



Regulation (EU) 2017/1129

Prospectus Regulation

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

DG FISMA, Securities Markets Unit
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WHAT IS A PROSPECTUS?



A prospectus is a disclosure document for investors describing a security and its issuer.



Consisting of

- Registration document (information about the issuer)
- Securities note (information about the security and the offer/admission)
- Summary



The Prospectus Directive (PD)

The EU introduced rules on prospectus in 2003, with [Directive 2003/71/EC](#). These rules underwent a major revision in 2010, with the adoption of amending [Directive 2010/73/EU](#)

Main features of the PD:

- EU prospectus rules ensure that adequate and equivalent disclosure standards are in place in all EU countries so that investors can benefit from the same level of information*
- Under these rules, once a prospectus has been approved in one EU country, it is valid throughout the Union (single passport for the issuers)*
- The rules also ensure that minimum protection for investors is of the same standard across the Union*

The Prospectus Regulation (PR)

A consultation conducted in 2015 by the EC identified shortcomings in the regime introduced by the PD.

As part of its capital markets union action plan, in June 2017 the EU adopted Regulation (EU) 2017/1129 to improve the prospectus regime. The PR, due to become applicable on 21 July 2019, aims to:

- make it easier and cheaper for smaller companies to access capital*
- introduce simplification and flexibility for all types of issuers, in particular for SMEs, secondary issuances and frequent issuers*
- improve prospectuses for investors by introducing a retail investor-friendly summary of key information, catering for the specific information and protection needs of investors*
- foster supervisory convergence by harmonising scrutiny and approval of prospectuses throughout the Union*

Scope of PR

The PR lays down requirements for the drawing up, approval and distribution of the prospectus to be published (i) when securities are offered to the public; or (ii) admitted to trading on a regulated market situated or operating within a Member State (MS)

In scope: *transferrable securities as defined in point (44) of Article 4(1) of MiFID II, with the exception of money market instruments having a maturity of less than 12 months*

Out of scope

- ❖ **Securities laid down in Article 1(2) of PR** *(units issued by collective investment undertakings other than the closed-end type, non-equity securities issued by a MS or by one of a MS's regional or local authorities, etc.)*
- ❖ **Offers below EUR 1 000 000** *(total consideration in the Union) calculated over a period of 12 months*
- ❖ **Optional exemption** *at the discretion of MS for offers below EUR 8 000 000 (total consideration in the Union) calculated over a period of 12 months*

Exemptions from the prospectus requirement

- *The PR sets out exemptions from the obligation to publish a prospectus in case of an **offer of securities to the public** (Art. 1(4) of PR)*
 - *For example: offers limited to qualified investors, offers addressed to less than 150 non-qualified investors per MS, offers of securities with a minimum denomination of EUR 100 000, offers addressed to investors that acquire securities for at least EUR 100 000 per investor, for each separate offer*
- *The PR sets out several exemptions from the obligation to publish a prospectus in case of an **admission to trading on a regulated market** (Art. 1(5) of PR)*
 - *For example: 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*
- *Exemptions can be combined for offer of securities to the public and/or an admission to trading on a regulated market, where conditions are fulfilled at the same time*

Changes to scope compared to PD

- ***Voluntary prospectus:*** for all 'out of scope' situations and availability of EU passport clarified
- Provisions on the "**retail cascade**": unchanged compared to PD
- ***Employee share schemes:*** the requirement for an equivalence decision of third country markets is removed and all employers, independently of whether they are established in or outside the EU, listed on a regulated market or not, are now out of scope
 - ❖ Ensures equal access to employee-share schemes for all directors and employees in the EU
 - ❖ A document is still required containing information on the number and nature of the securities and the reasons for and details of the offer.
- ***Take overs by means of exchange offers, mergers and divisions:*** exempted, provided that a document is available containing information describing the transaction and its impact on the issuer
 - ❖ PD requirement for a document regarded by the NCA as 'equivalent to a prospectus' is abandoned.
- ***Exemption for listed private placements:*** no EU-prospectus for the mere admission to trading on a regulated market subject to dilution threshold of 20% (vs. 10% currently)
 - ❖ Extension from shares to all 'fungible securities'

Disclosure test for the prospectus

- *A prospectus shall contain the **necessary information** which is material to an investor for making an informed assessment of:*
 - (a) the assets and liabilities, profit and losses, financial position, and prospects of the issuer and of any guarantor*
 - (b) the rights attaching to the securities*
 - (c) the reasons for the issuance and its impact on the issuer*
- *That information may vary depending on the nature of the issuer, the type of securities and the circumstances of the issuer*
- *The information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible form*
- *The prospectus may be drawn up as a single document or as separate documents (registration document, securities note and summary)*
- *A simplified disclosure test under Art. 14(2) of PR for the simplified disclosure regime for secondary issuances*

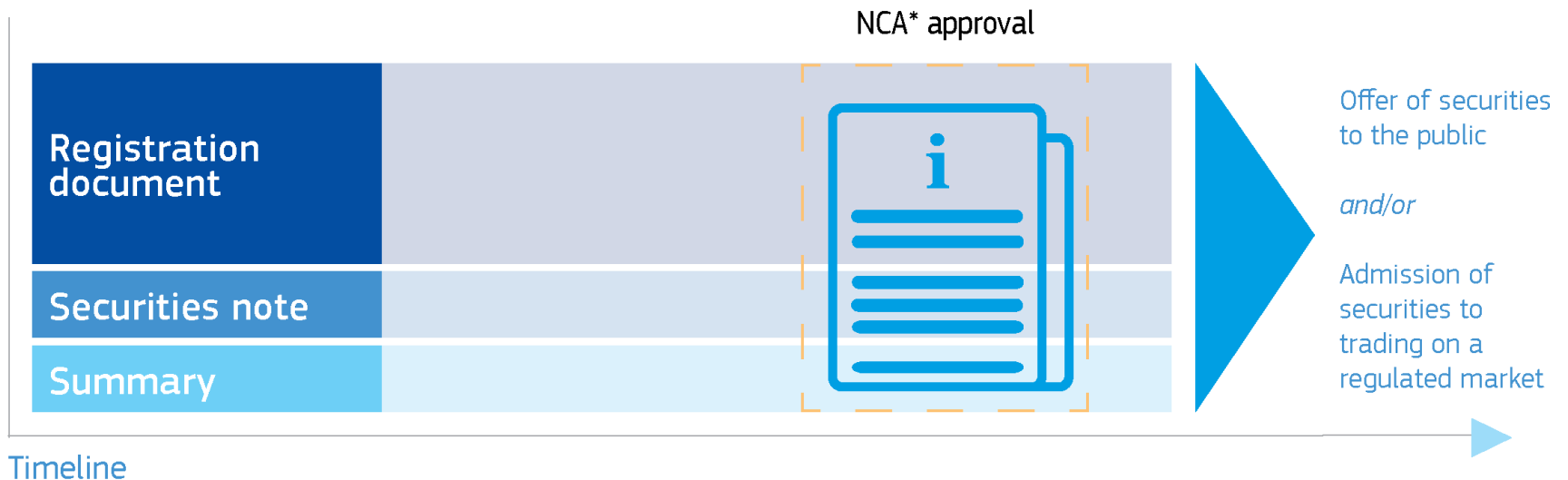
Prospectus summary

- *The summary provides the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered or admitted to trading on a regulated market*
- *Maximum length of **7 pages** (characters of readable size must be used)*
 - ❖ *Relaxation in case the summary covers several securities differing only in some very limited details*
- *Liability attaches to the summary only if it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus*
- *Apart from warnings, **three main sections** covering key information on (i) the issuer, (ii) the security and (iii) the offer/admission respectively*
 - ❖ *The PR defines general headings and indications on their content*
 - ❖ *For securities under the scope of PRIIPS, the issuer may substitute the "security" section with the content of the KID*
- *No incorporation of information by reference into the summary in order to avoid that the summary becomes a collection of hyperlinks and cross-references*

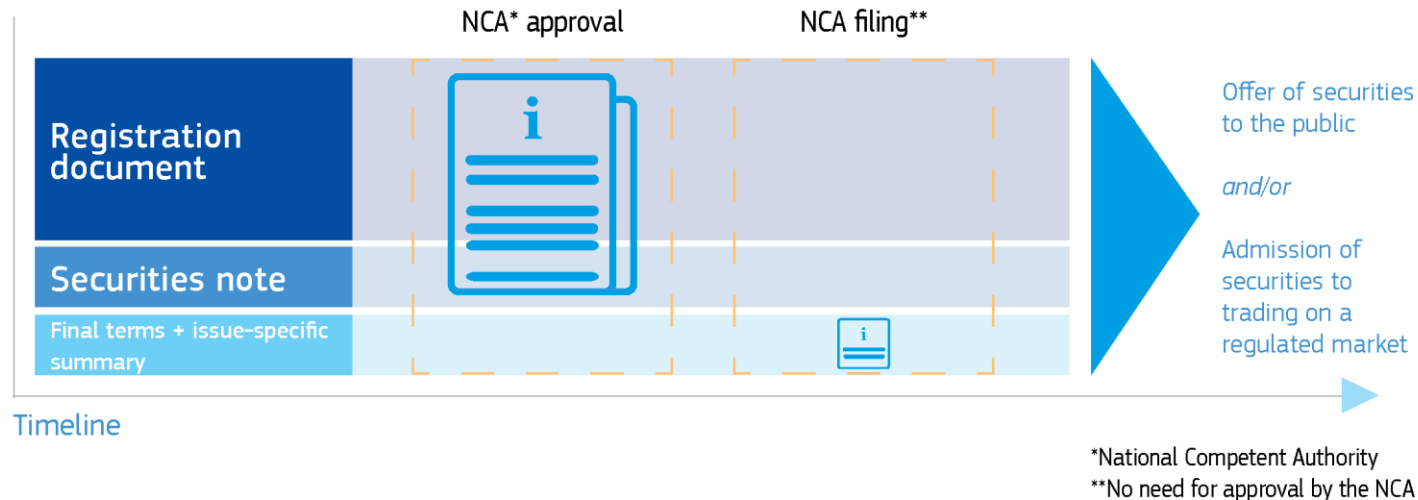
The constituent parts of a prospectus

STAND-ALONE PROSPECTUS

The 3 parts of the prospectus in one document approved at the same moment

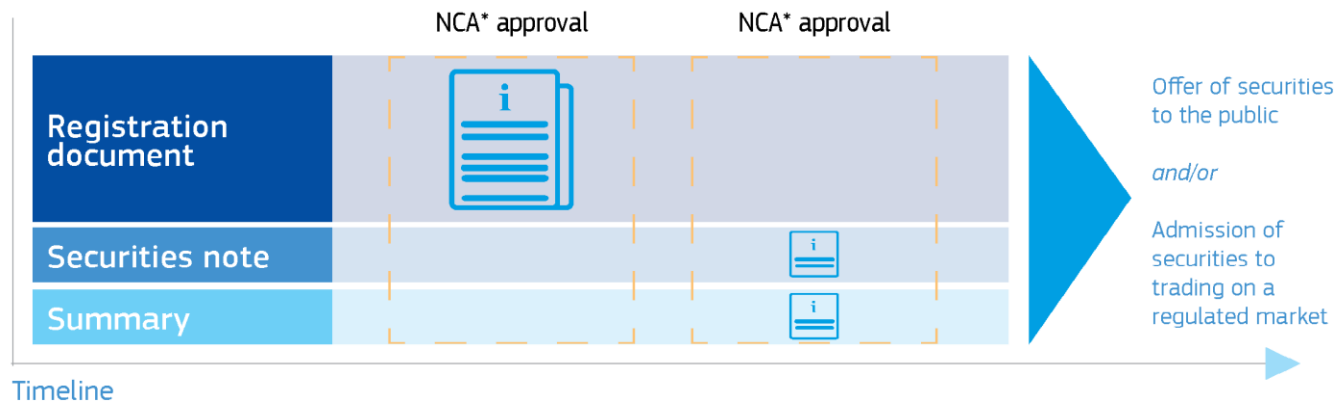


Base prospectus



- **Base prospectuses** for non-equity securities and consisting of several documents are allowed. The registration document of a base prospectus may also take the form of a universal registration document
- **Only the "issue-specific" summary is required** to be produced and **annexed to the final terms** when those are filed
- **Often used for "straddling offers"**, i.e. cases where an offer starts under one base prospectus and continues unchanged under a new, succeeding base prospectus

Tripartite prospectus and validity of a prospectus



- **Supplementing a registration document:** same method and standard applies as for regular supplements, **in such a case no withdrawal rights exist**, because no offer has yet been made
- **The validity of a prospectus is 12 months** after its approval for offers to the public or admissions to trading on a regulated market and that **in case of a tripartite prospectus validity begins upon approval of the securities note**

Universal registration document (URD)

- An **optional** "shelf registration" mechanism for "**frequent issuers**" admitted to trading on regulated markets or MTFs. URD to serve as a **consolidated** and **well-structured source of reference** on the issuer
- Provides **flexibility to frequent issuers** and enable them to quickly react to market windows
 - ❖ Issuer keeps the information in its URD up-to-date and only needs to add a securities note and a summary when market conditions become favourable and a prospectus is required
- **"Two in one" approach:** under certain conditions, frequent issuers admitted to trading on a regulated market may fulfil their ongoing disclosure obligation under the Transparency Directive by integrating their annual and half-yearly financial reports into the URD.
- Prior NCA approval of the URD for the **first two consecutive years**, then **post-filing review** at the option of the NCA, provided the URD is filed every year
- **Fast-track approval:** NCAs to scrutinise the remaining documents (securities note and summary) within **5 working days**, instead of 10, when the frequent issuer has an up-to-date URD "on the shelf"

Simplified prospectus for secondary issuances

- *The secondary issuance alleviated prospectus takes into account the information **already disclosed** by the issuer (e.g. under the **Transparency Directive** and **the Market Abuse Regulation**)*
- *The new alleviated prospectus will be optional and available **on regulated markets** and **SME growth markets**, both for an offer to the public and an admission to trading, under three scenarios:*
 - ❖ *issuance of **fungible** securities ("**more of the same**")*
 - ❖ *issuance of debt securities by equity issuers*
 - ❖ *offer to the public of securities by an existing security-holder.*

*In all 3 cases, the securities must have been admitted to trading for **at least 18 months**.*

The EU Growth Prospectus

- *A specific prospectus for SMEs and mid caps (issuers with market capitalization not exceeding EUR 500 000 000) to replace the "proportionate disclosure regime" introduced by Directive 2010/73/EU which has not achieved its objective*
- *The new alleviated EU Growth prospectus will be:*
 - ❖ ***optional***
 - ❖ *available for listed and unlisted SMEs, SMEs traded on MTFs, SMEs and mid caps traded on an SME Growth Markets. Not available for issuers whose securities are admitted or to be admitted to trading on a regulated market*
 - ❖ *focused on information that is **material and relevant** for companies of such size*
 - ❖ *available for offers up to EUR 20 000 000 for unlisted issuers with up to maximum 499 employees*
- *Objectives of the new alleviated EU Growth prospectus:*
 - *be significantly lighter than the full prospectus in terms of administrative burdens and costs for issuers*
 - *facilitate access to capital markets for SMEs while ensuring investor confidence*
 - *set out alleviations for offers of both equity and non-equity securities*

Risk factors

- *Policy objective: curb the tendency of issuers overloading their prospectus with generic risk factors which obscure the more specific risks that investors should be aware of, and only serve to protect the issuer or its advisors from liability*
- *A prospectus may only contain risk factors which are (i) **material**, (ii) **specific** to the issuer and its securities and (iii) **corroborated** by the content of the prospectus*
- *Requirement for the issuer to **allocate** risk factors **across a limited number of categories** based on their nature*
- *ESMA required to develop **guidelines** on the allocation of risk factors and to help NCAs assess materiality and specificity of risk factors*
- *The overall number of risk factors (relating to the issuer, the securities and the guarantor) disclosed in the prospectus summary **shall not exceed 15***

Incorporation by reference

- Information may be **incorporated by reference** in a prospectus provided
 - ❖ It has been previously or simultaneously **published electronically**
 - ❖ It is drawn up in a **language fulfilling the language requirements** of Article 27 of PR
 - ❖ It is contained in one of the documents listed in Article 19(1) of PR

Examples of documents that can be incorporated by reference

- annual and interim financial information
- audit reports and financial statements
- management reports as defined in Article 19 of Directive 2013/34/EU;
- corporate governance statements as defined in Article 20 of Directive 2013/34/EU;
- memorandum and articles of association

Scrutiny and approval of the prospectus

- *The PR puts the three "C"s necessary for the approval of the prospectus **on an equal footing: completeness, comprehensibility and consistency***
- *NCA's will provide on their **websites guidance and contact points on the scrutiny and approval process** in order to facilitate efficient and timely approval of prospectuses*
- *The issuer or the person responsible for drawing up the prospectus will be able to **directly communicate and interact with the staff of the NCA***
- ***The level of fees charged by the NCA** of the home Member State for the approval of prospectuses etc **will be disclosed to the public at least on the website of the NCA***
- ***ESMA peer review of the scrutiny, approval and notification procedures** will also assess the impact of different approaches with regard to scrutiny and approval by NCA's on issuers' ability to raise capital in the European Union*

Publication of the prospectus

- *Removal of two outdated options of PD for publishing an approved prospectus (namely the insertion in a newspaper and the printed prospectus available at the offices of the issuer)*
 - ❖ *Still, the obligation to provide a free paper copy to anyone who requests it remains*
- *The responsibility of publishing the prospectus lies with the issuer, the offeror or the person asking for admission to trading*
- *The prospectus shall be deemed available to the public when published **in electronic form** on the website of:*
 - ❖ *either the issuer, the offeror or the person asking for admission (or, if applicable, the financial intermediaries placing or selling the securities)*
 - ❖ *or the regulated market where the admission to trading is sought, or of the operator of the multilateral trading facility*
- *A **dedicated section of the website** shall contain: the prospectus, its supplements and/or final terms and the documents containing information incorporated by reference in the prospectus (or hyperlinks thereto)*
- *ESMA will transform its prospectus register into an **online storage mechanism** with a search tool that EU investors may use for free*

Advertisements - supplements

- **Advertisements**
 - ❖ Principles of **fairness, accuracy and consistency** of advertisements with the content of the prospectus
 - ❖ NCA of the **MS where advertisements are disseminated** has the power to exercise control over the compliance of advertising activity
- **Supplement** to the prospectus must be made available **without undue delay** following a significant new factor, material mistake or inaccuracy. Delay for approval: **5 working days**
- Time-limits within which (i) an issuer must publish a supplement to the prospectus and (ii) investors have a right to withdraw their acceptance of the offer following the publication of a supplement:
 - ❖ the obligation to supplement a prospectus applies until the final closing of the offer period **or** the time when trading of such securities on a regulated market begins, **whichever occurs later**
 - ❖ the right to withdraw an acceptance applies 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 **or** the delivery of the securities, **whichever occurs first**.

Language and Passport regime

- *Language regime under Art. 27 is unchanged compared to PD*
- *The prospectus approved by the home Member State and any supplements thereto shall be valid for an offer to the public or the admission to trading in any number of host MS (subject to notification to ESMA and each host MS)*
- *Competent authorities of host MS shall not undertake any approval or administrative procedures relating to prospectuses and supplements approved by the competent authorities of other MS, and relating to final terms*
- ***No fee** can be charged by NCAs for the notification, or receipt of notification, of prospectuses and supplements thereto, or any related supervisory activity, whether in the home MS or in the host MS*

Third country regime

- ***Case 1: a third country issuer draws up an EU prospectus in accordance with PR:***
 - ❖ *the issuer shall obtain approval of its prospectus from the competent authority of the home MS*
 - ❖ *the approved prospectus entails all the rights and obligations provided for a prospectus under PR*

- ***Case 2: a third country issuer draws up a prospectus in accordance with a third country legislation:***
 - ❖ *the NCA of the home Member State may approve it if the information requirements imposed by that third country legislation are **equivalent** to the requirements under PR*
 - ❖ *the EC may take an implementing decision stating that the information requirements imposed by the national law of a third country are equivalent to the requirements under PR*

- *Cooperation arrangements between NCAs and the supervisory authorities of third countries: optional under case 1 ("where deemed necessary"), mandatory under case 2*

New powers of competent authorities compared to PD

- ***Supervisory and investigatory powers of NCAs*** under the PD have been kept **unchanged**, with only two additional powers enabling NCAs:
 - ❖ ***to suspend the scrutiny of a prospectus*** submitted for approval **or suspend an offer** to the public or admission to trading where the **NCA is making use of** the power to impose a prohibition or restriction pursuant to Article 42 of MiFIR (**MiFIR product intervention powers**), until such prohibition or restriction has ceased
 - ❖ ***to refuse approval of any prospectus*** drawn up by a certain issuer, offeror or person asking for admission to trading **for a maximum period of 5 years**, where that issuer, offeror or person asking for admission to trading has **repeatedly and severely infringed** upon the provisions of PR
- *Only the publishing of approved prospectuses on the Internet may be delegated by NCAs to another entity*

Sanctions and measures, and whistleblower protection

- ***Minimum ceilings for monetary fines:***
 - ❖ *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*
 - ❖ *in the case of a **legal person**, maximum administrative pecuniary sanctions of **at least EUR 5 000 000, or 3% of the total annual turnover** of that legal person according to the last available financial statements approved by the management body*
 - ❖ *in the case of a **natural person**, maximum administrative pecuniary sanctions of **at least EUR 700 000***
- *Member States may provide for additional sanctions or measures and for higher levels of administrative fines than those provided*
- *Member States may decide not to lay down rules for administrative sanctions where the infringements are already subject to criminal sanctions in their national law*
- ***Protection of whistleblowers:** NCAs will establish effective mechanisms to encourage and enable reporting of actual or potential infringements of the Prospectus Regulation, Member States can grant financial incentives if they want*

Implementing measures under PR

- ***Delegated Act on the format, content, scrutiny and approval of the prospectus:*** adopted on 14 March 2019 (under scrutiny of co-legislators)
- ***Regulatory Technical Standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal:*** adopted on 14 March 2019 (under scrutiny of co-legislators)
- ***Delegated Act on minimum information documents for prospectus exemption in case of take overs, mergers or divisions:*** ongoing
- ***Delegated Act on general equivalence criteria:*** ongoing

Thank you for your attention

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