

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are offered to the public or admitted to trading and amending Directive 2001/34/EC (Text with EEA relevance) (repealed)

CHAPTER II

DRAWING UP OF THE PROSPECTUS

Article 5

The prospectus

1 Without prejudice to Article 8(2), the prospectus shall contain all 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. This information shall be presented in an easily analysable and comprehensible form.

[^{F12} The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary that, in a concise manner and in non-technical language, provides key information in the language in which the prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, in conjunction with the prospectus, appropriate information about essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities.

The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary shall also contain a warning that:]

- a it 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; and
- d civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

[^{F1}Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100 000, there shall be no requirement to provide a summary, save where a Member State so requires in accordance with Article 19(4).]

[^{F2}In order to ensure uniform conditions of application of this Directive and of the delegated acts adopted by the Commission in accordance with paragraph 5, ESMA shall

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develop draft implementing technical standards in order to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 5 in relation to a uniform template for the presentation of the summary and to allow investors to compare the security concerned with other relevant products.

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.]

[^{F13} 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 separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. 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.]

4 For the following types of securities, the prospectus can, 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:

- a non-equity securities, including warrants in any form, issued under an offering programme;
- b non-equity securities issued in a continuous or repeated manner by credit institutions,
 - (i) where the sums deriving from the issue of the said securities, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date;
 - (ii) where, in the event of the insolvency of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the provisions of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions⁽¹⁾.

The information given in the base prospectus shall be supplemented, if necessary, in accordance with Article 16, 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.

[^{F1}Where the final terms of the offer are neither included in the base prospectus nor in a supplement, the final terms shall be made available to investors, filed with the competent authority of the home Member State and communicated, by the issuer, to the competent authority of the host Member State(s) when each public offer is made as soon as practicable and, if possible, in advance of the beginning of the public offer or admission to trading. The final terms shall contain only information that relates to the securities note and shall not be used to supplement the base prospectus. Article 8(1)(a) shall apply in those cases.]

[^{F15} In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures relating to the following:

- a the format of the prospectus or base prospectus, the summary, final terms and supplements; and
- b the detailed content and specific form of the key information to be included in the summary.

Those delegated acts shall be adopted by 1 July 2012.]

Textual Amendments

- F1** Substituted by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).
- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 6

Responsibility attaching to the prospectus

1 Member States shall ensure that responsibility for the information given in a prospectus attaches at least 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, as the case may be. 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.

[^{F1}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.]

Textual Amendments

- F1** Substituted by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).

Article 7

Minimum information

[^{F1}1 Detailed delegated acts regarding the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents, shall be adopted by the Commission in accordance with Article 24a and subject to the conditions of Articles 24b and 24c.]

2 In particular, for the elaboration of the various models of prospectuses, 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;
- [^{F1}b the various types and characteristics of offers and admissions to trading on a regulated market of non-equity securities. The information required in a prospectus shall be appropriate from the point of view of the investors concerned for non-equity securities having a denomination per unit of at least EUR 100 000;]
- c the format used and the information required in prospectuses relating to non-equity securities, including warrants in any form, issued under an offering programme;
- d the format used and the information required in prospectuses relating to non-equity securities, in so far as these securities are not subordinated, convertible, exchangeable, subject to subscription or acquisition rights or linked to derivative instruments, issued in a continuous or repeated manner by entities authorised or regulated to operate in the financial markets within the European Economic Area;
- [^{F1}e the various activities and size of the issuer, in particular credit institutions issuing non-equity securities referred to in Article 1(2)(j), companies with reduced market capitalisation and SMEs. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record;]
- f if applicable, the public nature of the issuer[^{F1};
- [^{F3}g a proportionate disclosure regime shall apply to offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC, which are subject to appropriate ongoing disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights.]

[^{F1}3 The delegated acts referred to in paragraph 1 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 indicative Annexes to this Directive.]

[^{F2}4 ESMA may develop draft implementing technical standards in order to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 1.

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.]

Textual Amendments

- F1** Substituted by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).
- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F3** Inserted by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).

Article 8

Omission of information

- 1 Member States shall ensure that where the final offer price and 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 will be determined or, in the case of price, the maximum price, are 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 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 the arrangements provided for in Article 14(2).

- 2 The competent authority of the home Member State may authorise the omission from the prospectus of certain information provided for in this Directive or in the [F1delegated acts] referred to in Article 7(1), if it considers that:
- a disclosure of such information would be contrary to the public interest; or
 - b disclosure of such information would be seriously detrimental to the issuer, provided that the omission 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; or
 - c such information is of minor importance only for a specific offer or admission to trading on a regulated market and is not such as will influence the assessment of the financial position and prospects of the issuer, offeror or guarantor, if any.

- 3 Without prejudice to the adequate information of investors, where, exceptionally, certain information required by [F1the delegated acts] referred to in Article 7(1) to be included in a prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer

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or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such information, this requirement shall not apply.

[^{F3a} 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 1(3), shall be entitled to omit information about such guarantor.]

[^{F14} In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures concerning paragraph 2.]

[^{F25} ESMA may develop draft implementing technical standards to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 4.

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.]

Textual Amendments

- F1** Substituted by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).
- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F3** Inserted by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).

Article 9

Validity of a prospectus, base prospectus and registration document

[^{F11} A prospectus shall be valid for 12 months after its approval for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any supplements required pursuant to Article 16.]

2 In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to 12 months.

3 In the case of non-equity securities referred to in Article 5(4)(b), the prospectus shall be valid until no more of the securities concerned are issued in a continuous or repeated manner.

[^{F14} A registration document, as referred to in Article 5(3), previously filed and approved, shall be valid for a period of up to 12 months. The registration document, updated in accordance with Article 12(2) or Article 16, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus.]

Textual Amendments

- F1** Substituted by [Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market \(Text with EEA relevance\).](#)

^{F4}Article 10

[^{F4}Information]

Textual Amendments

- F4** Deleted by [Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market \(Text with EEA relevance\).](#)

Article 11

Incorporation by reference

[^{F11} Member States shall allow information to be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of the home Member State or filed with it in accordance with this Directive or Directive 2004/109/EC. Such information shall be the most recent available to the issuer. The summary shall not incorporate information by reference.]

2 When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to identify easily specific items of information.

[^{F13} In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures concerning the information to be incorporated by reference.]

Textual Amendments

- F1** Substituted by [Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements](#)

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in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).

Article 12

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 note when securities are offered to the public or admitted to trading on a regulated market.

[^{F12} In this case, the securities note shall provide information that would normally be provided in the registration document, where there has been a material change or recent development which could affect investors' assessments since the latest updated registration document, unless such information is provided in a supplement in accordance with Article 16. The securities and summary notes shall be subject to a separate approval.]

3 Where an issuer has only filed a registration document without approval, the entire documentation, including updated information, shall be subject to approval.

Textual Amendments

- F1** Substituted by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).

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(1) [OJ L 125, 5.5.2001, p. 15.](#)