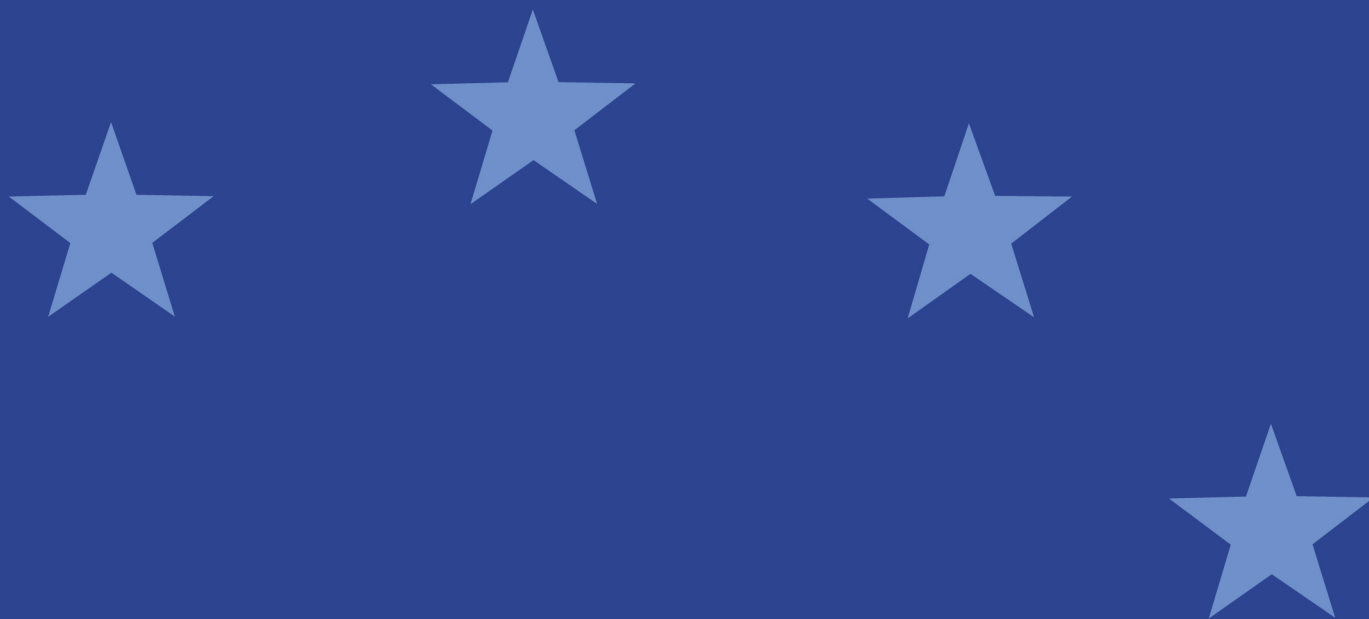




European Securities and  
Markets Authority

## **Response form for the Consultation Paper on draft RTS under the new Prospectus Regulation**



## Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on draft RTS under the new Prospectus Regulation (ESMA31-62-802). 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 9 March 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\_PR\_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\_PR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_PR\_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 draft RTS 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 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 the Consultation Paper**

The Consultation Paper may be of particular interest to investors, issuers, 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 (Regulation (EU) 2017/1129).

## General information about respondent

Name of the company / organisation	Polish Association of Listed Companies
Activity	Non-financial counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Poland

## Introduction

**Please make your introductory comments below, if any:**

<ESMA\_COMMENT\_PR\_1>

Dear Sirs,

We would like to present answers by the Polish Association of Listed companies to the consultation paper on draft RTS under the new Prospectus Regulation. The Polish Association of Listed Companies is an NGO representing ca. 270 companies listed on the Warsaw Stock Exchange, which corresponds to ca. 85% of the market capitalization of the WSE.

Additionally to the answers to questions posted in the consultation paper on the following pages, we would like to suggest the following issues to be considered by ESMA developing RTS:

1. (regarding point 14 of section 2.3.1. of the Consultation paper) We would suggest to allow the issuer to include more than 3 APMs in the summary of the prospectus, as the APMs may be of particular interest for investors regarding issuers of specific industries. The preferred number of APMs we suggest is 5 or 7.

2. (regarding point 59 of section 2.3.2. of the Consultation paper) In case of Table 1a (Income statement for non-financial entities, equity securities), we would suggest to add the following items/lines:

- return on sales (after the "total revenue" line)
- EBITDA (before the "operating profit" line)
- margin on return on sales (before the "operating profit margin" line)
- EBITDA margin (before the "operating profit margin" line)

In case of Table 1b (Balance sheet for non-financial entities, equity securities) we would suggest to add the following item/line:

- cash at end of period (before the "net financial debt" line)

In case of Table 1c (Cash flow statement for non-financial entities, equity securities) we would suggest to add the following items/lines:

- amortisation
- net cash flows from financing activities
- net cash flows from investing activities

(see answer to Q3 below)

All the items proposed above are KFI's often used by investors to analyse the performance of a non-financial company.

Yours sincerely,

The Polish Association of Listed Companies

[www.seg.org.pl](http://www.seg.org.pl)

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<ESMA\_COMMENT\_PR\_1>



## Key financial information in the summary

**Q1: Do you agree that the KFI extracted from the issuer's historical financial information should be sign-posted?**

<ESMA\_QUESTION\_PR\_1>

[Yes ]

<ESMA\_QUESTION\_PR\_1>

**Q2: Would you suggest the inclusion of specific templates for other types of issuer? Please specify and explain your reasoning.**

<ESMA\_QUESTION\_PR\_2>

[No ]

<ESMA\_QUESTION\_PR\_2>

**Q3: 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?**

<ESMA\_QUESTION\_PR\_3>

[No. Regarding non-financial entities issuing equity, cash flow from operations is a useful measure only when compared with cash flow from financing and investing activities. Those three key figures combined allow for basic analysis of the company's cash flow, a single figure representing only cash flow from operations would not suffice. Moreover, as amortisation is the most looked-for figure in the cash flow statement, we would suggest to include it also in the KFI in the prospectus summary. ]

<ESMA\_QUESTION\_PR\_3>

**Q4: 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.**

<ESMA\_QUESTION\_PR\_4>

[Income statement, balance sheet and cash flow statement are the most important elements of historical financial information for retail investors. Additionally, a number of APMs should be allowed, preferably 5-7 items should be allowed. ]

<ESMA\_QUESTION\_PR\_4>

**Q5: 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?**

<ESMA\_QUESTION\_PR\_5>

[Use of footnotes should be allowed, as definitions of some APMs differ among different groups of investors or even among particular analysts. Such is the case for example in case of EV/EBITDA or net debt /

EBITDA ratios, which are often used by investors to assess the company's performance but both may be calculated differently. Therefore the use of footnotes to describe the formula used to calculate particular APMs used in the prospectus summary should be not only allowed, but obligatory (unless there is an obligation to include definitions of the APMs in the body text or table of the prospectus summary). ]  
<ESMA\_QUESTION\_PR\_5>

**Q6: 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?**

<ESMA\_QUESTION\_PR\_6>

[Pro forma financial information should be presented in form of additional columns to the relevant tables. That solution would be in line of the concise form of the prospectus summary and would not endanger the length of the summary. Moreover, presentation of pro forma financial information in form of additional columns make these information easier to read and compare for an investor (contrary to presentation if form of separate tables). ]

<ESMA\_QUESTION\_PR\_6>

**Q7: 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.**

<ESMA\_QUESTION\_PR\_7>

[Yes ]

<ESMA\_QUESTION\_PR\_7>

**Q8: 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.**

<ESMA\_QUESTION\_PR\_8>

[We agree with the items proposed in the Consultation paper in Table 3b (Balance sheet for credit institutions) as the most useful to determine the health of a credit institution. CET1 may be not comprehensible for all retail investors, yet there is a significant group of them who understand this ratio, therefore we propose to keep it in the table. ]

<ESMA\_QUESTION\_PR\_8>

**Q9: 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?**

<ESMA\_QUESTION\_PR\_9>

[Yes ]

<ESMA\_QUESTION\_PR\_9>

**Q10 : Do you agree with the choice of measures for insurance companies?**

<ESMA\_QUESTION\_PR\_10>

[Yes ]

<ESMA\_QUESTION\_PR\_10>

**Q11 : Do you think it would be useful for retail investors to include a measure of historical performance for closed end funds in the summary?**

<ESMA\_QUESTION\_PR\_11>

[Yes ]

<ESMA\_QUESTION\_PR\_11>

**Q12 : Do you think that investment companies which are subject to capital requirements should be required to include regulated capital ratios in their summary?**

<ESMA\_QUESTION\_PR\_12>

[Yes ]

<ESMA\_QUESTION\_PR\_12>

**Q13 : Would the issuer, offeror or person asking for admission to trading incur costs if the proposed provisions are adopted? If so, please specify the nature of such costs, including quantifying them.**

<ESMA\_QUESTION\_PR\_13>

[No, we don't suppose that calculating and presenting the proposed financial data and information would be burdensome for the issuers, as all these information are available in the financial statements of the issuer. ]

<ESMA\_QUESTION\_PR\_13>

## **Data and machine readability**

**Q14 : Do you believe that the data related to the amount raised should be made mandatory? Please explain your reasons.**

<ESMA\_QUESTION\_PR\_14>

[Yes, due to the fact that in many cases an in-depth analysis of the issuer's KFI in relation to the type and number of securities issued, as well as to the amount of capital raised, is useful for investors. The data on the amount raised is available for issuers and it's disclosure should bring no additional burdens. ]



<ESMA\_QUESTION\_PR\_14>

**Q15 : 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.**

<ESMA\_QUESTION\_PR\_15>

[Yes ]

<ESMA\_QUESTION\_PR\_15>

**Q16 : 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?**

<ESMA\_QUESTION\_PR\_16>

[Yes, the current system seems sufficient and we would like to stress that no solutions inducing additional costs for particular issuers or for the market at large should be introduced. ]

<ESMA\_QUESTION\_PR\_16>

**Q17 : 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?**

<ESMA\_QUESTION\_PR\_17>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_PR\_17>

**Q18 : 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?**

<ESMA\_QUESTION\_PR\_18>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_PR\_18>

## Advertisements

**Q19 : 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.**

<ESMA\_QUESTION\_PR\_19>

[Yes, the advertisement should contain a hyperlink to the website where the prospectus and any additional information concerning the issuance of securities are available or a hyperlink that would facilitate tracing the prospectus and the additional information (for example it should be allowed to include a shortened version of a hyperlink in the advertisement). There should no additional requirements regarding the contents of the advertisement. ]

<ESMA\_QUESTION\_PR\_19>

**Q20 : 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?**

<ESMA\_QUESTION\_PR\_20>

[No, inclusion of the definition of complex securities will not reduce risks for investors. The requirements regarding the contents of an advertisement should be limited to minimum, as the prospectus is the key source of information for investors, not the advertisement. ]

<ESMA\_QUESTION\_PR\_20>

**Q21 : Do you agree with the requirements suggested for Article 11 of the RTS? If not, please provide your reasoning.**

<ESMA\_QUESTION\_PR\_21>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_PR\_21>

**Q22 : 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?**

<ESMA\_QUESTION\_PR\_22>

[No, inclusion of the suggested warnings will not serve the purpose of investor protection, as advertisement is not the right information tool to advise investors of risks – the prospectus itself is the right information document describing risks for investors. ]

<ESMA\_QUESTION\_PR\_22>

**Q23 : 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.**

<ESMA\_QUESTION\_PR\_23>

[The obligation to translate advertisements in particular cases would incur additional costs for issuers, offerors or persons asking for admission to trading. It is not possible to quantify them in advance, as they may vary depending on the scale and length of the advertising and promotion campaign accompanying an issuance and offering of securities. In most cases these would be one-off costs, but, in case of some types of advertising and promotion activities, these would be ongoing costs. It is necessary not to incur any additional costs for the issuers, therefore the costs of translation of advertisements should be imposed on NCAs and not on the market participants. ]

<ESMA\_QUESTION\_PR\_23>

## Supplements

**Q24 : 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?**

<ESMA\_QUESTION\_PR\_24>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_PR\_24>

**Q25 : Do you agree that the additional requirements identified from ESMA's draft technical advice should also be included.**

<ESMA\_QUESTION\_PR\_25>

[Yes ]

<ESMA\_QUESTION\_PR\_25>

**Q26 : 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?**

<ESMA\_QUESTION\_PR\_26>

[Yes ]

<ESMA\_QUESTION\_PR\_26>

**Q27 : 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.**

<ESMA\_QUESTION\_PR\_27>

[No, adoption of the aforementioned provisions should not incur any additional costs, as those provisions are in force and any issuer planning a public offering of securities is aware of them. ]

<ESMA\_QUESTION\_PR\_27>

## **Publication**

**Q28 : 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?**

<ESMA\_QUESTION\_PR\_28>

[Yes, provided that both articles are amended in the way described in para 177 and 178, making them significantly less restrictive. ]

<ESMA\_QUESTION\_PR\_28>

**Q29 : 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.**

<ESMA\_QUESTION\_PR\_29>

[Yes, no other publication provisions should be specified by way of RTS ]

<ESMA\_QUESTION\_PR\_29>

**Q30 : 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.**

<ESMA\_QUESTION\_PR\_30>

[No additional provisions should be added to the RTS in case they impose additional costs on issuers. ]

<ESMA\_QUESTION\_PR\_30>