on draft regulatory technical standards under the new Prospectus Regulation

1. Key financial information in the summary

4. The SMSG appreciates the intent of this review is to make summaries more relevant for investors and easier to understand by decreasing the length of these documents; however, the Group believes that certain new provisions may be unnecessarily prescriptive and could lead to increased legal costs for issuers.
5. In particular, the SMSG would suggest not to limit the number of KFI items, including alternative performance measures (APMs), but to leave flexibility to companies to:
 - determine the additional KFI they want to include in the summary; and
 - choose the format of presentation of the KFI.
6. As APMs are not clearly defined they may potentially be misleading for investors. Therefore, it is important to ensure a consistent methodology year by year is adhered to in order to allow for comparability.
7. Footnotes may be easily “overread” and it should be ensured that they do not contain material information or complex explanations that could hide important information from investors.
8. An alternative approach (bearing in mind the length limit for the summary) might be for issuers to include a prominent warning that the summary contains APMs and that investors should read the summary together with the rest of the prospectus (which will contain the relevant explanations in line with the ESMA Guidelines on APMs).
9. Flexibility would not lower investor protection because there would be no advantage for issuers to abuse this flexibility and display non-relevant KFI in numbers. The overall page limit of the summary will prevent unnecessary information being included in the summary.
10. Limiting the number of KFI could also raise liability issues by creating inconsistency between information disclosed in the summary, the prospectus and other reports and disclosures made public by the issuer, such as annual financial reports, registration documents, press releases, etc.
11. Furthermore, there is no specific piece of information that would be more meaningful or useful for retail investors. All information an issuer chooses to include in a summary is useful for a knowledgeable reader to make an investment decision and should be treated in the same way. However, the SMSG supports ESMA’s view that the KFI position should correspond to the respective position in the issuer’s financial statements and that (discretionary) APMs should not be given more prominence than the KFIs stemming from financial statements.

12. Cash flows from operating activities are expected to be in some degree recurrent for a business entity and thus they deserve special attention from the investment community. Nevertheless, cash flow from financing activities and cash flow from investing activities can be relevant for investors in certain equity securities, i.e. when the company is pursuing an acquisition strategy, when companies use significant hedging transactions (e.g. commodity companies) or for companies with high R & D expenditure and without significant revenues (e.g. Biotechs). Flexibility should be given to issuers to decide whether KFI extracted from the cash flow statement is relevant or not.
13. For credit institutions consideration should be given to the disclosure of the Supervisory Review and Evaluation Process (SREP) information and a measure related to the individual credit institution liquidity, such as the Liquidity Coverage Ratio (LCR) currently required by EU prudential regulation to monitor credit institution liquidity conditions.

2. Data and machine readability

14. The SMSG wishes to underline the fact that any new requirements regarding the collection of the data should not result in an increase of the administrative burdens and costs for the issuers.

3. Advertisements

15. The SMSG agrees that advertisements, other than oral advertisements, should contain a hyperlink to the specific page of the website where the prospectus was published or will be published.
16. It is also suggested that in written advertisements relating to securities aimed for retail investors, issuers should also include a statement encouraging / recommending such investors to seek prior advice from authorised / licensed financial intermediaries for the purposes of assessing suitability in accordance with their requirements and portfolio diversification.

4. Supplements

17. The SMSG believes that the proposal on the publication of audited financial statements by an issuer of retail debt or retail derivative securities should not trigger the obligation to publish a supplement. When an issuer holds information regarding its financial situation and its capacity to pay the interests or redeem bonds, for instance, this would be price sensitive information. Furthermore, pursuant to the provisions of MAR, the issuer would have to disclose without delay such information.
18. There is a divergence of views within the stakeholder group on the use of unaudited outstanding profit forecasts. A majority believe that these should not be included in the prospectus, regardless of the asset class. This is because forecasts are seen to be akin to a business plan and could be misinterpreted or could mislead investors in case they are not audited. The inclusion of unaudited profit forecasts could reflect badly on investor trust and could over time especially damage financing opportunities for all SMEs, as growth segments would suffer from a less robust reputation than the rest of the market.
19. Conversely there is a view that profit forecasts are a valuable part of the provision of issuer information in some member states and with a predicted fall in the amount of investment research there is a belief that the prohibition of profit forecasts in prospectuses would be to the detriment of investors when making an informed investment decision. Where there is appropriate depth of due diligence and appropriate responsibility taken by the directors of an issuer, then the inclusion of unaudited forecasts should be at the discretion of the issuer.

5. Publication

20. The SMSG suggests considering technological evolution and state of the art solutions that could ease disclosure of information while ensuring it is useful for investors (apps, etc.).
21. As a principle and based on current practice, issuers of prospectuses are encouraged to look at all presentations and media formats in order to find solutions as to how the information can be made available.
22. Wide-spread electronic dissemination and storage of regulated information raise, however, issues in terms of security and liability that need to be addressed.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 9 March 2018

(Signed)

Rüdiger Veil
Chair
Securities and Markets Stakeholder Group

Annex V: Draft regulatory technical standards

Draft

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

of ...

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, and in particular Article 7(13), Article 21(12), Article 21(13), Article 22(9), Article 23(7) and Article 25(7) thereof,

Whereas:

- (1) The key financial information in the summary of a prospectus should present the key financial figures that provide investors with a succinct overview of the issuer's assets, liabilities and profitability as well as any other key financial information that is relevant for investors in order to make a preliminary assessment of the financial performance and financial position of the issuer. In order to ensure that this information is concise and relevant, it is necessary to identify a limited number of disclosures, specify the layout of such disclosures and calibrate the financial information to be provided to take account of different types of issuers and securities. Where issuers consider that the required disclosures do not provide a clear picture of their performance and financial position, they should be entitled to include specified additional disclosures to avoid misleading investors. In order to avoid distracting from the figures stemming from financial statements, alternative performance measures should not be given more prominence than the figures extracted from the historical financial information.
- (2) In order to reduce compliance costs and administrative burdens on issuers, the key financial information (including additional line item and Alternative Performance Measures) in the summary should reuse information already disclosed in the body of the

prospectus. Furthermore, it is appropriate that the key financial information presented in the summary should be adapted to the sphere of economic activity of the issuer, its industrial sector, the major line items of its financial statements and the type of securities being offered or issued. However, it would be counterproductive to set out an exhaustive list of specific templates covering all types of issuers such as a third country, its regional and local authorities, a public international body or a specialist issuer. In this case the disclosure requirements would be rendered over-complicated, without providing a degree of flexibility to issuers. If the historical financial information included in the prospectus is restated, the key financial information in the summary should be taken from the restated historical financial information.

- (3) Where complex financial information is included in the prospectus as required by Commission Delegated Regulation (EU) [] the complex financial information should, where appropriate, be presented in addition to or in substitution for the stand alone financial information of the issuer and the other entity / entities.
- (4) This Regulation specifies the list of data fields to be reported to ESMA for the classification of prospectuses and provides for the use of XML format templates as the practical arrangement to ensure that such fields are machine readable. Reporting and publication of data in an electronic, machine readable form and format facilitates the efficient use and exchange of that data. The list of data should be sufficiently comprehensive to ensure that ESMA meets its mandate under Article 47 of Regulation (EU) 2017/1129 of the European Parliament and of the Council¹⁸ to publish a yearly report containing statistics on the prospectuses approved and notified in the EU, as well as an analysis of trends taking into account the type of issuers and the type of issuances.
- (5) Advertisements relating to an offer of securities to the public or an admission to trading on a regulated market should be identifiable as such and should clearly identify the offer and prospectus to which they relate. Identification of the offer or prospectus may be achieved differently depending on the means of dissemination used.
- (6) Advertisements should not be inappropriately long in order to avoid that investors confuse them with the actual prospectus. In the interests of ensuring that retail investors, in particular, are not misled during the process of marketing any security proposed for public offers or admission to trading, an advertisement should not, by virtue of its size or content, give the impression that it is the principle document for the purpose of receiving information on both the issuer and the security. The principle document is the prospectus and not any other document.
- (7) Advertisements relating to an offer of securities to the public or an admission to trading on a regulated market can become inaccurate or misleading where a significant new

¹⁸ 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, ad repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 67).

factor, material mistake or material inaccuracy relating to the information in the corresponding prospectus arises or is noted. Requirements should be established to ensure that when advertisements become inaccurate or misleading due to such a new factor, material mistake or material inaccuracy, such advertisements are amended.

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

securities involved. Therefore, it is appropriate to specify the minimum situations where a supplement is required.

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

therein is important for the investor's assessment of certain aspects of the issuer's securities and therefore would necessitate a supplement.

- (19) The financial position or the business of the entity is likely to be affected by a significant financial commitment. Therefore, investors should be entitled to receive additional information on the consequences of that commitment in a supplement to the prospectus.
- (20) An increase of the aggregate nominal amount of an offering programme provides information on issuers' necessity for financing or an increase in demands for the issuers' securities. Therefore, where there is an increase in the aggregate nominal amount of an offering programme included in the prospectus, a supplement to the prospectus should be published.
- (21) Investors need clarity as regards which information forms part of the prospectus and to whom an offer of securities to the public is addressed. With the exception of information incorporated by reference, where the prospectus contains hyperlinks, it should therefore inform investors that the information on the related website(s) is not part of the prospectus and has not been scrutinised or approved by the competent authority. Furthermore, in order to ensure the appropriate scope of offers, measures should be taken on websites used for publication of the prospectus to avoid targeting residents in Member States or third countries where the offer of securities to the public does not take place.
- (22) Relevant competent authorities should receive in a timely manner via the notification portal the prospectus and accompanying data, together with a certificate of approval which states that the prospectus has been drawn up in accordance with the Regulation (EU) 2017/1129. The notification portal shall ensure the security and integrity of the information exchanged between competent authorities which remain responsible for its submission. In order for the portal to function smoothly and in a timely manner, it is necessary that technical arrangements include uploading accompanying data to the notification portal.
- (23) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (24) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹⁹, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation, ESMA has not consulted on the draft regulatory technical standards on the technical arrangements for the

¹⁹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

notification portal as to do so would have been disproportionate in relation to the scope and impact of the draft regulatory technical standards.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes regulatory technical standards that specify the following aspects of Regulation (EU) 2017/1129:
 - a) the content and format of presentation of the key financial information referred to in point (b) of Article 7(6), and the relevant key financial information referred to in point (c)(iii) of Article 7(7), taking into account the various types of securities and issuers and ensuring that the information produced is concise and understandable;
 - b) the data necessary for the classification of prospectuses referred to in Article 21(5) and the practical arrangements to ensure that such data, including the ISINs of the securities and the LEIs of the issuers, offerors and guarantors, is machine readable;
 - c) situations where a significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published.
 - d) the technical arrangements necessary for the functioning of the notification portal referred to in Article 25(6).
2. Additionally, this Regulation establishes regulatory technical standards that specify further the following aspects of Regulation (EU) 2017/1129:
 - a) the requirements relating to the publication of the prospectus;
 - b) the provisions concerning advertisements laid down in Article 22(2) to (4), including the provisions concerning the dissemination of advertisements and procedures on the cooperation between the competent authorities of the home

Member State and of the Member State where the advertisements are disseminated.

CHAPTER II

KEY FINANCIAL INFORMATION IN THE SUMMARY

Article 2

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

1. Any historical financial information in the summary, which is extracted from the financial statements, shall be identified as such.
2. The key financial information shall contain the information required by the relevant Annexes of Commission Delegated Regulation (EU) []. Depending on the type of the issuer and the type of the securities involved, the key financial information shall be presented in tabular form according to the tables set out in Annexes I to VI to this Regulation.
3. Where any information required in the appropriate tables in Annexes I to VI of this Regulation is not included in the financial statements of the issuer, the issuer shall substitute a corresponding item from its financial statements for such information.
4. An issuer may include additional line items or Alternative Performance Measures (APM) in the summary if they are key financial information to the issuer or to the securities being offered or admitted to trading. For the purposes of this paragraph, alternative performance measures shall consist of performance measures which are financial measures of historical or future financial performance, financial position, or cash flows, other than financial measures defined in the applicable financial reporting framework.
5. Where pro forma information as required by the Commission Delegated Regulation (EU) [] is included in the prospectus, the pro forma figures affecting the information in the relevant table shall be presented in the summary in the form of additional columns in the tables set out in Annexes I to VI to this Regulation or as a separate table. Where necessary for the understanding of the pro forma information, a brief explanation of the figures shall accompany the pro forma table. Where in the case of a significant gross change only narrative information is included in the prospectus, a statement with regard to the significant gross change shall be included in the summary.
6. Where the issuer has complex financial information as set out in Article [J] of Commission Delegated Regulation (EU) [], the key financial information shall be presented in a manner which corresponds to the presentation of the complex financial information in the prospectus using the appropriate tables in the Annexes I to VI to this Regulation.

7. Where an issuer is of a type not specified by the tables in Annexes I to VI to this Regulation, the issuer shall present the key financial information using the tables in the Annexes relating to the securities that it considers most closely correspond to the type of securities that it is issuing.
8. The key financial information shall be presented for the number of years required by the relevant Annexes of Commission Delegated Regulation (EU) [] according to which type of security or the type of issue the issuer is issuing.

Article 3

Key financial information for non-financial entities issuing equity securities

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

Article 4

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

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

Article 5

Key financial information for credit institutions

Where the issuer is a credit institution, information shall be given in accordance with the tables in Annex III to this Regulation.

Article 6

Key financial information for insurance companies

Where the issuer is an insurance company, information shall be given in accordance with the tables in Annex IV to this Regulation.

Article 7

Key financial information for Special Purpose Vehicles issuing asset backed securities

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

Article 8

Key financial information for closed end funds

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

Article 9

Key financial information for guarantors

Where there is a guarantee attached to the securities, the key financial information on the guarantor shall be presented as if the guarantor were the issuer of the same type of security that is the subject of the guarantee using the tables set out in the Annexes I to VI to this Regulation. Where the guarantee is given for asset backed securities, the key financial information on the guarantor shall be presented as if the guarantor were the issuer of the underlying securities.

CHAPTER III

MACHINE READABLE DATA

Article 10

Data for the classification of prospectuses

When notifying prospectuses, any supplements thereto or communicating final terms to ESMA in accordance with Regulation (EU) 2017/1129, competent authorities shall provide to ESMA the relevant accompanying data for the classification of prospectuses set out in the tables in Annex VII to this Regulation.

Article 11

Practical arrangements to ensure the machine readability of the data

Competent authorities shall ensure that the accompanying data is provided to ESMA in a common XML format and in accordance with the format and standard set out in the tables in Annex VII to this Regulation.

CHAPTER IV

ADVERTISEMENTS

Article 12

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

1. Any advertisement relating to an offer of securities to the public or an admission to trading on a regulated market shall:
 - a) where disseminated other than by written electronic means, clearly identify the website where the prospectus is published or will be published;
 - b) where disseminated by written electronic means, include a hyperlink to the prospectus and to the relevant final terms in the case of a base prospectus. In case the prospectus has not been published, the advertisement shall include a hyperlink to the general or specific page of the website where the prospectus will be published; and
 - c) where disseminated other than by written electronic means as referred to in point (a) or unless there is a hyperlink to the specific page of the website containing the prospectus as referred to in point (b), the advertisement shall contain information to identify the prospectus and offer of securities or admission to trading on a regulated market to which it relates.
2. Advertisements disseminated to retail investors, either written or oral, shall contain the following statements:
 - a) if the advertisement contains a reference to the prospectus being approved by an NCA, a statement that the approval of the prospectus should not be understood as an endorsement of the securities offered or admitted to trading;
 - b) if the advertisement contains a reference to the prospectus being approved by an NCA, a statement that potential investors should read the prospectus before making an investment decision in order to fully understand the potential risks and rewards associated with the decision to invest in the securities; and
 - c) if the advertisement relates to complex securities, the comprehension alert required pursuant to point (b) of Article 8(3) of Regulation (EU) No 1286/2014⁽²⁰⁾ where this is or will be included in the summary and where the

²⁰ Regulation (EU) No 1286/2014 of the European Parliament and of the council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 11).

security does not fulfil the requirements laid down in points (i), (ii) and (vi) of Article 25(4)(a) of Directive 2014/65/EU⁽²¹⁾.

3. A written advertisement shall contain the word 'Advertisement' in a prominent place. Where an advertisement is disseminated in an oral form, the purpose of the communication shall be clearly identified at the beginning of the message.
4. The format and length of written advertisements disseminated to retail investors should be appropriate for this type of document so that investors do not confuse them for the prospectus, where a prospectus is required to be published.

Article 13

Dissemination of advertisements

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

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

²¹ 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 (recast) (OJ L 173, 12.6.2014, p. 409).

Article 14

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

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

Article 15

Procedure for the cooperation between competent authorities

1. Where the competent authority of a Member State in which an advertisement relating to a public offer or an admission to trading on a regulated market is disseminated, has reasonable grounds for believing that its content is inconsistent with the information in the prospectus and asks for the assistance of the competent authority of the home Member State, it shall communicate to the competent authority of the home Member State its belief, the relevant advertisement and where necessary a translation of the advertisement in a language customary in the sphere of international finance or in the language of the prospectus.
2. The competent authority of the home Member State shall reply to the competent authority of the host Member State within a reasonable period with the results of its assessment of the consistency of the advertisement with the information in the prospectus.

CHAPTER V

SUPPLEMENTS

Article 16

Obligation to publish a supplement to the prospectus

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

- (3) an issuer of the underlying shares where a prospectus is drawn up in accordance with a depository receipt schedule, set out in Annex [14] to Commission Delegated Regulation (EU) [];
- e) where there is any new public takeover bid by third parties, as defined in Article 2(1)(a) of Directive 2004/25/EC⁽²²⁾ and the outcome of any public takeover bid in respect of any of the following:
 - (1) the equity of the issuer where a prospectus relates to shares and other transferable securities equivalent to shares referred to in Article [Share registration document schedule] of Commission Delegated Regulation (EU) [];
 - (2) the equity of the issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to equity securities complying with the conditions set out in Article [Additional information building block on the underlying share] of Commission Delegated Regulation (EU) [];
 - (3) the equity of the issuer of the underlying shares where a prospectus is drawn up in accordance with the depository receipt schedule, set out in Annex [14] to Commission Delegated Regulation (EU) [];
- f) where in relation to shares and other transferable securities equivalent to shares referred to in Article [Share registration document schedule] of Regulation [] and convertible or exchangeable debt securities which are equity securities complying with the conditions set out in Article [Additional information building block on the underlying share] of that Regulation and depository receipts referred to in Article [Depository Receipts Schedule] of Commission Delegated Regulation (EU) [] there is a change in the working capital statement included in a prospectus when the working capital becomes sufficient or insufficient for the issuer's present requirements;
- g) where an issuer is seeking admission to trading on (an) additional regulated market(s) in (an) additional Member State(s) or is intending to make an offer to the public in (an) additional Member State(s) other than the one(s) provided for in the prospectus;
- h) where a new significant financial commitment is undertaken which is likely to give rise to a significant gross change within the meaning of Article [Definitions] of Commission Delegated Regulation (EU) [] and the prospectus relates to shares or other transferable securities equivalent to shares referred to in Article

²² Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 15).

[Share registration document schedule] of that Regulation or other equity securities complying with the conditions set out in Article [Additional information building block on the underlying share] of that Regulation;

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

CHAPTER VI

PUBLICATION

Article 17

Publication of the prospectus

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

CHAPTER VII

TECHNICAL ARRANGEMENTS FOR THE NOTIFICATION PORTAL

Article 18

Upload of documents and accompanying data

1. When uploading any documents pursuant to Article 25(6) of this Regulation, a competent authority shall ensure they are in a searchable electronic format that cannot be modified and are accompanied by the data relating to those documents specified in the tables of Annex VII to this Regulation in a common XML format.

Article 19

Processing and passporting of documents and accompanying data

1. The notification portal shall automatically process and check all uploaded documents and accompanying data and send feedback to the uploading competent authority, notifying it of whether the upload was successful and of any error(s).
2. The notification portal shall send notifications of uploaded documents and accompanying data to the relevant competent authorities.

Article 20

Download of documents and accompanying data

1. The notification portal shall make available to the relevant competent authorities for download any documents and data uploaded for communication to them.

CHAPTER VIII

FINAL PROVISIONS

Article 21

Entry into force

1. This Regulation shall enter into force on the [twentieth] day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [date].

For the Commission

The President

[name]

ANNEX I

NON-FINANCIAL ENTITIES (EQUITY)

The following legend applies across Annexes I to VI:

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

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

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

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

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

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

	<i>Year</i>	<i>Year -1</i>	<i>Year -2</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Relevant net Cash flows from operating activities and / or cash flows from investing activities and / or cash from financing activities					

ANNEX II

NON-FINANCIAL ENTITIES (NON-EQUITY)

Table 1: Income statement for non-equity securities

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

Table 2: Balance sheet for non-equity securities

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

Table 3: Cash flow statement for non-equity securities

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

ANNEX III

CREDIT INSTITUTIONS (EQUITY AND NON-EQUITY SECURITIES)

Table 1: Income statement for credit institutions

	<i>Year</i>	<i>Year -1</i>	<i>Year -2²³</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Net interest income (or equivalent)					
*Net fee and commission income					
*Net impairment loss on financial assets					
*Net trading income					
*Measure of financial performance used by the issuer in the financial statements such as operating profit					
*Net profit or loss (for consolidated financial statements net profit or loss attributable to equity holders of the parent)					
#Earnings per share (for equity issuers only)					

²³ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

Table 2: Balance sheet for credit institutions

	<i>Year</i>	<i>Year -1</i>	<i>Year -2²⁴</i>	<i>Interim</i>	<i>#Value as outcome from the most recent SREP</i>
*Total assets					
*Senior debt					
*Subordinated debt					
*Loans and receivables from customers (net)					
*Deposits from customers					
*Total equity					
#Non performing loans (based on net carrying amount) / Loans and receivables)					
#Common Equity Tier 1 capital (CET1) ratio or other relevant prudential capital adequacy ratio depending on the issuance					
#Total Capital Ratio					
#Leverage Ratio calculated under applicable regulatory framework					

²⁴ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

ANNEX IV

INSURANCE COMPANIES (EQUITY AND NON-EQUITY SECURITIES)

Table 1: Income statement for insurance companies

	<i>Year</i>	<i>Year -1</i>	<i>Year -2²⁵</i>	<i>Interim</i>	<i>Comparative interim from same period in prior year</i>
*Net premiums					
*Net benefits and claims					
*Earnings before tax					
*Operating profit (distinguishing between life and non-life insurance)					
*Net profit or loss (for consolidated financial statements net profit or loss attributable to equity holders of the parent)					
#Year on year revenue growth (net premiums)					
#Earnings per share (for equity issuers only)					

Table 2: Balance sheet for insurance companies

	<i>Year</i>	<i>Year -1</i>	<i>Year -2²⁶</i>	<i>Interim</i>
*Investments including financial assets				

²⁵ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

²⁶ Number of years of financial information to correspond with the relevant annex in Commission Delegated Regulation (EU) [].

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

ANNEX V

SPVS ISSUING ASSET BACKED SECURITIES

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

	Year	Year -1
*Net profit or loss		

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

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

ANNEX VI

CLOSED END FUNDS

Table 1: Additional information relevant to closed end funds

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

Table 2: Income statement for closed end funds

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

Table 3: Balance sheet for closed end funds

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

ANNEX VII

MACHINE-READABLE DATA TO BE PROVIDED TO ESMA

Table 1

<i>Number</i>	<i>Field</i>	<i>Content to be reported</i>	<i>Format and Standard to be used for reporting</i>
1.	National identifier	Unique identifier of the uploaded record, assigned by the sending NCA	{ALPHANUM-50}
2.	Related national identifier	Unique identifier of the record to which the uploaded record relates, assigned by the sending NCA Not reported in case the related national identifier is not applicable	{ALPHANUM-50}
3.	Sending Member State	Country code of the Member State which approved the uploaded record or with which the uploaded record was filed	{COUNTRYCODE_2}
4.	Receiving Member State(s)	Country code of the Member State(s) to which uploaded record is to be notified or communicated When multiple Member States shall be communicated, field 4 shall be reported as many times as necessary	{COUNTRYCODE_2}
5.	Document type	The type of uploaded document(s)	Choice from list of predefined fields: - 'BPFT' - Base prospectus with final terms - 'BPWO' - Base prospectus without final terms - 'STDA' - Standalone prospectus

			<ul style="list-style-type: none"> - 'REGN' - Registration document - 'URGN' - Universal registration document - 'SECN' - Securities note - 'FTWS' - Final terms, including the summary of the individual issue annexed to them - 'SMRY' - Summary - 'SUPP' - Supplement - 'SUMT' - Translation of summary - 'COAP' – Certificate of Approval - 'AMND' – Amendment <p>When multiple documents shall be communicated, field [5] shall be reported as many times as necessary to describe each document composing the record</p>
6.	Structure type	The format chosen for the prospectus	<p>Choice from list of predefined fields:</p> <ul style="list-style-type: none"> - 'SNGL' - Single document prospectus - 'SPWS' - Prospectus consisting of separate documents (base prospectus and final terms) with summary - 'SPWO' - Prospectus consisting of separate documents (base prospectus and final terms) without summary
7.	Approval or filing date	The date on which the uploaded record was approved or filed	{DATEFORMAT}
8.	Language	The EU language in which the uploaded record is drafted	{LANGUAGE}
9.	Offeror standardised name	Name and surname of the offeror in case the offeror is a natural person	{ALPHANUM-280}

		When multiple offerors shall be communicated, field [9] shall be reported as many times as necessary	
10.	Guarantor standardised name	Name and surname of the guarantor in case the guarantor is a natural person When multiple guarantors shall be communicated, field [10] shall be reported as many times as necessary	{ALPHANUM-280}
11.	Issuer LEI	Legal Entity Identifier of the issuer When multiple issuers shall be communicated, field [11] shall be reported as many times as necessary	{LEI}
12.	Offeror LEI	Legal Entity Identifier of the offeror When multiple offerors shall be communicated, field [12] shall be reported as many times as necessary	{LEI}
13.	Guarantor LEI	Legal Entity Identifier of the guarantor When multiple guarantors shall be communicated, field [13] shall be reported as many times as necessary	{LEI}
14.	Offeror residency	Offeror's residency in case the offeror is a natural person When multiple offerors shall be communicated,	{COUNTRYCODE_2}

		field [14] shall be reported as many times as necessary	
15.	Guarantor residency	<p>Guarantor's residency in case the guarantor is a natural person</p> <p>When multiple guarantors shall be communicated, field [15] shall be reported as many times as necessary</p>	{COUNTRYCODE_2}
16.	FISN	<p>Financial Instrument Short Name of the security</p> <p>This field should be repeated for each ISIN</p>	{FISN}
17.	ISIN	<p>International Securities Identification Number</p>	{ISIN}
18.	CFI	<p>Classification of Financial Instrument code</p> <p>This field should be repeated for each ISIN</p>	{CFI_CODE}
19.	Issuance currency	<p>Code representing the currency in which the nominal or notional value is denominated</p> <p>This field should be repeated for each ISIN</p>	{CURRENCYCODE_3}
20.	Denomination per unit	<p>Nominal value or notional value per unit in the issuance currency</p> <p>This field should be repeated for each ISIN</p> <p>Field applicable to securities with defined denomination</p>	{DECIMAL-18/5}
21.	Identifier or name of the underlying	<p>ISIN code of the underlying security/index or name of the underlying security/index if an ISIN does not exist</p> <p>When basket of securities, to be identified accordingly</p>	<p>For unique underlying:</p> <ul style="list-style-type: none"> - In case of security or index with existing ISIN: {ISIN} - In case the index has no ISIN: {INDEX} - Otherwise: {ALPHANUM-50}

		Field applicable to securities with defined underlying. This field should be repeated for each ISIN of such securities	For multiple underlyings (more than one): 'BSKT'
22.	Maturity or expiry date	Date of maturity or expiry date of the security, when applicable This field should be repeated for each ISIN Field applicable to securities with defined maturity	{DATEFORMAT} For perpetual debt securities field 22 should be populated with the value 9999-12-31.
23.	Volume offered	Number of securities offered Field applicable only to equity This field should be repeated for each applicable ISIN	{INTEGER-18} Either as single value, range of values, maximum
24.	Price offered	Price per security offered, in monetary value. The currency of the price is the issuance currency Field applicable only to equity This field should be repeated for each applicable ISIN	{DECIMAL-18/5} Either as single value, range of values, maximum 'PNDG' in case the price offered is not available but pending 'NOAP' in case the price offered is not applicable
25.	Consideration offered	Total amount offered, in monetary value of the issuance currency This field should be repeated for each ISIN	{DECIMAL-18/5} Either as single value, range of values, maximum 'PNDG' in case the consideration offered is not available but pending 'NOAP' in case the consideration offered is not applicable

26.	Type of security	<p>Classification of categories of equity and non-equity securities</p> <p>This field should be repeated for each ISIN</p>	<p>Choice from list of predefined fields:</p> <p>Equity</p> <ul style="list-style-type: none"> - 'SHRS': Share - 'UCEF': Unit or share in closed end funds - 'CVTS': Convertible security - 'OTHR': Other equity <p>'DRCP': Depository receipt</p> <p>Debt</p> <ul style="list-style-type: none"> - 'DWLD': Debt with denomination per unit of at least EUR 100,000 - 'DWHD': Debt with denomination per unit of less than EUR 100,000 - 'DLRM': Debt with denomination per unit of less than EUR 100,000 traded on a regulated market to which only qualified investors have access to <p>'ABSE': ABS</p> <p>'DERV': Derivative security</p>
27.	Type of offer / admission	Taxonomy according to PR and MiFID / MIFIR	<p>Choice from list of predefined fields:</p> <ul style="list-style-type: none"> - 'IOWA': Initial offer without admission to trading / listing - 'SOWA': Secondary offer without admission to trading / listing - 'IRMT': Initial admission to trading on regulated market - 'IPTM': Initial admission to trading on regulated market from previously being traded on MTF

			<ul style="list-style-type: none"> - 'IMTF': Initial admission to trading on MTF with offer to the public - 'SIRM': Secondary issuance on a regulated market or MTF
28.	Characteristics of the trading venue where the security is initially admitted to trading	Taxonomy according to PR and MiFID / MIFIR	<p>Choice from list of predefined fields:</p> <ul style="list-style-type: none"> - 'RMKT': RM open to all investors - 'RMQI': RM, or segment thereof, limited to qualified investors - 'MSGM': MTF which is a SME growth market - 'MLTF': MTF which is not a SME growth market
29.	Disclosure regime	<p>The annex number in accordance with which the prospectus is drafted under the Commission Delegated Regulation (EU) []</p> <p>When multiple annexes shall be communicated, field 29 shall be reported as many times as necessary</p>	{INTEGER-2} From 1 to [28]
30.	EU Growth prospectus category	Reason based on which an EU Growth prospectus has been used	<p>Choice from list of predefined fields:</p> <ul style="list-style-type: none"> - 'S15A' : SME under PR Article 15(1)(a) - 'I15B': Issuer other than SME under PR Article 15(1)(b) - 'I15C': Issuer other than SME under PR Article 15(1)(c) - 'O15D': Offeror of securities under PR Article 15(1)(d)

Table 2

<i>Symbol</i>	<i>Data Type</i>	<i>Definition</i>
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field
{CFI_CODE}	6 characters	CFI code, as defined in ISO 10962
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alfa-2 country code
{DATEFORMAT}	Dates in the following format: YYYY-MM-DD Dates shall be reported in UTC	ISO 8601 date format
{LANGUAGE}	2 letter code	ISO 639-1
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{FISN}	35 alphanumerical characters with the following structure	FISN code, as defined in ISO 18774
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DECIMAL-n/m}	Decimal number of up to n digit in total, of which up to m digits can be fraction digits	Numerical field Decimal separator is '.' (full stop) Values are rounded and not truncated
{INTEGER-n}	Integer number of up to n digits in total	Numerical field
{INDEX}	4 alphabetic characters	'EONA' – EONIA 'EONS' - EONIA SWAP 'EURI' - EURIBOR 'EUUS' - EURODOLLAR

		<p>'EUCH' - EuroSwiss 'GCFR' - GCF REPO 'ISDA' - ISDAFIX 'LIBI' - LIBID 'LIBO' - LIBOR 'MAAA' – Muni AAA 'PFAN' - Pfandbriefe 'TIBO' - TIBOR 'STBO' - STIBOR 'BBSW' - BBSW 'JIBA' - JIBAR 'BUBO' - BUBOR 'CDOR' - CDOR 'CIBO' – CIBOR 'MOSP' – MOSPRIM 'NIBO' - NIBOR 'PRBO' - PRIBOR 'TLBO' - TELBOR 'WIBO' – WIBOR 'TREA' – Treasury 'SWAP' – SWAP 'FUSW' – Future SWA</p>
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Annex VI: Amendment to the technical advice on scrutiny and approval

C(2a) Where required by the competent authority, when submitting a draft prospectus to the competent authority for approval or when filing final terms, the issuer, offeror or person asking for admission to trading on a regulated market shall submit data referred to in the table of Annex VII to Commission Delegated Regulation (EU) [] in line with the format requirements set out in that Annex and to the extent required by the competent authority. Competent authorities are allowed to make use of data which are available to them instead of requiring the submission of the data referred to in the table of Annex VII to the Commission Delegated Regulation (EU) [] by the issuer, offeror or person asking for admission to trading on a regulated market.