ESMA_QA_978

Submission Date
12/07/2019

Status: Published Answer Updated

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Free offers (Updated 09/09/2026)

Question
Are 'free offers', such as employee shares granted without payment, excluded from the definition of public offer?

If they fall under the definition of public offer, can they be considered to have zero total consideration and therefore fall under a prospectus exemption, e.g. where the total

consideration is less than EUR 12,000,000 or EUR 5,000,000? (Updated 09/09/2026)

ESMA Answer

09-09-2026

Original language

ESMA considers that where securities are generally allotted free of charge no prospectus should be required. In the case of allocations of securities (which are almost invariably free of charge) where there is no element of choice on the part of the recipient, including no right to repudiate the allocation, there is no "offer of securities to the public" within the meaning of Article 2(d) of the Prospectus Regulation. This is because the definition refers to a communication containing "sufficient information to enable an investor to decide to purchase or subscribe for the securities". Where no decision is made by the recipient of the securities, there is no offer for the purposes of the Prospectus Regulation. Such allocations will therefore fall outside the scope of Prospectus Regulation.

Offers of free shares, where the recipient decides whether to accept the offer, are regarded as an offer for zero consideration. As such, they would fall within the exemption under Article 3(2) of the Prospectus Regulation, and accordingly a PR approved prospectus may not be required

This analysis does not prevent Competent Authorities from assessing whether an offer, presented as an offer of free shares, in fact disguises a 'hidden' consideration. However, if the shares are expressly offered in the place of quantifiable financial benefits in another form, then it might be appropriate to identify consideration to the value of the benefits that the employee would otherwise have been entitled to receive. **(Updated answer 09/09/2026)**

~~12/07/2019~~

Subject Matter: Free offers

Question: Can 'free offers' be considered outside the definition of public offer (for example options granted to employees for no consideration)?

If they do fall under the definition of public offer, could it be considered that they have a total consideration of zero and therefore fall outside the scope of the Prospectus Regulation (EU) 2017/1129, e.g. where the total consideration is less than EUR 1,000,000?

Answer:

[ESMA31-62-1258 Prospectus Q&A 4.2]

ESMA considers that where securities are generally allotted free of charge no prospectus should be required. In the case of allocations of securities (which are almost invariably free of charge) where there is no element of choice on the part of the recipient, including no right to repudiate the allocation, there is no "offer of securities to the public" within the meaning of Article 2(d) of the Prospectus Regulation. This is because the definition refers to a communication containing "sufficient information to enable an investor to decide to purchase or subscribe for the securities". Where no decision is made by the recipient of the securities, there is no offer for the purposes of the Prospectus Regulation. Such allocations will therefore fall outside the scope of Prospectus Regulation.

Offers of free shares, where the recipient decides whether to accept the offer, are properly regarded as an offer for zero consideration. As such, they would fall within the excluded offers under Article 1.3 of the Prospectus Regulation, and accordingly no prospectus can be required.

This analysis does not prevent Competent Authorities from assessing whether an offer, presented as an offer of free shares, in fact disguises a 'hidden' consideration. However, if the shares are expressly offered in the place of quantifiable financial benefits in another form, then it might be appropriate to identify consideration to the value of the benefits that the employee would otherwise have been entitled to receive.