

Key dates (Articles 46 and 49)

- > 20 July 2017 entry into force.
- > 20 July 2017 provisions affecting **exemptions for fungible securities and shares resulting from conversion/exchange** take effect.
- > 21 July 2018 provision establishing new **threshold of (up to) €8m for public offer exemption** takes effect (dependent on Member State discretion).
- > 21 July 2019 **Prospectus Regulation** takes effect (remaining provisions) and Prospectus Directive is repealed (subject to grandfathering).

Risk factors (Article 16)

- > To be presented in a **“limited number of categories depending on their nature”**.
- > **Most material** risk factors to be presented **first** within each such category.
- > Issuers to assess the relative **“materiality”** of risk factors, based on the **probability of their occurrence** and the **expected magnitude of their negative impact**.
- > Risk factors to be **specific** to the issuer and the securities.
- > Risk factors to be **corroborated** by the prospectus.
- > **ESMA Guidelines (March 2019)**.
- > **Two page summary**.

Advertisements (Article 22)

- > Definition of advertisements expanded beyond announcements to capture certain bi-lateral communications.
- > Requirements from current regime carried over.
- > More prescriptive requirements to identify the prospectus.
- > New **content requirements** for advertisements directed at **retail investors**.

Publication of The Prospectus (Article 21)

- Approved prospectuses** to be **published** on (any of) the websites of:
- > the **issuer/offeror/person asking for admission to trading** on a regulated market;
 - > **financial intermediaries** (including paying agents); or
 - > the **regulated market** where the admission to trading is sought; and to remain publicly available on websites for **at least 10 years**.

Incorporation by reference (Article 19)

- > Prospectus to include **hyperlinks** to all documents incorporated by reference.
- > **Hyperlinks** to remain functional for **at least 10 years**.

Data provision (Article 21)

NCA to **provide data** that will allow ESMA to:

1. provide a centralised storage mechanism of prospectuses allowing access free of charge and appropriate search facilities for the public; and
2. draw up the annual report containing statistics on prospectuses and an analysis of trends that will facilitate the future evaluation of prospectus rules.

NCA likely to push down the obligation on to issuers to provide the data to the NCAs, increasing compliance costs. Implementation delayed until mid 2020.

Subject matter and scope (Article 1)

Subject matter

The Prospectus Regulation establishes requirements for **drawing up, approval and distribution of prospectuses for securities**:

- > **offered to the public** in Member States;
- > **admitted to trading** on Regulated Markets within Member States.

Scope – Prospectus Regulation does not apply to:

- > debt issues of (or guaranteed by) **Member States (or their regional or local authorities)**;
- > debt issues by **public international bodies** with one or more Member States members;
- > debt issues of the **ECB** or by the **central banks of Member States**;
- > offers of securities to the public with **total consideration <€1m** over 12 months (Member States can increase this threshold to €8m); and
- > others.

The general disclosure test (Article 6(1))

Prospectus shall contain the **necessary information** which is **material** to an **investor** for making an informed assessment of:

- > the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor;
- > the rights attaching to the securities; and
- > **the reasons for the issuance and its impact on the issuer**.

Necessary information *may vary* depending on:

- (i) The nature and **circumstances of the issuer**.
- (ii) The type and denomination of the securities.
- (iii) The type of investor.

The information must be *easily analysable, concise* and comprehensible taking into account the factors set out in (i), (ii) and (iii) above.

Minimum information and format (Article 13)

Annex 7: **Registration document for wholesale non-equity securities**.

Annex 15: **Securities note for wholesale non-equity securities**.

No bank specific annex, no table of combinations.

Contact us for comparisons against Prospectus Directive annexes.

Innovations introduced under the Prospectus Regulation

- > Simplified prospectuses for secondary issuance (Article 14).
- > EU Growth Prospectus (Article 15).
- > Universal registration document (Article 9).
- > New centralised storage mechanism for prospectuses (Article 21).

For further information please get in touch with your **regular Linklaters contact**.

Key exemptions (Article 1)

Offers to the public – no prospectus required for:

- > Securities with a **€100,000 minimum denomination**;
- > Offers to **qualified investors**; and
- > Offers to fewer than **150 persons** per Member State.

Admission to trading – no prospectus required for:

- > **Fungible securities** (up to 20% of securities in issue per year).
- > **Shares resulting from conversion or exchange of securities** (up to 20% of shares of same class admitted to trading on the same regulated market (some exceptions) – previously exemption applied without cap).

Alleviated treatment for prospectuses for admission to trading (Wholesale debt) (Articles 6, 7, 27)

- > Less onerous minimum information requirements than for retail.
- > No summary in the prospectus.
- > More flexible language requirements.
- > Less onerous content requirements for advertisements.

Where:

- > Minimum denomination is €100,000 or more, and/or;
- > Investors are “qualified investors” on a market/segment restricted to qualified investors only (*new*).

Grandfathering

Grandfathered prospectuses (prospectuses approved under the Prospectus Directive) may be:

- > supplemented; or
- > passported

on or after 21 July 2019 under the rules of the Prospectus Directive.

Final terms and summaries relating to a **grandfathered base prospectus** will also be governed by the rules established under the Prospectus Directive.

Grandfathering does not apply to advertisements.

Supplements (Article 23)

- > Requirements from current regime carried over.
- > RTS specifies the triggers for supplements.

Sources

Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 (the “Prospectus Regulation”)

Commission Delegated Regulation (EU) 2019/980 of 14 March 2019.

Commission Delegated Regulation (EU) 2019/979 of 14 March 2019.

Questions and answers on the Prospectus Regulation (July 2019).

ESMA final report on guidelines on risk factors under the Prospectus Regulation (Mar 2019).