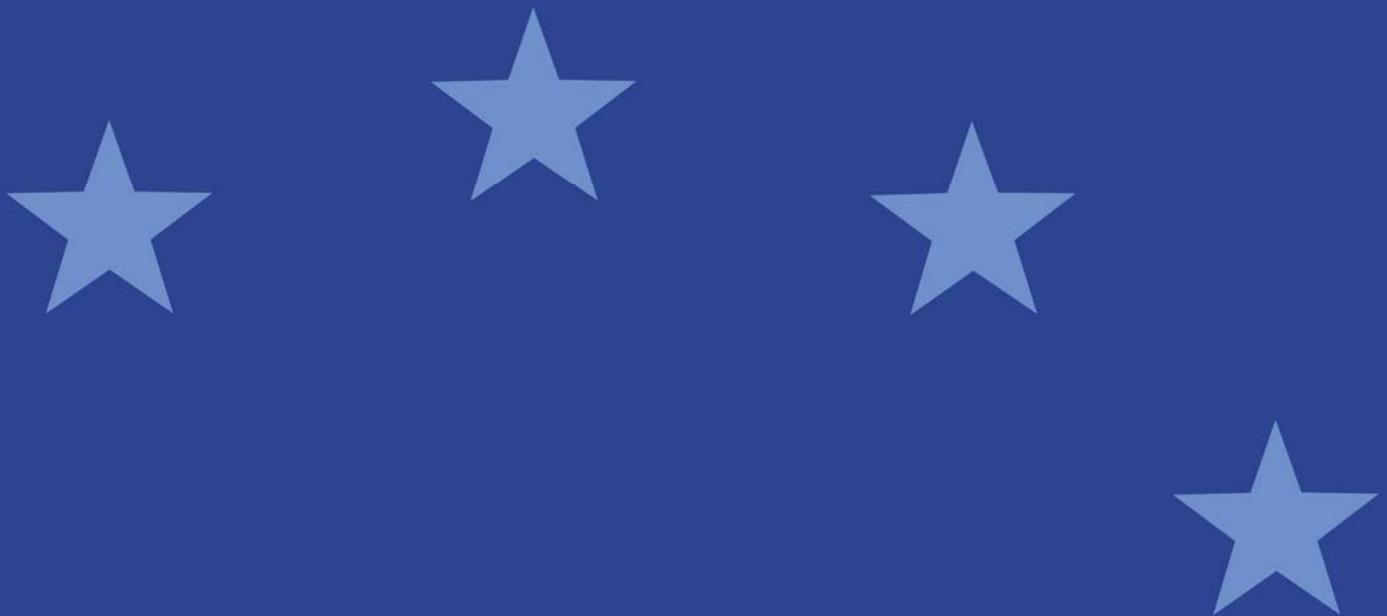


Response form for the Consultation Paper on Guidelines on risk factors under the Prospectus Regulation



Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on Guidelines on risk factors under the Prospectus Regulation. 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 05 October 2018.

Instructions

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

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESMA_QUESTION_GRF_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_GRF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_GRF_ABCD_RESPONSEFORM.
 - Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open consultations” → “Consultation on Guidelines on risk factors under the Prospectus Regulation”).

Publication of responses

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

**Data protection**

Information on data protection can be found at www.esma.europa.eu under the heading “Data protection”.

Who should read the Consultation Paper

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



General information about respondent

Name of the company / organisation	EURONEXT
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_GRF_1>

Euronext welcomes the opportunity to respond to ESMA's Consultation Paper on the guidelines on risk factors under the new Prospectus Regulation. We support the objectives of ensuring risk factors are more concise and meaningful in the prospectus.

We have answered all of the questions posed by ESMA. However, we would like to highlight, in particular, our responses to Q1 to Q5 as we feel that further guidance from ESMA is necessary to explain how these guidelines will apply in practice to ensure that they do not result in a barrier to entry. Our views are in line with those expressed in FESE's response also.

<ESMA_COMMENT_GRF_1>



Specificity

Q1 : Do you agree with the suggested draft guidelines on specificity? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_1>

Euronext agrees in theory that risk factors should be drafted with specificity to the issuer, guarantor or securities and acknowledge ESMA peer review findings that the inclusion of generic risk factors leads to lengthy, cumbersome risk factor sections that confer no benefit on investors. We welcome the examples provided by ESMA but have the following queries on how this guideline will be applied in practice:

- Risk factors often address geopolitical events, economic environment, recent legislative changes etc.

Will NCAs continue to allow these types of risks to be construed as specific to the issuer, guarantor or securities?

- The draft guidelines state that the competent authority should not approve a prospectus where specificity is not apparent from the disclosure of the risk factor. Is the scope of the NCA's review therefore limited to whether disclosure exists which explains why the issuer considers the risk factor specific or can NCAs disagree with an issuer's assessment of a risk factor as specific?

- If there is disagreement between the NCA and persons responsible for the prospectus as to whether a risk factor is adequately specific for inclusion, whose view will prevail?

- Can exclusion of risk factors that the NCA may deem non-specific to the issuer, guarantor or securities expose the persons responsible to liability such that imposition of Guidelines 1 & 2 will pose a barrier to prospectus approval across the EU?

- If the view of the NCA prevails and risk factors are removed, could this expose NCAs to liability?

We would ask ESMA to consider and clarify these points so that we gain a better understanding as to how this guideline will be applied by NCAs and whether exposure to liability exists so that industry can better assess whether this guideline will pose a barrier to entry.

<ESMA_QUESTION_GRF_1>

Materiality

Q2 : Do you agree with the suggested draft guideline 3? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_2>

Euronext notes that neither ESMA nor the Prospectus Regulation defines "materiality," but that ESMA wishes to extrapolate the definition included in the IFRS conceptual framework, i.e. information is material if omission or misstatement could negatively influence investment decisions based on use of the prospectus.

In the absence of an express definition in the Prospectus Regulation, we consider it a good idea to include this extrapolated concept of "materiality" in the guidelines in order to allow a consistent application of materiality across all prospectus approval applications in the EU.

However, we would query the scope of competent authorities' review under Guideline 3. Per the current wording, competent authorities should challenge where "materiality" is not apparent. ESMA should clarify whether this simply means that NCAs are limited to ensuring that the responsible persons have provided a rationale as to why they consider a particular risk material or whether NCAs can disagree with responsible persons as to whether a risk is material or not. We believe clarification is necessary as the latter application could lead to exposure to liability of either the responsible persons or the NCA and would lead to the same concerns raised under our response to Q1.

<ESMA_QUESTION_GRF_2>

Q3 : Do you agree with the suggested draft guideline 4 on quantitative information? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_3>

Based on ESMA's explanatory text, we understand Guideline 4 as follows: quantitative information should be provided where available but in its absence, qualitative disclosure may be provided. Qualitative disclosure may be presented by reference to a scale of low, minimum or high (although responsible persons are not obliged to provide such scaled ranking of risks). In the absence of any guidance as to how low, medium or high can be defined, we would query whether this will lead to inconsistency of scaled risk by both responsible persons and NCAs, which ultimately will be of no benefit to investors. In order to ensure a level playing field across the EU and to ensure issuers approach it in the same way, we would ask ESMA to either provide further guidance as to scaling or alternatively, to provide examples of low, medium and high risks.

We would also query the scope of competent authorities' review under Guideline 4. Can a competent authority disagree with an issuer's assessment as to how negative the impact is or how material the risk is? For example, if an issuer uses a scale of low, medium or high to rank a risk, can a competent authority disagree with the ranking of a risk as low if it feels the risk should be medium or high? We feel these are important points for ESMA to clarify so that responsible persons understand who has the final say in materiality of a risk as it raises questions around liability issues. If the final say lies with the NCA, we feel this may have a deterrent effect on prospectus approval across the EU.

Finally, we note that ESMA acknowledges that other pieces of European legislation require issuers to provide quantitative disclosure regarding financial risks. ESMA points out that risk factors should be concise, focused and appropriate for investors targeted by the prospectus and thus, reproduction in full of such disclosure in a prospectus would be inappropriate. ESMA's explanatory text suggests that this other disclosure "could be tailored for the purpose of including it in the prospectus." This would appear to preclude incorporating other such disclosure by reference absent a cross-referencing table; the remaining alternative is for issuers to reproduce shortened versions of disclosure acceptable under other EU legislation in order for it to satisfy ESMA's guidelines for prospectus inclusion. We would consider that either approach will lead to duplication of effort and increased costs for issuers. We would also consider that disclosure which satisfies other pieces of EU legislation should be considered appropriate under the Prospectus Regulations.

<ESMA_QUESTION_GRF_3>

Q4 : Do you agree with the suggested draft guideline 5 on mitigating language? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_4>

Euronext acknowledges ESMA's concern that mitigating language could limit the perception of risk to the extent that the reader is unclear as to whether any risk remains. ESMA considers that mitigating language cannot be used to undermine the principle of "risk" attached to relevant securities.

Whilst we appreciate ESMA's concerns, we would consider that mitigating language may also prevent over-estimation of risk and is therefore a useful tool in enabling investors to reach an informed investment decision. According to the explanatory text for guideline 5, the competent authority can require removal of mitigating language "if the competent authority believes that mitigating language included in the prospectus renders the relevant risk factor immaterial." Whilst ESMA does not proscribe mitigating language such as risk management practices/policies, it will only allow its inclusion to the extent that it does not negate the risk and where the remaining material risk is made clear. We believe ESMA should also consider whether this guideline will deter issuers from seeking approval in the EU if they feel that an NCA can prevent them from, in their view, adequately mitigating risk. In our view, it is important for there to be sufficient flexibility to allow issuers describe mitigating factors as appropriate.

From a practical standpoint, we note that ESMA considers that it may be relevant for the prospectus to refer to risk management practices but that lengthy descriptions of same should not be included in the risk factor section. We would note, however, that Article 7(11) of the Prospectus Regulation does not permit cross-references in the summary; accordingly, risk factors presented in the summary may therefore be



required to include mitigating risk management practices/policies etc. as cross-referencing is not allowed. We would welcome guidance on this point.
<ESMA_QUESTION_GRF_4>

Corroboration

Q5 : Do you agree with the suggested draft guideline 6 on corroboration of specificity and materiality? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_5>

Euronext agrees in general that risk factors should be capable of being supported by corroborating information but have concerns as to application. To that end, we would ask ESMA to provide further guidance as to how corroboration requirements will be applied by competent authorities to ensure a consistent approach that does not result in a barrier to entry.

From a practical standpoint, we would also welcome clarification as to the following language taken from the guideline: “Where the competent authority considers that the materiality and specificity of a risk factor is not corroborated by a reading of the prospectus, the competent authority should challenge the inclusion of such risk factor.” Does this highlighted language allow the corroboration requirement to be satisfied within the risk factor (by including detail which adequately explains the risk) or must there be further corroboration elsewhere in the prospectus? We would consider the former to be more favourable from both a cost and replication standpoint.

<ESMA_QUESTION_GRF_5>

Presentation of risk factors across categories

Q6 : Do you agree with the suggested draft guidelines on Presentation of risk factors across categories? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_6>

Euronext agrees that risk factors should be presented in a way that supports comprehensibility and assists investors in understanding the nature and source of each.

We generally agree that a risk factor should appear only once, in the most appropriate category but would ask ESMA to consider exercising flexibility if an issuer can demonstrate that a particular risk factor falls across more than one category as we believe this is a determination that issuers are best placed to make.

<ESMA_QUESTION_GRF_6>

Q7 : Do you agree with that the number of categories to be included in a risk factor section, should not usually exceed 10? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_7>

Euronext agrees on the basis of ESMA’s confirmation that (i) the intention of the guideline is to build on the Level 1 requirement of “limited” categories while still allowing for flexibility; and (ii) departures from ten categories may be allowed where there are justifiable grounds. Once again, we would consider that the issuer is best placed to determine whether more than ten categories is justified in a particular prospectus so it is of utmost importance that flexibility is allowed in this regard. Otherwise there is a risk that the artificial restriction on the number of risks allowed could ultimately be to the detriment of the investor.

<ESMA_QUESTION_GRF_7>

Focused/concise risk factors

Q8 : Do you agree with the suggested draft guidelines on focused/concise risk factors? If not, please provide your reasoning.



<ESMA_QUESTION_GRF_8>

We agree that competent authorities should challenge wording and request more focused disclosure where risk factors are not presented in a concise form. This appears to be a practical way to address the “size inflation” issue referred to by ESMA in its explanatory text and will ensure investors will not have to wade through content obscuring the perception of risk.

<ESMA_QUESTION_GRF_8>

Summary

Q9 : Do you agree with the suggested draft guideline on risk factors in the summary? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_9>

We agree that the presentation of risk factors in the summary should be consistent with the order of risk factors in the risk factor section.

<ESMA_QUESTION_GRF_9>

General

Q10 : Do you agree with the proposed draft guidelines? Have you any further suggestions with regard to draft guidelines addressing a particular section or the guidelines in general?

<ESMA_QUESTION_GRF_10>

We agree in general with the proposed draft guidelines but would welcome further clarification as set out in Questions 1 through 5.

<ESMA_QUESTION_GRF_10>

Q11 : Do you believe that market participants will bear any additional cost as an indirect effect of the suggested draft guidelines? If yes, please indicate the nature of such costs and provide an estimation.

<ESMA_QUESTION_GRF_11>

In our opinion, issuers are likely to incur additional costs adjusting to the new, more prescriptive regime for risk factor disclosure because issuers and their legal advisors will need to consider how best to meet their obligations, with a specific focus on specificity, materiality, corroboration, categorisation, conciseness and liability.

In general there is a lot of scope for NCAs to challenge issuers in many areas which is likely to lead to increased comments and a longer review time. We would ask that NCAs take a practical and balanced approach to this and only challenge where it is clearly required to improve the content and quality of the prospectus, otherwise there is a concern that it could deter issuers from listing on regulated markets if it is deemed too onerous.

<ESMA_QUESTION_GRF_11>