

Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (Text with EEA relevance)

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter, scope and exemptions

1 This Regulation lays 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:

- 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-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 that right being given up.

3 Without prejudice to the second subparagraph of this paragraph and to Article 4, this Regulation shall not apply to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months.

Member States shall not extend the obligation to draw up a prospectus in accordance with this Regulation to offers of securities to the public referred to in the first subparagraph of this paragraph. However, in those cases, Member States may require other disclosure requirements at national level to the extent that such requirements do not constitute a disproportionate or unnecessary burden.

4 The obligation to publish a prospectus set out in Article 3(1) 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 whose denomination per unit amounts to at least EUR 100 000;

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- d 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;
 - 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 made available to the public in accordance with the arrangements set out in Article 21(2), 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 made available to the public in accordance with the arrangements set out in Article 21(2), 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;
 - j 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 calculated over a period of 12 months, provided that those securities:
 - (i) are not subordinated, convertible or exchangeable; and
 - (ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.
- 5 The obligation to publish a prospectus set out in Article 3(3) 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 % 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 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph;
 - c securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU;
 - d 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;
 - e securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;

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- f securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;
- g 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;
- h 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;
- 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 calculated over a period of 12 months, provided that those securities:
 - (i) are not subordinated, convertible or exchangeable; and
 - (ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument;
- j securities already admitted to trading on another regulated market, on the following conditions:
 - (i) that those securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months;
 - (ii) that, for securities first admitted to trading on a regulated market after 1 July 2005, the admission to trading on that other regulated market was subject to a prospectus approved and published in accordance with Directive 2003/71/EC;
 - (iii) that, except where point (ii) applies, for securities first admitted to listing after 30 June 1983, listing particulars were approved in accordance with the requirements of Council Directive 80/390/EEC⁽¹⁾ or Directive 2001/34/EC of the European Parliament and of the Council⁽²⁾;
 - (iv) that the ongoing obligations for trading on that other regulated market have been fulfilled;
 - (v) that the person seeking the admission of a security to trading on a regulated market under the exemption set out in this point (j) makes available to the public in the Member State of the regulated market where admission to trading is sought, in accordance with the arrangements set out in Article 21(2), a document the content of which complies with Article 7, except that the maximum length set out in Article 7(3) shall be extended by two additional sides of A4-sized paper, drawn up in a language accepted by the competent authority of the Member State of the regulated market where admission is sought; and
 - (vi) that the document referred to in point (v) states where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to ongoing disclosure obligations is available.

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The requirement that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market as referred to in point (b) of the first subparagraph shall not apply in any of the following cases:

- a 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 on a regulated market of the securities giving access to the shares;
- b where the securities giving access to the shares were issued before 20 July 2017;
- c where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽³⁾ of an institution as defined in point (3) of Article 4(1) of that Regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that Regulation;
- d where the shares qualify as eligible own funds or eligible basic own funds as defined in Section 3 of Chapter VI of Title I of Directive 2009/138/EC of the European Parliament and of the Council⁽⁴⁾, and result from the conversion of other securities which was triggered for the purposes of fulfilling the obligations to comply with the Solvency Capital Requirement or Minimum Capital Requirement as laid down in Sections 4 and 5 of Chapter VI of Title I of Directive 2009/138/EC or the group solvency requirement as laid down in Title III of Directive 2009/138/EC.

6 The exemptions from the obligation to publish a prospectus that are set out in paragraphs 4 and 5 may be combined together. However, the exemptions in points (a) and (b) of the first subparagraph of paragraph 5 shall not be combined together if such combination could lead to the immediate or deferred admission to trading on a regulated market over a period of 12 months of more than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, without a prospectus being published.

7 The Commission is empowered to adopt delegated acts in accordance with Article 44 supplementing this Regulation by setting out the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of this Article.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) ‘securities’ means transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU with the exception of money market instruments as defined in point (17) of Article 4(1) 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;

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- (d) ‘offer of securities to the public’ means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those 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 that Annex, or recognised as eligible counterparties in accordance with Article 30 of Directive 2014/65/EU unless they have entered into an agreement to be treated as non-professional clients in accordance with the fourth paragraph of Section I of that Annex. For the purposes of applying the first sentence of this point, investment firms and credit institutions shall, upon request from the issuer, communicate the classification of their clients to the issuer subject to compliance with the relevant laws on data protection;
- (f) ‘small and medium-sized enterprises’ or ‘SMEs’ means any of the following:
 - (i) 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;
 - (ii) small and medium-sized enterprises as defined in point (13) of Article 4(1) of Directive 2014/65/EU.
- (g) ‘credit institution’ means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
- (h) ‘issuer’ means a legal entity which issues or proposes to issue securities;
- (i) ‘offeror’ means a legal entity or individual which offers securities to the public;
- (j) ‘regulated market’ means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
- (k) ‘advertisement’ means a communication with both of the following characteristics:
 - (i) relating to a specific offer of securities to the public or to an admission to trading on a regulated market;
 - (ii) aiming to specifically promote the potential subscription or acquisition of securities;
- (l) ‘regulated information’ means regulated information as defined in point (k) of Article 2(1) 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

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- 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 to trading on a regulated market. 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 to trading on a regulated market, 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 those issuers;
 - in accordance with point (i)(iii) of Article 2(1) of Directive 2004/109/EC;
- (n) ‘host Member State’ means the Member State where an offer of securities to the public is made or admission to trading on a regulated market is sought, when different from the home Member State;
- (o) ‘competent authority’ means the authority designated by each Member State in accordance with Article 31, unless otherwise specified in this Regulation;
- (p) ‘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;
- (q) ‘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;
- (r) ‘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;
- (s) ‘base prospectus’ means a prospectus that complies with Article 8, and, at the choice of the issuer, the final terms of the offer;
- (t) ‘working days’ means working days of the relevant competent authority excluding Saturdays, Sundays and public holidays, as defined in the national law applicable to that competent authority;
- (u) ‘multilateral trading facility’ or ‘MTF’ means a multilateral trading facility as defined in point (22) of Article 4(1) of Directive 2014/65/EU;

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- (v) ‘organised trading facility’ or ‘OTF’ means an organised trading facility as defined in point (23) of Article 4(1) of Directive 2014/65/EU;
- (w) ‘SME growth market’ means an SME growth market as defined in point (12) of Article 4(1) of Directive 2014/65/EU;
- (x) ‘third country issuer’ means an issuer established in a third country;
- (y) ‘offer period’ means the period during which potential investors may purchase or subscribe for the securities concerned;
- (z) ‘durable medium’ means any instrument which:
 - (i) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period adequate for the purposes of the information; and
 - (ii) allows the unchanged reproduction of the information stored.

Article 3

Obligation to publish a prospectus and exemption

1 Without prejudice to Article 1(4), securities shall only be offered to the public in the Union after prior publication of a prospectus in accordance with this Regulation.

2 Without prejudice to Article 4, a Member State may decide to exempt offers of securities to the public from the obligation to publish a prospectus set out in paragraph 1 provided that:

- a such offers are not subject to notification in accordance with Article 25; and
- b the total consideration of each such offer in the Union is less than a monetary amount calculated over a period of 12 months which shall not exceed EUR 8 000 000.

Member States shall notify the Commission and ESMA whether and how they decide to apply the exemption pursuant to the first subparagraph, including the monetary amount below which the exemption for offers in that Member State applies. They shall also notify the Commission and ESMA of any subsequent changes to that monetary amount.

3 Without prejudice to Article 1(5), securities shall only be admitted to trading on a regulated market situated or operating within the Union after prior publication of a prospectus in accordance with this Regulation.

Article 4

Voluntary prospectus

1 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 in accordance with Article 1(3), or exempted from the obligation to publish a prospectus in accordance with Article 1(4), 1(5) or 3(2), 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.

2 Such voluntarily drawn up prospectus approved by the competent authority of the home Member State, as determined in accordance with point (m) of Article 2, shall entail all

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the rights and obligations provided for a prospectus required under this Regulation and shall be subject to all provisions of this Regulation, under the supervision of that competent authority.

Article 5

Subsequent resale of securities

1 Any subsequent resale of securities which were previously the subject of one or more of the types of offer of securities to the public listed in points (a) to (d) of Article 1(4) shall be considered as a separate offer and the definition set out in point (d) of Article 2 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 unless one of the exemptions listed in points (a) to (d) of Article 1(4) applies in relation to 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.

2 Where a prospectus relates to the admission to trading on a regulated market of non-equity securities that are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in such securities, the securities shall not be resold to non-qualified investors, unless a prospectus is drawn up in accordance with this Regulation that is appropriate for non-qualified investors.

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- (1) 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](#)).
- (2) 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](#)).
- (3) 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](#)).
- (4) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([OJ L 335, 17.12.2009, p. 1](#)).

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