Vijeće
Europske unije

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2015/0268 (COD)

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PE 93

INFORMATIVNA NAPOMENA

Od:	Glavno tajništvo Vijeća
Za:	Odbor stalnih predstavnika / Vijeće
Predmet:	Prijedlog uredbe Europskog parlamenta i Vijeća o prospektu koji se objavljuje prilikom javne ponude vrijednosnih papira ili uvrštavanja za trgovanje – ishod prvog čitanja Europskog parlamenta (Strasbourg, od 12. do 15. rujna 2016.)

I. UVOD

Odbor za ekonomsku i monetarnu politiku predstavio je izvješće koje sadrži jedan amandman (amandman 1) na Prijedlog uredbe. Nadalje:

- klub zastupnika S&D-a podnio je dva amandmana (amandmani 2 i 3),
- klub zastupnika EUL/NGL-a podnio je šest amandmana (amandmani 4 – 9).

II. RASPRAVA

Izvjestitelj Petr JEŽEK (ALDE - CZ) otvorio je raspravu koja je održana 14. rujna 2016. te:

- izjavio je da izrada prospekata trenutačno predstavlja veliko opterećenje čiji trošak, u pogledu izdavanja vlasničkih vrijednosnih papira, u prosjeku iznosi 1 milijun EUR. Potrebno ih je pojednostaviti kako bi se zaštitili ulagatelji i smanjilo opterećenje izdavatelja. Glavni je cilj izvješća Odbora za ekonomsku i monetarnu politiku doprinijeti ostvarivanju istinske unije tržištâ kapitala time što bi se na razini EU-a uskladio mehanizam postupanja prema malim i srednjim poduzećima te izdavateljima vrijednosnih papira u iznosu od 1 do 20 milijuna EUR omogućivši im jednostavniju izradu tzv. prospekata EU-a za rast. Time će se na nacionalnoj razini smanjiti rascjepkanost i ograničiti prostor za diskrecijske odluke, smanjiti opterećenje izdavateljâ i njihovi troškovi te osigurati zaštita ulagatelja i
- naveo je da većina klubova zastupnika dijeli iste zajedničke ciljeve u smislu istinskog europskog mehanizma kojim bi se uskladili zahtjevi za prospekte, smanjio prostor za diskrecijske odluke na nacionalnoj razini u pogledu manjih izdanja, a naglasak stavio na rasterećenje malih i srednjih poduzeća.

Povjerenik DOMBROVSKIS:

- izjavio je da Komisija ima jednostavan cilj: stvoriti u pogledu prospekata jednostavniji, brži i jeftiniji mehanizam. Prospekt bi trebao sadržavati jasne i usporedive informacije kako bi trgovačko društvo moglo na temelju jedinstvenog dokumenta prikupiti kapital u cijeloj Europi;
- naveo je da sva trgovačka društva ne trebaju ili ne žele prikupljati kapital u cijeloj Europi te se stoga obvezu izrade usklađenog prospekta ne bi trebalo propisivati kada se prikupljaju samo mali iznosi na lokalnoj razini. Stoga je prijedlog Komisije da za prikupljanje manje od 10 milijuna EUR ne postoji obveza izrade prospekta. Za manje iznose bi se uvjetovanjem izrade usklađenog prospekta prouzročili nerazmjerni troškovi koji dosežu i do 10 % iznosa prikupljenog izdavanjem vlasničkih vrijednosnih papira i do 5 % u slučaju izdavanja dužničkih vrijednosnih papira. Naveo je da se Komisija zanima za prijedlog Parlamenta o stvaranju posebno prilagođenog prospekta za rast u EU-u koji bi bio namijenjen malim trgovačkim društvima i izdavanju vlasničkih vrijednosnih papira u iznosu do 20 milijuna EUR. Troškovi izrade prospekta moraju biti razmjerni kapitalu koji se želi prikupiti;
- podsjetio je na jedan od razloga zbog kojih je Komisija predložila novu uredbu o prospektu sa širim rasponom izuzeća, tj. na činjenicu da prethodni i navodno jednostavniji mehanizam nije bio smisleno jednostavniji od izrade cjelovitog prospekta;

- izjavio je da se prijedlogom Komisije pojednostavnjuje tzv. sekundarno izdavanje za trgovačka društva koja su već uvrštena na burzu ili neko drugo uređeno tržište. Na njih se odnosi velika većina (oko 70 %) izdanih prospekata. Komisija podržava nastojanja Parlamenta da se u tom pogledu poduzmu i ambiciozniji koraci;
- pozdravio je prijedloge Parlamenta da se tzv. čestim izdavateljima omogući ubrzano izdavanje odobrenja jer su informacije o tim izdavateljima već dostupne i redovito se aktualiziraju. Ubrzanim izdavanjem odobrenja za česte izdavatelje mogao bi se doista olakšati pristup tržištima kapitala i ojačati konkurentnost europske industrije na globalnoj razini i
- napomenuo je da preostaje nekoliko pitanja o kojima će trebati raspraviti u okviru trijaloga, posebice o tome kako uskladiti prijedlog Komisije da se obveza izrade prospekta propiše samo za izdanja čija vrijednost prelazi 10 milijuna EUR s prijedlogom Parlamenta da se stvori prospekt za rast u EU-u koji bi se primjenjivao na prikupljanja kapitala u iznosu od 5 do 20 milijuna EUR.

Vicky FORD (ECR - UK) u ime Odbora za unutarnje tržište i zaštitu potrošača:

- istaknula je da skupno financiranje (*crowd-funding*) otvara nove mogućnosti koje se ne smiju opteretiti birokracijom prije nego li se mogu u potpunosti razviti;
- podsjetila je da njezin odbor ima zadaću osigurati zaštitu potrošača. Priznaje da će se potrošači moći koristiti proširenim izborom mogućnosti za ulaganja, no i navodi da je odbor ujedno intenzivno radio sa stručnjacima za zaštitu potrošača kako bi se potrošačima pružila odgovarajuća razina jasnih i točnih informacija i omogućilo im da donesu informirane odluke; i
- izrazila je nadu da će se nakon Brexita moći iznaći načini kako bi poduzeća diljem EU-a mogla očuvati pristup razvijenim tržištima kapitala u Ujedinjenoj Kraljevini, a britanska trgovačka društva održati i razvijati odnose s ulagateljima u ostatku Europe.

Tom VANDENKENDELAERE (EPP - BE) u ime kluba zastupnika EPP-a ustvrdio je da se europska trgovačka društva previše oslanjaju na banke za osiguravanje financijskih sredstava te da je to posljedica pretjerano složenih propisa u vezi s prospektima. Time se sprečava razvoj malih i srednjih poduzeća. Njegov klub zastupnika poduzet će sve što može kako bi se trgovačkim društvima olakšalo prikupljanje kapitala.

Neena GILL (S&D - UK) u ime kluba zastupnika S&D-a napomenula je da se u 2014. putovnica upotrebljavala tek za svaki četvrti prospekt i da se za veliku većinu izdanja kapital prikupljao u državi članici. To se mora promijeniti. Potrebno je osigurati slobodan protok kapitala koji se ne zaustavlja na granicama država članica. Time se ujedno može pripomoći osiguravanju pristupa sredstvima institucionalnih ulagatelja koji ne ulažu svoj kapital zbog trenutačno niskih kamatnih stopa. Trebalo bi iskoristiti potencijal tržištâ kapitala za mala i srednja poduzeća pojednostavnjenjem i pojeftinjenjem prospekata i uklanjanjem potrebe za dugotrajnim i nepotrebnim uslugama banaka i pravnika.

Miguel VIEGAS (EUL/NGL - PT) u ime kluba zastupnika EUL/NGL napomenuo je da financijski proizvodi postaju sve složeniji i izrazio žaljenje zbog načelâ maksimiziranja dobiti. Naglasio je nužnost obrane javnog nadzora nad financijskim sustavom.

Ernest URTASUN (Zeleni/ESS – ES) smatra da su predložena izuzeća preopširna te je pozvao na navođenje „zdravstvenih upozorenja” kako bi mali ulagatelji bili svjesni svih problema povezanih s pojedinim proizvodima.

Povjerenik DOMBROVSKIS još jednom je preuzeo riječ izrazivši nadu da će pregovori u okviru trijaloga moći započeti u narednim tjednima.

Izvjestitelj se još jednom obratio prisutnima zatraživši na plenarnoj sjednici snažan mandat uoči predstojećih pregovora u okviru trijaloga.

III. GLASOVANJE

Parlament je glasovanjem 15. rujna 2016. usvojio 76 amandmana (amandmani 1., 2. i 3.). Tekst prijedloga Komisije, kako je izmijenjen tim trima amandmanima, priložen je ovoj napomeni.

Glasovanje o zakonodavnoj rezoluciji odgođeno je za jednu od kasnijih sjednica te stoga nije dovršeno prvo čitanje. Prijedlog je zatim vraćen Odboru za ekonomsku i monetarnu politiku, u skladu s člankom 61. stavkom 2. Poslovnika Europskog parlamenta.

ANNEX
(15.09.2016)

Prospectus to be published when securities are offered to the public or admitted to trading***I

Committee on Economic and Monetary Affairs
PE578.833

Amendments adopted by the European Parliament on 15 September 2016 on the proposal for a regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (COM(2015)0583 – C8-0375/2015 – 2015/0268(COD))[1]

(Ordinary legislative procedure: first reading)

[Amendment 1, unless otherwise indicated]

AMENDMENTS BY THE EUROPEAN PARLIAMENT**

to the Commission proposal

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the prospectus to be published when securities are offered to the public or admitted to trading

[1] The matter was referred back to the committee responsible for reconsideration pursuant to Rule 61(2), second subparagraph (A8-0238/2016).

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[2],

Having regard to the opinion of the European Central Bank[3],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[4],

Whereas:

(1) This Regulation constitutes an essential step towards the completion of the Capital Markets Union as set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled 'Action Plan on Building a Capital Markets Union' of 30 September 2015. The aim of the Capital Markets Union is to help businesses tap into more diverse sources of capital from anywhere within the European Union (hereinafter 'the Union'), make markets work more efficiently and offer investors and savers additional opportunities to put their money to work, in order to enhance growth and create jobs.

(2) Directive 2003/71/EC of the European Parliament and of the Council[5] laid down harmonised principles and rules on the prospectus to be drawn up, approved and published when

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2 OJ C *177, 18.5.2016, p. 9*.

3 ***JO C 195, 2.6.2016, p. 1.***

4 Position of the European Parliament of … [(OJ …)/(not yet published in the Official Journal)] and decision of the Council of ….

securities are offered to the public or admitted to trading on a regulated market. Given the legislative and market developments since its entry into force, that Directive should be replaced.

(3) Disclosure of information in case of offers of securities to the public or admission of securities to trading on a regulated market is vital to protect investors by removing asymmetries of information between them and issuers. Harmonising this disclosure allows for the establishment of a cross-border passport mechanism which facilitates the effective functioning of the internal market in a wide variety of securities.

(4) Divergent approaches would result in fragmentation of the internal market since issuers, offerors and persons asking for admission would be subject to different rules in different Member States and prospectuses approved in one Member State could be prevented from being used in other Member States. In the absence of a harmonised framework to ensure uniformity of disclosure and the functioning of the passport in the Union it is therefore likely that differences in Member States legislation would create obstacles to the smooth functioning of the internal market for securities. Therefore to ensure the proper functioning of the internal market and improve the conditions of its functioning, in particular with regard to capital markets, and to guarantee a high level of consumer and investor protection, it is therefore appropriate to lay down a regulatory framework for prospectuses at Union level.

(5) It is appropriate and necessary for the rules on disclosure when securities are offered to the public or admitted to trading on a regulated market to take the legislative form of a Regulation in order to ensure that provisions directly imposing obligations on persons involved in offers of securities to the public and in admissions of securities to trading on a regulated market are applied in a uniform manner throughout the Union. Since a legal framework for the provisions on prospectuses necessarily involves measures specifying precise requirements on all different aspects inherent to prospectuses, even small divergences on the approach taken regarding one of these aspects could lead to significant impediments to cross-border offers of securities, to multiple listings on regulated markets and to EU consumer protection rules. Therefore, the use of a Regulation, which is directly applicable without requiring national legislation, should reduce the possibility of divergent

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[5] ***Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).***

measures being taken at national level, and should ensure a consistent approach, greater legal certainty and prevent the appearance of significant impediments to cross-border offers and multiple listings. The use of a Regulation will also strengthen confidence in the transparency of markets across the Union, and reduce regulatory complexity as well as search and compliance costs for companies.

(6) The assessment of Directive 2010/73/EU ***of the European Parliament and of the Council***[6] has revealed that certain changes introduced by that Directive have not met their original objectives and that further amendments to the prospectus regime in the Union are necessary to simplify and improve its application, increase its efficiency and enhance the international competitiveness of the Union, thereby contributing to the reduction of administrative burdens.

(7) The aim of this Regulation is to ensure investor protection and market efficiency, while enhancing the single market for capital. The provision of information which, according to the nature of the issuer and of the securities, is necessary to enable investors to make an informed investment decision ensures, together with rules on the conduct of business, the protection of investors. Moreover, such information provides an effective means of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The appropriate way to make this information available is to publish a prospectus.

(8) The disclosure requirements of the present Regulation do not prevent a Member State or a competent authority or an exchange through its rule book to impose other particular requirements in the context of admission to trading of securities on a regulated market (notably regarding corporate governance). Such requirements may not directly or indirectly restrict the drawing up, the content and the dissemination of a prospectus approved by a competent authority.

(9) Non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are

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[6] ***Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 327, 11.12.2010, p. 1).***

members, by the European Central Bank or by the central banks of the Member States should not be covered by this Regulation and thus should remain unaffected by this Regulation.

(10) The scope of the prospectus requirement should cover both equity and non-equity securities offered to the public or admitted to trading on regulated markets in order to ensure investor protection. Some of the securities covered by this Regulation entitle the holder to acquire transferable securities or to receive a cash amount through a cash settlement determined by reference to other instruments, notably transferable securities, currencies, interest rates or yields, commodities or other indices or measures. This Regulation covers in particular warrants, covered warrants, certificates, depositary receipts and convertible notes, such as securities convertible at the option of the investor.

(11) To ensure the approval and passporting of the prospectus as well as the supervision of compliance with this Regulation in particular concerning advertising activity, a competent authority needs to be identified for each prospectus. Thus, this Regulation should clearly determine the home Member State best placed to approve the prospectus.

(12) For offers of securities to the public ***with a total*** consideration ***in the Union*** below EUR ***1 000 000***, the cost of producing a prospectus in accordance with this Regulation is likely to be disproportionate to the envisaged proceeds of the offer. It is therefore appropriate that the requirement to draw up a prospectus under this Regulation should not apply to offers of such small scale. Member States should ***not extend the requirements to draw up a prospectus in accordance with this Regulation to offers of securities with a total consideration below that threshold. Furthermore, Member States should*** refrain ***from imposing*** at national level ***other*** disclosure requirements which ***could*** constitute a disproportionate or unnecessary burden in relation to such offers and thus increase fragmentation of the internal market. ***Where Member States impose such national disclosure requirements, they should notify the Commission and ESMA of the applicable rules.***

(12a) The Commission should analyse such national disclosure requirements and should incorporate the results in its work on crowdfunding, taking into account the need to avoid fragmentation of the internal market. It is important that the regulatory environment at Union level ensures that companies have enough options to raise capital. Therefore, in the spirit of the Capital Markets Union and in order to unlock investment, the

Commission should propose a regulatory initiative to regulate and harmonise crowdfunding practices across the Union.

(13) ***Furthermore, in view of the varying sizes of financial markets across the Union, it is appropriate to give Member States the option of exempting offers of securities to the public not exceeding EUR 5 000 000 from the prospectus obligation as provided for in this Regulation. In particular, Member States should be free to set out in their national law a threshold between EUR 1 000 000 and EUR 5 000 000, expressed as the total consideration of the offer in the Union over a period of 12 months, from which the exemption should apply*** taking into account the level of domestic investor protection they deem to be appropriate. ***Member States should notify the Commission and ESMA of the threshold they have chosen. Offers of securities to the public made under such an exemption should not benefit from the passporting regime under this Regulation. Furthermore, such offers should contain a clear indication that the public offer is not of a cross-border nature and should not actively solicit investors outside that Member State.***

(13a) Where a Member State chooses to exempt offers of securities to the public with a total consideration not exceeding EUR 5 000 000, nothing in this Regulation should prevent that Member State from introducing rules at national level which allow multilateral trading facilities (MTFs) to determine the content of the admission document which an issuer is required to produce upon initial admission to trading of its securities. In such a case, it could be appropriate for the operator of the MTF to define how the admission document is reviewed, which would not necessarily involve a formal approval by the competent authority or the MTF.

(14) Where an offer of securities is addressed exclusively to a restricted circle of investors who are not qualified investors ***or other investors that fulfil the conditions set out in points (a) and (b) of Article 6(1) of Regulation (EU) No 345/2013***, drawing up a prospectus represents a disproportionate burden in view of the small number of persons targeted by the offer, thus no prospectus should be required. This should apply for example to an offer addressed to relatives or personal acquaintances of the managers of a company.

(15) Incentivising directors and employees to hold securities of their own company can have a positive impact on companies' governance and help create long-term value by fostering employees' dedication and sense of ownership, aligning the respective interests of

shareholders and employees, and providing the latter with investment opportunities. Participation of employees in the ownership of their company is particularly important for small and medium-sized enterprises (SMEs), in which individual employees are likely to play a significant role in the success of the company. Therefore, there should be no requirement to produce a prospectus for offers made in the context of an employee-share scheme within the Union, provided a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer, to safeguard investor protection. To ensure equal access to employee-share schemes for all directors and employees, independently of whether their employer is established in or outside the Union, no equivalence decision of third country markets should be required any longer, as long as the aforementioned document is made available. Thus, all participants in employee-share schemes will benefit from equal treatment and information.

(16) Dilutive issuances of shares or securities giving access to shares often indicate transactions with a significant impact of the issuer's capital structure, prospects and financial situation, for which the information contained in a prospectus is needed. By contrast, where an issuer has shares already admitted to trading on a regulated market, a prospectus should not be required for any subsequent admission of the same shares on the same regulated market, including where such shares result from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, providing the newly admitted shares represent a limited proportion in relation to shares of the same class already issued on the same regulated market, unless such admission is combined with an offer to the public falling in the scope of this Regulation. The same principle should apply more generally to securities fungible with securities already admitted to trading on a regulated market.

(17) When applying the definition of 'offer of securities to the public', the ability of an investor to take an individual decision to purchase or subscribe to securities should be a decisive criterion. Therefore, where securities are offered without an element of individual choice on the part of the recipient, including in allocations of securities where there is no right to repudiate the allocation, such transaction should not fall within the definition of 'offer of securities to the public' prescribed by this Regulation.

(18) Issuers, offerors or persons asking for the admission to trading on a regulated market of securities which are not subject to the obligation to publish a prospectus ***should be entitled to draw up voluntarily a full prospectus or an EU Growth prospectus, as applicable, in***

accordance with this Regulation. Therefore, they should benefit from the single passport where they choose to comply with this Regulation on a voluntary basis.

(19) Disclosure provided by the prospectus should not be required for offers limited to qualified investors. In contrast, any resale to the public or public trading through admission to trading on a regulated market requires the publication of a prospectus.

(20) A valid prospectus, drawn up by the issuer or the person responsible for drawing up the prospectus and available to the public at the time of the final placement of securities through financial intermediaries or in any subsequent resale of securities, provides sufficient information for investors to make informed investment decisions. Therefore, financial intermediaries placing or subsequently reselling the securities should be entitled to rely upon the initial prospectus published by the issuer or the person responsible for drawing up the prospectus as long as it is valid and duly supplemented and the issuer or the person responsible for drawing up the prospectus consents to its use. The issuer or the person responsible for drawing up the prospectus should be allowed to attach conditions to his or her consent. The consent to use the prospectus, including any conditions attached thereto, should be given in a written agreement enabling assessment by relevant parties of whether the resale or final placement of securities complies with the agreement. In the event that consent to use the prospectus has been given, the issuer or person responsible for drawing up the initial prospectus should be liable for the information stated therein and in the case of a base prospectus, for providing and filing final terms and no other prospectus should be required. However, in the event that the issuer or the person responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus. In that case, the financial intermediary should be liable for the information in the prospectus, including all information incorporated by reference and, in the case of a base prospectus, final terms.

(21) Harmonisation of the information contained in the prospectus should provide equivalent investor protection at Union level. In order to enable investors to make an informed investment decision, ***a prospectus drawn up under this Regulation should contain the relevant and necessary*** information ***in relation to an investment in securities which an investor would reasonably require in order to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer and of any guarantor,*** and the rights attaching to the securities***. Such information*** should be ***drafted***

and presented in an easily analysable, succinct and comprehensible form ***and should be adapted to the type of prospectus*** drawn up in accordance with this Regulation, including those following the ***simplified*** disclosure ***regime*** for secondary issuances and ***the EU Growth prospectus regime***. A prospectus should not contain information which is not material or specific to the issuer and the securities concerned, as this could obscure the information relevant to ***investors*** and thus undermine investor protection. ***Therefore, the information which is included in a prospectus should be adapted to reflect the nature and circumstances of the issuer, the type of securities, the type of investor targeted by the offer or admission to trading on a regulated market and the likely knowledge of such investors, and the information that is available to such investors because it has been made public under other legal or regulatory requirements.***

(22) The summary of the prospectus should be a useful source of information for investors, in particular retail investors. It should be a self-contained part of the prospectus and should focus on key information that investors need in order to be able to decide which offers and admissions to trading of securities ***they want*** to ***study*** further ***by reviewing the prospectus as a whole with the purpose of making an informed investment decision. The foregoing implies that information produced in the summary is not replicated within the main body of the prospectus unless absolutely necessary***. Such key information should convey the essential characteristics of, and risks associated with, the issuer, any guarantor, and the securities offered or admitted to trading on a regulated market***, including unique identifiers such as the legal entity identifier (LEI) of the actors involved in the offer and the international securities identification number (ISIN) of the securities***. It should also provide the general terms and conditions of the offer. In particular, the presentation of risk factors in the summary should consist of a limited selection of specific risks which the issuer considers to be ***of most relevance to the investor when the investor is making an investment decision. The description of the risk factors in the summary should be of relevance to the specific offering and should be prepared solely for the benefit of investors*** and not ***give general statements on investment risk, or limit the liability of the issuer, offeror or any persons acting on their behalf***.

(22a) The summary should contain a clear warning highlighting the risks, in particular for retail investors, in the case of securities issued by banks that are subject to bail-in under Directive 2014/59/EU of the European Parliament and of the Council (BRRD)[7].

(23) The summary of the prospectus should be short, simple, clear and easy for investors to understand. It should be drafted in plain, non-technical language, presenting the information in an easily accessible way. It should not be a mere compilation of excerpts from the prospectus. It is appropriate to set a maximum length for the summary in order to ensure that investors are not deterred from reading it and to encourage issuers to select the information which is essential for investors. ***In exceptional cases, the competent authority should, however, be able to allow the issuer to draw up a longer summary of up to 10 sides of A4-sized paper when printed, where the complexity of the issuer's activities, the nature of the issue, or the nature of the securities issued so requires, and where the investor would be misled without the additional information being set out in the summary as a result.***

(24) To ensure the uniform structure of the prospectus summary, general sections and sub-headings should be provided, with indicative contents which the issuer should fill in with brief, narrative descriptions including figures where appropriate. As long as they present it in a fair and balanced way, issuers should be given discretion to select the information that they deem to be material and meaningful.

(25) The prospectus summary should be modelled as much as possible after the key information document required under Regulation (EU) No 1286/2014 of the European Parliament and of the Council[8]. Where securities fall under the scope of both this Regulation and Regulation (EU) No 1286/2014, full reuse of the contents of the key information document should be permitted in the summary in order to minimise compliance costs and administrative burden for issuers. The requirement to produce a summary should however not be waived when a

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7 ***Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).***

8 Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

key information document is required, as the latter does not contain key information on the issuer and the offer to the public or admission to trading of the securities concerned.

(26) No civil liability should be attached to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. The summary should contain a clear warning to this effect.

(27) Issuers which repeatedly raise financing on capital markets should be offered specific formats of registration documents and prospectuses as well as specific procedures for their filing and approval, in order to provide them with more flexibility and enable them to seize market windows. In any case, those formats and procedures should be optional at the choice of issuers.

(28) For all non-equity securities, including where these are issued in a continuous or repeated manner or as part of an offering programme, issuers should be allowed to draw up a prospectus in the form of a base prospectus. A base prospectus and its final terms should contain the same information as a prospectus.

(29) It is appropriate to clarify that final terms to a base prospectus should contain only information relating to the securities note which is specific to the individual issue and which can be determined only at the time of the individual issue. Such information may, for example, include the international securities identification number, the issue price, the date of maturity, any coupon, the exercise date, the exercise price, the redemption price and other terms not known at the time of drawing up the base prospectus. Where the final terms are not included in the base prospectus they should not have to be approved by the competent authority, but should only be filed with it. Other new information which is capable of affecting the assessment of the issuer and the securities should be included in a supplement to the base prospectus. Neither the final terms nor a supplement should be used to include a type of securities not already described in the base prospectus.

(30) Under a base prospectus, a summary should only be drawn up by the issuer in relation to each individual issue offered, in order to reduce administrative burdens and to enhance the readability for investors. That issue-specific summary should be annexed to the final terms and should only be approved by the competent authority where the final terms are included in the base prospectus or in a supplement thereto.

(31) In order to enhance the flexibility and cost-effectiveness of the base prospectus, an issuer should be allowed to draw up a base prospectus as separate documents and to use a universal registration document as a constituent part of that base prospectus, where it is a frequent issuer.

(32) Frequent issuers should be encouraged to draw up their prospectus as separate documents as this can reduce their cost of compliance with this Regulation and enable them to swiftly react to market windows. Thus, issuers whose securities are admitted to trading on regulated markets or multilateral trading facilities should have the option, but not the obligation, to draw up and publish every financial year a universal registration document containing legal, business, financial, accounting and shareholding information and providing a description of the issuer for that financial year. That should enable the issuer to keep the information up-to-date and draw up a prospectus when market conditions become favourable for an offer or an admission by adding a securities note and a summary. The universal registration document should be multi-purpose in so far as its content should be the same irrespective of whether the issuer subsequently uses it for an offer or admission to trading of equity, debt securities or derivatives. It should act as a source of reference on the issuer, supplying investors and analysts with the minimum information needed to make an informed judgement on the company's business, financial position, earnings and prospects, governance and shareholding.

(33) An issuer which has filed and received approval for a universal registration document for ***two*** consecutive years can be considered well-known to the competent authority. All subsequent universal registration documents ***and any amendments thereto*** should therefore be allowed to be filed without prior approval and reviewed on an ex-post basis by the competent authority where that competent authority deems it necessary***, unless those amendments concern an omission, or a material mistake or inaccuracy, which is likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer***. Each competent authority should decide the frequency of such review taking into account for example its assessment of the risks of the issuer, the quality of its past disclosures, or the length of time elapsed since a filed universal registration document has been last reviewed.

(34) It should be possible for the universal registration document, as long as it has not become a constituent part of an approved prospectus, to be amended, either voluntarily by the issuer –

for example in case of a material change in its organisation or financial situation – or upon request by the competent authority in the context of a post filing review where the standards of completeness, comprehensibility and consistency are not met. Such amendments should be published according to the same arrangements that apply to the universal registration document. In particular, when the competent authority identifies an omission or a material mistake or inaccuracy, the issuer should amend its universal registration document and make this amendment publicly available without undue delay. As neither an offer to the public, nor an admission to trading of securities is taking place, the procedure for amending a universal registration document should be distinct from the procedure for supplementing a prospectus, which should apply only after the approval of the prospectus.

(35) Where an issuer draws up a prospectus consisting of separate documents, all constituting parts of the prospectus should be subject to approval, including, where applicable, the universal registration document and amendments thereto, where they have been previously filed with the competent authority but not approved. ***In the case of a frequent issuer, any amendments to the universal registration document should not need to be approved prior to publication, but instead should be able to be reviewed by the competent authority on an ex post basis.***

(36) To speed up the process of preparing a prospectus and to facilitate access to capital markets in a cost-effective way, frequent issuers who produce a universal registration document should be granted the benefit of a faster approval process, since the main constituent part of the prospectus has either already been approved or is already available for the review by the competent authority. The time needed to obtain approval of the prospectus should therefore be shortened when the registration document takes the form of a universal registration document.

(37) Provided that the issuer complies with the procedures for the filing, dissemination and storage of regulated information and with the deadlines set out in Articles 4 and 5 of Directive 2004/109/EC of the European Parliament and of the Council[9], it should be allowed to publish the annual and half-yearly financial reports required by Directive 2004/109/EC as parts of the universal registration document, unless the home Member States of the issuer

[9] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

are different for the purposes of this Regulation and Directive 2004/109/EC and unless the language of the universal registration document does not fulfil the conditions of Article 20 of Directive 2004/109/EC. This should alleviate administrative burden linked to multiple filings, without affecting the information available to the public or the supervision of these reports under Directive 2004/109/EC.

(38) A clear time limit should be set for the validity of a prospectus in order to avoid investment decisions based on outdated information. In order to improve legal certainty, the validity of a prospectus should commence at its approval, a point in time which is easily verified by the competent authority. An offer of securities to the public under a base prospectus should only extend beyond the validity of the base prospectus where a succeeding base prospectus is approved before such validity expires and covers the continuing offer.

(39) By nature, information on taxes on the income from the securities in a prospectus can only be generic, adding little informational value for the individual investor. Since such information must cover not only the country of registered office of the issuer but also the countries where the offer is being made or admission to trading is being sought, where a prospectus is passported, it is costly to produce and might hamper cross-border offers. Therefore a prospectus should only contain a warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities. However, the prospectus should still contain appropriate information on taxation where the proposed investment entails a specific tax regime, for instance in the case of investments in securities granting investors a favourable tax treatment.

(40) Once a class of securities is admitted to trading on a regulated market, investors are provided with ongoing disclosures by the issuer under Regulation (EU) 596/2014 of the European Parliament and of the Council[10] and Directive 2004/109/EC. The need for a full prospectus is therefore less acute in case of subsequent offers to the public or admissions to trading by such an issuer. A distinct ***simplified*** prospectus should therefore be available for use in case of secondary issuances and its content should be alleviated compared to the normal regime, taking into account the information already disclosed. Still, investors need to

[10] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, (OJ L 173, 12.6.2014, p. 1).

be provided with consolidated and well-structured information on such elements as the terms of the offer and its context. ***Therefore, the simplified prospectus for a secondary issuance should include the relevant reduced information which investors would reasonably require to understand the prospects of the issuer and of any guarantor, the rights attaching to the securities, and the reasons for the issuance and its impact on the issuer, in particular the working capital statement, the disclosure of capitalisation and indebtedness, the impact on the overall capital structure and a concise summary of relevant information disclosed under Regulation (EU) No. 596/2014 since the date of the last issue.***

(41) The ***simplified*** disclosure regime for secondary issuances should be extended to ***securities that are traded on*** SME growth markets as their operators are required under Directive 2014/65/EU to establish and apply rules ensuring appropriate ***on-going*** disclosure by issuers whose securities are traded on such venues. ***The regime should also be applicable to MTFs, other than an SME growth market, where those MTFs have disclosure requirements equivalent to the ones required for SME growth markets under Directive 2014/65/EU.***

(42) The ***simplified*** disclosure regime for secondary issuances should only be available for use after a minimum period of time has elapsed since the initial admission to trading of a class of securities of an issuer. A delay of 18 months should ensure that the issuer has complied at least once with its obligation to publish an annual financial report under Directive 2004/109/EC or under the rules of the market operator of an SME growth market ***or an MTF with equivalent disclosure requirements***.

(43) One of the core objectives of the Capital Markets Union is to facilitate access to financing on capital markets for SMEs in the Union. As such companies usually need to raise relatively lower amounts than other issuers, the cost of drawing up a ***full*** prospectus can be disproportionately high and may deter them from offering their securities to the public. At the same time, because of their size and shorter track record, SMEs might carry a ***specific*** investment risk ***compared to*** larger issuers and should disclose sufficient information for investors to take their investment decision. ***Furthermore, in order to encourage the use of capital market financing by SMEs, this Regulation should ensure that special consideration is given to SME growth markets. SME growth markets are a promising tool to allow smaller, growing companies to raise capital. The success of such venues depends, however, on their attractiveness to companies of certain size. Similarly, issuers offering***

securities to the public with a total consideration in the Union not exceeding EUR 20 000 000 would benefit from easier access to capital markets funding in order to be able to grow and reach their full potential and should be able to raise funds at costs that are not disproportionately high. Therefore, it is appropriate that this Regulation establishes a specific proportionate EU Growth prospectus regime which is available to SMEs, to issuers making an offer of securities to the public that are to be admitted to trading on an SME growth market and to issuers offering securities to the public with a total consideration in the Union not exceeding EUR 20 000 000. A proper balance should therefore be struck between the cost-efficient access to financial markets and investor protection when calibrating the content of ***an EU Growth*** prospectus applying to SMEs and a specific disclosure regime should therefore be developed for SMEs to achieve that objective. ***Once approved, EU Growth prospectuses should benefit from the passporting regime under this Regulation and should therefore be valid for any offer of securities to the public across the Union.***

(44) The ***reduced*** information required to be disclosed ***in the EU Growth prospectuses*** should be calibrated in a way that focuses on information that is material and relevant ***when making an investment in the securities issued,*** and ***would need to ensure*** proportionality between the size of the company and its fundraising needs, on the one hand, and the cost of producing a prospectus, on the other hand. In order to ensure ***that such companies*** can draw up prospectuses without incurring costs that are not proportionate to their size, and thus the size of their fundraising, the ***EU Growth prospectus*** regime ▌ should be more flexible than ***the regime which applies*** to companies on regulated markets to the extent compatible with ensuring that the key information necessary to the investors is disclosed.

(45) The ***proportionate*** disclosure regime ***for EU Growth prospectuses*** should ***not*** be ▌ available ***where securities are to be admitted to trading on a*** regulated ***market*** because investors on regulated markets should feel confident that the issuers whose securities they invest in are subject to one single set of disclosure rules. Therefore there should not be a two-tier disclosure standard ***for admission of securities*** on regulated markets depending on the size of the issuer.

(46) ***An EU Growth prospectus should be a standardised document, which is easy for issuers to complete and should cover key information on the issuer, on the securities and on the offer. The Commission should develop delegated acts to specify the reduced content and***

format of the standardised EU Growth prospectus. When setting out the details of the proportionate disclosure regime for EU Growth prospectuses, the Commission should take into account the need to ensure that the EU growth prospectus is significantly and genuinely lighter than the full prospectus, in terms of administrative burden and issue costs, the need to facilitate access to capital markets for SMEs while ensuring investor confidence in investing in such companies, the need to minimise costs and burden for SMEs, the need to elicit specific types of information of special relevance to SMEs, the size of the issuer and how long it has been operating, the various types and characteristics of offers, and the various types of information needed by investors relating to the different types of securities.

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(48) The primary purpose of including risk factors in a prospectus is to ensure that investors make an informed assessment of such risks and thus take investment decisions in full knowledge of the facts. Risk factors should therefore be limited to those risks which are material and specific to the issuer and its securities and which are corroborated by the content of the prospectus. A prospectus should not contain risk factors which are generic and only serve as disclaimers, as these could obscure more specific risk factors that investors should be aware of, thereby preventing the prospectus from presenting information in an easily analysable, succinct and comprehensible form. ***ESMA should develop guidelines on the assessment of the specificity and significance of risk factors to assist competent authorities in their review of risk factors in a manner which encourages appropriate and focused risk factor disclosure by issuers.***

(49) Omission of sensitive information in a prospectus should be allowed in certain circumstances by means of a derogation granted by the competent authority in order to avoid detrimental situations for an issuer.

(50) Member States publish abundant information on their financial situation which is in general available in the public domain. Thus, where a Member State guarantees an offer of securities, such information should not need to be provided in the prospectus.

(51) Allowing issuers to incorporate by reference documents containing the information to be disclosed in a prospectus ***or a base prospectus*** — provided that the documents incorporated by reference have been previously published electronically— should facilitate the procedure

of drawing up a prospectus and lower the costs for the issuers without endangering investor protection. However, this aim of simplifying and reducing the costs of drafting a prospectus should not be achieved to the detriment of other interests the prospectus is meant to protect, including the accessibility of the information. The language used for information incorporated by reference should follow the language regime applying to prospectuses. Information incorporated by reference may refer to historical data, however where this information is no longer relevant due to material change, this should be clearly stated in the prospectus and the updated information should also be provided. ***Furthermore, frequent issuers should be free to choose to incorporate any changes to the universal registration document by way of a dynamic reference in the prospectus. Such dynamic reference would ensure that the reader is always referred to the latest version of the universal registration document, without the need for a supplement. The use of a dynamic reference in place of a supplement should not affect the investor's right of withdrawal.***

(52) Any regulated information ▌should be eligible for incorporation by reference in a prospectus. Issuers whose securities are traded on a multilateral trading facility, and issuers which are exempted from publishing annual and half-yearly financial reports pursuant to Article 8(1)(b) of Directive 2004/109/EC, should also be allowed to incorporate by reference in a prospectus all or part of their annual and interim financial information, audit reports, financial statements, management reports or corporate governance statements, subject to their electronic publication.

(53) Not all issuers have access to adequate information and guidance about the scrutiny and approval process and the necessary steps to follow to get a prospectus approved, as different approaches by competent authorities exist in Member States. This Regulation should eliminate those differences by harmonising the rules applying to the scrutiny and approval process ***and streamlining the approval process by the national competent authorities*** in order to ensure that all competent authorities take a convergent approach when scrutinising the completeness, consistency and comprehensibility of the information contained in a prospectus. Guidance on how to seek approval of a prospectus should be publicly available of the websites of the competent authorities. ESMA should play a key role in fostering supervisory convergence in this field by using its powers under Regulation (EU) No

1095/2010 of the European Parliament and of the Council[11]. In particular, ESMA should conduct peer reviews covering activities of the competent authorities under this Regulation within an appropriate time-frame before the review of this Regulation and in accordance with Regulation (EU) No 1095/2010. ***ESMA should develop a central workflow system, capturing the prospectus approval process from initiation through to approval, allowing competent authorities, ESMA and issuers to manage and monitor approval requests online. That system would provide key information and function as a tool for ESMA and competent authorities to drive convergence of prospectus approval processes and procedures across the Union and to ensure that, in future, prospectuses are approved in the same manner Union-wide.***

(53a) ESMA should make an assessment of the design, financing and operation of a central workflow system in the context of the Capital Markets Union together with the national competent authorities.

(54) To facilitate the access to the markets of Member States, it is important that fees charged by competent authorities for the approval and filing of prospectuses and their related documents are ***reasonable and are*** disclosed. ***Fees imposed on issuers established in a third country should reflect the burden that such an issuance represents.***

(55) Since the internet ensures easy access to information, and in order to ensure better accessibility for investors, the approved prospectus should always be published in an electronic form. The prospectus should be published on a dedicated section of the website of the issuer, the offeror or the person asking for admission, or, where applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents, or on the website of the regulated market where the admission to trading is sought, or of the operator of the multilateral trading facility, and be transmitted by the competent authority to ESMA along with the relevant data enabling its classification. ESMA should provide a centralised storage mechanism of prospectuses allowing access free of charge and appropriate search facilities for the public. ***To ensure that investors have access to reliable data that can be used and analysed in a timely and efficient matter, key information contained in the prospectuses, such as the ISIN identifying the securities and the LEI***

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11 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, (OJ L 331, 15.12.2010, p. 84)

identifying the issuers, offerors and guarantors, should be machine readable including when meta data is used. Prospectuses should remain publicly available for at least 10 years after their publication, to ensure that their period of public availability is aligned with that of annual and half-yearly financial reports under Directive 2004/109/EC. The prospectus should however always be available to investors ***on a durable medium***, free of charge ▌ on request.

(56) It is also necessary to harmonise advertisements in order to avoid undermining public confidence and prejudicing the proper functioning of financial markets. The fairness and accuracy of advertisements, as well as their consistency with the content of the prospectus are of utmost importance for the protection of investors, including retail investors***. Without prejudice to the passporting regime under this Regulation***, the supervision of such advertisements is an integral part of the role of competent authorities. ***The competent authority of the Member State where the advertisements are disseminated should have the power to exercise control over the compliance of advertising activity, relating to an offer to the public of securities or an admission to trading on a regulated market, with the principles referred to in this Regulation. Where necessary, the home Member State should assist the competent authority of the Member State where the advertisements are disseminated with assessing the consistency of the advertisements with the information in the prospectus. Without prejudice to the powers laid down in Article 30(1), scrutiny of the advertisements by a competent authority should not constitute a precondition for the offer to the public or the admission to trading to take place in any host Member State.***

(57) Any significant new factor, material mistake or inaccuracy which could influence the assessment of the investment, arising after the publication of the prospectus but before the closing of the offer or the start of trading on a regulated market, should be properly evaluated by investors and therefore requires the approval and dissemination of a supplement to the prospectus without undue delay.

(58) In order to improve legal certainty, the respective time-limits within which an issuer must publish a supplement to the prospectus and within which investors have a right to withdraw their acceptance of the offer following the publication of a supplement should be clarified. On the one hand, the obligation to supplement a prospectus should apply until the final closing of the offer period or the time when trading of such securities on a regulated market begins, whichever occurs later. On the other hand, the right to withdraw an acceptance

should apply only where the prospectus relates to an offer of securities to the public and the new factor, mistake or inaccuracy arose before the final closing of the offer and the delivery of the securities. Hence, the right of withdrawal should be linked to the timing of the new factor, mistake or inaccuracy that gives rise to a supplement, and should assume that such triggering event has occurred while the offer is open and before the securities are delivered. To improve legal certainty, the supplement to the prospectus should specify when the right of withdrawal ends. Financial intermediaries should facilitate proceedings when investors exert their right to withdraw acceptances.

(59) The obligation for an issuer to translate the full prospectus into all the relevant official languages discourages cross-border offers or multiple trading. To facilitate cross-border offers, where the prospectus is drawn up in a language that is customary in the sphere of international finance, only the summary should be translated in the official language(s) of the host or home Member State(s) ***or in one of the official languages used in the part of the Member State where the investment product is distributed***.

(60) ***ESMA and*** the competent authority of the host Member State should be entitled to receive a certificate from the competent authority of the home Member State which states that the prospectus***, or the individual universal registration document in cases where only such a document has been approved,*** has been drawn up in accordance with this Regulation. The competent authority of the home Member State should also notify the issuer or the person responsible for drawing up the prospectus ***or the universal registration document, as applicable,*** of the certificate of approval of the prospectus that is addressed to the authority of the host Member State in order to provide the issuer or the person responsible for drawing up the prospectus ***or the universal registration document, as applicable,*** with certainty as to whether and when a notification has actually been made.

(61) In order to ensure that the purposes of this Regulation will be fully achieved, it is also necessary to include within its scope securities issued by issuers governed by the laws of third countries. ▌ In order to ensure exchanges of information and cooperation with third-country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements should comply with Directive 95/46/EC and with Regulation (EC) No 45/2001 of the European Parliament and of the Council.

(62) A variety of competent authorities in Member States, with different responsibilities, may create unnecessary costs and overlapping of responsibilities without providing any additional benefit. In each Member State, a single competent authority should be designated to approve prospectuses and to assume responsibility for supervising compliance with this Regulation. That competent authority should be established as an administrative authority and in such a form that their independence from economic actors is guaranteed and conflicts of interest are avoided. The designation of a competent authority for prospectus approval should not exclude cooperation between that competent authority and other entities, such as banking and insurance regulators or listing authorities, with a view to guaranteeing efficient scrutiny and approval of prospectuses in the interest of issuers, investors, markets participants and markets alike. Delegation of tasks by a competent authority to another entity should only be permitted where it relates to the publication of approved prospectuses.

(63) A set of effective tools and powers and resources for the competent authorities of Member States guarantees supervisory effectiveness. This Regulation therefore should in particular provide for a minimum set of supervisory and investigative powers with which competent authorities of Member States should be entrusted in accordance with national law. Those powers should be exercised, where the national law so requires, by application to the competent judicial authorities. When exercising their powers under this Regulation competent authorities and ESMA should act objectively and impartially and remain autonomous in their decision making.

(64) For the purpose of detecting infringements of this Regulation, it is necessary for competent authorities to be able to access sites other than the private residences of natural persons in order to seize documents. The access to such premises is necessary when there is reasonable suspicion that documents and other data related to the subject matter of an inspection or investigation exist and may be relevant to prove an infringement of this Regulation. Additionally the access to such premises is necessary where: the person to whom a demand for information has already been made fails to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed.

(65) In line with the Commission Communication of 8 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector' and in order to ensure that the

requirements of this Regulation are fulfilled, it is important that Member States take necessary steps to ensure that infringements of this Regulation are subject to appropriate administrative penalties and measures. Those penalties and administrative measures should be effective, proportionate and dissuasive and ensure a common approach in Member States and a deterrent effect. This Regulation should not limit Member States in their ability to provide for higher levels of administrative sanctions.

(66) In order to ensure that decisions made by competent authorities have a deterrent effect on the public at large, they should normally be published unless the competent authority in accordance with this Regulation deems it necessary to opt for a publication on an anonymous basis, to delay the publication or not to publish sanctions.

(67) Although Member States may lay down rules for administrative and criminal penalties for the same infringements, Member States should not be required to lay down rules for administrative penalties for the infringements of this Regulation which are subject to national criminal law by [*date of application of this Regulation*]. In accordance with national law, Member States are not obliged to impose both administrative and criminal penalties for the same offence, but they should be able to do so if their national law so permits. However, the maintenance of criminal penalties instead of administrative penalties for infringements of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.

(68) Whistleblowers may bring new information to the attention of competent authorities which assists them in detecting and imposing sanctions in cases of infringements of this Regulation. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to actual or potential infringements of this Regulation and to protect them from retaliation.

(69) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of ▌ the minimum information content of the documents referred to in points (f) and (g) of Article 1(3) and points (d) and (e) of Article 1(4), the adjustment of the definitions of Article 2, ▌ the format of the prospectus, the base

prospectus and the final terms, and the specific information which must be included in a prospectus, the minimum information contained in the universal registration document, the reduced information contained in the simplified ***prospectus*** in case of secondary issuances and by SMEs, the ***specific reduced content and format of the EU Growth prospectus provided for in this Regulation,*** the advertisements for securities falling under the scope of this Regulation, and the general equivalence criteria for prospectuses drawn up by third country issuers. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, ***and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of*** delegated acts, ***the European Parliament and the Council*** should ***receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts***.

(70) In order to ensure uniform conditions for the implementation of this Regulation in respect of equivalence of third country prospectus legislations, implementing powers should be conferred on the Commission to take a decision on such equivalence. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[12].

(71) Technical standards in financial services should ensure adequate protection of investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.

(72) The Commission should adopt draft regulatory technical standards developed by ESMA, with regard to the content and format of presentation of the historical key financial information to be included in the summary, the ***scrutiny, approval, filing and review of the universal registration document, as well as the conditions for its amendment or updating and the conditions where the status of frequent issuer may be lost, the*** information to be incorporated by reference and further types of documents required under Union law, ***the***

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12 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

procedures for the scrutiny and approval of the prospectus, the publication of the prospectus, the data necessary for the classification of prospectuses in the storage mechanism operated by ESMA, ***the provisions concerning advertisements,*** the situations where a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published, the information exchanged between competent authorities and ESMA in the context of the obligation to cooperate, and the ***minimum content of the*** cooperation arrangements with supervisory authorities in third countries. The Commission should adopt those draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(73) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to the standard forms, templates and procedures for the notification of the certificate of approval, the prospectus, the supplement of the prospectus and the translation of the prospectus and/or summary, the standard forms, templates and procedures for the cooperation and exchange of information between competent authorities, and the procedures and forms for exchange of information between competent authorities and ESMA.

(74) In exercising its delegated and implementing powers in accordance with this Regulation, the Commission should respect the following principles:

– the need to ensure confidence in financial markets among retail investors and SMEs by promoting high standards of transparency in financial markets,

– the need to calibrate the disclosure requirements of a prospectus taking into account the size of the issuer and the information which an issuer is already required to disclose under Directive 2004/109/EC and Regulation (EU) No 596/2014,

– the need to facilitate access to capital markets for SMEs while ensuring investor confidence in investing in such companies,

– the need to provide investors with a wide range of competing investment opportunities and a level of disclosure and protection tailored to their circumstances,

– the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against white-collar crime,

– the need for a high level of transparency and consultation with all market participants and with the European Parliament and the Council,

– the need to encourage innovation in financial markets if they are to be dynamic and efficient,

– the need to ensure systemic stability of the financial system by close and reactive monitoring of financial innovation,

– the importance of reducing the cost of, and increasing access to, capital,

– the need to balance, on a long-term basis, the costs and benefits to all market participants of any implementing measure,

– the need to foster the international competitiveness of the Union's financial markets without prejudice to a much-needed extension of international cooperation,

– the need to achieve a level playing field for all market participants by establishing Union legislation every time it is appropriate,

– the need to ensure coherence with other Union legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.

(75) Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Directive 95/46/EC of the European Parliament and of the Council[13] and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council[14].

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13 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

14 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal

(76) No later than five years after the entry into force of this Regulation, the Commission should review the application of this Regulation and assess in particular whether the disclosure regimes for secondary issuances and for SMEs, the universal registration document and the prospectus summary remain appropriate to meet the objectives pursued by this Regulation.

(77) The application of the requirements in this Regulation should be deferred in order to allow for the adoption of delegated and implementing acts and to allow market participants to assimilate and plan for the application of the new measures.

(78) Since the objectives of this Regulation, namely to enhance investor protection and market efficiency while establishing the Capital Markets Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its effects, be better achieved at Union level, the Union may adopt measures in accordance with principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(79) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Therefore, this Regulation should be interpreted and applied in accordance with those rights and principles.

(80) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 ▌.

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data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

HAVE ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose and scope

1. The purpose of this Regulation is to lay down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market ***established in*** a Member State.

2. This Regulation***, with the exception of Article 4,*** shall not apply to the following types of securities:

   (a) units issued by collective investment undertakings ;

   (b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States;

   (c) shares in the capital of central banks of the Member States;

   (d) securities wholly, unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;

   (e) securities issued by associations with legal status or non-profit-making bodies, recognised by a Member State, for the purposes of obtaining the funding necessary to achieve their non-profit-making objectives;

   (g) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or a part thereof and where the shares cannot be sold on without this right being given up;

(i) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution over a period of 12 months, provided that those securities:

(i) are not subordinated, convertible or exchangeable;

(ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.

3. This Regulation***, with the exception of Article 4,*** shall not apply to any of the following types of offers of securities to the public:

(a) ▌ addressed solely to qualified investors;

(b) ▌ addressed to fewer than ***350*** natural or legal persons per Member State ***and in a total of no more than 4000 natural or legal persons in the Union***, other than qualified investors ***or other investors that fulfil the conditions set out in points (a) and (b) of Article 6(1) of Regulation (EU) No 345/2013***;

(c) ▌ addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;

(d) ▌ with a total consideration in the Union of less than EUR ***1 000 000***, which shall be calculated over a period of 12 months;

(e) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;

(f) securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information describing the transaction and its impact on the issuer;

(g) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information describing the transaction and its impact on the issuer;

(h) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is

made available containing information on the number and nature of the shares and the reasons for and details of the offer;

(i) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking, whether or not located in the Union, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer or allotment.

Member States shall not extend the requirement to draw up a prospectus in accordance with this Regulation to offers of securities referred to in point (d) of the first subparagraph. Furthermore, Member States shall refrain from imposing on such types of offers of securities other disclosure requirements at national level which could constitute a disproportionate or unnecessary burden. Member States shall notify the Commission and ESMA of the disclosure requirements applied at national level, if any, including the text of the relevant provisions.

4. This Regulation shall not apply to the admission to trading on a regulated market of any of the following:

(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 per cent of the number of securities already admitted to trading on the same regulated market;

(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 per cent of the number of shares of the same class already admitted to trading on the same regulated market. Where a prospectus was drawn up in accordance with either this Regulation or Directive 2003/71/EC upon the offer to the public or admission to trading of the securities giving access to the shares, or where the securities giving access to the shares were issued before the entry into force of this Regulation, this Regulation shall not apply to the admission to trading on a regulated market of the resulting shares irrespective of their proportion in relation to the

number of shares of the same class already admitted to trading on the same regulated market.

(c) shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, where the issuing of such shares does not involve any increase in the issued capital;

(d) securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information describing the transaction and its impact on the issuer;

(e) securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is available containing information describing the transaction and its impact on the issuer;

(f) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer or allotment;

(g) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, whether or not located in the Union, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the securities and the reasons for and detail of the offer or allotment;

(h) securities already admitted to trading on another regulated market, on the following conditions:

(i) that these securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months;

(ii) that, for securities first admitted to trading on a regulated market after 1 July 2005, the admission to trading on that other regulated market was subject to a prospectus approved and published in accordance with Directive 2003/71/EC;

(iii) that, except where point (ii) applies, for securities first admitted to listing after 30 June 1983, listing particulars were approved in accordance with the requirements of Council Directive 80/390/EEC[15] or Directive 2001/34/EC of the European Parliament and of the Council[16];

(iv) that the ongoing obligations for trading on that other regulated market have been fulfilled; and

(v) that the person seeking the admission of a security to trading on a regulated market under this exemption makes available to the public in the Member State of the regulated market where admission to trading is sought, in the manner set out in Article 20(2), a document the content of which complies with Article 7, drawn up in a language accepted by the competent authority of the Member State of the regulated market where admission is sought. The document shall state where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to his ongoing disclosure obligations is available.

▌

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 42 setting out the minimum information content of the documents referred to in points (f) and (g) of paragraph 3 and points (d) and (e) of paragraph 4 of this Article.

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15 Council Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing (OJ L 100, 17.4.1980, p. 1).

16 Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1).

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(a) ‘securities’ means transferable securities as defined by Article 4(1)(44) of Directive 2014/65/EU with the exception of money market instruments as defined by Article 4(1)(17) of Directive 2014/65/EU, having a maturity of less than 12 months;

(b) ‘equity securities’ means shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer;

(c) ‘non-equity securities’ means all securities that are not equity securities;

(d) ‘offer of securities to the public’ means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe ***for*** these securities. This definition also applies to the placing of securities through financial intermediaries;

(e) ‘qualified investors’ means persons or entities that are listed in points (1) to (4) of Section I of Annex II to Directive 2014/65/EU, and persons or entities who are, on request, treated as professional clients in accordance with Section II of Annex II to Directive 2014/65/EU, or recognised as eligible counterparties in accordance with Article 30 of Directive 2014/65/EU unless they have requested that they be treated as non-professional clients. Investment firms and credit institutions shall communicate their classification on request to the issuer without prejudice to the relevant legislation on data protection;

(f) ‘small and medium-sized enterprises’ ('SMEs') means either

– companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of

employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 000 000 and an annual net turnover not exceeding EUR 50 000 000; or

– small and medium-sized enterprises as defined in Article 4(1)(13) of Directive 2014/65/EU.

(g) 'credit institution' means an undertaking as defined as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[17];

(h) 'issuer' means a legal entity which issues or proposes to issue securities;

(i) 'offeror' means a legal entity or individual which offers securities to the public;

(j) 'regulated market' means a ***regulated*** market as defined by Article 4(1)(21) of Directive 2014/65/EU;

(k) 'advertisement' means announcements:

– relating to a specific offer ***of securities*** to the public ▌ or to an admission to trading on a regulated market;

– ***published by or on behalf of the issuer, the offeror, the person asking for admission to trading on a regulated market or the guarantor;*** and

– aiming to specifically promote the potential subscription or acquisition of securities;

(l) 'regulated information' means all information ***which the issuer, or any other person that has applied for admission to trading of securities on a regulated market without the issuer's consent, is required to disclose under Directive 2004/109/EC or under the laws, regulations or administrative provisions of a Member State adopted under*** Article 2(1)(k) of ***that*** Directive ***and under Articles 17 and 19 of Regulation (EU) No 596/2014***;

(m) 'home Member State' means:

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17 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(i) for all issuers of securities established in the Union which are not mentioned in point (ii), the Member State where the issuer has its registered office;

(ii) for any issues of non-equity securities whose denomination per unit amounts to at least EUR 1 000, and for any issues of non-equity securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer, the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission. The same shall apply to non-equity securities in a currency other than euro, provided that the value of such minimum denomination is nearly equivalent to EUR 1 000;

(iii) for all issuers of securities established in a third country which are not mentioned in point (ii), the Member State where the securities are intended to be offered to the public for the first time or where the first application for admission to trading on a regulated market is made, at the choice of the issuer, the offeror or the person asking for admission, subject to a subsequent choice by issuers established in a third country in either of the following circumstances:

– where the home Member State was not determined by the choice of these issuers,

in accordance with point (1)(i)(iii) of Article 2 of Directive 2004/109/EC;

(n) 'host Member State' means the Member State where an offer ***of securities*** to the public is made or admission to trading ***on a regulated market*** is sought, when different from the home Member State;

(na) 'competent authority' means the authority designated by each Member State in accordance with Article 29, unless otherwise specified in this Regulation.

(o) ‘collective investment undertaking’ means ***undertakings for collective investment in transferable securities (UCITS) authorised in accordance with Article 5 of Directive 2009/65/EC of the European Parliament and of the Council***[18] ***and alternative investment funds (AIFs) within the meaning of Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council***[19]***;***

(p) ‘units of a collective investment undertaking’ means securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets;

(q) ‘approval’ means the positive act at the outcome of the scrutiny by the home Member State's competent authority of the completeness, the consistency and the comprehensibility of the information given in the prospectus;

(r) ‘base prospectus’ means a prospectus that complies with Article 8 of this Regulation, and, at the choice of the issuer, the final terms of the offer;

(s) 'working days', for the purposes of this Regulation, mean working days of the ***relevant*** competent authority excluding Saturdays, Sundays and public holidays, as defined by the national law applicable to ***that*** national competent authority;

(t) ‘multilateral trading facility’ means a multilateral system as defined in Article 4(1)(22) of Directive 2014/65/EU;

(u) ‘SME growth market’ means an SME growth market as defined in Article 4(1)(12) of Directive 2014/65/EU;

(v) 'third country issuer' means an issuer established in a third country

(va) ‘durable medium’ means any instrument which:

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18 *Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).*

19 *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).*

(i) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and

(ii) allows the unchanged reproduction of the information stored.

2. In order to take account of technical developments on financial markets, the Commission shall be empowered to adopt delegated acts in accordance with Article 42 to specify some technical elements of the definitions laid down in paragraph 1 of this Article, ***excluding*** the definition of 'small and medium-sized enterprises (SMEs)' in point (f) of paragraph 1, taking into account the situation on different national markets, ▌Union legislation ▌as well as economic developments.

Article 3

Obligation to publish a prospectus and exemption

1. Securities shall ▌be offered to the public in the Union ***only after*** prior publication of a prospectus ***in accordance with this Regulation***.

2. ***Without prejudice to Article 15, a*** Member State may ***decide to*** exempt offers of securities to the public from the ***obligation to publish a*** prospectus ***set out in*** paragraph 1 provided that ▌the total consideration of the offer ***in the Union does not exceed EUR 5 000 000*** calculated over a period of 12 months.

Public offers made under the exemption set out pursuant to the first subparagraph:

(a) shall not benefit from the passporting regime under this Regulation and therefore Articles 23 and 24 of the Regulation shall not apply;

(b) shall contain a clear indication that the public offer is not of a cross-border nature; and

(c) shall not actively solicit investors outside the Member State referred to in the first subparagraph.

Member States shall notify the Commission and ESMA of ***any decision taken in accordance with the first subparagraph and*** the ***threshold chosen for the total consideration referred to therein***.

3. Securities shall ▌ be admitted to trading on a regulated market ***established in*** the Union ***only after*** prior publication of a prospectus.

3a. In order to take account of exchange rate movements, including inflation and exchange rates for currencies other than the euro, the Commission may adopt, by means of delegated acts in accordance with Article 42, measures to specify the threshold laid down in paragraph 2 of this Article.

Article 4

Voluntary prospectus

Where an offer of securities to the public or an admission of securities to trading on a regulated market is outside the scope of this Regulation as ***specified*** in Article 1, an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to voluntarily draw up a prospectus ***or an EU Growth prospectus as applicable*** in accordance with this Regulation.

Such voluntarily drawn up prospectus approved by the competent authority of the home Member State, as determined according to Article 2(1)(m), shall entail all the rights and obligations provided for a prospectus ▌ required under this Regulation and shall be subject to all provisions of this Regulation, under the supervision of that competent authority.

Article 5

Subsequent resale of securities

Any subsequent resale of securities which were previously the subject of one or more of the types of offer of securities ***excluded from the scope of this Regulation in accordance with*** points (a) to (d) of Article 1(3) shall be considered as a separate offer and the definition set out in Article 2(1)(d) shall apply for the purpose of determining whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus where none of the conditions listed in points (a) to (d) of Article 1(3) are met for the final placement.

No additional prospectus shall be required in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 12 and the issuer or the person responsible for drawing up such prospectus consents to its use by means of a written agreement.

CHAPTER II
DRAWING UP OF THE PROSPECTUS

Article 6
The prospectus

1. Without prejudice to Article 14(2) and Article 17(2), the prospectus shall contain the ***relevant and necessary*** information which ***an investor would reasonably require in relation to an investment in securities in order to be able*** to make an informed assessment of***:***

(a) the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor***;*** and

(b) the rights attaching to such securities.

That information shall be ***drafted and*** presented in an easily analysable, succinct and comprehensible form ***and may vary depending on:***

(a) the nature of the issuer;

(b) the type of securities;

(c) the circumstances of the issuer;

(d) where relevant, the type of investor targeted in the offer to the public or admission to trading, the likely knowledge of such type of investor, and the market on which the securities are to be admitted to trading;

(e) any information made available to investors further to requirements imposed on the issuer of the securities under Union or national law or the rules of any competent authority or trading venue by or on which the issuer's securities are listed or admitted to trading, which can be accessed through an officially appointed mechanism as referred to in Article 21 of Directive 2004/109/EC;

(f) the applicability of any simplified or proportionate disclosure regime as set out in Article 14 and Article 15.

2. The issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or as separate documents.

A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary, without prejudice to Article 8(7) ***and the second subparagraph of Article 7(1)***. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.

Article 7

The prospectus summary

1. The prospectus shall include a summary ***that provides*** the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered or admitted to trading on a regulated market, and that ***shall be*** read together with the other parts of the prospectus ***to aid*** investors when considering whether to invest in such securities.

By way of derogation from the first subparagraph, where the prospectus relates to the admission to trading on a regulated market of non-equity securities offered solely to qualified investors, no summary shall be required.

2. The content of the summary shall be accurate, fair, clear and not misleading. It shall be ***read as an introduction to the prospectus and it shall be*** consistent with the other parts of the prospectus.

3. The summary shall be drawn up as a short document written in a concise manner and of a maximum of six sides of A4-sized paper when printed.

Only in exceptional cases, however, the competent authority may allow the issuer to draw up a longer summary of up to a maximum of 10 sides of A4-sized paper when printed where the complexity of the issuer's activities, the nature of the issue, or the nature of the securities issued so requires and where there is a risk that the investor would be misled without the additional information being set out in the summary as a result.

The summary shall:

(a) be presented and laid out in a way that is easy to read, using characters of readable size;

(b) be written in a language and a style that facilitate the understanding of the information, in particular, in language that is clear, non-technical, succinct and comprehensible ***for the type of investors concerned***.

4. The summary shall be made up of the following four sections:

(a) an introduction containing ***general and specific*** warnings***, including the extent to which investors could lose their investment in a worst case scenario***;

(b) key information on the issuer, the offeror or the person asking for admission ***to trading on a regulated market***;

(c) key information on the securities;

(d) key information on the offer itself and/or the admission to trading.

5. The introduction ***to*** the summary shall contain***:***

(a) the name ***and international securities identification numbers (ISIN)*** of the securities;

(b) the identity and contact details of the issuer, ***including its legal entity identifier (LEI);***

(c) ***the identity and contact details of*** the offeror***, including its LEI if the offeror has legal personality,*** or ***of*** the person seeking admission***;***

(d) the identity and contact details of the home competent authority and the date of the document.

For the purposes of point (d) of the first subparagraph, where the prospectus consists of separate documents that have been approved by different competent authorities, the introduction to the summary shall identify, and provide contact details of, all of those competent authorities.

It shall contain warnings that:

(a) the summary should be read as an introduction to the prospectus;

(b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;

(c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated;

(d) civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only where the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus, or where it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.

6. The section referred to in point (b) of paragraph 4 shall contain the following information:

(a) under a sub-section titled 'Who is the issuer of the securities?', a brief description of the issuer of the securities, including at least the following:

– its domicile and legal form, ***its LEI,*** the legislation under which it operates and its country of incorporation;

– its principal activities;

– its major shareholders, including whether it is directly or indirectly owned or controlled and by whom;

– the identity of its key ***executive*** directors ***and board of directors***;

– the identity of its statutory auditors.

(b) under a sub-section titled 'What are the key financial information regarding the issuer?' a selection of historical key financial information, including where applicable pro forma information, presented for each financial year of the period covered by the

historical financial information, and any subsequent interim financial period accompanied by comparative data from the same period in the prior financial year. The requirement for comparative balance sheet information shall be satisfied by presenting the year-end balance sheet information.

(c) under a sub-section titled 'What are the key risks that are specific to the issuer?' a brief description of no more than ***10*** of the most ***significant*** risk factors specific to the issuer contained in the ***prospectus including in particular, operational and investment risks***.

7. The section referred to in point c) of paragraph 4 shall contain the following information:

(a) under a sub-section titled 'What are the main features of the securities?', a brief description of the securities being offered and/or admitted to trading including at least:

– their type and class, ***their ISIN***, their currency, denomination, par value, the number of securities issued, the term of the securities;

– the rights attached to the securities;

– ***the relative seniority of the securities in the issuer's capital structure in the event of insolvency, including, where applicable, information on the level of subordination of the securities and their treatment in the event of resolution under the BRRD;***

– any restrictions on the free transferability of the securities;

– where applicable, the dividend or payout policy.

(b) under a sub-section titled 'Where will the securities be traded?', an indication as to whether the securities offered are or will be the object of an application for admission to trading on a regulated market or ***for trading on*** a multilateral trading facility and the identity of all the markets where the securities are or are to be traded.

(c) under a sub-section titled 'Is there a guarantee attached to the securities?' a brief description of the nature and scope of the guarantee, if any, as well as a brief description of the guarantor***, including its LEI***.

(d) under a sub-section titled 'What are the key risks that are specific to the securities?' a brief description of no more than ***10*** of the most ***significant*** risk factors specific to the securities, contained in the ***prospectus***.

Where a key information document is required to be prepared under Regulation (EU) No 1286/2014 of the European Parliament and of the Council[20], the issuer, the offeror or the person asking for admission may substitute the content set out in this paragraph with the information set out in points (b) to (i) of Article 8(3) of Regulation (EU) No 1286/2014. In that case and where a single summary covers several securities which differ only in some very limited details, such as the issue price or maturity date, according to the last subparagraph of Article 8(8), the length limit set out in paragraph 3 shall be extended by 3 additional sides of A4-sized paper for each additional security.

8. The section referred to in point (d) of paragraph 4 shall contain the following information:

(a) under a sub-section titled 'Under which conditions and timetable can I invest in this security?', where applicable, the general terms, conditions and expected timetable of the offer, the details of the admission to trading, the plan for distribution, the amount and percentage of immediate dilution resulting from the offer and an estimate of the total expenses of the issue and/or offer, including estimated expenses charged to the investor by the issuer or the offeror.

(b) under a section titled 'Why has the issuer produced this prospectus?' a brief narrative description of the reasons for the offer or for the admission to trading, as well as the use and estimated net amount of the proceeds.

9. Under each of the sections described in paragraphs 6, 7 and 8, the issuer may add sub-headings where deemed necessary.

10. The summary shall not contain cross-references to other parts of the prospectus or incorporate information by reference.

11. ESMA shall develop draft regulatory technical standards to specify the content and format of presentation of the historical key financial information referred to under point (b) of

[20] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (OJ L 352, 9.12.2014, p. 1).

paragraph 6, taking into account the various types of securities and issuers ***and ensuring that the information produced is brief, concise and understandable***.

ESMA shall submit those draft regulatory technical standards to the Commission by [***12*** *months* ***from the date of*** *entry into force* ***of this Regulation***].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 8

The base prospectus

1. For non-equity securities, the prospectus may, at the choice of the issuer, offeror or person asking for the admission to trading on a regulated market consist of a base prospectus containing ***the*** relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market.

2. A base prospectus shall include the following information:

   (a) a list of the information that will be included in the final terms of the offer;

   (b) a template, titled 'form of the final terms', to be filled out for each individual issue;

   (c) the address of the website where the final terms will be published.

3. The final terms shall be presented in the form of a separate document or shall be included in the base prospectus or a supplement thereto. The final terms shall be prepared in an easily analysable and comprehensible form.

   The final terms shall only contain information that relates to the securities note and shall not be used to supplement the base prospectus. Article 17(1)(a) shall apply in such cases.

4. Where the final terms are neither included in the base prospectus, nor in a supplement, the issuer shall make them available to the public in accordance with Article 20 and file them with the competent authority of the home Member State, as soon as practicable before the beginning of the offer to the public or admission to trading.

A clear and prominent statement shall be inserted in the final terms indicating:

(a) that the final terms have been prepared for the purpose of this Regulation and must be read in conjunction with the base prospectus and its supplement(s) in order to obtain all the relevant information;

(b) where the base prospectus and its supplement(s) are published in accordance with Article 20;

(c) that a summary of the individual issue is annexed to the final terms.

5. A base prospectus may be drawn up as a single document or as separate documents.

Where the issuer, the offeror or the person asking for admission to trading on a regulated market has previously filed a registration document for a particular type of non-equity security, or a universal registration document as defined in Article 9, and, at a later stage, chooses to draw up a base prospectus, the base prospectus shall consist of the following:

(a) the information contained in the registration document, or universal registration document;

(b) the information which would otherwise be contained in the relevant securities note, with the exception of the final terms where the final terms are not included in the base prospectus.

6. The specific information on each of the different securities included in a base prospectus shall be clearly segregated.

7. A summary shall only be drawn up when the final terms are ***included in the base prospectus in accordance with paragraph 3*** or filed and such a summary shall be specific to the individual issue.

8. The summary of the individual issue shall be subject to the same requirements as the final terms, as set out in this Article, and shall be annexed to them.

The summary of the individual issue shall comply with Article 7 and shall provide the key information of the base prospectus and of the final terms. It shall contain the following:

(a) the information of the base prospectus which is only relevant to the individual issue, including the ***essential*** information on the issuer;

(b) the options contained in the base prospectus which are only relevant to the individual issue as determined in the final terms;

(c) the relevant information given in the final terms which has been previously left in blank in the base prospectus.

Where the final terms relate to several securities which differ only in some very limited details, such as the issue price or maturity date, a single summary of the individual issue may be attached for all those securities, provided the information referring to the different securities is clearly segregated.

9. The information contained in the base prospectus shall be supplemented, where necessary, in accordance with Article 22, with updated information on the issuer, and on the securities to be offered to the public or to be admitted to trading on a regulated market.

10. An offer to the public may continue after the expiration of the base prospectus under which it was commenced provided that a succeeding base prospectus is approved no later than the last day of validity of the previous base prospectus. The final terms of such an offer shall contain a prominent warning on their first page indicating the last day of validity of the previous base prospectus and where the succeeding base prospectus will be published. The succeeding base prospectus shall include or incorporate by reference the form of the final terms from the initial base prospectus and refer to the final terms which are relevant for the continuing offer.

The withdrawal right granted under Article 22(2) shall also apply to investors who have agreed to purchase or subscribe the securities during the validity period of the previous base prospectus, unless the securities have already been delivered to them.

Article 9

The universal registration document

1. Any issuer having its registered office in a Member State and whose securities are admitted to trading on a regulated market or a multilateral trading facility may draw up every financial year a registration document in the form of a universal registration document

describing the company's organisation, business, financial position, earnings and prospects, governance and shareholding structure.

2. ***Any*** issuer ***that*** chooses to draw up a universal registration document every financial year shall submit it for approval to the competent authority of its home Member State according to the procedure set out in paragraphs 2***,*** 4 ***and 5*** of Article 19.

After the issuer has had a universal registration document approved by the competent authority every financial year for ***two*** consecutive years, subsequent universal registration documents ***or amendments to such universal registration documents*** may be filed with the competent authority without prior approval***, unless those amendments concern an omission, or a material mistake or inaccuracy, which is likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer***.

Where the issuer thereafter fails to file a universal registration document for one financial year, the benefit of filing without approval shall be lost and all subsequent universal registration documents shall be submitted to the competent authority for approval until the condition of the second subparagraph is met again.

3. Issuers which, prior to the date of application of this Regulation, have had a registration document, drawn up in accordance with Annex I or XI of Regulation (EC) No 809/2004[21], approved by a competent authority for at least ***two*** consecutive years and have thereafter filed, according to Article 12(3) of Directive 2003/71/EC, or got approved such a registration document every year, shall be allowed to file a universal registration document without prior approval in accordance with the second subparagraph of paragraph 2 from the date of application of this Regulation.

4. Once approved or filed without approval, the universal registration document, as well as the amendments thereto referred to in paragraphs 7 and 9, shall be made available to the public without undue delay and in accordance with the arrangements set out in Article 20.

5. The universal registration document shall comply with the language requirements laid down in Article 25.

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21 Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004 p. 3).

6. Information may be incorporated by reference into a universal registration document under the conditions set out in Article 18.

7. Following the filing or approval of a universal registration document, the issuer may at any time update the information it contains by filing an amendment to its universal registration document with the competent authority.

8. The competent authority may at any time review the content of any universal registration document which has been filed without prior approval, as well as the content of amendments thereto.

The review by the competent authority shall consist in scrutinising the completeness, the consistency and the comprehensibility of the information given in the universal registration document and amendments thereto.

9. Where the competent authority, in the course of the review, finds that the universal registration document does not meet the standards of completeness, comprehensibility and consistency, and/or that amendments or supplementary information are needed, it shall notify it to the issuer.

A request for amendment or supplementary information addressed by the competent authority to the issuer needs only be taken into account by the issuer in the next universal registration document filed for the following financial year, except where the issuer wishes to use the universal registration document as a constituent part of a prospectus submitted for approval. In that case, the issuer shall file an amendment to the universal registration document at the latest upon submission of the application referred to in Article 19(5).

By derogation to the second subparagraph, where the competent authority notifies the issuer that its amendment request concerns an omission or a material mistake or inaccuracy, which is likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, the issuer shall file an amendment to the universal registration document without undue delay.

10. The provisions of paragraphs 7 and 9 shall only apply where the universal registration document is not used as a constituent part of a prospectus. Whenever a universal registration document is used as a constituent part of a prospectus, only the rules of Article 22 for supplementing the prospectus shall apply between the time when the prospectus is

approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later.

11. An issuer fulfilling the conditions described in the first ***and*** second subparagraph of paragraph 2 or in paragraph 3 shall have the status of frequent issuer and shall benefit from the faster approval process described in Article 19(5), provided that:

(a) upon the filing or submission for approval of each universal registration document, the issuer provides written confirmation to the competent authority that all regulated information which it is required to disclose under Directive 2004/109/EC, if applicable, and Regulation (EU) No 596/2014 has been filed and published in accordance with the requirements set out in those acts; and

(b) where the competent authority undertakes the review referred to under paragraph 8, the issuer amends its universal registration document according to the arrangements set out in paragraph 9.

Where any of the above conditions is not fulfilled by the issuer, the status of frequent issuer shall be lost.

12. Where the universal registration document filed with or approved by the competent authority is made public at the latest four months after the end of the financial year, and contains the information required to be disclosed in the annual financial report referred to in Article 4 of Directive 2004/109/EC of the European Parliament and of the Council[22], the issuer shall be deemed to have fulfilled its obligation to publish the annual financial report required under that Article.

Where the universal registration document, or an amendment thereto, is filed or approved by the competent authority and made public at the latest three months after the end of the first six months of the financial year, and contains the information required to be disclosed in the half-yearly financial report referred to in Article 5 of Directive 2004/109/EC, the issuer shall be deemed to have fulfilled its obligation to publish the half-yearly financial report required under that Article.

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22 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

In the cases described under the first or second subparagraph, the issuer:

(a) shall include in the universal registration document a cross reference list identifying where each item required in the annual and half-yearly financial reports can be found in the universal registration document;

(b) shall file the universal registration document according to Article 19(1) of Directive 2004/109/EC and make it available to the officially appointed mechanism referred to in Article 21(2) of Directive 2004/109/EC;

(c) shall include in the universal registration document a responsibility statement in the terms required under Article 4(2)(c) and 5(2)(c) of Directive 2004/109/EC.

13. Paragraph 12 shall only apply where the home Member State of the issuer for the purposes of this Regulation is also the home Member State for the purposes of Directive 2004/109/EC, and where the language of the universal registration document fulfils the conditions of Article 20 of Directive 2004/109/EC.

14. ***ESMA*** shall ***develop draft regulatory technical standards*** to specify the procedure for the scrutiny, approval, filing and review of the universal registration document, as well as the conditions for its amendment and the conditions where the status of frequent issuer may be lost.

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 10

Prospectuses consisting of separate documents

1. An issuer ***that*** already has a registration document approved by the competent authority shall be required to draw up only the securities note and the summary when securities are offered to the public or admitted to trading on a regulated market. In that case, the securities note and the summary shall be subject to a separate approval.

Where, since the approval of the registration document, there has been a significant new factor, material mistake or inaccuracy relating to the information included in the registration document which is capable of affecting the assessment of the securities, a supplement to the registration document shall be submitted for approval at the same time as the securities note and the summary. The right to withdraw acceptances according to Article 22(2) shall not apply in that case.

The registration document and its supplement, where applicable, accompanied by the securities note and the summary shall constitute a prospectus, once approved by the competent authority.

2. An issuer ***that*** already has a universal registration document approved by the competent authority ***or that has filed a universal registration document without approval pursuant to the second subparagraph of Article 9(2),*** shall be required to draw up only the securities note and the summary when securities are offered to the public or admitted to trading on a regulated market. In that case, the securities note, the summary and all amendments to the universal registration document filed since the approval ***or the filing*** of the universal registration document***, except for amendments to the universal registration document of a frequent issuer in accordance with Article 19(5),*** shall be subject to a separate approval.

Where an issuer has filed a universal registration document without approval, the entire documentation, including amendments to the universal registration document, shall be subject to approval, notwithstanding the fact that these documents remain separate.

The universal registration document, amended in accordance with paragraphs 7 or 9 of Article 9, accompanied by the securities note and the summary shall constitute a prospectus, once approved by the competent authority.

Article 11

Responsibility attaching to the prospectus

1. Member States shall ensure that responsibility for the information given in a prospectus attaches to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the guarantor. The persons responsible shall be clearly identified in the prospectus by their names and

functions or, in the case of legal persons, their names and registered offices, as well as declarations by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

2. Member States shall ensure that their laws, regulation and administrative provisions on civil liability apply to those persons responsible for the information given in a prospectus.

However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities. The summary shall contain a clear warning to that effect.

3. The responsibility for the information given in a universal registration document shall attach to the persons referred to under paragraph 1 only in cases where the universal registration document is used as a constituent part of an approved prospectus. This shall apply without prejudice to Articles 4 and 5 of Directive 2004/109/EC where the information under these Articles is included in a universal registration document.

Article 12

Validity of a prospectus, base prospectus and registration document

1. A prospectus or a base prospectus, whether a single document or consisting of separate documents, shall be valid for 12 months after its approval for offers to the public or admissions to trading on a regulated market, provided that it is completed by any supplement required pursuant to Article 22.

Where a prospectus or a base prospectus consists of separate documents, the validity shall begin upon approval of the securities note.

2. A registration document, including a universal registration document as referred to in Article 9, which has been previously filed or approved, shall be valid for use as a constituent part of a prospectus for 12 months after its filing or approval.

The end of validity of such a registration document shall not affect the validity of a prospectus of which it is a constituent part.

CHAPTER III
THE CONTENT AND FORMAT OF THE PROSPECTUS

Article 13
Minimum information and format

1. The Commission shall adopt, in accordance with Article 42, delegated acts regarding the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents.

In particular, when ***drawing up*** the various prospectus schedules, account shall be taken of the following:

(a) the various types of information needed by investors relating to equity securities as compared with non-equity securities; a consistent approach shall be taken with regard to information required in a prospectus for securities which have a similar economic rationale, notably derivative securities;

(b) the various types and characteristics of offers and admissions to trading on a regulated market of non-equity securities;

(c) the format used and the information required in base prospectuses relating to non-equity securities, including warrants in any form;

(d) where applicable, the public nature of the issuer;

(e) where applicable, the specific nature of the activities of the issuer.

In particular, the Commission shall draw up two sets of separate and materially different prospectus schedules setting out the information requirements applicable to non-equity securities adapted to the different investor classes - qualified or non-qualified – to whom the offer is addressed, taking into account the different information needs of those investors.

2. The Commission shall adopt, in accordance with Article 42, delegated acts setting out the schedule defining the minimum information contained in the universal registration document, as well as a dedicated schedule for the universal registration document of credit institutions.

Such a schedule shall ensure that the universal registration document contains all the necessary information on the issuer so that the same universal registration document can be used equally for the subsequent offer to the public or admission to trading of equity, debt securities or derivatives. With regard to the financial information, the operating and financial review and prospects and the corporate governance, such information shall be aligned as much as possible with the information required to be disclosed in the annual and half-yearly financial reports referred to under Articles 4 and 5 of Directive 2004/109/EC, including the management report and the corporate governance statement.

3. The delegated acts referred to in paragraph 1 and 2 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, in particular by IOSCO and on the Annexes I, II and III to this Regulation. Those delegated acts shall be adopted by [***6 months before the date of application of this Regulation***].

Article 14

Simplified disclosure regime for secondary issuances

1. The following persons may choose to draw up a ***simplified*** prospectus under the ***simplified*** disclosure regime for secondary issuances, in the case of an offer of securities to the public or of an admission to trading of securities on a regulated market:

(a) issuers whose securities have been admitted to trading on a regulated market or an SME growth market ***or an MTF, other than an SME growth market, with disclosure requirements equivalent to at least those provided for on an SME growth market as specified in Article 33(3)(d), (e), (f) and (g) of MiFID,*** for at least 18 months and who issue more securities of the same class;

(b) issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market ***or an MTF, other than an SME growth market, with disclosure requirements equivalent to at least those provided for on an SME growth market as specified in Article 33(3)(d), (e), (f) and (g) of MiFID,*** for at least 18 months and who issue non-equity securities.

(c) offerors of a class of securities admitted to trading on a regulated market or an SME growth market ***or an MTF, other than an SME growth market, with disclosure requirements equivalent to at least those provided for on an SME growth market as specified in Article 33(3)(d), (e), (f) and (g) of MiFID,*** for at least 18 months.

The ***simplified prospectus provided for in the first subparagraph*** shall consist of a ***summary in accordance with Article 7, a*** specific registration document which may be used by persons referred to under (a), (b) and (c) and a specific securities note which may be used by persons referred to under (a) and (c).

For the purposes of points (a), (b) and (c) of the first sub-paragraph, ESMA shall publish and regularly update a list of MTFs, other than SME growth markets, with disclosure requirements equivalent to at least those provided for on an SME growth market as specified in Article 33(3)(d), (e), (f) and (g) of MiFID.

2. ***In accordance with the principles set out in*** Article 6(1), and without prejudice to Article 17(2), the ***simplified*** prospectus ***referred to in paragraph 1*** shall contain the relevant ***reduced*** information which ***an investor would reasonably require in relation to a secondary issuance for the purpose of making an informed assessment of:***

(a) prospects of the issuer and of any guarantor, based on ▌financial information included or incorporated by reference into the prospectus covering the last financial year only,

(b) the rights attaching to the securities,

(c) the reasons for the issuance and its impact on the issuer***, in particular the working capital statement, the disclosure of capitalisation and indebtedness, the impact on the overall capital structure, and a concise summary of relevant information disclosed under Regulation (EU) No. 596/2014 since the date of the last issue.***

The summary shall only cover the relevant information required under the simplified disclosure regime for secondary issuances.

The information contained in the ***simplified*** prospectus ***referred to in paragraph 1*** shall be ***drafted and*** presented in an easily analysable, succinct and comprehensible form and shall enable investors to make an informed investment decision.

3. The Commission shall adopt delegated acts in accordance with Article 42 to specify the reduced information ***referred to in paragraph 2***, to be included in the schedules applicable under the ***simplified disclosure regime referred to in paragraph 1.***

When specifying the reduced information to be included in the schedules applicable under the simplified disclosure regime***, the Commission shall take*** into account the ***need to facilitate access to capital markets, the importance of reducing the cost of, and increasing access to, capital, and the*** information which ***an issuer*** is already ***required to disclose*** under Directive 2004/109/EC, where applicable, and Regulation (EU) No 596/2014. ***In order to avoid imposing unnecessary burdens on issuers, the Commission shall calibrate the requirements so that they focus on the information that is material and relevant for secondary issuances and are proportionate.***

Those delegated acts shall be adopted by [***6 months before the*** date of application ***of this Regulation***].

Article 15

EU Growth prospectus

1. ***The following entities shall be entitled*** to draw up ***an EU Growth*** prospectus under the ***proportionate*** disclosure regime ***set out in this Article*** in the case of an offer of securities to the public***, except where the securities are to be*** admitted to trading on a regulated market:

(a) SMEs;

(b) issuers, other than SMEs, where the offer to the public concerns securities which are to be admitted to trading on an SME growth market;

(c) issuers, other than those referred to under points (a) and (b), where the offer of securities to the public is of a total consideration in the Union that does not exceed EUR 20 000 000 calculated over a period of 12 months .

An EU Growth prospectus approved pursuant to this Article shall be valid for any offer of securities to the public in any number of host Member States under the conditions set out in Article 23, 24 and 25.

An EU Growth prospectus under the proportionate disclosure regime ***referred to in the first subparagraph*** shall be a ***standardised document, which is easy for issuers to complete.***

1a. The EU growth prospectus shall cover the following three key elements:

(a) key information on the issuer, such as:

(i) the name of the issuer and persons responsible for the prospectus;

(ii) business overview, current trading and prospects of the issuer;

(iii) risk factors relating to the issuer;

(iv) financial information, which may be incorporated by reference;

(b) key information on the securities, such as:

(i) the number and nature of the securities forming part of the offer;

(ii) the terms and conditions of the securities and a description of any rights attached to the securities;

(iii) risk factors related to the securities;

(c) key information on the offer, such as:

(i) the terms and conditions of the offer, including the issue price;

(ii) the reasons for the offer and the intended use of the net proceeds.

▌

3. The Commission shall adopt delegated acts in accordance with Article 42 to specify the reduced ***content and format specific to the standardised EU Growth prospectus referred to in paragraphs 1 and 1a. Those acts shall specify the information required in the prospectus schedules in simple language, using incorporation by reference where appropriate.***

When specifying specific reduced content and format of the standardised EU Growth prospectus the Commission shall calibrate the information requirements to focus on:

(a) the information that is material and relevant when making an investment in the securities issued for investors;

(b) the need to ensure proportionality between the size of the company and its fundraising needs; and

(c) the cost of producing a prospectus.

In doing so, the Commission shall take into account the following:

- ***the need to ensure that the EU growth prospectus is significantly and genuinely lighter than the full prospectus, in terms of administrative burden and cost to issuers;***
- ***the need to facilitate access to capital markets for SMEs while ensuring investor confidence in investing in such companies;***
- ***the need to minimise costs and burden for SMEs;***
- ***the need to elicit specific types of information of special relevance to SMEs;***
- ***the size of the issuer and the length of time for which it has been in operation;***
- ***the various types and characteristics of offers;***
- ***the various types of information needed by investors relating to the different types of securities***.

Those delegated acts shall be adopted by [***6 months before the*** date of application ***of this Regulation***].

▌

Article 16

Risk factors

1. The risk factors featured in a prospectus shall be limited to risks which are specific to the issuer and/or the securities and are material for taking an informed investment decision, as corroborated by the content of the registration document and the securities note. ▌

1a. Risks factors shall also include those resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities under bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring in accordance with Directive 2014/59/EU (BRRD).

2. ESMA shall develop guidelines on the assessment ▌ of the specificity and materiality of risk factors and on the allocation of risk factors ▌. ***In addition, ESMA shall develop guidelines to assist competent authorities in their review of risk factors in a manner which encourages appropriate and focused risk factor disclosure by issuers.***

Article 17

Omission of information

1. Where the final offer price and/or amount of securities which will be offered to the public cannot be included in the prospectus:

   (a) the criteria, and/or the conditions in accordance with which the above elements shall be determined or, in the case of price, the maximum price, shall be disclosed in the prospectus; or

   (b) the acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price and/or amount of securities which will be offered to the public have been filed.

   The final offer price and amount of securities shall be filed with the competent authority of the home Member State and published in accordance with Article 20(2).

2. The competent authority of the home Member State may authorise the omission from the prospectus of certain information to be included in a prospectus, where it considers that any of the following conditions is satisfied:

(a) disclosure of such information would be contrary to the public interest;

(b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission of such information would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates;

(c) such information is of minor importance in relation to a specific offer or admission to trading on a regulated market and would not influence the assessment of the financial position and prospects of the issuer, offeror or guarantor.

The competent authority shall submit a report to ESMA on a yearly basis regarding the information the omission of which it has authorised.

3. Without prejudice to the adequate information provided to investors, where, exceptionally, certain information required to be included in a prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information, unless no such information exists.

4. Where securities are guaranteed by a Member State, an issuer, an offeror or a person asking for admission to trading on a regulated market, when drawing up a prospectus in accordance with Article 4, shall be entitled to omit information pertaining to that Member State.

5. ***ESMA may develop draft guidelines*** to specify the cases where information may be omitted according to paragraph 2, taking into account the reports of competent authorities to ESMA mentioned in paragraph 2.

Article 18

Incorporation by reference

1. Information may be incorporated by reference in a prospectus ***or a base prospectus*** where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 25 and ***filed in the context of disclosure requirements of Union law or filed under the rules*** of the ***trading venue or SME growth market***:

   (a) documents which have been approved by ***a*** competent authority , or filed with it, in accordance with this Regulation;

   (b) documents referred to in points (f) and (g) of Article 1(3) and points (d) and (e) of Article 1(4);

   (c) regulated information as defined in point (l) of Article 2(1);

   (d) annual and interim financial information;

   (e) audit reports and financial statements;

   (f) management reports as defined in Article 19 of Directive 2013/34/EU of the European Parliament and of the Council[23];

   (g) corporate governance statements as defined in Article 20 of Directive 2013/34/EU;

   (h) [remuneration reports as defined in Article [X] of [*revised Shareholders Rights Directive*[24]]***;***

   (ha) annual reports or any disclosure information required under Article 22 and 23 of Directive 2011/61/EU;

   (i) memorandum and articles of association.

   Such information shall be the most recent available to the issuer.

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23 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

24 [OJ C , , p.].

Where only certain parts of a document are incorporated by reference, a statement shall be included in the prospectus that the non-incorporated parts are either not relevant for the investor or covered elsewhere in the prospectus.

2. When incorporating information by reference, issuers, offerors or persons asking for admission to trading on a regulated market shall ensure accessibility of the information. In particular, a cross-reference list shall be provided in the prospectus in order to enable investors to identify easily specific items of information, and the prospectus shall contain hyperlinks to all documents containing information which is incorporated by reference.

3. Where possible along with the first draft of the prospectus submitted to the competent authority, and in any case during the prospectus review process, the issuer, offeror or person asking for admission to trading on a regulated market shall submit in searchable electronic format any information which is incorporated by reference into the prospectus, unless such information has already been approved by or filed with the competent authority approving the prospectus.

4. ESMA may develop draft regulatory technical standards to update the list ***of documents sets out*** mentioned in paragraph 1 by including additional types of documents required under Union law to be filed with or approved by a public authority.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER IV
ARRANGEMENTS FOR APPROVAL AND PUBLICATION OF THE PROSPECTUS

Article 19
Scrutiny and approval of the prospectus

1. No prospectus shall be published until it***, or all of its constituent parts, have*** been approved by the ***relevant*** competent authority of the home Member State.

2. The competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market, of its decision regarding the approval of the prospectus within 10 working days of the submission of the draft prospectus.

The competent authority shall notify ESMA of the approval of the prospectus and any supplement thereto at the same time as that approval is notified to the issuer, the offeror or the person asking for admission to trading on a regulated market.

3. The time limit referred to in paragraph 2 shall be extended to 20 working days where the offer to the public involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public.

The time limit of 20 working days shall only be applicable for the initial submission of the draft prospectus. Where subsequent submissions are necessary according to paragraph 4, the time limit of paragraph 2 shall apply.

4. Where the competent authority finds that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that amendments or supplementary information are needed:

(a) it shall inform the issuer, the offeror or the person asking for admission to trading on a regulated market within 10 working days ***from*** the submission of the draft prospectus and/or ***the*** supplementary information, and state the ***detailed*** reasons ***for the decision***, and

(b) the time limits referred to in ***paragraphs*** 2 ***and 3*** shall then apply only from the date on which an amended draft prospectus and/or the supplementary information requested are submitted to the competent authority.

5. By way of derogation from paragraphs 2 and 4, the time limit referred to in those paragraphs shall be reduced to 5 working days for frequent issuers referred to in Article 9(11). The frequent issuer shall inform the competent authority at least 5 working days before the date envisaged for the submission of an application for approval.

A frequent issuer shall submit an application to the competent authority containing the necessary amendments to the universal registration document, where applicable, the securities note and the summary submitted for approval.

A frequent issuer shall not be required to obtain approval for amendments to the universal registration document unless those amendments concern an omission, or a material mistake or inaccuracy, which is likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer.

6. Competent authorities shall provide on their websites guidance on the scrutiny and approval process in order to facilitate efficient and timely approval of prospectuses. This guidance shall include contact points in relation to approvals. The issuer or the person responsible for drawing up the prospectus shall have the possibility to directly communicate and interact with the staff of the competent authority throughout the process of approval of the prospectus.

▌

9. The level of fees charged by the competent authority of the home Member State for the approval of prospectuses, registration documents, including universal registration documents, supplements and amendments, as well as for the filing of universal registration documents, amendments thereto and final terms, shall be ***reasonable and proportionate and shall be*** disclosed to the public at least on the website of the competent authority.

10. ***ESMA may develop draft regulatory technical standards to specify*** the procedures for the scrutiny of completeness, comprehensibility and consistency and the approval of the prospectus.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

11. ESMA shall use its powers under Regulation (EU) No 1095/2010 to promote supervisory convergence with regard to the scrutiny and approval processes of competent authorities when assessing the completeness, consistency and comprehensibility of the information contained in a prospectus. ***To that end, ESMA shall develop guidelines addressed to the competent authorities on the supervision and enforcement of prospectuses, covering the***

examination of compliance with this Regulation and with any delegated and implementing acts adopted pursuant thereto, as well as the application of appropriate administrative measures and sanctions in the case of any infringements in accordance with Articles 36 and 37. **[AM. 2]** In particular, ESMA shall foster convergence regarding the efficiency, methods and timing of the scrutiny by the competent authorities of the information given in a prospectus***, using peer reviews where appropriate***.

11a. ESMA shall develop a central workflow system, capturing the prospectus approval process from initiation through to approval, allowing competent authorities, ESMA and issuers to manage and monitor approval requests online and across the Union.

12. Without prejudice to Article 30 of Regulation (EU) No 1095/2010, ESMA shall organise and conduct at least one peer review of the scrutiny and approval procedures of competent authorities, including notifications of approval between competent authorities. The peer review shall also assess the impact of different approaches with regard to scrutiny and approval by competent authorities on issuers' ability to raise capital in the European Union. The report on this peer review shall be published no later ***than*** three years ***from*** the date of application of this Regulation. In the context of this peer review, ESMA shall ***take into account*** advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.

Article 20

Publication of the prospectus

1. Once approved, the prospectus shall be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved.

   In the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the prospectus shall be available at least six working days before the end of the offer.

2. The prospectus, whether a single document or consisting of separate documents, shall be deemed available to the public when published in electronic form on either of the following websites:

(a) the website of the issuer, the offeror or the person asking for admission to trading,

(b) the website of the financial intermediaries placing or selling the securities, including paying agents,

(c) the website of the regulated market where the admission to trading is sought, or of the operator of the multilateral trading facility, where applicable.

3. The prospectus shall be published on a dedicated section of the website which is easily accessible when entering the website. It shall be downloadable, printable and in searchable electronic format that cannot be modified.

The documents containing information incorporated by reference in the prospectus, and the supplements and/or final terms related to the prospectus shall be accessible under the same section alongside the prospectus, including by way of hyperlinks where necessary.

Without prejudice to the right of withdrawal in Article 22(2), frequent issuers, as referred to in Article 9(11), may, in place of a supplement, choose to incorporate any changes to the universal registration document by way of a dynamic reference to the most recent version of the universal registration document.

4. Access to the prospectus shall not be subject to the completion of a registration process, the acceptance of a disclaimer limiting legal liability or the payment of a fee.

5. The competent authority of the home Member State shall publish on its website all the prospectuses approved or at least the list of prospectuses approved, including a hyperlink to the dedicated website sections referred to in paragraph 3 as well as an identification of the host Member State(s) where prospectuses are notified in accordance with Article 24. The published list, including the hyperlinks, shall be kept up-to-date and each item shall remain on the website for the time period referred to under paragraph 7.

At the same time as it notifies ESMA of the approval of a prospectus or of any supplement thereto, the competent authority shall provide ESMA with an electronic copy of the prospectus and any supplement thereto, as well as the data necessary for its classification by ESMA in the storage mechanism referred to in paragraph 6 and for the report referred to in Article 45.

The competent authority of the host Member State shall publish information on all notifications received in accordance with Article 24 on its website.

6. At the latest from the beginning of the offer to the public or the admission to trading of the securities involved, ESMA shall publish all prospectuses received from the competent authorities on its website, including any supplements thereto, final terms and related translations where applicable, as well as information on the host Member State(s) where prospectuses are notified in accordance with Article 24. Publication shall be ensured through a storage mechanism providing the public with free of charge access and search functions. ***Key information contained in the prospectuses such as ISIN identifying the securities and the LEI identifying the issuers, offerors and guarantors, shall be machine readable including when meta data is used.***

7. All prospectuses approved shall remain publicly available ***in a digital format*** for at least 10 years after their publication on the websites specified in paragraphs 2 and 6.

8. In the case of a prospectus comprising several documents and/or incorporating information by reference, the documents and information that constitute the prospectus may be published and distributed separately provided that those documents are made available to the public in accordance with paragraph 2. Each constituent document of the prospectus shall indicate where the other documents which are already approved and/or filed with the competent authority may be obtained.

9. The text and the format of the prospectus, and/or the supplements to the prospectus made available to the public shall at all times be identical to the original version approved by the competent authority of the home Member State.

10. A ▌ copy of the prospectus ***on a durable medium*** shall be delivered to any natural or legal person, upon request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities. Delivery shall be limited to jurisdictions in which the offer to the public is made or where the admission to trading is taking place under this Regulation.

11. In order to ensure consistent harmonisation of the procedures set out in this Article, ESMA may develop draft regulatory technical standards to further specify the requirements relating to the publication of the prospectus.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

12. ESMA shall develop draft regulatory technical standards to specify the data necessary for the classification of prospectuses referred to in paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by [***12*** months ***from date of*** entry into force ***of this Regulation***].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 21

Advertisements

1. Any advertisement relating either to an offer ***of securities*** to the public ▌ or to an admission to trading on a regulated market shall comply with the principles contained in this Article.

2. Advertisements shall state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it.

3. Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate or misleading. This information contained in an advertisement shall also be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is published afterwards.

4. All information concerning the offer ***of securities*** to the public or the admission to trading on a regulated market disclosed in an oral or written form, even where not for advertising purposes, shall be consistent with that contained in the prospectus.

Where material information is disclosed by an issuer or an offeror and addressed to one or more selected investors in an oral or written form, such information shall be disclosed to all other investors to whom the offer is addressed, whether or not a prospectus is required under this Regulation. Where a prospectus is required to be published, such

information shall be included in the prospectus or in a supplement to the prospectus in accordance with Article 22(1).

5. The competent authority of the ▌Member State ***where the advertisements are disseminated*** shall have the power to exercise control over the compliance of advertising activity, relating to an offer ***of securities*** to the public ▌or an admission to trading on a regulated market, with the principles referred to in paragraphs 2 to 4.

Where necessary, the competent authority of the home Member State shall assist the competent authority of the Member State where the advertisements are disseminated with assessing the consistency of the advertisements with the information in the prospectus.

Without prejudice to the powers laid down in Article 30(1), scrutiny of the advertisements by a competent authority shall not constitute a precondition for the offer of securities to the public or the admission to trading to a regulated market to take place in any host Member State.

5b. No fees shall be charged by a competent authority for the scrutiny of advertisements pursuant to this Article.

5c. The competent authority of the Member State where the advertisements are disseminated may agree with the competent authority of the home Member State, where the latter is a different competent authority, that the competent authority of the home Member State shall have the power to exercise control over the compliance of advertising activity in accordance with paragraph 5. In the event of such an agreement, the home Member State competent authority shall notify the issuer and ESMA thereof without delay.

6. ***ESMA*** shall ***develop draft regulatory technical standards*** to further specify the provisions concerning advertisements laid down in paragraphs 2 to 4 ***and 5a*** of this Regulation***, including to specify the provisions concerning the dissemination of advertisements and to establish procedures on the cooperation between the competent authorities of the home Member State and of the Member State where the advertisements are disseminated.***

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 22

Supplements to the prospectus

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the 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 final closing of the offer to the public 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.

   Such a supplement shall be approved in the same way as a prospectus in a maximum of five working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published in accordance with Article 20. The summary, and any translations thereof, shall also be supplemented, where necessary, to take into account the new information included in the supplement.

2. Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within ***five*** working days after the publication of the supplement, to withdraw their acceptances, provided that the new factor, mistake or inaccuracy referred to in paragraph 1 arose before the final closing of the offer to the public or the delivery of the securities, whichever occurs first. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.

   Where an issuer chooses to incorporate any changes to the universal registration document by way of a dynamic reference to the most recent version of the universal registration document, in place of a supplement pursuant to Article 20(3), that shall not affect the investor's right of withdrawal as set out in the first subparagraph.

3. Where the issuer prepares a supplement concerning information in the base prospectus that relates to only one or several individual issues, the right of investors to withdraw their

acceptances pursuant to paragraph 2 shall only apply to the relevant issue(s) and not to any other issue of securities under the base prospectus.

4. Only one supplement shall be drawn up and approved where the significant new factor, material mistake or inaccuracy referred to in paragraph 1 concerns only the information contained in a ***registration document or a*** universal registration document and where this ***registration document or*** universal registration document is simultaneously used as a constituent part of several prospectuses. In that case, the supplement shall mention all the prospectuses to which it relates.

5. When scrutinising a supplement before approval, ***without prejudice to subparagraph 2a of Article 20(3),*** the competent authority may request the supplement to contain a consolidated version of the supplemented prospectus in an annex, where this is necessary to ensure comprehensibility of the information given in the prospectus. Such a request shall be deemed to be a request for supplementary information under Article 19(4).

6. In order to ensure consistent harmonisation of this Article and to take account of technical developments on financial markets, ESMA shall develop draft regulatory technical standards to specify situations where a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published.

ESMA shall submit those draft regulatory technical standards to the Commission by [***12*** months ***from the date of*** entry into force ***of this Regulation***].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER V
CROSS-BORDER OFFERS AND ADMISSIONS TO TRADING AND USE OF LANGUAGES

Article 23
Union scope of approvals of prospectuses and universal registration documents

1. Without prejudice to Article 35, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the offer to the public or the admission to trading in any number of host Member States, provided that ESMA and the competent authority of each host Member State are notified in accordance with Article 24. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.

The provisions of the first subparagraph of paragraph 1 shall apply mutatis mutandis to universal registration documents that have already been approved.

Where a prospectus is submitted for approval in one or more Member States and contains a universal registration document which has already been approved in another Member State, the competent authority considering the application for approval of the prospectus shall not re-review the universal registration document but shall instead accept its prior approval.

2. Where significant new factors, material mistakes or inaccuracies come to light after approval of the prospectus, as referred to in Article 22, the competent authority of the home Member State shall require that the publication of a supplement be approved in accordance with Article 19(1). ESMA and the competent authority of the host Member State may inform the competent authority of the home Member State of the need for new information.

Article 24
Notification

1. The competent authority of the home Member State shall, at the request of the issuer or the person responsible for drawing up the prospectus and within three working days following receipt of that request or, where the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus, notify the competent authority of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Regulation and with an electronic copy of that prospectus. ***ESMA shall establish a portal into which each national competent authority feeds in such information.***

Where applicable, the notification referred to in the first subparagraph shall be accompanied by a translation of the prospectus and/or summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus.

Where a universal registration document has been approved in accordance with Article 9, the first and second subparagraphs of this paragraph shall apply mutatis mutandis.

The issuer or the person responsible for drawing up the prospectus ***or the universal registration document, as applicable,*** shall be notified of the certificate of approval at the same time as the competent authority of the host Member State.

2. The application of the provisions of Article 17(2) and (3) shall be stated in the certificate, as well as its justification.

3. The competent authority of the home Member State shall notify ESMA of the certificate of approval of the prospectus at the same time as it is notified to the competent authority of the host Member State.

4. Where the final terms of a base prospectus which has been previously notified are neither included in the base prospectus, nor in a supplement, the competent authority of the home Member State shall communicate them electronically to the competent authority of the host Member State(s) and to ESMA as soon as practicable after they are filed.

5. No fee shall be charged by competent authorities for the notification, or receipt of notification, of prospectuses and supplements thereto, or ***the universal registration document, as applicable, or*** any related supervisory activity, whether in the home Member State or in the host Member State(s).

6. In order to ensure uniform conditions of application of this Regulation and to take account of technical developments on financial markets, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notification of the certificate of approval, the prospectus, the supplement of the prospectus ***or the universal registration document*** and the translation of the prospectus and/or summary.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 25

Use of languages

1. Where an offer to the public is made or admission to trading on a regulated market is sought only in the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State.

2. Where an offer to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission.

   The competent authority of each host Member State ***shall*** require that the summary referred to in Article 7 be translated into its official language or languages but it shall not require the translation of any other part of the prospectus**.[AM. 3]**

   For the purpose of the scrutiny and approval by the competent authority of the home Member State, the prospectus shall be drawn up either in a language accepted by this authority or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission to trading.

3. Where an offer to the public is made or admission to trading on a regulated market is sought in more than one Member State including the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State, and shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, offeror, or person asking for admission to trading.

The competent authority of each host Member State may require that the summary referred to in Article 7 be translated into its official language or languages but it shall not require the translation of any other part of the prospectus.

4. The final terms and the summary of the individual issue shall be drawn up in the same language as the language of the approved base prospectus.

When the final terms are communicated to the competent authority of the host Member State or, where there is more than one host Member State, to the competent authorities of the host Member States, the final terms and the summary of the individual issue annexed thereto, shall be subject to the language requirements set out in this Article.

CHAPTER VI
SPECIFIC RULES IN RELATION TO ISSUERS ESTABLISHED IN THIRD COUNTRIES

Article 26
Offer of securities or admission to trading made under a prospectus drawn up in accordance with this Regulation

1. ***Where a*** third country issuer ***intends*** to offer securities to the public in the Union or to seek admission to trading of securities on a regulated market ***established in*** the Union under a prospectus drawn up according to this Regulation***, it*** shall obtain approval of its prospectus, in accordance with Article 19, from the competent authority of its home Member State.

Once a prospectus is approved in accordance with the first subparagraph, it shall entail all the rights and obligations provided for a prospectus under this Regulation and the prospectus and the third country issuer shall be subject to all the provisions of this Regulation under the supervision of the competent authority of the home Member State.

Article 27

Offer of securities or admission to trading made under a prospectus drawn up in accordance with the legislation of a third country

1. The competent authority of the home Member State of a third country issuer may approve a prospectus for an offer to the public or for admission to trading on a regulated market, drawn up in accordance with, and which is subject to, the national legislation of the third country issuer, ***provided that:***

   (a) the information requirements imposed by that third country legislation are equivalent to the requirements under this Regulation***: and***

   (b) the competent authority of the home Member State has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 28.

2. In the case of an offer to the public or admission to trading on a regulated market of securities issued by a third country issuer, in a Member State other than the home Member State, the requirements set out in Articles 23, 24 and 25 shall apply.

   For such issuers, the competent authority of the home Member State shall be allowed to charge an extra fee reflecting the burden that such an issuance represents.

3. The Commission ***shall be empowered to*** adopt delegated acts in accordance with Article 42 establishing general equivalence criteria, based on the requirements laid down in Articles 6, 7, 8 and 13.

   On the basis of the above criteria, the Commission may adopt ***an*** implementing ***decision*** stating that ***the information requirements imposed by*** a third country ***legislation are equivalent to the requirements under*** this Regulation***. Such*** implementing ***decision*** shall be adopted in accordance with the examination procedure referred to in Article 43(2).

Article 28

Cooperation with third countries

1. For the purpose of Article 27, and, where deemed necessary, for the purpose of Article 26, the competent authorities of Member States shall conclude cooperation arrangements with

supervisory authorities of third countries concerning the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under this Regulation in third countries***, unless that third country is on the Commission's list of non-cooperative countries***. Those cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.

A competent authority shall inform ESMA and the other competent authorities where it proposes to enter into such an arrangement.

2. For the purpose of Article 27, and, where deemed necessary, for the purpose of Article 26, ESMA shall facilitate and coordinate the development of cooperation arrangements between the competent authorities and the relevant supervisory authorities of third countries.

▌

ESMA shall also, where necessary, facilitate and coordinate the exchange between competent authorities of information obtained from supervisory authorities of third countries that may be relevant to the taking of measures under Articles 36 and 37.

3. The competent authorities shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 33. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

3a. ESMA may develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 1.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3b. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to set out a template document for cooperation arrangements that are to be used by competent authorities of Member States.

CHAPTER VII
ESMA AND COMPETENT AUTHORITIES

Article 29
Competent authorities

1. Each Member State shall designate a single competent administrative authority responsible for carrying out the duties resulting from this Regulation and for ensuring that the provisions adopted pursuant to this Regulation are applied. Member States shall inform the Commission, ESMA and the other competent authorities of other Member States accordingly.

   The competent authority shall be ▌ independent from ▌ market participants.

2. Member States may allow their competent authority to delegate the tasks of publication on the Internet of approved prospectuses.

   Any delegation of tasks to entities shall be made in a specific decision stating the tasks to be undertaken and the conditions under which they are to be carried out, and including a clause obliging the entity in question to act and be organised in such a manner as to avoid conflicts of interests and so that information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. Such a decision shall specify all arrangements entered into between the competent authority and the entity to which tasks are delegated.

   The final responsibility for supervising compliance with this Regulation and for approving the prospectus shall lie with the competent authority designated in accordance with paragraph 1.

   The Member States shall inform the Commission, ESMA and the competent authorities of other Member States of the decision referred to in subparagraph 2, including the precise conditions regulating such delegation.

3. Paragraphs 1 and 2 shall be without prejudice to the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

Article 30

Powers of competent authorities

1. In order to fulfil their duties under this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers:

(a) to require issuers, offerors or persons asking for admission to trading on a regulated market to include in the prospectus supplementary information, where necessary for investor protection;

(b) to require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents;

(c) to require auditors and managers of the issuer, offeror or person asking for admission to trading on a regulated market, as well as financial intermediaries commissioned to carry out the offer to the public or ask for admission to trading, to provide information;

(d) to suspend an offer to the public or admission to trading for a maximum of ***25*** consecutive working days on any single occasion where there are reasonable grounds for suspecting that the provisions of this Regulation have been infringed;

(e) to prohibit or suspend advertisements or require issuers, offerors or persons asking for admission to trading on a regulated market, or relevant financial intermediaries to cease or suspend advertisements for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that the provisions of this Regulation have been infringed;

(f) to prohibit an offer to the public where it finds that the provisions of this Regulation have been infringed or where there are reasonable grounds for suspecting that they would be infringed;

(g) to suspend or require the relevant regulated markets to suspend trading on a regulated market for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that the provisions of this Regulation have been infringed;

(h) to prohibit trading on a regulated market where it finds that the provisions of this Regulation have been infringed;

(i) to make public the fact that an issuer, an offeror or a person asking for admission to trading is failing to comply with its obligations;

(j) to suspend the scrutiny of a prospectus submitted for approval or suspend an offer to the public or admission to trading where the competent authority is making use of the power to impose a prohibition or restriction pursuant to Article 42 of Regulation (EU) No 600/2014 of the European Parliament and of the Council[25], until such prohibition or restriction has ceased;

(k) to refuse approval of any prospectus drawn up by a certain issuer, offeror or person asking for admission to trading for a maximum number of 5 years, where this issuer, offeror or person asking for admission to trading has repeatedly and ***severely*** infringed the provisions of this Regulation;

(l) to disclose, or to require the issuer to disclose, all material information which may have an effect on the assessment of the securities admitted to trading on regulated markets in order to ensure investor protection or the smooth operation of the market;

(m) to suspend or require the relevant regulated market to suspend the securities from trading where it considers that the issuer's situation is such that trading would be detrimental to investors' interests;

(n) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for this purpose to enter premises in order to access documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove an infringement of this Regulation.

Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in the first subparagraph. In accordance with Article 21 of Regulation (EU) No 1095/2010, ESMA shall be entitled to

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25 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

participate in on-site inspections referred to in point (n) where they are carried out jointly by two or more competent authorities.

2. Competent authorities shall exercise their functions and powers, referred to in paragraph 1, to the fullest extent necessary to exercise their responsibility for supervising compliance with this Regulation and for approving the prospectus in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such authorities;

(d) by application to the competent judicial authorities.

3. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

4. A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.

5. Paragraphs 1 to 3 shall be without prejudice to the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

Article 31

Cooperation between competent authorities

1. Competent authorities shall cooperate with each other and with ESMA for the purposes of this Regulation. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

Where Member States have chosen, in accordance with Article 36, to lay down criminal sanctions for infringements of the provisions of this Regulation, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary

powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible infringements of this Regulation and provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:

(a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;

(b) where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed;

(c) where a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

3. Competent authorities shall, on request, immediately supply any information required for the purposes of this Regulation.

4. The competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

A requesting competent authority shall inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA shall, where requested to do so by one of the competent authorities, coordinate the investigation or inspection.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) appoint auditors or experts to carry out the on-site inspection or investigation, and/or

(e) share specific tasks related to supervisory activities with the other competent authorities.

5. The competent authorities may refer to ESMA situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), ESMA may, in the situations referred to in the first sentence, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. ESMA may develop draft regulatory technical standards to specify the information to be exchanged between competent authorities in accordance with paragraph 1.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 32

Cooperation with ESMA

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

3. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 33

Professional secrecy

1. All the information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings.

2. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority or for any entity to whom the competent authority has delegated its powers. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.

Article 34

Data protection

With regard to the processing of personal data within the framework of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC.

With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001.

Article 35

Precautionary measures

1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer, the offeror or the person asking for admission to trading or by the financial institutions in charge of the offer to the public or that those persons have infringed their obligations under this Regulation, it shall refer those findings to the competent authority of the home Member State and to ESMA.

2. Where, despite the measures taken by the competent authority of the home Member State, the issuer, the offeror or the person asking for admission to trading or the financial institutions in charge of the offer to the public persists in infringing the relevant provisions of this Regulation, the competent authority of the host Member State, after informing the competent authority of the home Member State and ESMA, shall take all appropriate measures in order to protect investors and shall inform the Commission and ESMA thereof without undue delay.

3. ESMA may, in the situations referred to in the second paragraph, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.

CHAPTER VIII

ADMINISTRATIVE MEASURES AND SANCTIONS

Article 36

Administrative measures and sanctions

1. Without prejudice to the supervisory and investigatory powers of competent authorities under Article 30, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to take appropriate administrative measures and impose administrative sanctions ***which shall be effective, proportionate and dissuasive. Those administrative measures and sanctions shall apply*** at least ***to***:

   (a) infringements of Article 3, Article 5, Article 6, Article 7(1) to (10), Article 8, Article 9(1) to (13), Article 10, Article 11(1) and (3), Article 12, Article 14(2), Article 15(1) and (2), Article 16(1), Article 17(1) and (3), Article 18(1) to (3), Article 19(1),

Article 20(1) to (4) and (7) to (10), Article 21(2) to (4), Article 22 (1), (2) and (4), and Article 25 of this Regulation;

(b) failure to cooperate or comply in an investigation or with an inspection or request covered by Article 30.

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in point (a) or point (b) of that subparagraph are already subject to criminal sanctions in ▌their national law by [12 months ***from the date of*** entry into force ***of this Regulation***]. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.

By [12 months ***from the date of*** entry into force ***of this Regulation***], Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and measures in relation of infringements listed in point (a) of paragraph 1:

(a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement ***in accordance with Article 40***;

(b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;

(c) maximum administrative pecuniary sanctions of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;

(d) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [date of entry into force ***of this Regulation***], or 3% of the total annual turnover of that legal person according to the last available financial statements approved by the management body.

Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(e) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 700 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [date of entry into force ***of this Regulation***].

3. Member States may provide for additional sanctions or measures and for higher levels of administrative fines than those provided for in this Regulation.

Article 37

Exercise of supervisory powers and sanctioning powers

1. Competent authorities, when determining the type and level of administrative sanctions and measures, shall take into account all relevant circumstances including, where appropriate:

(a) the gravity and the duration of the infringement;

(b) the degree of responsibility of the person responsible for the infringement;

(c) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(d) the impact of the infringement on retail investors' interests;

(e) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(f) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(g) previous infringements by the person responsible for the infringement;

(h) measures taken after the infringement by the responsible person to prevent its repetition.

2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 36, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers and the administrative sanctions and measures that they impose are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative sanctions and measures in cross-border cases.

Article 38

Right of appeal

Member States shall ensure that decisions taken under the provisions of this Regulation are properly reasoned and subject to a right of appeal before a tribunal.

Article 39

Reporting of infringements

1. Competent authorities shall establish effective mechanisms to encourage and enable reporting of actual or potential infringements of this Regulation to them.

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports of actual or potential infringements and their follow-up including the establishment of secure communication channels for such reports;

(b) appropriate protection for employees working under a contract of employment who report infringements at least against retaliation, discrimination and other types of unfair treatment by their employer or third parties;

(c) protection of the identity and personal data of both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent judicial proceedings.

3. Member States may provide for financial incentives to persons who offer relevant information about actual or potential infringements of this Regulation to be granted in accordance with national law where such persons do not have other pre-existing legal or contractual duties to report such information, and provided that the information is new, and that it results in the imposition of an administrative or criminal sanction, or the taking of another administrative measure, for an infringement of this Regulation.

4. Member States shall require employers engaged in activities that are regulated for financial services purposes to have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.

Article 40

Publication of decisions

1. A decision imposing an administrative sanction or measure for infringement of this Regulation shall be published by competent authorities on their official website immediately after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. That obligation shall not apply to decisions imposing measures that are of an investigatory nature.

2. Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data,

or where such publication would jeopardise the stability of financial markets or an ongoing investigation, Member States shall ensure that the competent authorities shall either:

(a) delay the publication of the decision to impose a sanction or a measure until the moment where the reasons for non-publication cease to exist;

(b) publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned; In the case of a decision to publish a sanction or measure on an anonymous basis the publication of the relevant data may be postponed for a reasonable period of time where it is foreseen that within that period the reasons for anonymous publication shall cease to exist;

(c) not publish the decision to impose a sanction or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:

(i) that the stability of financial markets would not be put in jeopardy;

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

3. Where the decision to impose a sanction or measure is subject to an appeal before the relevant judicial or other authorities, competent authorities shall also publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or a measure shall also be published.

4. Competent authorities shall ensure that any publication, in accordance with this Article, shall remain on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules

Article 41

Reporting sanctions to ESMA

1. The competent authority shall, on an annual basis, provide ESMA with aggregate information regarding all administrative sanctions and measures imposed in accordance with Article 36. ESMA shall publish this information in an annual report.

   Where Member States have chosen, in accordance with Article 36(1), to lay down criminal sanctions for the infringements of the provisions referred to in Article 36(1) their competent authorities shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal sanctions imposed in an annual report.

2. Where the competent authority has disclosed administrative or criminal sanctions or other administrative measures to the public, it shall simultaneously report those administrative sanctions or measures to ESMA.

3. Competent authorities shall inform ESMA of all administrative sanctions or measures imposed but not published in accordance with Article 40(2)(c) including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgement in relation to any criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purposes of exchanging information between competent authorities. This database shall be accessible only to competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

CHAPTER IX

DELEGATED AND IMPLEMENTING ACTS

Article 42

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The ▌ power ***to adopt delegated acts*** referred to in Article 1 ▌ (6), Article 2(2), ▌ Article 13(1) and (2), Article 14(3), Article 15(3), ▌ and Article 27(3) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force ***of this Regulation***].

3. The delegation of powers referred to in Article 1▌ (6), Article 2(2), ▌ Article 13(1) and (2), Article 14(3), Article 15(3), ▌ and Article 27(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 1 ▌ (6), Article 2(2), ▌ Article 13(1) and (2), Article 14(3), Article 15(3), ▌ and Article 27(3) shall enter into force only ***if*** no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or ***if,*** before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or ***of*** the Council.

Article 43

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.[26] That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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26 Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

CHAPTER X
FINAL PROVISIONS

Article 44
Repeal

1. Directive 2003/71/EC is repealed with effect from [date of application ***of this Regulation***].

2. References to Directive 2003/71/EC shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex IV of this Regulation.

▌

4. Prospectuses approved in accordance with the national laws transposing Directive 2003/71/EC before [date of application of this Regulation] shall continue to be governed by that national law until the end of their validity, or until twelve months have elapsed after [date of application of this Regulation], whichever occurs first.

Article 45
ESMA report on prospectuses

1. Based on the documents made public through the mechanism referred to in Article 20(6), ESMA shall publish every year a report containing statistics on the prospectuses approved and notified in the Union and an analysis of trends taking into account the types of issuers, in particular SMEs, and the types of issuances, in particular offer consideration, type of transferable securities, type of trading venue and denomination.

2. This report shall contain in particular:

   (a) an analysis of the extent to which the disclosure regimes set out in Articles 14 and 15 and the universal registration document set out in Article 9 are used throughout the Union;

   (b) statistics on base prospectuses and final terms, and on prospectuses drawn up as separate documents or as a single document;

(c) statistics on the average and overall amounts raised by way of an offer of securities to the public subject to this Regulation, by unlisted companies, companies whose securities are traded on multilateral trading facilities, including SME growth markets, and companies whose securities are admitted to trading on regulated markets. Where applicable, such statistics shall provide a breakdown between initial public offerings and subsequent offers, and between equity and non-equity securities***;***

(ca) statistics on the costs of producing prospectuses broken down at least by different classes of issuers, sizes of issue and locations as well as the classes of fees and charges incurred by issuers and the classes of service providers that charge them; the statistics shall be accompanied by an analysis of the effectiveness of competition between services providers involved in drawing up prospectuses and recommendations on how to reduce costs.

Article 46

Review

Before [5 years ***from the date of*** entry into force ***of this Regulation***] the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied where appropriate by a legislative proposal.

The report shall assess, inter alia, whether the prospectus summary, the disclosure regimes set out in Articles 14 and 15 and the universal registration document set out in Article 9 remain appropriate in light of their pursued objectives. The report shall take into account the results of the peer review mentioned in Article 19(12).

Article 47

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from [***24*** months ***from the date of*** entry into force ***of this Regulation***].

2a. By way of derogation from paragraph 2, Member States may choose to apply the thresholds set out for the purposes of the exemption in Article 1(3)(d) or the option in Article 3(2) from the date of entry into force of this Regulation.

3. Member States shall take the necessary measures to comply with Article 11, Article 19(8), Article 29, Article 30, Article 36, Article 37, Article 38, Article 39, Article 40, and Article 41 by [***24*** months ***from the date of*** entry into force ***of this Regulation***].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

PROSPECTUS

I. Summary

II. Identity of directors, senior management, advisers and auditors

The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

III. Offer statistics and expected timetable

The purpose is to provide essential information regarding the conduct of any offer and the identification of important dates relating to that offer.

A. Offer statistics

B. Method and expected timetable

IV. Essential information

The purpose is to summarise essential information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

A. Selected financial data

B. Capitalisation and indebtedness

C. Reasons for the offer and use of proceeds

D. Risk factors

V. Information on the company

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future capacity increases or decreases.

A. History and development of the company

B. Business overview

C. Organisational structure

D. Property, plant and equipment

VI. Operating and financial review and prospects

The purpose is to provide the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

A. Operating results

B. Liquidity and capital resources

C. Research and development, patents and licences, etc.

D. Trends

VII. Directors, senior management and employees

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company.

A. Directors and senior management

B. Remuneration

C. Board practices

D. Employees

E. Share ownership

VIII. Major shareholders and related-party transactions

The purpose is to provide information regarding the major shareholders and others that may control or have an influence on the company. It also provides information regarding transactions the

company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

A. Major shareholders

B. Related-party transactions

C. Interests of experts and advisers

IX. Financial information

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

A. Consolidated statements and other financial information

B. Significant changes

X. Details of the offer and admission to trading details

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

A. Offer and admission to trading

B. Plan for distribution

C. Markets

D. Holders of securities who are selling

E. Dilution (for equity securities only)

F. Expenses of the issue

XI. Additional information

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

A. Share capital

B. Memorandum and articles of association

C. Material contracts

D. Exchange controls

E. Warning on tax consequences

F. Dividends and paying agents

G. Statement by experts

H. Documents on display

I. Subsidiary information

ANNEX II

REGISTRATION DOCUMENT

I. Identity of directors, senior management, advisers and auditors

The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

II. Essential information about the issuer

The purpose is to summarise essential information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

A. Selected financial data

B. Capitalisation and indebtedness

C. Risk factors

III. Information on the company

The purpose is to provide information about the company's business operations, the products it makes or the services it provides and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future capacity increases or decreases.

A. History and development of the company

B. Business overview

C. Organisational structure

D. Property, plants and equipment

IV. Operating and financial review and prospects

The purpose is to provide the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

A. Operating results

B. Liquidity and capital resources

C. Research and development, patents and licences, etc.

D. Trends

V. Directors, senior management and employees

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company.

A. Directors and senior management

B. Remuneration

C. Board practices

D. Employees

E. Share ownership

VI. Major shareholders and related-party transactions

The purpose is to provide information regarding the major shareholders and others that may control or have an influence on the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

A. Major shareholders

B. Related-party transactions

C. Interests of experts and advisers

VII. Financial information

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

A. Consolidated statements and other financial information

B. Significant changes

VIII. Additional information

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

A. Share capital

B. Memorandum and articles of association

C. Material contracts

D. Statement by experts

E. Documents on display

F. Subsidiary information

ANNEX III

SECURITIES NOTE

I. Identity of directors, senior management, advisers and auditors

The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

II. Offer statistics and expected timetable

The purpose is to provide essential information regarding the conduct of any offer and the identification of important dates relating to that offer.

A. Offer statistics

B. Method and expected timetable

III. Essential information about the issuer

The purpose is to summarise essential information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

A. Capitalisation and indebtedness

B. Reasons for the offer and use of proceeds

C. Risk factors

IV. Interests of experts

The purpose is to provide information regarding transactions the company has entered into with experts or advisers employed on a contingent basis.

V. Details of the offer and admission to trading

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

A. Offer and admission to trading

B. Plan for distribution

C. Markets

D. Selling securities holders

E. Dilution (for equity securities only)

F. Expenses of the issue

VI. Additional information

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

A. Exchange controls

B. Warning on tax consequences

C. Dividends and paying agents

D. Statement by experts

E. Documents on display

ANNEX IV

Correlation table

(referred to in Article 44)

Directive 2003/71/EC	**This Regulation**
Article 1(1)	Article 1(1)
Article 1(2) except Article 1(2)(h)	Article 1(2)
Article 1(2)(h)	Article 1(3)(d)
Article 1(3)	Article 4
Article 1(4)	Article 1(5)(a) and (b)
Article 2(1)	Article 2(1)
Article 2(4)	Article 2(2)
Article 3(1)	Article 3(1)
Article 3(2)(a)	Article 1(3)(a)
Article 3(2)(b)	Article 1(3)(b)
Article 3(2)(c)	Article 1(3)(c)
Article 3(2)(d)	-
Article 3(2)(e)	-
Article 3(2) subparagraphs 2 and 3	Article 5
Article 3(3)	Article 3(3)
Article 3(4)	Article 1(5)(b)
Article 4(1)(a)	Article 1(3)(e)

Article 4(1)(b)	Article 1(3)(f)
Article 4(1)(c)	Article 1(3)(g)
Article 4(1)(d)	Article 1(3)(h)
Article 4(1)(e)	Article 1(3)(i)
Article 4(1) subparagraphs 2 to 5	-
Article 4(2)(a)	Article 1(4)(a)
Article 4(2)(b)	Article 1(4)(c)
Article 4(2)(c)	Article 1(4)(d)
Article 4(2)(d)	Article 1(4)(e)
Article 4(2)(e)	Article 1(4)(f)
Article 4(2)(f)	Article 1(4)(g)
Article 4(2)(g)	Article 1(4)(b)
Article 4(2)(h)	Article 1(4)(h)
Article 4(3)	Article 1(6)
Article 5(1)	Article 6(1)
Article 5(2)	Article 7
Article 5(3)	Article 6(2)
Article 5(4) subparagraph 1	Article 8(1)
Article 5(4) subparagraph 2	Article 8(9)
Article 5(4) subparagraph 3	Article 8(4) and Article 24(4)
Article 5(5)	Article 13(1)

Article 6(1)	Article 11(1)
Article 6(2)	Article 11(2)
Article 7(1)	Article 13(1) subparagraph 1
Article 7(2)(a)	Article 13(1) subparagraph 2, point (a)
Article 7(2)(b)	Article 13(2) subparagraph 2, point (b)
Article 7(2)(c)	Article 13(2) subparagraph 2, point (c)
Article 7(2)(d)	Article 13(2) subparagraph 2, point (c)
Article 7(2)(e)	Article 15
Article 7(2)(f)	Article 13(2) subparagraph 2, point (d)
Article 7(2)(g)	Article 14
Article 7(3)	Article 13(3)
Article 7(4)	-
Article 8(1)	Article 17(1)
Article 8(2)	Article 17(2)
Article 8(3)	Article 17(3)
Article 8(3a)	Article 17(4)
Article 8(4)	Article 17(5)
Article 8(5)	-
Article 9(1)	Article 12(1)
Article 9(2)	Article 12(1)
Article 9(3)	Article 12(1)

Article 9(4)	Article 12(2)
Article 11(1)	Article 18(1)
Article 11(2)	Article 18(2)
Article 11(3)	Article 18(4)
Article 12(1)	Article 10(1) subparagraph 1
Article 12(2)	Article 10(1) subparagraph 2
Article 12(3)	-
Article 13(1)	Article 19(1)
Article 13(2)	Article 19(2)
Article 13(3)	Article 19(3)
Article 13(4)	Article 19(4)
Article 13(5)	Article 19(7)
Article 13(6)	Article 19(8)
Article 13(7)	Article 19(10)
Article 14(1)	Article 20(1)
Article 14(2)	Article 20(2)
Article 14(3)	-
Article 14(4)	Article 20(5)
Article 14(4a)	Article 20(6)
Article 14(5)	Article 20(8)
Article 14(6)	Article 20(9)

Article 14(7)	Article 20(10)
Article 14(8)	Article 20(11)
Article 15(1)	Article 21(1)
Article 15(2)	Article 21(2)
Article 15(3)	Article 21(3)
Article 15(4)	Article 21(4)
Article 15(5)	-
Article 15(6)	Article 21(5)
Article 15(7)	Article 21(6)
Article 16(1)	Article 22(1)
Article 16(2)	Article 22(2)
Article 16(3)	Article 22(6)
Article 17(1)	Article 23(1)
Article 17(2)	Article 23(2)
Article 18(1)	Article 24(1)
Article 18(2)	Article 24(2)
Article 18(3) subparagraph 1	Article 24(3)
Article 18(3) subparagraph 2	Article 20(5) subparagraph 3 and Article 20(6)
Article 18(4)	Article 24(6)
Article 19(1)	Article 25(1)
Article 19(2)	Article 25(2)

Article 19(3)	Article 25(3)
Article 19(4)	-
Article 20(1)	Article 27(1)
Article 20(2)	Article 27(2)
Article 20(3)	Article 27(3)
Article 21(1)	Article 29(1)
Article 21(1a)	Article 32(1)
Article 21(1b)	Article 32(2)
Article 21(2)	Article 29(2)
Article 21(3)(a)	Article 30(1)(a)
Article 21(3)(b)	Article 30(1)(b)
Article 21(3)(c)	Article 30(1)(c)
Article 21(3)(d)	Article 30(1)(d)
Article 21(3)(e)	Article 30(1)(e)
Article 21(3)(f)	Article 30(1)(f)
Article 21(3)(g)	Article 30(1)(g)
Article 21(3)(h)	Article 30(1)(h)
Article 21(3)(i)	Article 30(1)(i)
Article 21(3) subparagraph 2	Article 30(1) subparagraph 2
Article 21(4)(a)	Article 30(1)(l)
Article 21(4)(b)	Article 30(1)(m)

Article 21(4)(c)	-
Article 21(4)(d)	Article 30(1)(n)
Article 21(4) subparagraph 2	Article 30(1) subparagraph 3
Article 21(5)	Article 29(3) and Article 30(5)
Article 22(1)	Article 33(2)
Article 22(2) subparagraph 1	Article 31(1)
Article 22(2) subparagraph 2	-
Article 22(2) subparagraph 3	Article 31(5)
Article 22(3)	-
Article 22(4)	Article 31(6) and (7)
Article 23(1)	Article 35(1)
Article 23(2)	Article 35(2)
Article 24	Article 43
Article 24a(1)	Article 42(2)
Article 24a(2)	Article 42(4)
Article 24a(3)	Article 42(1)
Article 24b	Article 42(3)
Article 24c	Article 42(5)
Article 25(1)	Article 36(1)
Article 25(2)	Article 40
Article 26	Article 38

Article 27	-
Article 28	-
Article 29	-
Article 30	-
Article 31	Article 46
Article 32	Article 47
Article 33	Article 47