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| 6 July 2017 |

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| Response form for the Consultation Paper on EU Growth prospectus  |
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| Date: 6 July 2017 |

Responding to this paper

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

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

ESMA will consider all responses received by 28 September 2017.

Instructions

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

* Insert your responses to the questions in the Consultation Paper in the form “Response form\_Consultation Paper on EU Growth prospectus”, available on ESMA’s website alongside the present Consultation Paper ([www.esma.europa.eu](http://www.esma.europa.eu) 🡪 ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).
* Please do not remove tags of the type <ESMA\_QUESTION\_EUG\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_EUG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_EUG\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Data protection’.

Who should read this Consultation Paper

This Consultation Paper may be of particular interest to investors, issuers, including issuers already admitted to trading on a regulated market or on a multilateral trading facility, offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the new Prospectus Regulation.

# General information about respondent

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| Name of the company / organisation | Association of capital market orientated small and medium-sized enterprises (“Interessenverband kapitalmarktorientierter kleiner und mittlerer Unternehmen (KMU)”) |
| Activity | Non-financial counterparty |
| Are you representing an association? |[x]
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ EUG\_1>

Dear Sir, dear Madam,

We appreciate the opportunity to represent the interests of the small and medium-sized enterprises in this consultation process and would like to introduce also our association.

Our association of capital market orientated small and medium-sized enterprises (“Interessenverband kapitalmarktorientierter kleiner und mittlerer Unternehmen (KMU)”) was founded on August 30, 2017 in Frankfurt am Main, Germany.

Our association represents the interests of capital market orientated small and medium-sized enterprises. Purpose of the association is to improve the conditions for financing of small and medium-sized enterprises via capital markets.

Foundation members of our association represent beside SMEs also service providers, financial institutes, media and law firms who support SME on financing via capital markets.

The press coverage regarding the foundation of our association was enormous. See below an extract of the press coverage:

 <http://www.anleihen-finder.de/anlaufstelle-fuer-kapitalmarkorientierte-kmu-interessenverband-in-frankfurt-am-main-gegruendet-00034284.html>

<http://www.bondguide.de/topnews/erfolgreiche-gruendung-des-interessenverbandes-kapitalmarktorientierter-unternehmen-e-v/2/>

<http://www.deal-magazin.com/news/67082/Interessenverband-kapitalmarkorientierter-KMUs-gegruendet>

With this response form our association wants to participate actively in the consultation process and debate regarding the future format of the EU Growth prospectus.

<ESMA\_COMMENT\_ EUG\_1>

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

<ESMA\_QUESTION\_EUG\_1>

In the request to ESMA for Technical Advice it was pointed out, that ESMA should adopt a “bottom-up approach” and avoid taking the existing Annexes of Regulation (EC) No 809/2004 as a starting point. In particular, ESMA should take as a benchmark the content of admission documents required by markets where the prospectus obligation does not apply, e.g. the rules of MTFs that cater for SMEs and midcaps.

In contrary the format of the EU Growth prospectus suggested in Article A is comparable with the Format of the current prospectus regime and the required “bottom-up approach” was obviously not taken into account.

From our point of view the suggested format does not fulfill the requirements according to the Prospectus Regulation “to be easy to complete for issuers” and it is also not ensured “that the EU Growth prospectus is significantly lighter than the standard prospectus, in terms of administrative burdens and costs to issuers”.

We strongly recommend to reconsider the suggested format and to use a real “bottom-up approach”.

As an alternative for a serious meant bottom-up approach ESMA could have taken the listing prerequisites of the open markets (e.g. Frankfurt Stock Exchange) as a role model for the EU Growth prospectus. For example the open market of the Frankfurt Stock Exchange requires for a listing in the open market a form with issuer data only. Required data would be here contact details, management and supervisory board, name and address of board members, date of incorporation, business activity, paying agent, financial information and the terms and conditions of the security.

Our understanding of a EU Growth prospectus which is easy to complete is more a format of a prospectus according to the suggestion of the European Commission so that the issuer “shall be entitled to draw up a prospectus under a format structured in the form of a questionnaire with standardised text, to be filled in by the issuer.”

We think that certainly no more sections should be inserted. In contrary sections could be removed.

From our point of view there is no obligation for example to include a “cover note” (see also ESMA comments 20, 21). In addition, we also do not see the necessity to insert in a short prospectus format for a small and medium sized company a “general description of the programme” which can in general be found in medium term note programmes.

Furthermore, from our point of view the current prospectus regime does not require to insert for a bond prospectus a working capital statement which would be an additional burden.<ESMA\_QUESTION\_EUG\_1>

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

<ESMA\_QUESTION\_EUG\_2>

We would prefer a predefined order which guarantees comparability. Exceptions might be possible if the issuer is obliged to publish with the prospectus a cross reference list for the investors. <ESMA\_QUESTION\_EUG\_2>

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

<ESMA\_QUESTION\_EUG\_3>

We suggest to place the risk factors more prominently after the summary.<ESMA\_QUESTION\_EUG\_3>

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

<ESMA\_QUESTION\_EUG\_4>

We refer to our comment to Q1.<ESMA\_QUESTION\_EUG\_4>

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

<ESMA\_QUESTION\_EUG\_5>

We refer to our comment to Q1. We do not see a bottom-up approach at all. From our point of view the suggested Annex 1 is far too close to the current prospectus regime. The prospectus regulation requires proportionality between the size of the company and the cost of producing the prospectus and that the EU Growth prospectus is significantly lighter than the standard prospectus.

Furthermore, we would like to point out, that under the current prospectus regime certain items which will be required under the new prospectus regime are not required so far. This would be an additional burden for the SMEs, e.g. Remuneration and benefits for bond issues, and would be counterproductive for the purpose of the Capital Markets Union.<ESMA\_QUESTION\_EUG\_5>

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

<ESMA\_QUESTION\_EUG\_6>

We agree with a single registration document for equity and non-equity issuances.<ESMA\_QUESTION\_EUG\_6>

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

<ESMA\_QUESTION\_EUG\_7>

We agree. However, this might be only a small advantage for the issuer since the issuer regularly has to provide a comfort letter in context with the offering in which the auditor confirms the financial information.<ESMA\_QUESTION\_EUG\_7>

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

<ESMA\_QUESTION\_EUG\_8>

So far information concerning the issuer’s borrowing requirements and funding structure is from our point not necessary for SME. Therefore, this new requirement would be an additional burden for SMEs. We refer to our comments above.

From this point of view we suggest that this information should not be provided by non-equity issuers.<ESMA\_QUESTION\_EUG\_8>

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

<ESMA\_QUESTION\_EUG\_9>

From our point of view the foreseen requirements are more extensive than the current prospectus regulation for SMEs (e. g. 5 percent clause for equity securities) and are therefore an unnecessary burden for the SMEs.<ESMA\_QUESTION\_EUG\_9>

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

<ESMA\_QUESTION\_EUG\_10>

We agree and strongly recommend that this possibility should remain. For example the German GAAP is widely used, well tested, reliable and much cheaper than IFRS. Furthermore, we want to point out that it would increase costs enormously if all SMEs would be forced to prepare their financial statements under IFRS. Therefore, an obligation to include IFRS-information would be counterproductive for the wanted effect to facilitate access to financing on capital markets for SME.<ESMA\_QUESTION\_EUG\_10>

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

<ESMA\_QUESTION\_EUG\_11>

We refer to our comment to Q1.<ESMA\_QUESTION\_EUG\_11>

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

<ESMA\_QUESTION\_EUG\_12>

From our point of view it is important, that the issuer of the EU Growth registration document is able to draft the registration document without legal support. Not every small SME has a legal department. We do not think that a non-lawyer is able to draft a registration document on the basis of Annex 1 only. Therefore, we recommend to simplify the wording or to give additional explanations or to provide the issuers with an additional guidance.<ESMA\_QUESTION\_EUG\_12>

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

<ESMA\_QUESTION\_EUG\_13>

We refer to our comment to Q1 and Q12 (lawyers costs – € 50,000 – € 200,000 for the whole prospectus, dependent on the structure of the issuance.<ESMA\_QUESTION\_EUG\_13>

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

<ESMA\_QUESTION\_EUG\_14>

We refer to our comment to Q1. We do not see a bottom-up approach at all. From our point of view the suggested Annex 1 is far too close to the current prospectus regime. The prospectus regulation requires proportionality between the size of the company and the cost of producing the prospectus and that the EU Growth prospectus is significantly lighter than the standard prospectus.<ESMA\_QUESTION\_EUG\_14>

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

<ESMA\_QUESTION\_EUG\_15>

We agree with the proposal regarding a single registration document for equity and non-equity issuances.<ESMA\_QUESTION\_EUG\_15>

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

<ESMA\_QUESTION\_EUG\_16>

From our point of view it is important, that the issuer of the EU Growth securities note is able to draft the securities note without legal support. Not every small SME has a legal department. We do not think that a non-lawyer is able to draft a securities note on the basis of Annex 2 only. Therefore, we recommend to simplify the wording or to give additional explanations or to provide the issuers with an additional guidance.<ESMA\_QUESTION\_EUG\_16>

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

<ESMA\_QUESTION\_EUG\_17>

We refer to our comment to Q1.<ESMA\_QUESTION\_EUG\_17>

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

<ESMA\_QUESTION\_EUG\_18>

We refer to our comment to Q1. We do not see much benefits in terms of reduced costs.<ESMA\_QUESTION\_EUG\_18>

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

<ESMA\_QUESTION\_EUG\_19>

We refer to our comment to Q16.

<ESMA\_QUESTION\_EUG\_19>

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

<ESMA\_QUESTION\_EUG\_20>

From our point of view the foreseen necessary information is by far too detailed. We refer to our comment to Q1. For example the information concerning the securities is by far more detailed than the issuer data form for a listing in the open market. And Annex 3 of the ESMA draft contains the “necessary” information for the summary only while the issuer data form already contains the whole information concerning the security. <ESMA\_QUESTION\_EUG\_20>

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

<ESMA\_QUESTION\_EUG\_21>

We agree that the summary should be a very short document. Nonetheless, ESMA should consider that ESMA already needed 5 pages to explain the necessary content. We refer to our comment to Q1 and to Q20. <ESMA\_QUESTION\_EUG\_21>

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

<ESMA\_QUESTION\_EUG\_22>

We do not see reduced compliance costs. In contrary, the compliance department (please have in mind that SMEs have limited capacities) has to estimate the different risks which is much more time consuming than just to name them.<ESMA\_QUESTION\_EUG\_22>

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

<ESMA\_QUESTION\_EUG\_23>

We agree.<ESMA\_QUESTION\_EUG\_23>

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

<ESMA\_QUESTION\_EUG\_24>

We refer to our comment to Q1. From our point of view this content of the key financial information in the summary is by far to detailed.<ESMA\_QUESTION\_EUG\_24>

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

<ESMA\_QUESTION\_EUG\_25>

Under the current prospectus regime pro forma financial information has only to be inserted in the summary according to Annex I and Annex II.

Therefore a disclosure of condensed pro forma financial information in the summary of the EU Growth prospectus would create an additional burden for the SMEs.<ESMA\_QUESTION\_EUG\_25>

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

<ESMA\_QUESTION\_EUG\_26>

We refer to our comment to Q1.

<ESMA\_QUESTION\_EUG\_26>

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

<ESMA\_QUESTION\_EUG\_27>

In our opinion the items are clear enough.<ESMA\_QUESTION\_EUG\_27>

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

<ESMA\_QUESTION\_EUG\_28>

We refer to our comment to Q22 and to Q1. <ESMA\_QUESTION\_EUG\_28>