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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 | France Biotech |
| Activity | Non-financial counterparty |
| Are you representing an association? |[x]
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ EUG\_1>

France Biotech is an association representing 160 companies in healthcare (pharma, biotech, medtech) in France as well as expert in legal, tax, governance aspects. 28 of our members are listed companies on the European market.

<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>

Section 4 regarding the Risk factors should be inserted AFTER the description of activities in order to better link the risk to the activities described.

Section 5 regarding the Information of the Company : the part regarding the investments done and considered should be removed or at least optional if significant (i.e. for mining, oil & gas,etc.) but represent usually a significant amount of time to fill and to discuss with auditors, lawyers and banks for minor amounts considering the activities.

Section 8 on property, plant and equipment should be removed except if they are part of the core business, but otherwise it is redundant with the information disclosed in the Financial Statements and often not relevant considering some industry.

Section 3 is redundant with section 9 and 10 as it is often asked by the regulators to include the information of the section 3 as an introduction of section 9. I think it would be useful to group the financial information in the prospectus and therefore to have a **first part** which will be sort of an ID card of the company with Responsible / Name, registration, historic of the company /Legal auditors & advisors; then a **second part** with activities/ risk factors/ organisation of the group / R&D – IP if relevant/ Property-Plant & Equipment if relevant / key contracts & agreement; then a **third section** which will regroup financing & accounting information which are currently splited in Section 3, 9,10 and 20; and finally a **fourth section** with the governance matters – Section 14 to 19 & 21.

Section 18 (main shareholders) and 21 should be merger as they are redundant.

<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>

It is useful for the issuers to have a template / order for each section. First it ease the reading but also the comparability which is important for investors. We are favourable to a new order of sections, but once defined, it should be the same for all issuers, with a correspondence table still authorised if needed.

Increase flexibility might ease the understanding of the Company (i.e. understand the activities in order to better understand the risks; understand the organisation of the Group before reading the Financial statements, etc.) but having “rigid” section will help investors & regulators to compare and review the prospectus. It might also be helpful for smaller issuers that might not have a full department dedicated to marketing and investor relations.

I do not agree with the proposal to allow issuer to define the order, it will complexify the control, comparability and the issuers might spent a considerable amount of time “re-create” an order each submission… The regulator should define the order but probably propose a more intuitive one that what actually exist. It is not fluid to have some financial information / then risks/ then activities/ then info about the company/ shareholder/ then financial again/ then information on shares & governance…

<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>

As mentioned before, having the risk factors AFTER the business section would make more sense as we are, as of today, reading the risk before understanding the activities and the industry. Plus all issuers have the same risk regarding liquidity / shares / risk of investments: it should be inserted either in a note/ preambule in the registration document, or at the end of the document. But it is always the same chapters, at the end you don’t even read it anymore, at it is not specific to a Company but to the market entirely. I would recommend to remove it or have it placed at the end of the document.

<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>

No. What is the rationale for this limitation ? An SME is not less complicated to understand and some might need more than 3 pages. It is not fair to limit them to 3 pages, it should be authorized to have only 3 but not mandatory as an additional constrain will take more time to implement.

<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>

That will be a nice tool to have. A “tick the box” check list that would generate a table of content & tables would be great. The questionnaire for generating the disclosure items should then be submitted to the regulator for its information.

<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>

Yes, that will just save so much time and money. As the case is not so common but could happen some time.

<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>

As a former legal auditor of one of the “Big 4”, the report that need to be provided as of today takes time in order to review assumption and issue the report and is costly (> 10 000€ depending on the Company & activity). So often, the issuer prefers not to include forecast or prevision just to save money but also, sometimes more importantly, to save time.

As a representant of issuers, the report from the auditors does not validate the accuracy of the Company’s forecast but just the model used to establish then, so at the end it does not endorse our forecasting, but cost thousands of euros, an important load of hours to spend with the auditors to explain them the model. So as long as the report will be an obligation, most of the SME won’t include perspective & forecast because it is not worth it.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, the information required in relation to major shareholders is fit for purpose and gives relevant information about the issuer. However, it should be linked to the Section 21 regarding the equity & shares of the company. The issuer usually have those information quite quickly as it is in our cap table. What took time is the review by lawyers & bankers of this cap table entirely. So as it is disclosed in another section in the document, all the information should be gathered together instead of having “major shareholders” and then 30 pages later, “all shareholders”. It also takes time, in case of update, to change the information in several parts of the document when it could be only done once. It is several hours for the issuers, but also for reviewers (lawyers, auditors) and regulator;

<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>

Yes. It is very important for SME to have that possibility. Conversion to IFRS takes more than 3 months, especially as you have to restate not only 1 year but at least 2, plus you have to hire an independent advisor as it cannot be performed by legal auditors. Preparation of IFRS financial statements cost me 50 000 € if I only do one closing per year and 80 000 € if twice per year. It was higher the first year as it obviously takes more time for the issuers & advisors, as well as an additional 20 000 euros for legal auditors who will review not only the national GAAP but also the IFRS. So really, really, for EU Growth, national accounting standards save a lot of money & time (about 3 weeks of additional closing at least).

<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>

Biography of directors does not seem relevant + it take time to have all of them validated their bio and have the same format for all of them.

Section 16 and 1ç are almost the same : what is disclosed in related parties (section 19) does not need to be repeated in Section 16 – agreement between directors & the company- it is useless and heavy.

By-laws and act of incorporation in Section 21 is heavy, costly (as often written by lawyers) and not sure to understand the purpose of this item.

<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>

Remuneration might be a nightmare about what to include, and what should not be. Not sure either of the relevant of what has been paid / what was due. It is often not significant for SME and should be included only if major discrepancies.

<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>

What is considerably time consuming is section 11 about R&D, section 8 about PPE, Section 15 about Remuneration and Section 21 about capital. As it is time consuming it is also cost consuming as all information needs to be reviewed and approved. Some of them are coming from analytical accounting of are hard to reconciliate, some of them are prospective information, and for section 21 it is very often redundant with financial statements, section 10 & 18

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

One single securities = less review from lawyers (= saving money) = changing everything in one document if needed = less time spent on it by the issuer = less time of review by the auditors (= saving money) = only one note to be reviewed by the regulator (= saving time in the operation).

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

No. See below, same interrogation : what would be the benefit of this limit ? It should be authorised or recommended to have 6 pages, but not mandatory.

<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>

No, it should not be reduced to ten instead of 15. Being an SME does not mean having less specific risk factors. What is the justification behind this question ? In terms of compliance, if you only have 8 risks, then you can put 8 risks, but if you have 12 risk factors, then it could became a nightmare especially as the issuer is responsible for disclosing those risks. I do not see any benefit in that as if we already are below 10 then we do not add risks for the pleasure, and if we are above 10 risks then it takes time to decide which one you are going to includes and how to merge few of them without losing in clarity.

<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>

Underwriting of historical shareholders should be included but it should not be mandatory for new investors and left at the discretion of the issuer. Some investors might prefer not to disclose this information and for other it is important. There is no rule really and it should be kept that way.

<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>

Key financial information should not be limited to 3, especially as two are already defined, that only left room for 1 to the decision of the issuer. This is not enough and some relevant information could be missed. 3 should be “acceptable” or a minimum but a maximum should not be defined. For some companies, level of investment is a KPI and for other, level of R&D expenses is a KPI, for liquor, level of inventory and fixed asset are KPI. So at least 6 or 7 KPIs should be accepted for financial information as 3 is too restrictive.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Yes, 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_EUG\_28>