

Consultation Paper

Draft Guidelines on supplements which introduce new securities to a base prospectus

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **19 May**.

All contributions should be submitted online under the relevant [consultation](#).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish 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 under the heading '[Legal Notice and Data protection](#)'.

Who should read this paper?

This Consultation Paper is of particular interest to issuers, advisors and any financial market participant involved in the preparation or use of base prospectuses under the Prospectus Regulation.

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1 Executive Summary

Reasons for publication

Article 23(4a) of the Prospectus Regulation (PR) states that “a supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus”¹ and Article 23(8) of the Prospectus Regulation requires ESMA to “develop Guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus”².

These Guidelines are necessary to align EU-wide supervision on this subject, which has been characterised by longstanding divergence, which can lead to different supervisory outcomes. This situation is recognised in Recital 54³ of the Listing Act, therefore ESMA is proposing these draft Guidelines to address it.

Financial market participants are strongly encouraged to provide feedback on ESMA’s proposed Guidelines and to consider ESMA’s reasoning in this Consultation Paper because the final Guidelines may be quite impactful for them and may impact some NCAs’ supervisory practices.

Content

The *Background* section of this Consultation Paper expands on the reasons for publication above by commenting on the sources of divergence in the supervision of so-called “product supplements.” The *ESMA’s proposals* section presents ESMA’s rationale for its proposed Guidelines. The proposed Guidelines themselves are in Annex III.

Next Steps

ESMA will consider the feedback it receives to this Consultation Paper, in Q2 and Q3 2025, and will subsequently publish a final report containing the final Guidelines, in Q4 2025, after taking such feedback into account.

¹ Article 23(4a) states: “A supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus, unless doing so is necessary to comply with capital requirements under Union law or national law transposing Union law.”

2 Background

1. Recital 36 of the Prospectus Regulation (PR) states supplements should not be used to include a type of security not already described in a base prospectus⁴. There have been longstanding discussions with national competent authorities about when that occurs. At a high-level, NCAs agree, for example, that a supplement which would include a structured product in a base prospectus that only catered for plain vanilla non-equity securities should not be approved. The major problem is that there is no widely agreed written guidance to identify different types of securities. This creates issues in relation to non-equity securities overall but can be especially problematic when variations in structured products arise. To address this lack of agreement, the Listing Act introduces Recital 54 and Article 23(4a)⁵ of the PR, which repeat the message in Recital 36 PR.
2. The following example helps to illustrate the way in which “product supplement” discussions can become and have been difficult to date.

If a base prospectus generally caters for structured products, and allows an issuer to issue equity-linked notes, is a supplement which seeks to introduce index-linked notes adding a ‘new’ security or not? On one hand, both are structured products, but on the other, the principal and interest repayments are linked to a different underlying. Is ‘repayment’ the material distinguishing feature here? If yes, how far do you go in treating ‘repayment’ as the material feature? For example, if a base prospectus only allows an issuer to issue fixed rate bonds, does that mean a supplement introducing a variable rate option is introducing a ‘new’ security? Are there no other features that are material, for example, what about level of subordination, callability, convertibility? Are they also relevant? Since many of these can be relevant at the same time, are there examples that differentiate non-equity securities that take permutations on this basis into account... etc....

² Article 23(8) states: “ESMA shall by 5 June 2026 develop guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus.”

³ Recital 54 states: “Diverging interpretations on whether an issuer should be allowed to supplement a base prospectus to introduce other securities, or securities with different features than the ones for which that base prospectus has been approved, have led to a lack of convergence between Member States. In order to ensure investor protection and foster regulatory convergence across the Union, it is therefore appropriate to lay down that a supplement to a base prospectus should not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus unless doing so is necessary to comply with capital requirements under Union law or national law transposing Union law. Furthermore, to further foster convergence on the use of the base prospectus, ESMA should provide additional clarity by means of guidelines on the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus.”

⁴ Recital 36 states that “[...]. Neither the final terms nor a supplement should be used to include a type of securities not already described in the base prospectus.”

⁵ Article 23(4a) of the Prospectus Regulation states: “A supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus, unless doing so is necessary to comply with capital requirements under Union law or national law transposing Union law.”

3. This example illustrates the type of argumentation that is put forward in discussions about whether a new type of security is being added to a base prospectus. It shows why it has been difficult to achieve consensus on a list of “product supplements” because it is easy to refute proposals that are made.
4. Due to the absence of agreement, national competent authorities make their own individual judgements, which can lead to inconsistent outcomes. In some cases, an NCA might require an issuer to draw up a new base prospectus because they argue the supplement is introducing a new security. In others, a supplement containing similar information might be considered as complementing what is already in the base prospectus and will be approved as a supplement. Financial market participants cannot rely on widely agreed public information to help them in deciphering when either of those two events will occur. This has significant cost, time, and fairness implications as requiring an issuer to prepare a base prospectus instead of a supplement is a materially different outcome.
5. Such divergent and inconsistent analyses causing cost and market access issues are undesirable in the context of the Listing Act, which seeks convergence, burden reduction and access to capital. Furthermore, as “product supplements” can be quite complex for NCAs to review due to the nature and amount of changes they may introduce, this creates an investor protection issue because NCAs may have less time to assess the content of a supplement than for prospectuses. As such, clarifying what constitutes a “product supplement” benefits both market participants and investor protection.

3 ESMA’s proposals

3.1 General

6. Draft Guideline 1 tackles the subject of “product supplements” by clarifying the role of a supplement under Article 23 of the Prospectus Regulation⁶ and the nature of information which supplements should or should not include. ESMA believes draft Guideline 1 can help to meet consistency expectations under the Listing Act but recognises it may be too strict when measured against the additional Listing Act goals of burden reduction and access to capital. As such, ESMA is also proposing draft Guideline 2. Draft Guideline 2 explains what issuers should do to avoid the risk of submitting a “product supplement” to an NCA and

⁶ Article 23 on supplements to the prospectus states: “(1) Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay. [...]”

provides examples of supplements that do not introduce a new security relative to those already described in the base prospectus.

3.2 The proposed Guidelines

Draft Guideline 1

7. [Draft Guideline 1](#) is based on Article 23 of the Prospectus Regulation. It focuses on the purpose of a supplement, which is to provide an investor with material information that would concern the assessment of securities that are already described in a base prospectus. Draft Guideline 1 therefore distinguishes between information that is material to securities that an issuer can already issue under a base prospectus and information which would introduce new features and/or risks that are not adequately covered in the existing base prospectus. The explanatory text in the proposed Guideline further clarifies what materiality can mean with respect to existing securities by referring to Article 18 of the CDR on financial information, supplements, advertisements, and metadata, which presents a non-exhaustive list of material situations that trigger the need for a supplement.

Q1: Do you agree with draft Guideline 1 proposed by ESMA and ESMA's reasoning? If not, please explain why.

Draft Guideline 2

8. [Draft Guideline 2](#) recalls the basic problem that arises in the context of “product supplements”, which is that issuers attempt to introduce new type(s) of non-equity security information into a base prospectus using a supplement but the base prospectus does not generally provide for the type of non-equity securities concerned. This sometimes arises when new securities are introduced to the market. For example, in recent times, issuers have sought to introduce sustainability-related security information in their base prospectuses using supplements, or information on crypto-assets as an underlying, without the original base prospectus accounting for either. Draft Guideline 2 encourages issuers to provide general information on all types of non-equity securities they reasonably expect to issue during the 12-month validity of the base prospectus. The draft guideline also explains what constitutes acceptable use of supplements with respect to base prospectuses that generally provide for several types of non-equity securities.
9. By encouraging issuers to provide as much disclosure as possible to facilitate the issuance of multiple products, there is a risk that base prospectuses become longer. Such potential “size inflation” would go against the idea of shortening prospectuses to make them more

comprehensible. Draft Guideline 2 touches upon a difficult trade-off between flexible market access and prospectus comprehensibility. On one hand, a base prospectus is meant to facilitate capital raising over a 12-month period, providing issuers with scope to time their issuance and to choose a product based on their needs, but accommodating that choice is complex when considering prospectus length and comprehensibility. Issuers should take this into consideration when reflecting on the products they reasonably expect to issue.

Q2: Do you agree with draft Guideline 2 proposed by ESMA and ESMA's reasoning? If not, please explain why.

Q3: Do you believe draft Guideline 2 will lead to longer and less comprehensible prospectuses? If yes, please explain why and describe how you would solve this issue.

Q4: The explanatory text under draft Guideline 2 identifies 'green bonds' and 'sustainability-linked notes' as distinct securities for the purpose of these Guidelines. Do you agree with that, or do you think they are the same as 'regular' bonds or 'regular' structured products? To the extent you consider 'green bonds' and 'sustainability-linked notes' to be the same as 'regular' bonds or 'regular' structured products, please explain why. In particular, make clear why, for example, a currency-linked note, or index-linked note, should be treated differently to a 'sustainability-linked note' for the purpose of these Guidelines. Please also consider factors such as the oncoming Annex [21] in your response⁷.

Q5: Is there another way to approach the subject of these Guidelines in your opinion? If yes, please explain what it is and provide arguments to support your suggested approach. Please also provide examples to illustrate the issue(s) you are solving and how your proposed approach facilitates that end.

Q6: Can you provide an estimation of the costs/benefits of these proposed Guidelines?

⁷ The reference to Annex [21] relates to the proposed annex in [ESMA's consultation paper](#) on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata. Section 5 of the consultation paper discusses the proposed annex.

4 Annexes

4.1 Annex I – Summary of questions

Q1: Do you agree with draft Guideline 1 proposed by ESMA and ESMA's reasoning? If not, please explain why.

Q2: Do you agree with draft Guideline 2 proposed by ESMA and ESMA's reasoning? If not, please explain why.

Q3: Do you believe draft Guideline 2 will lead to longer and less comprehensible prospectuses? If yes, please explain why and describe how you would solve this issue.

Q4: The explanatory text under draft Guideline 2 identifies 'green bonds' and 'sustainability-linked notes' as distinct securities for the purpose of these Guidelines. Do you agree with that, or do you think they are the same as 'regular' bonds or 'regular' structured products? To the extent you consider 'green bonds' and 'sustainability-linked notes' to be the same as 'regular' bonds or 'regular' structured products, please explain why. In particular, make clear why, for example, a currency-linked note, or index-linked note, should be treated differently to a 'sustainability-linked note' for the purpose of these Guidelines. Please also consider factors such as the oncoming Annex [21] in your response⁸.

Q5: Is there another way to approach the subject of these Guidelines in your opinion? If yes, please explain what it is and provide arguments to support your suggested approach. Please also provide examples to illustrate the issue(s) you are solving and how your proposed approach facilitates that end.

Q6: Can you provide an estimation of the costs/benefits of these proposed Guidelines?

⁸ Idem.

4.2 Annex II - Mandate

Article 23(8) of the Prospectus Regulation states ESMA shall by 5 June 2026 develop guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus. Moreover, ESMA may generally issue guidelines under Article 16 of the ESMA Regulation.

4.3 Annex III: The draft Guidelines specifying the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus

1 Scope

Who?

1. These draft Guidelines apply to competent authorities, as defined in the Prospectus Regulation, and financial market participants, including the persons responsible for a prospectus under Article 11(1) of the Prospectus Regulation.

What?

2. These draft guidelines are to assist competent authorities and financial market participants, in identifying when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation. These draft Guidelines have been drafted pursuant to Article 23(8) of the Prospectus Regulation and Article 16(1) of the ESMA Regulation.

When?

3. These draft Guidelines apply from [two months after the date of their publication on ESMA's website in all official languages of the EU].

2 Legislative references, abbreviations and definitions

2.1 Legislative references

CDR on financial information, supplements, advertisements, and metadata	Commission Delegated Regulation 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301 ⁹ .
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ¹⁰ .
Listing Act	Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises. ¹¹
Prospectus Regulation or PR	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulation market, and repealing Directive 2003/71/EC ¹² .

2.2 Acronyms and Abbreviations

CP	Consultation Paper
EC	European Commission
EEA	European Economic Area
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
EU	European Union

⁹ OJ L 166 21.6.2019, p. 1.

¹⁰ OJ L 331, 15.12.2010, p. 84.

¹¹ OJ L 2024/2809, 14.11.2024

¹² OJ L 168, 30.6.2017, p. 12.

NCA

National competent authority under the Prospectus Regulation

2.3 Definitions

Product supplement

“Product supplement” is an abridged term to refer to a “supplement that is to be considered to introduce a new type of security that is not already described in a base prospectus.” The term “product supplement” is also understood to be used informally in certain EU financial markets.

3 Purpose

4. These draft Guidelines are based on Article 23(8) of the Prospectus Regulation and Article 16(1) of the ESMA Regulation. The objective of these draft Guidelines is to clarify when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation and to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of the provisions in Article 23(8) of the Prospectus Regulation.

4 Compliance and reporting obligations

4.1 Status of the guidelines

5. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with these draft Guidelines.
6. Competent authorities to which these draft Guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks when supervising supplements in accordance with Article 23(8) of the Prospectus Regulation.

4.2 Reporting requirements

7. Within [two months of the date of publication of the draft guidelines on ESMA's website in all EU official languages], competent authorities to which these draft Guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
8. In case of non-compliance, competent authorities must also notify ESMA [within two months of the date of publication of the guidelines on ESMA's website in all EU official languages] of their reasons for not complying with the guidelines.
9. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

5 Draft Guidelines specifying the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus

5.1 Overview

10. Considering Articles 23(4a)¹³ and 23(8)¹⁴ of the Prospectus Regulation, these draft Guidelines aim to clarify when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation. The draft Guidelines seek to achieve this by clarifying the purpose of a supplement, as set out in Article 23(1) of the Prospectus Regulation, and by clarifying the factors to consider when preparing a base prospectus to pre-empt the risk of a supplement being perceived as introducing a new security to a base prospectus.

5.2 The draft Guidelines

Draft Guideline 1: A supplement should include information which is material to assessing the securities that are already mentioned in the base prospectus. The addition of information about new types of security features into a base prospectus using a supplement does not provide information which is material to assessing the securities that are already mentioned in the base prospectus.

11. Article 23(1) of the Prospectus Regulation¹⁵ speaks of supplements in the context of “new factors, material mistakes, or material inaccuracies” relating to information in a prospectus and builds upon Article 6(1) of the Prospectus Regulation¹⁶. The purpose of a supplement is therefore to inform investors of material matters that can impact the assessment of securities. In the context of Article 23(4a) of the Prospectus Regulation, the securities in question are those already described in the base prospectus.

¹³ Article 23(4a) of the Prospectus Regulation states: “A supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus, unless doing so is necessary to comply with capital requirements under Union law or national law transposing Union law.”

¹⁴ Article 23(8) of the Prospectus Regulation states: “ESMA shall by 5 June 2026 develop guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus.”

¹⁵ Article 23(1) of the Prospectus Regulation states: “Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay. [...]”

¹⁶ Article 6(1) of the Prospectus Regulation states: “Without prejudice to Articles 14(2), 14a(2) and 18(1), a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of: (a) the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor; (b) the rights attaching to the securities; and (c) the reasons for the issuance and its impact on the issuer. [...]”

12. A supplement which would add a new type of feature that is not already generally provided for in the base prospectus, such as (i) a new type of underlying (ii) a new guarantee (iii) a new step-up/step-down interest payment provision, (iv) a new fixed-to-floating interest payment provision does not provide investors with material disclosure that is relevant to assess the securities which the issuer can already issue. It simply adds to the type and nature of securities that can be issued using the base prospectus. Such supplements should not be approved because they are introducing new securities. By contrast, increasing the aggregate nominal amount of an offering programme is a type of material event or factor which an issuer should mention using a supplement. This is because it might impact an issuer's long-term ability to make repayments concerning the securities already mentioned in its base prospectus.
13. Moreover, the nominal amount example already forms part of a list of situations for which a supplement is compulsory in Article 18 of the CDR on financial information, supplements, advertisements, and metadata¹⁷. That list generally concerns equity securities, but it also helps to portray the nature and characteristics of events that might be material to assessing securities already described in a base prospectus. Providing disclosure about those events or factors serves a reasonably distinct purpose than informing investors that, in the future, the issuer can offer securities with new features, such as payments of principal and interest that are to be linked to a new type of underlying.

Draft Guideline 2: Issuers should consider the various types of securities they reasonably expect to issue during the validity period of the base prospectus and should appropriately provide for them when they submit their base prospectus for approval. This should be done by including disclosure such as the risk factors associated with the relevant type of securities as well as the overarching terms and conditions that are applicable and by identifying the type of securities which the issuer will issue in the overview of the programme.

14. A base prospectus should provide for all the types of securities an issuer reasonably expects to issue when the base prospectus is approved. With this in mind, this draft Guideline seeks to encourage issuers to ensure that all the types of securities that they reasonably expect to issue over the life of a base prospectus are adequately described in the base prospectus.
15. To illustrate the point, if an issuer reasonably expects to issue green bonds, sustainability-linked notes, guaranteed notes, equity-linked notes, index-linked notes,

¹⁷ See Article 18(1)(i) of the CDR on financial information, supplements, advertisements, and metadata which contains a list of situations which generally depict the type of circumstances in which a supplement is necessary.

commodity-linked notes, currency-linked notes, fixed-to-floating rate notes or one of the many potential types of non-equity securities at the disposal of issuers to issue, the base prospectus submitted for approval should at least generally provide for such possibilities when it is approved by including disclosure such as the risk factors associated with the relevant type of securities as well as the overarching terms and conditions that are applicable.

16. If an issuer sought to add a new currency as an underlying in a base prospectus that generally provides for the issuance of currency-linked notes, the supplement in that case should not be treated as a “product supplement”. That is because the base prospectus provides the general contractual provisions applicable to issuances of that type of security and the supplement makes changes relating to a security which the issuer is already permitted to issue. Similarly, making limited adjustments to existing redemption formulae or formulae for calculating interest or limited changes to risk factors should also be permissible by supplement with respect to securities that are already described in the base prospectus. By contrast and by way of example, if an issuer tried to introduce sustainability-linked securities or crypto-assets as an underlying to a base prospectus not containing any associated general contractual provisions or disclosures, this should not be permitted using a supplement.