

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by reference and publication of such prospectuses and dissemination of advertisements (Text with EEA relevance) (repealed)

[^{XI}CHAPTER II

MINIMUM INFORMATION

Article 3

Minimum information to be included in a prospectus

A prospectus shall be drawn up by using one or a combination of the following schedules and building blocks set out in Articles 4 to 20, according to the combinations for various types of securities provided for in Article 21.

A prospectus shall contain the information items required in Annexes I to XVII depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in Articles 4 to 20. [^{F1}Subject to Article 4a(1), a competent authority shall not request that a prospectus contain information items which are not included in Annexes I to XVII.]

In order to ensure conformity with the obligation referred to in Article 5(1) of Directive 2003/71/EC, the competent authority of the home Member State, when approving a prospectus in accordance with Article 13 of that Directive, may require that the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market be completed, for each of the information items, on a case by case basis.

Textual Amendments

- F1** Substituted by [Commission Regulation \(EC\) No 211/2007 of 27 February 2007 amending Regulation \(EC\) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards financial information in prospectuses where the issuer has a complex financial history or has made a significant financial commitment \(Text with EEA relevance\).](#)

Article 4

Share registration document schedule

- 1 For the share registration document information shall be given in accordance with the schedule set out in Annex I.
- 2 The schedule set out in paragraph 1 shall apply to the following:
 1. shares and other transferable securities equivalent to shares;
 2. other securities which comply with the following conditions:

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Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 809/2004 (repealed), CHAPTER II. (See end of Document for details)

- (a) they can be converted or exchanged into shares or other transferable securities equivalent to shares, at the issuer's or at the investor's discretion, or on the basis of the conditions established at the moment of the issue, or give, in any other way, the possibility to acquire shares or other transferable securities equivalent to shares;

and

- (b) provided that these shares or other transferable securities equivalent to shares are or will be issued by the issuer of the security and are not yet traded on a regulated market or an equivalent market outside the Community at the time of the approval of the prospectus covering the securities, and that the underlying shares or other transferable securities equivalent to shares can be delivered with physical settlement.

[^{F2} Article 4a

Share registration document schedule in cases of complex financial history or significant financial commitment

1 Where the issuer of a security covered by Article 4(2) has a complex financial history, or has made a significant financial commitment, and in consequence the inclusion in the registration document of certain items of financial information relating to an entity other than the issuer is necessary in order to satisfy the obligation laid down in Article 5(1) of Directive 2003/71/EC, those items of financial information shall be deemed to relate to the issuer. The competent authority of the home Member State shall in such cases request that the issuer, the offeror or the person asking for admission to trading include those items of information in the registration document.

Those items of financial information may include pro forma information prepared in accordance with Annex II. In this context, where the issuer has made a significant financial commitment any such pro forma information shall illustrate the anticipated effects of the transaction that the issuer has agreed to undertake, and references in Annex II to 'the transaction' shall be read accordingly.

2 The competent authority shall base any request pursuant to paragraph 1 on the requirements set out in item 20.1 of Annex I as regards the content of financial information and the applicable accounting and auditing principles, subject to any modification which is appropriate in view of any of the following factors:

- a the nature of the securities;
- b the nature and range of information already included in the prospectus, and the existence of financial information relating to an entity other than the issuer in a form that might be included in a prospectus without modification;
- c the facts of the case, including the economic substance of the transactions by which the issuer has acquired or disposed of its business undertaking or any part of it, and the specific nature of that undertaking;
- d the ability of the issuer to obtain financial information relating to another entity with reasonable effort.

Where, in the individual case, the obligation laid down in Article 5(1) of Directive 2003/71/EC may be satisfied in more than one way, preference shall be given to the way that is the least costly or onerous.

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Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 809/2004 (repealed), CHAPTER II. (See end of Document for details)

3 Paragraph 1 is without prejudice to the responsibility under national law of any other person, including the persons referred to in Article 6(1) of Directive 2003/71/EC, for the information contained in the prospectus. In particular, those persons shall be responsible for the inclusion in the registration document of any items of information requested by the competent authority pursuant to paragraph 1.

4 For the purposes of paragraph 1, an issuer shall be treated as having a complex financial history if all of the following conditions apply:

- a its entire business undertaking at the time that the prospectus is drawn up is not accurately represented in the historical financial information which it is required to provide under item 20.1 of Annex I;
- b that inaccuracy will affect the ability of an investor to make an informed assessment as mentioned in Article 5(1) of Directive 2003/71/EC; and
- c information relating to its business undertaking that is necessary for an investor to make such an assessment is included in financial information relating to another entity.

5 For the purposes of paragraph 1, an issuer shall be treated as having made a significant financial commitment if it has entered into a binding agreement to undertake a transaction which, on completion, is likely to give rise to a significant gross change.

In this context, the fact that an agreement makes completion of the transaction subject to conditions, including approval by a regulatory authority, shall not prevent that agreement from being treated as binding if it is reasonably certain that those conditions will be fulfilled.

In particular, an agreement shall be treated as binding where it makes the completion of the transaction conditional on the outcome of the offer of the securities that are the subject matter of the prospectus or, in the case of a proposed takeover, if the offer of securities that are the subject matter of the prospectus has the objective of funding that takeover.

6 For the purposes of paragraph 5 of this Article, and of item 20.2 of Annex I, a significant gross change means a variation of more than 25 %, relative to one or more indicators of the size of the issuer's business, in the situation of an issuer.]

Textual Amendments

- F2** Inserted by [Commission Regulation \(EC\) No 211/2007 of 27 February 2007 amending Regulation \(EC\) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards financial information in prospectuses where the issuer has a complex financial history or has made a significant financial commitment \(Text with EEA relevance\).](#)

Article 5

Pro forma financial information building block

For pro forma financial information, information shall be given in accordance with the building block set out in Annex II.

Pro forma financial information should be preceded by an introductory explanatory paragraph that states in clear terms the purpose of including this information in the prospectus.

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Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 809/2004 (repealed), CHAPTER II. (See end of Document for details)

Article 6

Share securities note schedule

- 1 For the share securities note information is necessary to be given in accordance with the schedule set out in Annex III.
- 2 The schedule shall apply to shares and other transferable securities equivalent to shares.

Article 7

Debt and derivative securities registration document schedule for securities with a denomination per unit of less than EUR 50 000

For the debt and derivative securities registration document concerning securities which are not covered in Article 4 with a denomination per unit of less than EUR 50 000 or, where there is no individual denomination, securities that can only be acquired on issue for less than EUR 50 000 per security, information shall be given in accordance with the schedule set out in Annex IV.

Article 8

Securities note schedule for debt securities with a denomination per unit of less than EUR 50 000

- 1 For the securities note for debt securities with a denomination per unit of less than EUR 50 000 information shall be given in accordance with the schedule set out in Annex V.
- 2 The schedule shall apply to debt where the issuer has an obligation arising on issue to pay the investor 100 % of the nominal value in addition to which there may be also an interest payment.

Article 9

Guarantees building block

For guarantees information shall be given in accordance with the building block set out in Annex VI.

Article 10

Asset backed securities registration document schedule

For the asset backed securities registration document information shall be given in accordance with the schedule set out in Annex VII.

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Article 11

Asset backed securities building block

For the additional information building block to the securities note for asset backed securities information shall be given in accordance with the building block set out in Annex VIII.

Article 12

Debt and derivative securities registration document schedule for securities with a denomination per unit of at least EUR 50 000

For the debt and derivative securities registration document concerning securities which are not covered in Article 4 with a denomination per unit of at least EUR 50 000 or, where there is no individual denomination, securities that can only be acquired on issue for at least EUR 50 000 per security, information shall be given in accordance with the schedule set out in Annex IX.

Article 13

Depository receipts schedule

For depository receipts issued over shares information shall be given in accordance with the schedule set out in Annex X.

Article 14

Banks registration document schedule

1 For the banks registration document for debt and derivative securities and those securities which are not covered by Article 4 information shall be given in accordance with the schedule set out in Annex XI.

2 The schedule set out in paragraph 1 shall apply to credit institutions as defined in point (a) of Article 1(1) of Directive 2000/12/EC as well as to third country credit institutions which do not fall under that definition but have their registered office in a state which is a member of the OECD.

These entities may also use alternatively the registration document schedules provided for under in Articles 7 and 12.

Article 15

Securities note schedule for derivative securities

1 For the securities note for derivative securities information shall be given in accordance with the schedule set out in Annex XII.

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Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 809/2004 (repealed), CHAPTER II. (See end of Document for details)

2 The schedule shall apply to securities which are not in the scope of application of the other securities note schedules referred to in Articles 6, 8 and 16, including certain securities where the payment and/or delivery obligations are linked to an underlying.

Article 16

Securities note schedule for debt securities with a denomination per unit of at least EUR 50 000

1 For the securities note for debt securities with a denomination per unit of at least EUR 50 000 information shall be given in accordance with the schedule set out in Annex XIII.

2 The schedule shall apply to debt where the issuer has an obligation arising on issue to pay the investor 100 % of the nominal value in addition to which there may be also an interest payment.

Article 17

Additional information building block on the underlying share

1 For the additional information on the underlying share, the description of the underlying share shall be given in accordance with the building block set out in Annex XIV.

In addition, if the issuer of the underlying share is an entity belonging to the same group, the information required by the schedule referred to in Article 4 shall be given in respect of that issuer.

2 The additional information referred to in the first subparagraph of paragraph 1 shall only apply to those securities which comply with both of the following conditions:

1. they can be converted or exchanged into shares or other transferable securities equivalent to shares, at the issuer's or at the investor's discretion, or on the basis of the conditions established at the moment of the issue or give, in any other way, the possibility to acquire shares or other transferable securities equivalent to shares;

and

2. provided that these shares or other transferable securities equivalent to shares are or will be issued by the issuer of the security or by an entity belonging to the group of that issuer and are not yet traded on a regulated market or an equivalent market outside the Community at the time of the approval of the prospectus covering the securities, and that the underlying shares or other transferable securities equivalent to shares can be delivered with physical settlement.

Article 18

Registration document schedule for collective investment undertakings of the closed-end type

1 In addition to the information required pursuant to items 1, 2, 3, 4, 5.1, 7, 9.1, 9.2.1, 9.2.3, 10.4, 13, 14, 15, 16, 17.2, 18, 19, 20, 21, 22, 23, 24, 25 of Annex I, for the registration document for securities issued by collective investment undertakings of the closed-end type information shall be given in accordance with the schedule set out in Annex XV.

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2 The schedule shall apply to collective investment undertakings of the closed-end type holding a portfolio of assets on behalf of investors that:

1. are recognised by national law in the Member State in which it is incorporated as a collective investment undertaking of the closed end type;

or

2. do not take or seek to take legal or management control of any of the issuers of its underlying investments. In such a case, legal control and/or participation in the administrative, management or supervisory bodies of the underlying issuer(s) may be taken where such action is incidental to the primary investment objective, necessary for the protection of shareholders and only in circumstances where the collective investment undertaking will not exercise significant management control over the operations of that underlying issuer(s).

Article 19

Registration document schedule for Member States, third countries and their regional and local authorities

1 For the registration document for securities issued by Member States, third countries and their regional and local authorities information shall be given in accordance with the schedule set out in Annex XVI.

2 The schedule shall apply to all types of securities issued by Member States, third countries and their regional and local authorities.

Article 20

Registration document schedule for public international bodies and for issuers of debt securities guaranteed by a member state of the OECD

1 For the registration document for securities issued by public international bodies and for securities unconditionally and irrevocably guaranteed, on the basis of national legislation, by a state which is member of the OECD information shall be given in accordance with the schedule set out in Annex XVII.

2 The schedule shall apply to:

- all types of securities issued by public international bodies,
- to debt securities unconditionally and irrevocably guaranteed, on the basis of national legislation, by a state which is member of the OECD.

Article 21

Combination of schedules and building blocks

1 The use of the combinations provided for in the table set out in Annex XVIII shall be mandatory when drawing up prospectuses for the types of securities to which those combinations correspond according to this table.

However, for securities not covered by those combinations further combinations may be used.

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2 The most comprehensive and stringent registration document schedule, i.e. the most demanding schedule in term of number of information items and the extent of the information included in them, may always be used to issue securities for which a less comprehensive and stringent registration document schedule is provided for, according to the following ranking of schedules:

1. share registration document schedule;
2. debt and derivative securities registration document schedule for securities with a denomination per unit of less than EUR 50 000;
3. debt and derivative securities registration document schedule for securities with a denomination per unit at least EUR 50 000.

Article 22

Minimum information to be included in a base prospectus and its related final terms

1 A base prospectus shall be drawn up by using one or a combination of schedules and building blocks provided for in Articles 4 to 20 according to the combinations for various types of securities set out in Annex XVIII.

A base prospectus shall contain the information items required in Annexes I to XVII depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in Articles 4 to 20. A competent authority shall not request that a base prospectus contains information items which are not included in Annexes I to XVII.

In order to ensure conformity with the obligation referred to in Article 5(1) of Directive 2003/71/EC, the competent authority of the home Member State, when approving a base prospectus in accordance with Article 13 of that Directive, may require that the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market be completed, for each of the information items, on a case by case basis.

2 The issuer, the offeror or the person asking for admission to trading on a regulated market may omit information items which are not known when the base prospectus is approved and which can only be determined at the time of the individual issue.

3 The use of the combinations provided for in the table in Annex XVIII shall be mandatory when drawing up base prospectuses for the types of securities to which those combinations correspond according to this table.

However, for securities not covered by those combinations further combinations may be used.

4 The final terms attached to a base prospectus shall only contain the information items from the various securities note schedules according to which the base prospectus is drawn up.

5 In addition to the information items set out in the schedules and building blocks referred to in Articles 4 to 20 the following information shall be included in a base prospectus:

1. indication on the information that will be included in the final terms;
2. the method of publication of the final terms; if the issuer is not in a position to determine, at the time of the approval of the prospectus, the method of publication of

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the final terms, an indication of how the public will be informed about which method will be used for the publication of the final terms;

3. in the case of issues of non equity securities according to point (a) of Article 5(4) of Directive 2003/71/EC, a general description of the programme.

6 Only the following categories of securities may be contained in a base prospectus and its related final terms covering issues of various types of securities:

1. asset backed securities;
2. warrants falling under Article 17;
3. non-equity securities provided for under point (b) of Article 5(4) of Directive 2003/71/EC;
4. all other non-equity securities including warrants with the exception of those mentioned in (2).

In drawing up a base prospectus the issuer, the offeror or the person asking for admission to trading on a regulated market shall clearly segregate the specific information on each of the different securities included in these categories.

7 Where an event envisaged under Article 16(1) of Directive 2003/71/EC occurs between the time that the base prospectus has been approved and the final closing of the offer of each issue of securities under the base prospectus or, as the case may be, the time that trading on a regulated market of those securities begins, the issuer, the offeror or the person asking for admission to trading on a regulated market shall publish a supplement prior to the final closing of the offer or the admission of those securities to trading.

Article 23

Adaptations to the minimum information given in prospectuses and base prospectuses

1 Notwithstanding Articles 3 second paragraph and 22(1) second subparagraph, where the issuer's activities fall under one of the categories included in Annex XIX, the competent authority of the home Member State, taking into consideration the specific nature of the activities involved, may ask for adapted information, in addition to the information items included in the schedules and building blocks set out in Articles 4 to 20, including, where appropriate, a valuation or other expert's report on the assets of the issuer, in order to comply with the obligation referred to in Article 5(1) of Directive 2003/71/EC. The competent authority shall forthwith inform the Commission thereof.

In order to obtain the inclusion of a new category in Annex XIX a Member State shall notify its request to the Commission. The Commission shall update this list following the Committee procedure provided for in Article 24 of Directive 2003/71/EC.

2 By way of derogation of Articles 3 to 22, where an issuer, an offeror or a person asking for admission to trading on a regulated market applies for approval of a prospectus or a base prospectus for a security which is not the same but comparable to the various types of securities mentioned in the table of combinations set out in Annex XVIII, the issuer, the offeror or the person asking for admission to trading on a regulated market shall add the relevant information items from another securities note schedule provided for in Articles 4 to 20 to the main securities note schedule chosen. This addition shall be done in accordance with the main characteristics of the securities being offered to the public or admitted to trading on a regulated market.

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3 By way of derogation of Articles 3 to 22, where an issuer, an offeror or a person asking for admission to trading on a regulated market applies for approval of a prospectus or a base prospectus for a new type of security, the issuer, the offeror or the person asking for admission to trading on a regulated market shall notify a draft prospectus or base prospectus to the competent authority of the home Member State.

The competent authority shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information shall be included in the prospectus or base prospectus in order to comply with the obligation referred to in Article 5(1) of Directive 2003/71/EC. The competent authority shall forthwith inform the Commission thereof.

The derogation referred to in the first subparagraph shall only apply in case of a new type of security which has features completely different from the various types of securities mentioned in Annex XVIII, if the characteristics of this new security are such that a combination of the different information items referred to in the schedules and building blocks provided for in Articles 4 to 20 is not pertinent.

4 By way of derogation of Articles 3 to 22, in the cases where one of the information items required in one of the schedules or building blocks referred to in 4 to 20 or equivalent information is not pertinent to the issuer, to the offer or to the securities to which the prospectus relates, that information may be omitted.

Article 24

Content of the summary of prospectus and base prospectus

The issuer, the offeror or the person asking for admission to trading on a regulated market shall determine on its own the detailed content of the summary to the prospectus or base prospectus referred to in Article 5(2) of Directive 2003/71/EC.]

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 149 of 30 April 2004\)](#).

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