

European Commission consultation

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Reduced content and standardised format and sequence: EU follow-on prospectus and EU growth issuance prospectus

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ICMA response (EU follow-on prospectus only) *(Extracted from online questionnaire submission)*

1. STANDARDISED FORMAT AND STANDARDISED SEQUENCE

Question 1. Considering the new Prospectus Regulation provisions, what would be in your opinion the most efficient and less burdensome standardised format and sequence of the EU follow-on prospectus?

Alignment with format and sequence of full prospectuses without providing more onerous/more prescriptive requirements --- The most efficient and less burdensome standardised format and sequence of the EU follow on prospectus for non-equity securities is one that seeks to mirror to the extent possible the format and sequence that will apply to full prospectuses for non-equity securities. Introducing a different prescriptive ordering requirement may cause confusion for investors who will expect consistency in how prospectuses are ordered, irrespective of the disclosure regime that is followed at drafting stage. Also, as a baseline, format and sequence requirements applicable to an EU follow-on prospectus should not be more prescriptive or more onerous than those that will apply to full debt prospectuses. We would welcome some additional flexibility over this baseline if there is scope – please see our response to Question 3.

ICMA views on format and sequencing --- ICMA's views on standardised format and sequencing in respect of full prospectuses are set out in ICMA's response* to the ESMA October 2024 Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata (the "ESMA October Consultation"). See in particular ICMA response paragraph 2 (Views on format and sequencing) and paragraph 4 (Amending Regulation annexes vs CDR articles). Standardised format and sequencing seem unnecessary (in view of the degree of standardisation already provided by the PR through the use of the disclosure annexes in CDR EU/2019/980) and burdensome for issuers (as it requires revising established prospectus disclosure approaches to meet new format and sequence requirements).

(* <https://www.icmagroup.org/assets/documents/Regulatory/Primary-Markets/ESMA-PR-DR-CP-2024-ICMA-response- Final-231224.pdf>)

Prospectuses should follow a logical order: As noted in the ICMA response to the ESMA October Consultation in respect of full prospectuses: “It is crucial to apply a logical order to standardised prospectus format and sequencing that tries to respect the substance of what is being disclosed [...]”, and “Applying too prescriptive an approach that differs from the historical ordering of a vast majority of prospectuses with which investors are familiar seems an unnecessary burden [...]”. These considerations apply equally to EU follow-on prospectuses.

Amending Regulation annexes vs CDR articles --- To remain aligned with the historical ordering of most prospectuses in the market (and to seek to minimise burdens for issuers), it seems helpful to retain for all debt prospectuses (including follow-on prospectuses) the order established by Articles 24 and 25 of CDR EU /2019/980 to the extent possible, and to redraft only the order of information disclosed in the applicable CDR disclosure annexes in line with the annexes in the amended Prospectus Regulation (i.e. Annex V in respect of the follow-on prospectus).

Question 2. Do you agree that the rules on format and sequencing for the EU follow-on prospectus should align with those for the full prospectus?

Yes

See ICMA’s response to Question 1 for ICMA views on the importance of ensuring the rules on format and sequencing for the EU follow on prospectus align with those for the full prospectus.

Question 3. Do you agree that for an EU follow-on prospectus for non-equity securities there should be more flexibility on the standardised format and sequence requirement, for example that for an EU follow-on prospectus drawn up by a single issuer, the standardised format and sequence might be limited to the registration document?

This would mean that more flexibility would be retained for the non-equity securities note (particularly for complex non-equity securities requiring compliance with multiple Annexes and for an EU follow-on prospectus, where used as a base prospectus).

Yes

ICMA agrees that there should be more flexibility on the standardised format and sequence requirement in respect of EU follow-on prospectuses for non-equity securities. It would be helpful to retain as much flexibility as possible for issuers of non-equity securities when drawing up follow-on prospectuses (please refer to ICMA’s response to Question 1, 1st paragraph above). Note that the flexibility should apply not only to the non-equity securities note, but also to the non-equity registration document. This is because from a debt perspective, ICMA views standardised format and sequencing as unnecessary and burdensome, for the reasons provided in the ICMA response to the ESMA October Consultation (see in particular paragraph 2 (Views on format and sequencing)) and summarised in ICMA’s response to Question 1 above.

Question 4. Would it be useful if the delegated act outlined both a single annex (for cases where the EU follow-on prospectus is prepared as a single document) and two separate annexes – a registration document and a securities note – in cases where the EU follow-on prospectus is prepared as separate documents?

No

Having a single annex in addition to the two separate annexes (registration document (“RD”) and securities note (“SN”)) seems unnecessary, and could risk being confusing (for example in the event of any discrepancies between the single annex, and the combination of the RD and SN annexes). Market participants are used to looking at RD and SN disclosure annexes in combination for the purposes of preparing single-document prospectuses so it seems unnecessary to introduce an additional annex at this stage.

Question 5. Do you have any other comment on how to ensure that the standardised format and sequence of the EU follow-on prospectus could help investors in their investment decisions without creating burdens for issuers?

No

See ICMA’s response to Question 1 above for ICMA’s suggested approach on ensuring burdens for issuers are minimised, and for ICMA’s thoughts on standardised format and sequencing more generally.

2. REDUCED CONTENT

Question 10. Do you agree that Annexes IV and V to the Prospectus Regulation are overall sufficiently clear and that only certain items describing the securities would need to be further specified?

No

Annex V is detailed, yet we do not agree that it is sufficiently clear with respect to the reduced content of follow-on prospectuses for non-equity securities. Whilst no further detail is needed, we think that the delegated acts referred to in Article 14a(8) of the PR (which are intended to supplement the PR by specifying the reduced content and the standardised format and sequence for the EU Follow-on prospectus) should be used for the purposes of clarifying Annex V, for example to rectify/disapply any content requirements specified in Annex V (or in Article 14a) that go beyond current requirements that apply to full prospectuses for non-equity securities, to ensure that in the case of wholesale non-equity securities, the follow-on prospectus content requirements are not more onerous than the wholesale annexes for non-equity securities, to specify the circumstances in which more flexibility could be provided (for example as envisaged in Question 3) etc. See also our response to Question 11 below.

Question 11. Do you have any comment on how to specify further the reduced content of the EU follow-on prospectus in delegated acts while making sure that the overarching burden reduction objective is achieved?

Yes

For the follow-on prospectus to provide a valid (and less burdensome) alternative for issuers of debt securities, the disclosure requirements applicable to follow-on prospectuses for non-equity securities should be calibrated to be less onerous than disclosure requirements applicable to full prospectuses for non-equity securities (also bearing in mind any differences between wholesale and retail disclosure requirements).

In the March 2023 ICMA comments* on EU Listing Act proposals, ICMA had flagged concerns with the usefulness of the follow-on prospectus regime in a bond context in view of the inclusion (at the Listing Act proposal stage) of requirements that seemed equity-like and/or seemed to impose more onerous requirements than the 'core' PR regimes relating to bonds. See in particular paragraph 4 and the annex to the March 2023 ICMA comments on EU Listing Act proposals. A number of concerns were addressed in the final EU Listing Act, but some remain. We list below some remaining concerns. It is hoped that these are removed in the annexes that are developed in order to ensure that the follow-on regime is a genuine option for issuers of non-equity securities.

(* <https://www.icmagroup.org/assets/documents/Regulatory/Primary-Markets/EU-Listing-Act-PR-proposals-ICMA-comments-130323.pdf>)

Article 14a(2) necessary information test:

- Article 14a(2)(a) -- the reference to "significant changes in the [...] business position of the issuer" goes beyond the current retail and wholesale annex requirements (notably in terms of its focus on wider 'business' conditions rather than narrower 'financial' conditions) and is also not followed in the requirements of PR Annex V (VI);
- Article 14a(2)(a) includes 'prospects' -- for debt securities, 'credit' is more appropriate;
- Article 14a(2)(b) includes 'limitations on those rights' -- which is not in Article 6(1);
- Article 14a(2)(c) -- the reference to "impact on the [...] overall capital structure of the issuer" goes beyond the current PR Article 6(1) and the retail and wholesale annex requirements.

Furthermore, it would be useful if the delegated act could clarify:

- Article 14a(2)(b) -- what information on the securities is considered "essential";
- Annex V(IV) -- what is meant by "a limited number of categories" for the purposes of risk factor disclosure in a follow-on prospectus for non-equity securities, and what alleviations are envisaged on risk factor disclosure (compared to full prospectuses).

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