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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	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
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Delegations will find attached document COM(2015) 583 final.

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EUROPEAN
COMMISSION

Brussels, 30.11.2015
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2015/0268 (COD)

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**

(Text with EEA relevance)

{SWD(2015) 255 final}

{SWD(2015) 256 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The revision of the Prospectus Directive¹ is an important step to build the Capital Markets Union. The harmonised EU prospectus is the "gateway" for issuers in need of finance to gain access to European capital markets. A reform of the prospectus rules was announced in the Investment Plan for Europe² as part of the third pillar for improving the business environment and represents a key element of the Capital Markets Union. The Capital Markets Union Action Plan³ presents a comprehensive and ambitious programme of measures to strengthen the role of market-based finance in the European economy.

A key objective of the Capital Markets Union is notably to facilitate raising on capital markets. Capital markets offer access to a wide set of funding providers and provide an exit opportunity for private equity and business angels, which invest in companies at an earlier stage of their development.

Prospectuses are legally required documents presenting information about a company. This information aims to be the basis on which investors can decide whether to invest in a variety of securities issued by that company. It is therefore crucial that the prospectus does not act as an unnecessary barrier to accessing public markets to raise capital. In particular, SMEs can be deterred from offering securities to the public simply because of the paperwork involved and the high costs incurred. It should become easier for firms to fulfil their administrative obligations, but in a way that investors are still well informed about the products they are investing in.

Although the prospectus regime functions well overall, certain requirements of the Prospectus Directive might still be improved to alleviate administrative burden for companies which draw up a prospectus (especially SMEs) and to make the prospectus a more valuable information tool for potential investors. Further alignment of the prospectus rules with other EU disclosure rules (e.g. the Transparency Directive⁴ and the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs)⁵ could enhance the efficiency of the prospectus. The review of the Prospectus Directive is singled out in the Capital Markets Union Action Plan as one of its early and high-priority actions. Its overarching rationale is to reduce one of the principal regulatory hurdles that issuers face when offering their equity and debt securities to the investing public. This proposal contributes to the objective of screening the acquis to identify specific areas where rules can

¹ 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).

² COM(2014) 903 final.

³ COM(2015) 468 final.

⁴ 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).

⁵ 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).

be simplified, burdens reduced and costs saved. For that reason, the Commission's impact assessment builds on the findings of an evaluation which was conducted in the context of the Regulatory Fitness and Performance programme (REFIT, COM(2014)368).

The revision of the Prospectus Directive pursues a simple goal: provide all types of issuers with disclosure rules which are tailored to their specific needs while making the prospectus a more relevant tool of informing potential investors. In consequence, the proposal puts special emphasis on four groups of issuers: (1) issuers already listed on a regulated market or an SME growth market, which want to raise additional capital by means of a secondary issuance, (2) SMEs, (3) frequent issuers of all types of securities and (4) issuers of non-equity securities. It also intends to further incentivise the use of the cross-border "passport" for approved prospectuses, which was introduced by the Prospectus Directive.

The proposed measures should (i) reduce the administrative burden of drawing up of prospectus for all issuers, in particular for SMEs, frequent issuers of securities and secondary issuances; (ii) make the prospectus a more relevant disclosure tool for potential investors, especially in SMEs; and (iii) achieve more convergence between the EU prospectus and other EU disclosure rules.

Secondary issuances

Issuers whose securities are already listed on a regulated market (this category accounts for around 70% of all prospectuses approved in a given year), or the future SME growth market, should enjoy the benefit of an alleviated prospectus for their secondary issuances. The reformed minimum disclosure rules for secondary issuances are expected to reduce the cost of drawing up prospectuses and to make the resulting disclosure more relevant for potential investors.

SMEs

SMEs should likewise be offered the option to draw up a distinct, tailor-made prospectus when they offer securities to the public, focusing on information that is material and relevant for companies of such size. This kind of prospectus should however not be available to SMEs admitted to trading on regulated markets to avoid creating a two-tier disclosure standard on regulated markets which might undermine investor confidence. In addition, a new optional "question and answer" format is expected to help SMEs in drawing up their own prospectus, thus saving considerable legal fees.

Frequent issuers

The envisaged annual "universal registration document" for frequent issuers should result in cost reductions for companies who intend to have frequent recourse to capital markets and want to have a "shelf" registration document in place that is cleared by the competent authority and allows them to swiftly seize opportunities to raise capital. Recourse to the proposed universal registration document intends to shorten prospectus approvals, once the opportunity to raise capital presents itself from currently 10 to 5 working days.

Treatment of non-equity securities with a high denomination per unit

Based on evidence presented in the impact assessment, the favourable treatment granted by the Prospectus Directive to non-equity securities with a denomination per unit of EUR 100 000 or above have led to unintended consequences, creating distortions in the European

bond markets and making a significant share of bonds issued by investment-grade companies inaccessible to a wider number of investors. The Regulation therefore removes the incentives to issue debt securities in large denominations with a view to removing one of the identified barriers to secondary liquidity on European bond markets.

- **Consistency with other Union policies**

The prospectus reform aims to complement the Capital Markets Union objectives of reducing fragmentation in financial markets, diversifying financing sources and strengthening cross border capital flows. The Commission's top priority is to boost Europe's economy and stimulate investment to create jobs. Stronger European capital markets are an important part of the response to this pressing challenge, as it can increase the volume of finance available and channel it more efficiently to deserving investment opportunities across the EU.

As part of the Capital Markets Union Action Plan is the conviction that capital market based finance, in all its forms, – including venture capital, crowdfunding and the asset management industry – can provide funding solutions to companies that need more capital to run or expand their business. The Capital Markets Union Action Plan also aims to enable more private investment in infrastructure projects, to offer investors and savers additional opportunities to put their money to work more effectively, and to remove barriers to cross-border investment.

Capital Markets Union will work to the advantage of all 28 Member States. Those Member States with the smallest markets and high growth potential have a lot to gain from a better channelling of capital and investment into their projects. More developed market economies will benefit from greater cross-border investment and saving options. A more diversified funding mix will also deliver additional benefits: it will support financial stability, and reduce the dependence of the business sector and wider economy on bank lending. For this reason, Capital Markets Union is also an important part of the work on the completion of the European Economic and Monetary Union.

This review may also help to facilitate investor engagement with publicly offered equity and debt securities by better calibrating the information that is provided, and focussing on information that is relevant to the formulation of sound investor assessments of the proposed investment

- **Consistency with existing policy provisions in the policy area**

The Prospectus Directive governs the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market. The original aim of the Directive was to make it easier and cheaper for companies to raise capital throughout the Union on the basis of a single approval from a regulatory authority ("home competent authority") in only one Member State. Under the Directive, issuers, offerors or persons asking for the admission to trading on a regulated market can "passport" their prospectuses for cross-border offers and listings.

In ensuring harmonised minimum protection for investors by guaranteeing that all prospectuses, wherever they are published, provide them with the clear, comprehensive and standardised information they need to make informed investment decisions, the Prospectus Directive is complementary to the ongoing and ad-hoc reporting obligations laid down in

particular in the Transparency Directive and the Market Abuse Regulation⁶. The complementary nature results from the fact that the Prospectus Directive only concerns initial disclosure requirements for a public offer or listing on a regulated market.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for action is Article 114 of the Treaty on the Functioning of the European Union. The choice of this legal base reflects the crucial role that a harmonised prospectus regime with attendant passporting opportunities play in the functioning of an internal market for raising equity and debt.

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. 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 appropriate to lay down a regulatory framework for prospectuses at Union level.

- **Subsidiarity**

A harmonised EU prospectus is an essential tool to integrate capital markets throughout the Union. Once a competent national authority approves a prospectus, the issuer can ask for a passport to use this prospectus in another EU Member State. No further approvals or administrative procedures relating to the prospectus will be necessary in this "host" Member State. This passport operates on the assumption that minimum content of the prospectus is harmonised at EU level by the applicable prospectus rules (the basic rules and the delegated and implementing acts).

As the passport is therefore European in nature, any improvements can only be tackled at EU level. The possible alternatives, such as action at Member State level) could not sufficiently and effectively achieve the objectives to create the harmonised basis for the "passporting" of prospectuses.

Streamlining the above mentioned aspects of the EU prospectus is expected to lead to a more level playing field for issuers and investors alike and contribute to avoiding regulatory

⁶ Regulation (EU) No 596/2014 of the European Parliament and 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).

arbitrage. The proposed reforms would give a clear and consistent signal throughout the EU that the prospectus regime performed well even during the financial crisis, but that improvements need to be made to create a truly single market for those target groups which have hitherto not had the full benefit of a harmonised prospectus regime (SMEs, frequent and/or secondary issuers). Making the prospectus more accessible for SMEs and for frequent issuers can be conducive to deepening the pan-European capital pools available to such issuers. In the case of SMEs, this involves designing a distinct prospectus regime whose content and format is suitable for both issuers and investors. This aim constitutes a key plank of establishing a Capital Markets Union. These objectives cannot be achieved by the Member States alone and can be better achieved by the Union.

- **Proportionality**

On balance, the chosen options are designed to reduce the compliance burden for the following target groups: SMEs, secondary issuers, frequent issuers, issuers of non-equity securities.

All of these groups are expected to benefit from the proposed reforms to varying degrees.

The impact assessment contains initial estimations on cost savings, based on factual and realistic assumptions concerning the "take up" of the universal registration document and the two proposed disclosure regimes for SMEs and for secondary issuers respectively.

SMEs

Provided that they are not admitted to trading on a regulated market, SMEs wishing to raise capital by means of a public offer will benefit from new disclosure rules, including a new "question and answer" format, which should lower the cost of preparation of a prospectus. Additional savings are expected for those SMEs which are listed on a regulated market or an SME growth market as they will benefit from the alleviated disclosure regime applying to secondary issuances (see below). Recourse to the new disclosure regime for SMEs could, according to rough estimates, result in SMEs collectively around 45 million per year.

Secondary issuances

Data provided by Member States indicates that around 70% of all prospectuses approved in a given reference year pertain to a secondary issuance of securities by companies already admitted to trading on a regulated market or a multilateral trading facility. Extrapolating from available data on equity prospectuses approximately 700 prospectuses per year could benefit from the alleviated disclosure regime for secondary issuances. Figures on the cost of drawing up a prospectus as derived from the public consultation indicate that this could translate into savings of around 130 million per year.

Frequent issuers

Increased recourse to the proposed universal registration document for equity and non-equity prospectuses could result in faster prospectus approvals, increasing the number of prospectuses approved every year in less than 10 working days by 150% (equity) and 70% (non-equity).

Debt issuers

A uniform prospectus requirement for bond issuances, irrespective of denomination sizes, provides an incentive for all issuers of debt to choose denomination sizes that make their bonds more attractive for a wider range of investors. A wider range of investors is, in turn, expected to increase buying and selling interest in bonds, thus increasing the liquidity of corporate bond markets in the EU.

Investors

Making prospectuses more reader-friendly and targeted to the specific situation of the issuer has the double advantage of decreasing cost and increasing the relevance of the prospectus for potential investors. Refocusing the risk factors of a prospectus on those risks which are material and specific with help investors distinguish the information that is essential for taking an informed investment decision.

Advantages resulting from the reform of the prospectus summary and the introduction of a searchable prospectus database are more difficult to quantify: the impact assessment relies on a more qualitative assessment in these respects. Nevertheless, the rationale for reforming the prospectus summary builds on the work already carried out in the context of the key information document for packaged investment products.

National authorities and ESMA

The proposed alleviations should not trigger relevant costs for national budgets and administrations. On the contrary, competent national authorities should benefit from the simplifications of the prospectus as this would also render the approval process for prospectuses easier.

Making all prospectuses searchable online on the website of ESMA could trigger incremental IT-related costs for ESMA. These costs appear justified when compared to the significant benefits in lower search costs and easy, centralised access that could result for investors and potential investors interested in a broad variety of securities issued in the EU.

Compliance costs for issuers

The choice of a recast taking the form of a Regulation should not have a relevant impact on the compliance costs for issuers and enforcement costs for competent authorities. The impact of the proposed measures on compliance costs and enforcement costs can be summarised as follows.

The new disclosure regimes for secondary issuances and SMEs should both result in lower compliance costs for issuers and also reduce the work load of competent authorities as less information will have to be disclosed and scrutinised. This reduction in costs would apply even more to issuers that could not benefit from these regimes so far but will become eligible in the future. There would, however, be a certain cost for those issuers that are using the current schedules as they might have to familiarise themselves with the new rules.

The stakeholders that would face higher compliance costs would be issuers that currently benefit from the prospectus exemption and alleviations for offers of non-equity securities in denominations of EUR 100 000 or more. Those of them that cannot avail themselves of any other exemptions would have to prepare a prospectus either under the standard regime, the base prospectus regime or the specific disclosure regime for secondary issuances where applicable.

Transforming the prospectus summary in a document similar to the key investor information document would also mean a considerable reduction in compliance costs as the summary would be much less extensive and therefore less expensive to produce. Besides, 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.

- **Choice of the instrument**

The 2003 Prospectus Directive, even after the reform of 2010, has given rise to a number of cases where the heterogeneous implementation of the Prospectus Directive was observed in some Member States. Transforming the Prospectus Directive into a Regulation would address such problems which typically arise in the transposition of a Directive and would enhance coherence and integration throughout the internal market, while reducing divergent and fragmented rules across the Union, in coherence with the goals of the Capital Markets Union.

A single rule book will also eliminate the problem that even relatively minor divergences between national laws, require issuers and investors who are interested in raising or investing capital across borders to compare national rules in order to ensure that they have fully understood and comply with the relevant laws. With the use of a Regulation such unproductive search costs could be avoided. The adaptation of national laws which transposed the current Prospectus Directive to the proposed Regulation should be facilitated by the fact that the implementing measures currently in place already take the form of a Regulation. Therefore, the preferred option is to transform the Prospectus Directive into a Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Prospectus Directive has been included in the European Commission's REFIT programme. Further details about this evaluation can be found in the section "Regulatory fitness and simplification" below.

- **Stakeholder consultation**

The principles of Better Regulation as described in the Better Regulation Guidelines (SWD(2015) 111 final) and the corresponding toolbox have been followed by conducting a public consultation from 18 February to 13 May 2015. A total of 182 responses were received, of which 124 responses from organisations (associations) and companies (banks, stock exchanges, crowd-funding platforms), 22 responses from public authorities (Member States, national competent authorities and ESMA) and 36 responses from private individuals. Country-wise, 21% of the responses originated from Germany (38 responses), 21% from the UK (37), 11% from France (20), 9.5% from Belgium (17), and the rest was split amongst the other Member States.

Throughout the consultations stakeholders were largely supportive of the review and the proposed options. The general aim of alleviating the prospectus for frequent issuers, secondary issuances and SMEs of unnecessary and repetitive information was shared by all stakeholders, including Member States. Creating a new form of prospectus summary

following the model of the key information document and a centralised ESMA storage mechanism for prospectuses was also endorsed by the stakeholder community.

- **Impact assessment**

The impact assessment analyses several policy options to achieve the dual goals of alleviating administrative burden for companies which draw up a prospectus (especially SMEs) and of making the prospectus a more valuable information tool for potential investors. It also assesses the issue of how to deepen the investor base for non-equity issuances (denomination sizes).

The table below provides a summary of the different alleviations and investor protection measures chosen as well as their impact on relevant stakeholders and the overall market in which these stakeholders operate.

Preferred policy options	Cost impact on stakeholders	Impact on relevant markets/sectors
Set to EUR 10 million the maximum offer consideration below which Member States may decide not to subject domestic offers to an EU prospectus	Approximately 100 prospectuses (around 3% of annually approved prospectuses) may no longer be obliged to draw up an EU prospectus, depending on the choice of Member States.	Cost savings depend on whether Member States exempt domestic offers with a total consideration below EUR 10 million.
Alleviated disclosure regime for secondary issuances	Very significant market potential as approximately 70% of all equity prospectuses approved annually concern "secondary issuances", meaning around 700 out of 935 equity prospectuses could benefit. Overall annual savings are estimated to be around 130 million.	Impact on equity markets: increase in secondary issuances facilitates raising equity capital after successful initial public offerings, a major plank of the ongoing effort to build a Capital Markets Union.
Raise dilution threshold for prospectus exemption in case of admission to trading (Article 1(4)(a))	Cost savings of up to 1 million per prospectus if admission of less than 20% of outstanding securities.	Impact on equity markets: increase in secondary issuance facilitates raising of equity capital in line with the Capital Markets Union.
Universal registration document for frequent issuers on regulated markets or multilateral trading facilities	Significant market potential as currently only 20% of equity prospectuses and 32% of non-equity prospectuses (excluding base prospectuses) benefit from approval periods inferior to 10 days. Taking the example of France, where a similar system has been in place for nearly two decades, the universal registration document could increase this percentage to 50% for equity (= 370 equity prospectuses/year across the EU) and 55% (= 838 prospectuses/year for non-equity issuances across the EU).	Fast track approval brings benefits to frequent issuers of equity and non-equity securities. The reduced prospectus approval time of 5 days will save cost and allow frequent issuers to exploit market windows to raise capital or debt.
Uniform prospectus for non-equity securities listed on regulated	Slight increase resulting from the need to produce an admission prospectus including a summary for	Lower denominations result in more buying and selling interest which enhances liquidity and

Preferred policy options	Cost impact on stakeholders	Impact on relevant markets/sectors
markets (abolition of the wholesale / retail dual regime)	non-equity securities. Increase can be appropriately mitigated in the design of the uniform non-equity prospectus template in the delegated acts.	investor base in EU bond markets. Investors benefit from diversification of portfolios.
Abolish the EUR 100 000 exemption for offers of non-equity securities to the public	Increase resulting from the need to produce a public offer prospectus for non-equity securities. Likely to be compensated by the availability of other exemptions (qualified investors / minimum commitment of EUR 100 000). Balanced against the benefit of a larger market for corporate bonds.	Lower denominations result in more buying and selling interest which enhances liquidity in EU on multilateral trading facilities. Investor benefit from diversification of portfolios.
Specific disclosure regime for SMEs	Potentially 320 SME prospectuses would benefit from the new "pro-SME" prospectus resulting in expected annual savings of around 45 million. Additional savings above those indicated above could arise if the "question and answer" format takes off.	With a less costly and more user-friendly "pro-SME" prospectus, more SMEs would be able to list on multilateral trading facilities/SME Growth markets. More SME listings facilitate investor portfolio diversification.
New prospectus summary modelled after the key information document	Equity and non-equity issuers benefit from the flexibility to draft brief narratives and assemble material information from the prospectus under accessible headings. Issuers would also benefit by reusing the contents of an existing key information document in the prospectus summary.	Retail investors benefit from the redesign of the summary with maximum page limit. Predetermined/user-friendly headings inspired by the key information document allow for easier comparison of investment opportunities.
Electronic publication (centralised storage mechanism at ESMA)	Single access point facilitates research, enforcement and increases the efficiency of prospectus pass- porting.	Essential tool for online access to prospectuses enabling comparability and fostering the objectives of the Capital Markets Union.

Several of the preferred options would complement each other. For example, the universal registration document for frequent issuers is complementary to the alleviated prospectus for secondary issuances and the two options in combination could yield savings that are not captured by the analysis in this impact assessment (which looks at both options in isolation). Equally, due to its cross-cutting nature, the prospectus summary in the form of an enhanced key information document would reinforce the two specific regimes and especially the one for SMEs: for example, an SME could obtain a listing on an SME Growth market enjoying the cumulative benefit of a prospectus in "question and answer" format which, in turn, also contains the of the enhanced key information document.

In addition, the cross-cutting initiative concerning denomination sizes for non-equity securities benefits all issuers thanks to a deeper and more liquid secondary market for corporate debt. Again, SMEs and frequent issuers stand to benefit from a summary taking the form of an enhanced key information document, their respective specific disclosure regimes

and the abolition of the incentives to issue non-equity securities in large denomination of EUR 100 000 or above.

The impact assessment therefore concludes that the proposed "package" will result in a reduction in the administrative burden for issuers, will make access to capital markets for SMEs easier and cheaper and improve investor protection by improving the appropriateness of the disclosure documents and ultimately enlarging choice of prospectus-based securities. This should then translate into further integration of capital markets in the Union in the form of more prospectus-based securities being offered across borders and greater transparency and comparability.

It should be noted, however, that the Prospectus Directive only covers a fraction of the financial instruments traded in the Union and is only one factor among many that influence the functioning of capital markets. The proposed measures should therefore be seen in the context of the broader Capital Markets Union Action Plan of which it forms part.

- **Regulatory fitness and simplification**

In June 2014 the Prospectus Directive has been included in the REFIT programme (COM(2014)368). Inclusion in the REFIT programme was justified as stakeholders had expressed concerns regarding the high costs of preparing a prospectus and getting it approved by the competent authority.

The evaluation of the Directive was conducted in 2015 to ensure that the results would be available in time for the report on the application of the Directive which the European Commission has to send to the European Parliament and the Council by 1 January 2016 at the latest (Article 4 of Directive 2010/73/EU). This evaluation examines the effectiveness, efficiency, coherence, relevance and added value of the Directive. It is annexed to the Commission's impact assessment and its conclusions are as follows.

When Directive 2003/71/EC was adopted in 2003, it replaced two directives on listing particulars (1980) and prospectuses (1989) which had faced strong criticisms from stakeholders because they allowed widely varying practices across the Union and were based on a system of mutual recognition with significant discretion left to the host Member State authorities (including for instance that of requiring the translation of the full prospectus into the host Member State official languages).

In comparison, the Prospectus Directive can be credited for having facilitated the raising of capital across borders in Europe, thanks to the application of the "single passport" principle which implied that only one set of disclosure documents could be approved by the home country authority and accepted throughout the EU for public offer and/or admission to trading on regulated markets. The contribution of the Prospectus Directive for building up a single European securities market can therefore not be underestimated and it may be considered as a mile-stone in that regard.

Still, the 2010 review rightly identified a number of shortcomings in Directive 2003/71/EC, affecting the legal clarity of some of its concepts and undermining its efficiency in establishing the right balance between market efficiency (areas of excessive regulatory burden) and investor protection (quality, readability and materiality of disclosures). Directive 2010/73/EU introduced targeted changes to address them.

Three years after Directive 2010/73/EU entered into application, statistical data and stakeholders' feedback suggest that the diagnosis made during the previous review is still very much valid today. Indeed, it seems that the trends identified back then (prospectus used as a "liability shield", retail investors shunning prospectuses and their summaries, inappropriate scaling of the disclosure requirements between initial public offerings and secondary issuances) have continued, arguably because the remedies proposed by the amending Directive either did not produce the expected results (the prospectus summary) or were not ambitious enough (the proportionate disclosure regimes), or because Directive 2010/73/EU did not contain measures to address them.

In view of the shortcomings identified in this evaluation it is appropriate to thoroughly review the Prospectus Directive. In particular, with respect to the amendments performed by the 2010 review, it is appropriate to readdress the "proportionate disclosure regimes" (for SMEs and Small Caps and for rights issues) and the prospectus summary as the amendments introduced by Directive 2010/73/EU have failed to reach their objectives.

- **Fundamental rights**

Future legislative measures on the prospectus regime, including appropriate sanctions, need to be in compliance with relevant fundamental rights embodied in the EU Charter of Fundamental Rights, and particular attention should be given to the necessity and proportionality of the legislative measures. Only the protection of personal data (Article 8), the freedom to conduct a business (Art. 16) and consumer protection (Art. 38) of the EU Charter of Fundamental Rights are to some extent relevant. Limitations on these rights and freedoms are allowed under Article 52 of the EU Charter of Fundamental Rights. The objectives as defined above are consistent with the EU's obligations to respect fundamental rights. However, any limitation on the exercise of these rights and freedoms must be provided for by the law and respect the essence of these rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

In the case of the prospectus-related legislation, the general interest objective which justifies certain limitations of fundamental rights is the objective of ensuring market integrity. The freedom to conduct a business may be impacted by the necessity to follow certain disclosure, approval and filing obligations in order to ensure an alignment of interests in the investment chain and to ensure that potential investors act in a prudent manner. As regards the protection of personal data, the disclosure of certain information in the prospectus is necessary to ensure that investors are able to conduct their due diligence. It is however noted that these provisions are currently already in place in EU law. All proposed legislative actions safeguard proportionality with regard to limitation of fundamental rights.

In other words, the objective of this Regulation is to balance on the one hand the trade-off between ensuring investor protection and limiting administrative burden for issuers and on the other hand the trade-off between fostering the internal market for capital and the Capital Market Union and preserving sufficient flexibility for national and local markets.

4. BUDGETARY IMPLICATIONS

The proposal will have budgetary implications for ESMA in two respects: on the one hand ESMA will have to prepare regulatory and implementing technical standards and on the other

hand it will have to upgrade its existing prospectus register and to transform it into an online storage mechanism with a search tool that the public can use for free to access and compare EU prospectuses from a single location. Furthermore, the data gathered in the storage mechanism will allow ESMA to establish detailed statistics on prospectuses approved in the EU and to draw up an annual report.

The specific budgetary implications for ESMA are assessed in the financial statement accompanying this proposal.

The proposal has implications for the Community budget in the form of the Commission's share of forty per cent of the financing of ESMA.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

A monitoring of the impact of the new Regulation will be carried out in cooperation with ESMA and national competent authorities on the basis of the annual reports on prospectuses approved in the Union which ESMA will be empowered to produce every year. In particular, such reports will keep track of the extent to which the disclosure regimes for SMEs and secondary issuances and the universal registration document for frequent issuers will be used throughout the Union.

The revised prospectus rules will be evaluated five years after they enter into force. Careful scrutiny should reveal whether the stated objectives have been achieved. Key parameters to measure achievement of the stated objectives will be:

- the number of prospectuses approved annually under the two disclosure rules for secondary issuances and for SMEs; success will be measured against the estimates on take-up as set out above and in the accompanying impact assessment;
- the number of prospectuses that have benefitted from the universal registration document as described above to obtain a fast-track approval;
- the overall reduction in approval times that results from the introduction of the universal registration document;
- the share of retail investors among the investors in non-equity debt issuances (yardstick of success is a decrease in denomination sizes for non-equity issuances);
- the cost of preparing and getting a prospectus approved compared to the current costs;
- the share of prospectuses that have been passported to other Member States.

Input data for the above measurements will be sourced primarily from ESMA (including the annual reports previously mentioned) and trading venues. A study or survey will have to be launched to gather formation on the cost of preparing and getting a prospectus approved compared to the current costs.

- **Detailed explanation of the specific provisions of the proposal**

Scope of the prospectus obligation (Articles 1, 3 and 4)

Article 1 of the Proposal consolidates all articles in the current Prospectus Directive that pertain to the scope of the prospectus requirement. In particular, Article 1(3) and (4) set out a number of circumstances in which an offer of securities to the public or an admission of securities to trading on a regulated market is outside the scope of the requirement to publish a prospectus.

While most of the provisions on scope remain unchanged, the Proposal sets out new thresholds in Article 1(3)(d) and Article 3(2), of 'EUR 500 000' and 'EUR 10 000 000' respectively, in such a way as to ensure legal clarity.

Under Directive 2003/71/EC, the prospectus requirement applies to offers of securities with a total consideration of EUR 5 000 000 or above, and Member States are free to set out their national rules below that amount (currently 17 Member States require a prospectus below the threshold of EUR 5 000 000). Article 1(3)(d) provides that no prospectus is required under this Regulation for offers of securities with a consideration below EUR 500 000. This acknowledges that the cost of producing a prospectus is disproportionate with regard to the envisaged proceeds where an offer of securities to the public has a consideration below EUR 500 000, as is typically the case on securities-based crowdfunding platforms. Increasing the range of small offers where the harmonised prospectus established by this Regulation does not apply will not, however, preclude Member States from requiring appropriate forms of disclosure for such issuance sizes, as long as Member States calibrate such requirements in a proportionate way, in keeping with the spirit of simplification and better integration of markets.

While Article 3 clarifies that prior publication of a prospectus is mandatory for the offer of securities to the public and the admission of securities to trading on a regulated market situated or operating within the Union, its paragraph 2 establishes a mechanism of optional exemption at the discretion of Member States. Member States are given the choice to exempt from the harmonised prospectus established by this Regulation all offers of securities with a total consideration between EUR 500 000 and an amount which cannot exceed EUR 10 000 000. This exemption only applies to domestic offers for which no passport notification to host Member States is sought. Those Member States who choose to apply this exemption in their jurisdiction will report so to the Commission and ESMA and indicate the maximum consideration of domestic offers which are exempted from the prospectus in their jurisdiction.

Definitions (Article 2)

The main change in the area of definitions is the definition of SMEs which now encompasses both SMEs defined under point (f) of Article 2(1) of Directive 2003/71/EC and SMEs defined under Directive 2014/65/EU, thereby raising to EUR 200 million the EUR 100 million threshold that previously defined "companies with reduced market capitalisation" under point (t) of Article 2(1) of Directive 2003/71/EC.

Voluntary prospectuses (Article 4)

Article 4 allows issuers to opt in for the EU prospectus. Approval of such a 'voluntary' prospectus by the competent authority will entail the same rights and obligations as a

prospectus required under this Regulation, i.e., it would make the issuer eligible for the EU passport.

Subsequent resale of securities / "Retail cascade" (Article 5)

In some markets, securities are distributed by "retail cascade". A retail cascade typically occurs when securities are sold to investors (other than qualified investors) by intermediaries and not directly by the issuer. Article 5 clarifies how the requirement to produce and update a prospectus, and the provisions on responsibility and liability, should apply when securities are placed by the issuer with financial intermediaries and are subsequently, over a period that may run to many months, sold on to retail investors, possibly through one or more additional tiers of intermediaries. A valid prospectus, drawn up by the issuer or the offeror and available to the public in the final placement of securities through financial intermediaries or in any subsequent resale of securities, shall provide 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 offeror as long as this is valid and duly supplemented and the issuer or the offeror responsible for drawing up such prospectus consents to its use. In this case no other prospectus should be required. However, in case the issuer or the offeror responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus. The financial intermediary could use the initial prospectus by incorporating the relevant parts by reference into its new prospectus.

The prospectus summary (Article 7)

Article 7 takes into consideration the general views expressed in the public consultation that the summary format introduced by the amending Directive 2010/73/EU has not met its objectives. The new summary is now closely modelled on the key information document required under the PRIIPS Regulation and is subject to a maximum length of 6 sides of A4-sized paper when printed (characters of readable size must be used). The liability regime of the summary, set out in Article 11(2), is kept unchanged compared to Directive 2003/71/EC: liability attaches to the summary only if it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus. Next to the usual section containing warnings, there are three main sections in the summary, covering key information on the issuer, the security and the offer/admission respectively. For each of them, general headings are introduced, as well as indications on their content, but issuers have latitude to develop brief narratives and select the information which is material. For securities falling under the scope of the PRIIPS Regulation, the issuer can replace the "securities" section of the summary with the content of the key information document. A relaxation of the maximum number of pages of the summary is provided in case the summary covers several securities differing only in some very limited details. The prohibition to incorporate information by reference into the summary, currently set out in Article 11(1) of Directive 2003/71/EC is maintained in order to avoid that the summary becomes a mere collection of hyperlinks and cross-references.

The base prospectus (Article 8)

Article 8 aims at clarifying the functioning of the base prospectus, which remains broadly unchanged compared to Directive 2003/71/EC, except for the following points. A base prospectus may now be drawn up for any kind of non-equity securities, not only for those issued under an offering programme or in a continuous and repeated way by credit institutions. Base prospectuses consisting of several documents (the so-called "tripartite

prospectus") are now possible, and the registration document of a base prospectus may take the form of a universal registration document. The obligation to draw up a summary of the base prospectus, when the final terms are not contained therein, is removed, so that only the "issue-specific" summary is required to be produced and annexed to the final terms, when those are filed. Article 8(10) clarifies how "straddling offers" should be dealt with under a base prospectus, i.e. cases where an offer starts under one base prospectus and continues unchanged under a new, succeeding base prospectus.

The universal registration document (Article 9)

Article 9 (which should be read in conjunction with Articles 10(2), 11(3), 13(2) and 19(5)) contains detailed rules on the new "universal registration document", an optional shelf registration mechanism for "frequent issuers" admitted to trading on regulated markets or multilateral trading facilities. This new feature of the prospectus regime is based on the premise that where an issuer makes the effort of drawing up every year a complete registration document, it should be awarded a fast-track approval with the competent authority when a prospectus is later required. Since the main constituent part of the prospectus has either already been approved or is already available for review by the competent authority, the competent authority should be able to scrutinise the remaining documents (securities note and summary) within 5 working days, instead of 10. Besides, outside the context of an offer or admission to trading, the frequent issuer should be allowed to file its universal registration document, without prior approval, providing that previously three universal registration documents have been approved consecutively. The competent authority may then control it on an ex-post basis.

The alleviations granted to frequent issuers using the universal registration document promote the drawing up of prospectuses as separate documents, which is cost-effective and less burdensome for issuers and enables them to quickly react to market windows. The universal registration document should also serve as a consolidated and well-structured 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, even where neither an offer to the public nor an admission of securities to trading on a regulated market is taking place. For that purpose, Article 9(12) allows frequent issuers admitted to trading on a regulated market, under certain conditions, to fulfil their ongoing disclosure obligation under the Transparency Directive by integrating their annual and half-yearly financial reports into the universal registration document. This efficient "two in one" approach is meant to avoid duplicative requirements, alleviate unnecessary burdens and concentrate the information investors need in one single document which is updated at least every year.

Articles 9 and 10(2) also incorporate detailed rules on the practical administration of the universal registration document. They clarify which documents shall be approved in case the universal registration document has been either approved or filed without approval, and describe the process for amending the universal registration document, which follows a different approach from the process for supplementing a prospectus (as there is no public offer nor admission to trading, until the universal registration document becomes part of a prospectus).

Delegated acts will set out the minimum information contents of the universal registration document, including a specific schedule for credit institutions, which should be similar to the existing Annexes I or XI of the implementing Regulation (EC) No 809/2004.

Specific disclosure regimes (Articles 14 and 15)

The proposal contains two sets of specific disclosure rules, one for secondary issuances and the other for SMEs. These specific disclosure rules are of optional use. They replace the "proportionate disclosure regimes" for rights issues and SMEs introduced by the amending Directive 2010/73/EU, which have not achieved their objectives, as explained in the Impact assessment.

The alleviated regime for secondary issuances will apply to offers or admissions concerning securities issued by companies already admitted to trading on a regulated market or an SME growth market for at least 18 months. Such companies are therefore subject to ongoing disclosure requirements under the Market Abuse Regulation and either the Transparency Directive or the rules of the operator of the SME growth market as required under Directive 2014/65/EU and its implementing measures. The alleviated prospectus will only contain minimum financial information covering the last financial year only (which may be incorporated by reference). Still, investors need to be provided with consolidated and well-structured information on such elements as the terms of the offer, use of proceeds, risk factors, board practices, directors' remuneration, shareholding structure or relating-party transactions. As such information is not currently required to be disclosed on an ongoing basis under Regulation (EU) 596/2014 and Directive 2004/109/EC, the prospectus drawn up in case of secondary issuance will need to include them.

The specific regime for SMEs will allow these companies to draw up a distinct prospectus in case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market. For such companies the prospectus schedules (which will be designed in details by delegated acts) will focus on information that is material and relevant for companies of such size and a bottom-up approach will be taken to build the new information schedules. Compared to the existing Annexes XXV to XXVIII of Regulation (EC) No 809/2004, further alleviations will be introduced, so as to ensure proportionality between the company size and the cost of producing a prospectus.

Article 15 also introduces an optional format for the prospectus for SMEs in the form of a "question and answer" disclosure document, which will be designed in details by delegated acts. ESMA will be empowered to develop guidelines helping SMEs to draw up a prospectus under that format.

Like for all the minimum disclosure requirements under the prospectus regime, delegated acts will be adopted to specify the reduced information which must be included in the simplified registration document and securities note.

Treatment of non-equity securities of high denomination per unit (Article 1 and 13)

The EUR 100 000 denomination is currently used in the Directive 2003/71/EC to distinguish wholesale disclosures. It also triggers a prospectus exemption for offers of non-equity securities. This threshold, originally conceived as a consumer protection, prices bonds beyond the reach of retail investors, as issuers generally seek the less costly option of making wholesale-type disclosure. As most investment-grade issuers can raise the funds they need from institutional investors, there is little incentive for them to offer bonds in smaller sizes. However, this may mean that non-institutional investors may have access to a smaller and/or riskier pool of potential investments, and are less likely to have a well-diversified portfolio of securities.

Based on evidence presented in the impact assessment, the favourable treatment granted by the Prospectus Directive to non-equity securities with a denomination per unit of EUR 100 000 or above may have contributed to unintended consequences, creating distortions in the European bond markets and making a significant share of bonds issued by investment-grade corporate issuers inaccessible to a wider range of potential investors.

The Proposal therefore removes the incentives to issue debt securities in large denominations, currently featured in Articles 3(2)(d) and 7(2)(b) of Directive 2003/71/EC. For non-equity securities admitted to trading on a regulated market, the dual standard of disclosure (retail / wholesale) is therefore removed and a unified prospectus template will be defined through delegated acts, taking the existing wholesale disclosure annexes of Regulation (EC) No 809/2004 (Annexes IX & XIII) as a starting point and adding only the information items necessary for retail investor protection. Besides, the prospectus exemption of Article 3(2)(d) of Directive 2003/71/EC for offers of securities with a denomination above EUR 100 000 is removed. Issuers offering non-equity securities solely to qualified investors or requiring a minimum commitment of EUR 100 000 per investor will still benefit from a prospectus exemption. Through the above amendments, the proposal aims at removing one of the identified barriers to secondary liquidity on bond markets.

Risk factors (Article 16)

Article 16 provides that only risk factors which are material and specific to the issuer and its securities should be mentioned in a prospectus. The aim is to curb the tendency of overloading the prospectus with generic risk factors which obscure the more specific risk factors that investors should be aware of, and only serve to protect the issuer or its advisors from liability. To that aim, the issuer is required to allocate risk factors across two or three categories based on materiality. ESMA is empowered to develop guidelines on that field.

Incorporation by reference (Article 18)

The scope of documents whose information may be incorporated by reference in a prospectus is enlarged, subject to the condition that the information be published electronically and complies with the language regime of Article 25. A list of documents is set out in Article 18 and ESMA is empowered to develop draft regulatory technical standards to complete the list with further types of documents required under Union law. The proposed list covers documents filed or approved by the competent authority of the home Member State in accordance with this Regulation as well as regulated information. It also permits companies which are not under the scope of the Transparency Directive (e.g. companies whose securities are traded on a multilateral trading facility) or which are exempted from some of its requirements (e.g. issuers exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 100 000) to incorporate by reference all or parts of their annual and interim financial information and management reports.

Publication of the prospectus (Article 20)

Two of the options provided under Directive 2003/71/EC for publishing an approved prospectus (namely the insertion in a newspaper and the printed prospectus available at the offices of the issuer) have been removed as they were considered largely outdated. However, the obligation to provide a free paper copy to anyone who requests it is maintained (Article 20(10)). The responsibility of publishing the prospectus lies with the issuer, the offeror or the

person asking for admission to trading, as is currently the case under Directive 2003/71/EC. The prospectus shall be deemed available to the public when published in electronic form either on the website of the issuer, the offeror or the person asking for admission (or, if applicable, of the financial intermediaries placing or selling the securities) or on the website of the regulated market where the admission to trading is sought, or of the operator of the multilateral trading facility. ESMA will develop an online storage mechanism with a search tool that EU investors may use for free. Consequently, whenever competent authorities send to ESMA the electronic version of each approved prospectus, they will also send a set of meta-data (e.g. type of issuer, type of security, type of trading venue, consideration of the offer, type of issuance: initial or secondary, etc) which will enable the indexing of prospectuses on ESMA's website. The data gathered in the storage mechanism will allow ESMA to establish detailed statistics on prospectuses approved in the EU and draw up an annual report that should be granular enough to identify trends and provide evidence on the effects of the reforms introduced by this Proposal (Article 45) .

Administrative measures and sanctions (Articles 36 to 41)

The Commission Communication on sanctions⁷ confirmed that "ensuring proper application of EU rules is first and foremost the task of national authorities, who have the responsibility to prevent financial institutions from violating EU rules, and to sanction violations within their jurisdiction", but stressed at the same time the co-ordinated and integrated way in which national authorities should act.

In line with the Communication and following other initiatives at EU level in the financial sector, this proposal contains provisions on sanctions and measures aimed at introducing a harmonised approach to sanctions in order to ensure consistency. It is important that administrative sanctions and measures are applied where key provisions of this proposal are not complied with and that those sanctions and measures are effective, proportionate and dissuasive

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Reinforcing sanctioning regimes in the financial services sector", of 8 December 2010 (COM (2010) 716 final).

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

(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 Committee⁸,

Having regard to the opinion of the Committee of the Regions⁹,

Acting in accordance with the ordinary legislative procedure,

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 laid down harmonised principles and rules on the prospectus to be drawn up, approved and published when 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.

⁸ [OJ C , , p.].

⁹ [OJ C , , p.].

- (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 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 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 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 of a consideration below EUR 500 000, 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 refrain to impose at national level disclosure requirements which would constitute a disproportionate or unnecessary burden in relation to such offers and thus increase fragmentation of the internal market.
- (13) Where offers of securities to the public are addressed only to domestic investors in one Member State, and thus have no cross-border effects, and where such offers do not exceed a total consideration of EUR 10 000 000, the passport mechanism under this Regulation is not needed and drawing up a prospectus may represent a disproportionate cost. Therefore it is appropriate to allow Member States to decide to exempt such kinds of offers from the prospectus obligation set out in this Regulation, taking into account the level of domestic investor protection they deem to be appropriate. In particular, Member States should be free to set out in their national law the threshold between EUR 500 000 and EUR 10 000 000, expressed as the total consideration of the offer over a period of 12 months, from which this exemption should apply.

- (14) Where an offer of securities is addressed exclusively to a restricted circle of investors who are not qualified investors, 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 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, that information should be sufficient and objective including with regard to the financial circumstances of the issuer and the rights attaching to the securities, and should be provided in an easily analysable, succinct and comprehensible form. Those requirements should apply to all types of prospectuses drawn up in accordance with this Regulation, including those following the minimum disclosure requirements for secondary issuances and for SMEs. 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 the investment decision and thus undermine investor protection.
- (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 to consider further. 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. 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 the most material ones.
- (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.

- (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 Council¹⁰. 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 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.

¹⁰ 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).

- (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 three consecutive years can be considered well-known to the competent authority. All subsequent universal registration documents 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. 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.
- (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 Council¹¹, 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 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

¹¹ 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).

the European Parliament and of the Council¹² 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 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 be provided with consolidated and well-structured information on such elements as the terms of the offer and its context, including the working capital statement, the use of proceeds, risk factors specific to the issuer and the securities, board practices, directors' remuneration, shareholding structure or relating-party transactions. As such information is not required to be disclosed on an ongoing basis under Regulation (EU) 596/2014 and Directive 2004/109/EC, it is appropriate that the prospectus drawn up in case of secondary issuance should at least include this information.

- (41) The specific disclosure regime for secondary issuances should be extended to SME growth markets as their operators are required under Directive 2014/65/EU to establish and apply rules ensuring appropriate ongoing disclosure by issuers whose securities are traded on such venues.
- (42) The specific 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.
- (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 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 higher investment risk than larger issuers and should disclose sufficient information for investors to take their investment decision. A proper balance should therefore be struck between the cost-efficient access to financial markets and investor protection when calibrating the content of a prospectus applying to SMEs and a specific disclosure regime should therefore be developed for SMEs to achieve that objective.
- (44) The minimum information required to be disclosed by SMEs under the specific disclosure regime should be calibrated in a way that focuses on information that is material and relevant for companies of such size and their investors, and should aim at ensuring 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 SMEs can draw up prospectuses without incurring costs that are not proportionate to their size, and thus the size of their fundraising, the specific disclosure regime for SMEs should be more flexible than that applying to companies on

¹² 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).

regulated markets to the extent compatible with ensuring that the key information necessary to the investors is disclosed.

- (45) The specific disclosure regime should be made available to offers of securities to the public by SMEs whose securities are traded on multilateral trading facilities, including SME growth markets, as such trading venues can serve as the gateway to capital markets for SMEs and are subject to less stringent rules with regard to disclosure than regulated markets. It is also appropriate to extend the definition of SMEs to SMEs as defined in Directive 2014/65/EU to ensure consistency between this Regulation and Directive 2014/65/EU. SMEs whose securities are not traded on any trading venue should also be eligible to this disclosure regime as they may also be required to draw up a prospectus when offering their securities to the public, including through crowdfunding platforms. However, SMEs listed on regulated markets should not be eligible to use this regime 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 on regulated markets depending on the size of the issuer.
- (46) Provided they are not admitted to trading on a regulated market, SMEs offering shares and non-hybrid debt securities should be offered an optional method of drawing up a prospectus in the form of an easily understandable "question and answer" disclosure document. This alternative format to the usual disclosure schedule should be designed to minimise costs for SMEs by empowering them to draw up a prospectus by themselves, relying on their own capacities. The questions presented in the form should be designed to elicit specific types of information of special relevance to SMEs and the requests for information should be more detailed than on the usual disclosure schedules, so that persons using the "question and answer" format can more easily understand what information is being sought.
- (47) Favourable treatments granted to issuances of non-equity securities with a denomination per unit in excess of EUR 100 000 may distort the structure of debt markets, create impediments to proper diversification of portfolios and to the development of electronic trading platforms, thus undermining liquidity on the secondary market, and may reduce investment choice for retail investors by depriving them of the opportunity to acquire investment-grade corporate bonds. It is therefore appropriate to remove the prospectus exemption for offers of non-equity securities whose denomination per unit amounts to at least EUR 100 000 and the lower standard of disclosure granted to prospectuses concerning such non-equity securities, featured originally in Directive 2003/71/EC. In particular, it is appropriate to unify the minimum information requirements for non-equity prospectuses, thereby replacing the dual standard of disclosure between issuances targeting qualified investors only and issuances targeting non-qualified investors.
- (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. To help investors identify the most material risks, the issuer should be required to group specific risk factors together and allocate them across categories based on levels of materiality. A limited number of risk factors selected by the issuer from the category of highest materiality should be included in the summary.

- (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 — 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.
- (52) Any regulated information, as defined in Article 2(1)(k) of Directive 2004/109/EC, 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 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 on 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 Council¹³. In particular, ESMA should conduct peer reviews covering activities of the competent authorities under this Regulation

¹³ 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)

within an appropriate time-frame before the review of this Regulation and in accordance with Regulation (EU) No 1095/2010.

- (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 disclosed.
- (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. 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 in paper form, free of charge and 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, and the supervision of such advertisements is an integral part of the role of competent authorities.
- (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).
- (60) 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 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 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 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. Third country issuers drawing up a prospectus under this Regulation should appoint a representative among the entities which carry out activities that are regulated and supervised under EU financial services regulation, to serve as a contact point for the purposes of this Regulation. The representative should ensure compliance, jointly with the issuer, with the provisions of this Regulation. 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 *[enter 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 thresholds mentioned in point (i) of Article 1(2), in points (c) and (d) of Article 1(3), 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 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 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 registration document and securities note in case of secondary issuances and by SMEs, the format allowed under Article 15(2), the authorisation of the omission from the prospectus of certain information, the procedures for the scrutiny and approval of the prospectus, 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. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (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 Council¹⁴.
- (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 information to be incorporated by reference and further types of documents required under Union law, the publication of the prospectus, the data necessary for the classification of prospectuses in the storage mechanism operated by ESMA, 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 template document for 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

¹⁴ 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).

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 Council¹⁵ 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 Council¹⁶.

- (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 and delivered its opinion.

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 situated or operating within a Member State.
2. This Regulation shall not apply to the following types of securities:

¹⁵ 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).

¹⁶ 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 data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (a) units issued by collective investment undertakings other than the closed-end type;
- (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 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;
- (f) non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities comply with all of the following conditions:
 - (i) they are not subordinated, convertible or exchangeable;
 - (ii) they do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument;
 - (iii) they materialise reception of repayable deposits;
 - (iv) they are covered by a deposit guarantee scheme under Directive 2014/49/EU of the European Parliament and of the Council¹⁷;
- (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;
- (h) 'bostadsobligationer' issued repeatedly by credit institutions in Sweden whose main purpose is to grant mortgage loans, provided that
 - (i) the 'bostadsobligationer' issued are of the same series;
 - (ii) the 'bostadsobligationer' are issued on tap during a specified issuing period;
 - (iii) the terms and conditions of the 'bostadsobligationer' are not changed during the issuing period;
 - (iv) the sums deriving from the issue of the said 'bostadsobligationer', in accordance with the articles of association of the issuer, are placed in

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Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

assets which provide sufficient coverage for the liability deriving from securities;

- (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 shall not apply to any of the following types of offers of securities to the public:

- (a) an offer of securities addressed solely to qualified investors;
- (b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;
- (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;
- (d) an offer of securities with a total consideration in the Union of less than EUR 500 000, 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 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.

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, 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/EEC¹⁸ or Directive 2001/34/EC of the European Parliament and of the Council¹⁹;
 - (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.
5. In order to take account of technical developments on financial markets, including inflation, the Commission may adopt, by means of delegated acts in accordance with Article 42, measures concerning:
- (a) the adjustment of the monetary limit laid down in point (i) of paragraph 2 of this Article;
 - (b) the thresholds in points (c) and (d) of paragraph 3 of this Article;
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.

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

¹⁸ 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).

¹⁹ 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).

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 to 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 Council²⁰;
- (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 market as defined by Article 4(1)(21) of Directive 2014/65/EU;

²⁰

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).

- (k) ‘advertisement’ means announcements:
 - relating to a specific offer to the public of securities or to an admission to trading on a regulated market; and
 - aiming to specifically promote the potential subscription or acquisition of securities;
- (l) ‘regulated information’ means all information as defined in Article 2(1)(k) of Directive 2004/109/EC;
- (m) ‘home Member State’ means:
 - (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 to the public is made or admission to trading is sought, when different from the home Member State;
- (o) ‘collective investment undertaking other than the closed-end type’ means unit trusts and investment companies with both of the following characteristics:

- (i) they raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors;
 - (ii) their units are, at the holder's request, repurchased or redeemed, directly or indirectly, out of their assets;
 - (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 national competent authority excluding Saturdays, Sundays and public holidays, as defined by the national law applicable to the 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.
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, including the adjustment of the figures established in the definition of 'small and medium-sized enterprises (SMEs)' in point (f) of paragraph 1, taking into account the situation on different national markets, including the classification of enterprises used by the operators of regulated markets and multilateral trading facilities, Union legislation and recommendations as well as economic developments.

Article 3

Obligation to publish a prospectus and exemption

1. Securities shall not be offered to the public in the Union without prior publication of a prospectus.
2. A Member State may exempt offers of securities to the public from the prospectus requirement of paragraph 1 provided that:
 - (a) the offer is made only in that Member State, and

- (b) the total consideration of the offer is less than a monetary amount calculated over a period of 12 months, which shall not exceed EUR 10 000 000.

Member States shall notify the Commission and ESMA of the exercise of the option under this paragraph, including the consideration of the offer chosen below which the exemption for domestic offers applies.

- 3. Securities shall not be admitted to trading on a regulated market situated or operating within the Union without prior publication of a prospectus.

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 defined 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 in accordance with this Regulation.

A voluntary 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 mandatorily 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 listed in 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 information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. That information shall be presented in an easily analysable, succinct and comprehensible form.
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). 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 providing 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, when read together with the other parts of the prospectus, aids investors when considering whether to invest in such securities.
2. The content of the summary shall be accurate, fair, clear and not misleading. 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. It 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.
4. The summary shall be made up of the following four sections:
 - (a) an introduction containing warnings;
 - (b) key information on the issuer, the offeror or the person asking for admission;

- (c) key information on the securities;
 - (d) key information on the offer itself and/or the admission to trading.
5. The introduction of the summary shall contain the name of the securities, the identity and contact details of the issuer, the offeror or the person seeking admission, the identity and contact details of the home competent authority and the date of the document. 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, 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 managing 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 five of the most material risk factors specific to the issuer contained in the category of highest materiality according to Article 16.
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, any security identification number, their currency, denomination, par value, the number of securities issued, the term of the securities;
 - the rights attached to the securities;
 - 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 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.
 - (d) under a sub-section titled 'What are the key risks that are specific to the securities?' a brief description of no more than five of the most material risk factors specific to the securities, contained in the category of highest materiality according to Article 16.

Where a key information document is required to be prepared under Regulation (EU) No 1286/2014 of the European Parliament and of the Council²¹, 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:

²¹ 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).

- (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 paragraph 6, taking into account the various types of securities and issuers.

ESMA shall submit those draft regulatory technical standards to the Commission by [*enter date 9 months after entry into force*].

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 all 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 approved 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 key 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. The issuer which 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 and 4 of Article 19.

After the issuer has had a universal registration document approved by the competent authority every financial year for three consecutive years, subsequent universal registration documents may be filed with the competent authority without prior approval.

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 809/2004²², approved by a competent authority for at least three 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.
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

²² 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).

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 or 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 Council²³, 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.

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

²³ 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).

- (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. The Commission shall adopt delegated acts in accordance with Article 42 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.

Article 10

Prospectuses consisting of separate documents

1. An issuer which 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 which already has a universal 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, the summary and all amendments to the universal registration document filed since the approval of the universal registration document 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 establishing 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.
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 *[enter date of application]*.

Article 14

Minimum disclosure regime for secondary issuances

1. The following persons may choose to draw up a prospectus under the minimum 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 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 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 for at least 18 months.

The minimum disclosure regime shall consist of 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).

2. By derogation to article 6(1), and without prejudice to Article 17(2), the prospectus drawn up under the minimum disclosure regime for secondary issuances shall contain the relevant information which is necessary to enable investors to understand the prospects of the issuer and of any guarantor, based on minimum financial information included or incorporated by reference into the prospectus covering the last financial year only, the rights attaching to the securities, the reasons for the issuance and its impact on the issuer. The information contained in the prospectus shall be 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 to be included in the schedules applicable under the minimum disclosure regime, taking into account the information which is already disclosed to the public under Directive 2004/109/EC, where applicable, and Regulation (EU) No 596/2014.

Those delegated acts shall be adopted by *[enter date of application]*.

Article 15

Minimum disclosure regime for SMEs

1. SMEs may choose to draw up a prospectus under the minimum disclosure regime for SMEs in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market.

The minimum disclosure regime shall consist of a specific registration document and a specific securities note.

When establishing the corresponding prospectuses schedules, the information shall be adapted to the size and to the length of the track record of such companies.

2. Companies making use of the minimum disclosure regime referred to in paragraph 1 and offering shares or non-equity securities which are not subordinated, convertible or exchangeable, do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument, shall be entitled to draw up a prospectus under a format structured in the form of a questionnaire with standardised text, to be filled in by the issuer. For this purpose, both the specific registration document and the specific securities note shall be structured in that form.
3. The Commission shall adopt delegated acts in accordance with Article 42 to specify the reduced information to be included in the schedules applicable under the minimum disclosure regime and the optional format allowed under paragraph 2.

Those delegated acts shall be adopted by [*enter date of application*].

4. ESMA shall develop guidelines addressed to SMEs on how to draw up a prospectus under the format referred to in paragraph 2. The procedures set out in subparagraphs 2 to 4 of Article 16(3) of Regulation (EU) No 1095/2010 shall not apply.

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. They shall be allocated across a maximum of three distinct categories which shall differentiate them by their relative materiality based on the issuer's assessment of the probability of their occurrence and the expected magnitude of their negative impact.
2. ESMA shall develop guidelines on the assessment by competent authorities of the specificity and materiality of risk factors and on the allocation of risk factors across categories.

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. The Commission shall be empowered to adopt delegated acts, in accordance with Article 42, 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 where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 25 and where it is contained in one of the following documents:
 - (a) documents which have been approved by the competent authority of the home Member State, 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 Council²⁴;
 - (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*²⁵]
 - (i) memorandum and articles of association.

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

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.

²⁴ 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).

²⁵ [OJ C , , p.].

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. In order to ensure consistent harmonisation in relation to this Article, ESMA may develop draft regulatory technical standards to update the list 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 has been approved by the 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.

Where the competent authority fails to take a decision on the prospectus within the time limits laid down in this paragraph and paragraphs 3 and 5, this shall not be deemed to constitute approval of the application.

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 of the submission of the draft prospectus and/or supplementary information, and state the reasons therefor, and
 - (b) the time limits referred to in paragraph 2 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.
- 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.
- 7. The competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to prior notification to ESMA and the agreement of that competent authority. Such a transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three working days from the date of the decision taken by the competent authority of the home Member State. The time limit referred to in paragraph 2 shall apply from that date. Article 28(4) of Regulation (EU) No 1095/2010 shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph.
- 8. This Regulation shall not affect the competent authority's liability, which shall continue to be governed solely by national law.

Member States shall ensure that their national provisions on the liability of competent authorities apply only to approvals of prospectuses by their competent authority.
- 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 disclosed to the public at least on the website of the competent authority.
- 10. The Commission shall be empowered to adopt delegated acts in accordance with Article 42, specifying the procedures for the scrutiny of completeness, comprehensibility and consistency and the approval of the prospectus.

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. 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.
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 after the date of application of this Regulation. In the context of this peer review, ESMA shall, where appropriate, request opinions or 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.

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.
7. All prospectuses approved shall remain publicly available 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 paper copy of the prospectus 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 *[enter date 9 months after entry into force]*.

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 to the public of securities 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 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.
5. The competent authority of the home Member State shall 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 paragraphs 2 to 4.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 42 to further specify the provisions concerning advertisements laid down in paragraphs 2 to 4 of this Regulation.

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 two 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.
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 universal registration document and where this 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, 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 [*enter date 9 months after entry into force*].

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

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.
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.

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.

The issuer or the person responsible for drawing up the prospectus 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 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 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 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.

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. A third country issuer intending to offer securities to the public in the Union or to seek admission to trading of securities on a regulated market of the Union under a prospectus drawn up according to this Regulation shall obtain approval of its prospectus, in accordance with Article 19, from the competent authority of its home Member State, as determined under point (iii) of Article 2(1)(m). This 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.
2. The third country issuer shall designate a representative established in its home Member State, among the entities which are subject to and supervised under EU financial services regulation, on the basis of an authorisation. The third country issuer shall notify the competent authority of the identity and contact details of its representative.
3. The representative shall be the contact point of the third country issuer in the Union for the purposes of this Regulation, through which any official correspondence with the competent authority shall take place. The representative shall, together with the third country issuer, be responsible for ensuring compliance of the prospectus with the requirements of this Regulation, in accordance with Chapters VII and VIII of this Regulation, towards 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, where the information requirements imposed by that third country legislation are equivalent to the requirements under this Regulation.
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.
3. The Commission may 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 implementing measures in accordance with the examination procedure referred to in Article 43, stating that a third country ensures the equivalence of prospectuses drawn up in that country with this Regulation by reason of its national law. Those implementing acts 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. 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.

In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards containing a template document for cooperation arrangements that are to be used by competent authorities of Member States where possible.

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

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.

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 completely independent from all 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 10 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 Council²⁶, 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 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, 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.

²⁶ 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).

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 at least for:
- (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 *[enter date 12 months after entry into force]*. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.

By *[enter date 12 months after entry into force]*, 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;
 - (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 [*insert date of entry into force*], 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 [*insert date of entry into force*].

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 delegation of power referred to in Article 1(5) and (6), Article 2(2), Article 9(14), Article 13(1) and (2), Article 14(3), Article 15(3), Article 17(5), Article 19(10), Article 21(6) and Article 27(3) shall be conferred on the Commission for an indeterminate period of time from [*enter date of entry into force*].
3. The delegation of powers referred to in Article 1(5) and (6), Article 2(2), Article 9(14), Article 13(1) and (2), Article 14(3), Article 15(3), Article 17(5), Article 19(10), Article 21(6) 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(5) and (6), Article 2(2), Article 9(14), Article 13(1) and (2), Article 14(3), Article 15(3), Article 17(5), Article 19(10), Article 21(6) and Article 27(3) shall enter into force only where 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 where, 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 the Council.

Article 43 ***Committee procedure***

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.²⁷ 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.

CHAPTER X **FINAL PROVISIONS**

Article 44 ***Repeal***

1. Directive 2003/71/EC is repealed with effect from [*enter date of application*].
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.
3. Reference to the third and the fourth subparagraphs of Article 4(1) of Directive 2003/71/EC in the second subparagraph of point (a) of Article 25(4) of Directive 2014/65/EU shall continue to apply for the purpose of defining the notion of equivalent third-country market under Directive 2014/65/EU.
4. Prospectuses approved in accordance with the national laws transposing Directive 2003/71/EC before [*enter 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 [*enter date of application of this Regulation*], whichever occurs first.

²⁷ Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

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.

Article 46
Review

Before [enter date 5 years after entry into force] 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 [enter date 12 months after entry into force].
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 [enter date 12 months after entry into force].

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. Summary of estimated impact on expenditure*
 - 3.2.2. Estimated impact on operational appropriations*
 - 3.2.3. Estimated impact on appropriations of an administrative nature*
 - 3.2.4. Compatibility with the current multiannual financial framework*
 - 3.2.5. Third-party contributions*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a "Regulation XXX/XX/EU of the European Parliament and of the Council of xx/xx/xx on the prospectus to be published when securities are offered to the public or admitted to trading"

1.2. Policy area(s) concerned in the ABM/ABB structure²⁸

Policy area: [...]

Activity: [...]

1.3. Nature of the proposal/initiative

- ☐ The proposal/initiative relates to **a new action**
- ☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action²⁹**
- ☒ The proposal/initiative relates to **the extension of an existing action**
- ☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

This initiative is one of the building block of the Capital Markets Union initiative. This proposal aims in particular at:

- (1) reducing fragmentation in financial markets
- (2) improving investor protection in capital markets

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective No

The proposed measures should

- (i) reduce the administrative burden of drawing up of prospectus, both for SMEs and for frequent issuers of securities;
- (ii) make the prospectus a more relevant disclosure tool for potential investors;

²⁸

ABM: activity-based management; ABB: activity-based budgeting.

²⁹

As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

(iii) achieve more convergence between the EU prospectus and other EU disclosure rules.

ABM/ABB activity(ies) concerned

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

1. to reduce the administrative burden of compliance with the Prospectus Directive for offerors and issuers;
2. to make the regulatory framework for prospectuses more flexible and appropriate for the various types of securities and issuers covered, in particular for SMEs;
4. to better align the Prospectus Directive with recent EU law;
5. to make disclosure to investors under the prospectus regime more effective.

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

- the number of prospectuses approved under the various regimes of the Prospectus Directive and the amounts raised;
- the share of prospectuses published by SMEs;
- the share of retail investors among the investors in initial public offers;
- the liquidity of secondary markets;
- the cost of preparing and getting a prospectus approved compared to the current costs;
- the share of prospectuses that have been passported into other Member States.

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

1.5.2. *Prospectus reform aims to contribute to the CMU objectives of reducing fragmentation in financial markets, diversifying financing sources and strengthening cross border capital flows. Added value of EU involvement*

The harmonised EU prospectus is an essential tool to integrate capital markets throughout the Union. Once a prospectus is approved by the competent authority of an EEA Member State, this prospectus can be used to raise capital by means of a public offer or admission to a regulated market in other Member States. Making the prospectus more accessible for SMEs and for companies that have frequent recourse to capital markets (frequent issuers) constitutes a key plank of establishing a CMU.

1.5.3. *Lessons learned from similar experiences in the past*

The Prospectus Directive was already in 2010. The measures taken then were expected to generate savings. An evaluation of the functioning of the amended Directive indicated that all stakeholder groups, issuers, investors and Member States consider the Directive to be a useful instrument to foster market efficiency and integration as well as investor protection. The Directive has created a minimum

standard for disclosure and approval by national competent authorities which can be relied upon throughout the Union. However, despite those positive achievements, changes were largely incremental and not sufficient to materially reduce the cost of capital raising using a prospectus.

1.5.4. Compatibility and possible synergy with other appropriate instruments

This review of the Prospectus Directive is part of the Capital Markets Union Action Plan adopted on 30/09/2015. The actions proposed are expected to result in a comprehensive impact on the liquidity, stability and attractiveness of the capital markets in the Union. As there are barriers of various kind in the markets, this could not be achieved by a single measure.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from 2017 to 2019,
- followed by full-scale operation.

1.7. Management mode(s) planned³⁰

☐ **Direct management** by the Commission

- ☐ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

☐ **Shared management** with the Member States

☒ **Indirect management** by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated;
- ☐ international organisations and their agencies (to be specified);
- ☐ the EIB and the European Investment Fund;
- ☒ bodies referred to in Articles 208 and 209 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

³⁰

Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

The implementation of this initiative will imply ESMA. The proposed resources are for ESMA which is a regulatory agency not an executive agency. ESMA acts under the oversight of the Commission.

The implementation of the measure will require ESMA to develop an IT solution for the storage of prospectuses and related documents in a form that provides users with easy access and a search facility.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Commission should review the effectiveness of the proposed measures 5 years after it entered into application of the proposal.

2.2. Management and control system

2.2.1. Risk(s) identified

In relation to the legal, economical, efficient and effective use of appropriations resulting from the proposal it is expected that the proposal would not bring about new risks that would not be currently covered by ESMA's existing internal control framework.

2.2.2. Control method envisaged

N/A

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to the ESMA without any restriction.

ESMA shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for ESMA staff.

The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by ESMA as well as on the staff responsible for allocating these monies.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]]	Diff./Non-diff. ³¹	from EFTA countries ³²	from candidate countries ³³	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1a	12.02.06 ESMA	Diff./	YES	YES	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....N/A.....]]	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

³¹ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

³² EFTA: European Free Trade Association.

³³ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

[This section should be filled in using the **spreadsheet on budget data of an administrative nature** (second document in annex to this financial statement) and uploaded to CISNET for interservice consultation purposes.]

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	[Heading:.....]
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EUR million (to three decimal places)

Heading of multiannual financial framework	Number	[Heading: 1a]
--	--------	---------------

[Body]: ESMA			Year N ³⁴ : 2016	Year N+1: 2017	Year N+2: 2018	Year N+3: 2019	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL ³⁵
Title 1:	Commitments	(1)	0.362	1.078	0.924	0.200	...	...	...	2.564
	Payments	(2)	0.362	1.078	0.924	0.200	...	...	...	2.564
Title 2:	Commitments	(1a)	0	0.600	0.600	0.120	...	...	...	1.320
	Payments	(2a)	0	0.600	0.600	0.120	...	...	...	1.320
Title 3:	Commitments	(3a)								
	Payments	(3b)								
TOTAL appropriations for ESMA	Commitments	=1+1a +3a	0.362	1.678	1.524	0.320	...	...	...	3.884
	Payments	=2+2a +3b	0.362	1.678	1.524	0.320	...	...	...	3.884

³⁴ Year N is the year in which implementation of the proposal/initiative starts.

³⁵ The TOTAL covers the implementation phase and the first year thereafter. It does not cover the following years in which the appropriations would be the same as for 2019 as this time period is not limited and can therefore not be added up.

Heading of multiannual financial framework	5	‘Administrative expenditure’
---	----------	------------------------------

EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <.....>									
• Human Resources									
• Other administrative expenditure									
TOTAL DG <.....>	Appropriations								

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	n/a							
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EUR million (to three decimal places)

		Year N ³⁶ : 2016	Year N+1: 2017	Year N+2: 2018	Year N+3: 2019	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL ³⁷
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0.362	1.678	1.524	0.320	...	...	...	3.884
	Payments	0.362	1.678	1.524	0.320	...	...	...	3.884

³⁶ Year N is the year in which implementation of the proposal/initiative starts.

³⁷ The TOTAL covers the implementation phase and the first year thereafter. It does not cover the following years in which the appropriations would be the same as for 2019 as this time period is not limited and can therefore not be added up.

3.2.2. Estimated impact on ESMA's appropriations

- ☒ The proposal/initiative does not require the use of operational appropriations
- ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year N: 2016		Year N+1: 2017		Year N+2: 2018		Year N+3: 2019		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
	Type 38	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 ³⁹ ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

³⁸ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

³⁹ As described in point 1.4.2. 'Specific objective(s)...'

3.2.3. Estimated impact on [body]'s human resources

3.2.3.1. Summary

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

ESMA	Year N ⁴⁰ : 2016	Year N+1: 2017	Year N+2: 2018	Year N+3: 2019	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL ⁴¹
------	--------------------------------	----------------------	----------------------	----------------------	---	--	--	---------------------

Officials (AD Grades)								
Officials (AST grades)								
Contract staff	1	7	6	1.3	...	...	...	15.3
Temporary staff								
Seconded National Experts								

TOTAL	1	7	6	1.3	...	...	...	15.3
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Please indicate the planned recruitment date and adapt the amount accordingly (if recruitment occurs in July, only 50 % of the average cost is taken into account) and provide further explanations in an annex.

⁴⁰

Year N is the year in which implementation of the proposal/initiative starts.

⁴¹

The TOTAL covers the implementation phase and the first year thereafter. It does not cover the following years in which the appropriations would be the same as for 2019 as this time period is not limited and can therefore not be added up.

3.2.3.2. Estimated requirements of human resources for the parent DG

- ☒ The proposal/initiative does not require the use of human resources.
- ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)⁴²							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the Delegations)							
XX 01 04 JY⁴³	- at Headquarters ⁴⁴						
	- in Delegations						
XX 01 05 02 (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

⁴² AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JED = Junior Experts in Delegations.

⁴³ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

⁴⁴ Mainly for the Structural Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF).

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

3.2.4. *Compatibility with the current multiannual financial framework*

- ☐ The proposal/initiative is compatible the current multiannual financial framework.
- ☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

[...]

- ☒ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework⁴⁵.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

The costs related to the tasks to be carried out by ESMA have been estimated for staff expenditure in conformity with the cost classification in the ESA draft budget for 2015.

ESMA will have to develop and maintain an IT solution for the storage of prospectuses and related documents in a form that provides users with easy access and a search facility. The development of the IT solution can be expected start in 2017 and to finish in 2018.

Furthermore, ESMA will have to 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 and issuances.

The proposal of the Commission also includes provisions for ESMA to develop a number of regulatory technical standards (RTS).

Assuming that the proposed Regulation is adopted by the co-legislators by the end of 2016, ESMA's work on the RTS would take place in 2017.

New supervisory competences will not be assigned to ESMA but it will be asked to further promote supervisory cooperation and convergence in interpretation and application of the Prospectus Directive/Regulation.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.

⁴⁵ See Articles 11 and 17 of Council Regulation (EU, Euratom) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020.

- The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

- ☒ The proposal/initiative has no financial impact on revenue.
- ☐ The proposal/initiative has the following financial impact:
 - ☐ on own resources
 - ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ⁴⁶						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article								

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

[...]

Specify the method for calculating the impact on revenue.

[...]

⁴⁶ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.

Annex to the Legislative Financial Statement for a proposal for 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

The costs related to the tasks to be carried out by ESMA have been estimated for staff expenditure in conformity with the cost classification in the ESA draft budget for 2015. The proposal of the Commission includes provisions for ESMA to **develop a number of regulatory and implementing technical standards**.

Article	Type of empowerment	Form of empowerment	Scope of empowerment
7(11)	RTS	shall	Content and format of presentation of the historical key financial information of the summary, taking into account the various types of securities and issuers
18(4)	RTS	may	Update the list mentioned in Article 18(1) by including additional types of documents required under Union law to be filed with or approved by a public authority
20(11)	RTS	may	Specify the provisions relating to the publication of the prospectus
20(12)	RTS	shall	Specify the data necessary for the classification of prospectuses referred to in Article 20(5).
22(6)	RTS	shall	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
24(6)	ITS	may	Establish 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
28(2)	RTS	may	Define a template document for cooperation arrangements that are to be used by competent authorities of Member States where possible
29(6)	RTS	may	Specify the information required in Art. 29(1) (obligation to cooperate)
31(6)	RTS	may	Specify the information to be exchanged between competent authorities in accordance with Article 31(1)
31(7)	ITS	may	Establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities
32(3)	ITS	may	Determine the procedures and forms for exchange of information as

			referred to in paragraph 2 (cooperation with ESMA)
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In addition, ESMA will have to upgrade its existing prospectus register and to transform it into an **online storage mechanism with a search tool** that investors can use for free. This will enable investors to access and compare EU prospectuses from a single location. Furthermore, the data gathered in the storage mechanism will allow ESMA to establish **detailed statistics** on prospectuses approved in the EU and draw up an annual report. Whenever competent authorities send to ESMA the electronic version of approved prospectuses, they will also have to send a set of meta-data which will enable the indexing of prospectuses on ESMA's website.

New supervisory competences will not be assigned to ESMA but it will be asked to further **promote supervisory cooperation and convergence in interpretation and application of the STS criteria** (see chapter 3). This objective is essential as it will prevent a fragmentation of the securitisation market throughout the EU.

Regarding the timing, it has been assumed that the Regulation will enter into force in mid-2016. The additional ESMA resources are therefore required from 2016 to start the preparatory works and a smooth implementation of the Regulation. As regards the nature of the positions, the successful and timely delivery of new technical standards will require, in particular, additional resources to be allocated to tasks on policy, legal drafting and impact assessment.

The work requires bilateral and multilateral meetings with stakeholders, analysis and assessment of options and drafting of consultation documents, public consultation of stakeholders, setting up and management of standing expert groups composed of supervisors from Member States, setting up and management of ad hoc expert groups composed of market participants and representatives of investors, analysis of the responses to consultations, drafting of cost/benefit analysis and drafting of the legal text.

This means that one additional temporary agent is needed from early 2016. It is assumed that this increased will be maintained in 2017 and 2018 since ESMA will have to perform new tasks. These new tasks are set out in the proposed Regulation and further spelled out in the explanatory memorandum.

Additional resources assumption:

The additional posts are assumed to be a temporary agents of functional group and grade AD7.

- Average salary costs for different categories of personnel are based on DG BUDG guidance for the Regulation on securitisation, adopted by the College on 30/09/15;

- Salary correction coefficient for Paris is 1.168;
- Recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc) estimated at €12,700.

Personnel

Cost type	Calculation	Amount (in thousands)				
		2016	2017	2018	2019 onwards	Total
Staff expenditure		1x 132x1.168	7x 132 x1.168	6x 132 x1.168	1.3x 132 x1.168	
Salaries and allowances	X x 132 x 1.168	154	1,078	924	200	2,356
Expenditure related to recruitment	16x13	208				208
Total		362	1,078	924	200	2,564

Technical costs (IT)

Cost type	Calculation	Amount (in thousands)				
		2016	2017	2018	2019 onwards	Total
Total		-	600	600	120	1,320

