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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 June 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 4.6.2020 amending and correcting Commission Delegated Regulation (EU) 2019/979 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to 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

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Delegations will find attached document C(2020) 3502 final.

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Encl.: C(2020) 3502 final



Brussels, 4.6.2020  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 4.6.2020**

**amending and correcting Commission Delegated Regulation (EU) 2019/979 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to 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**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

#### **1.1. General background**

The Prospectus Regulation<sup>1</sup> creates a new and harmonised set of rules that (i) helps companies raising money on capital markets to invest and grow; (ii) helps investors to make better and more informed decisions; and (iii) fosters supervisory convergence throughout the Union.

Articles 7(13), 21(12), 21(13), 22(9), 23(7) and 25(7) of the Prospectus Regulation empower the Commission to adopt a delegated act to specify the following details of the new prospectus rules, based on draft regulatory technical standards (RTSs) submitted by the European Securities and Markets Authority (ESMA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1095/2010<sup>2</sup>:

- the minimum content and the format of presentation of the key financial information in the prospectus summary;
- requirements relating to the publication of the prospectus;
- data necessary for the classification of prospectuses (metadata) and practical arrangements to ensure the machine readability of the data;
- content and dissemination of advertisements, and establishment of an efficient cooperation procedure between competent authorities to assess the consistency between the advertisement and the information in the prospectus;
- situations where the publication of a supplement to the prospectus is required;
- technical arrangements necessary for the functioning of the notification portal.

In July 2018, ESMA delivered to the Commission the final report containing draft RTSs under the Prospectus Regulation.

The Commission adopted the RTSs in the form of Commission Delegated Regulation (EU) 2019/979<sup>3</sup> on 14 March 2019.

In order to make some amendments and corrections in respect of certain errors identified in Delegated Regulation (EU) 2019/979, on 6 December 2019 ESMA submitted to the Commission draft RTSs amending and correcting the following parts of that Regulation:

- Article 18;
- Article 21;

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<sup>1</sup> 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 (OJ L 168, 30.6.2017, p. 12).

<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>3</sup> Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to 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, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301 (OJ L 166, 21.6.2019, p. 1).

- Table 3 of Annex I;
- Table 1 of Annex VII.

## 1.2. Objectives of the Delegated Regulation

Under Commission Delegated Regulation (EU) No 382/2014<sup>4</sup>, as well as in ESMA's draft RTSs, issuers of non-equity securities are not required to publish a supplement to the prospectus in case of new annual audited financial statements, a change in control, a new take-over bid, a new significant financial commitment and a change in the working capital statement. During the scrutiny of Commission Delegated Regulation (EU) 2019/979, it emerged that issuers of certain non-equity securities (i.e. debt securities convertible or exchangeable into third party shares) would be unintentionally required to publish a supplement to the prospectus in the above-mentioned situations. Therefore, the objective of this Delegated Regulation is to restore the status quo, which has proven to work well.

Furthermore, one of the fields for classification of securities should be aligned with the corresponding field used in the Financial Instruments Reference Data System (FIRDS), with the aim of maintaining the current treatment of those instruments and aligning prospectus rules with MiFIR<sup>5</sup>.

The objective of this Delegated Regulation is to amend and correct Commission Delegated Regulation (EU) 2019/979.

## 2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Although the standard procedure in Article 10(1) of Regulation (EU) No 1095/2010 requires that ESMA consult stakeholders in relation to its regulatory technical standards, ESMA has decided not to do so on this occasion. The reason why ESMA has not carried out a public consultation in this specific case is that it would have been disproportionate in relation to the scope and impact of the amendments, in particular taking into consideration the urgency of these matters. However, ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

## 3. LEGAL ELEMENTS OF THE DELEGATED ACT

To address the above-mentioned issues, this Delegated Regulation proposes the following amendments and corrections:

- Article 1 of this Delegated Regulation amends Article 18, Annex I and Annex VII of Commission Delegated Regulation (EU) 2019/979;
- Article 2 of this Delegated Regulation corrects Article 21 of Commission Delegated Regulation (EU) 2019/979.

<sup>4</sup> Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus (OJ L 111, 15.4.2014, p. 36).

<sup>5</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

COMMISSION DELEGATED REGULATION (EU) .../...

of 4.6.2020

**amending and correcting Commission Delegated Regulation (EU) 2019/979 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to 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**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>6</sup>, and in particular Articles 7(13), 21(13) and 23(7) thereof,

Whereas:

- (1) Under Commission Delegated Regulation (EU) 2019/979<sup>7</sup>, issuers of securities convertible or exchangeable into third party shares are currently required, in the situations listed in Article 18 of that Regulation, to publish a supplement to their prospectus. By contrast, Commission Delegated Regulation (EU) No 382/2014<sup>8</sup>, which has been replaced by the Delegated Regulation (EU) 2019/979, did not require the publication of a supplement by such issuers in those situations. As those rules have proven to work well and have not affected the level of investor protection, all references to issuers of securities convertible or exchangeable into third party shares should be removed from the list in Article 18(1) of Delegated Regulation (EU) 2019/979.
- (2) To provide investors with a comparative overview of the evolution of the cash flow statement of a non-financial entity issuing equity securities, the column relating to the cash flow information for the two years prior to the year of the prospectus should be inserted in table 3 of Annex I to Delegated Regulation (EU) 2019/979.
- (3) Field 26 of Annex VII to Delegated Regulation (EU) 2019/979, which relates to depository receipts, refers to ‘DRCP’. That field should however refer to ‘DPRS’, which is the reference used in the Financial Instruments Reference Data System

<sup>6</sup> OJ L 168, 30.6.2017, p. 12.

<sup>7</sup> Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to 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, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301 (OJ L 166, 21.6.2019, p. 1).

<sup>8</sup> Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus (OJ L 111, 15.4.2014, p. 36).

(FIRDS) operated by the European Securities and Markets Authority (ESMA) in accordance with Regulation (EU) No 600/2014<sup>9</sup>.

- (4) Delegated Regulation (EU) 2019/979 should therefore be amended accordingly.
- (5) In the Czech, English, Portuguese and Slovak language versions of Article 21 of Delegated Regulation (EU) 2019/979, a word has been omitted, making that provision difficult to understand. That provision should be corrected accordingly.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (7) In the interest of legal certainty, summaries of prospectuses approved between 21 July 2019 and [PO please insert the date before the date of entry into force of this amending act in the OJ] should continue to be valid until the end of the validity of those prospectuses.
- (8) Regulation (EU) 2017/1129 and Delegated Regulation (EU) 2019/979 entered into application on 21 July 2019. For reasons of legal certainty and to ensure the correct functioning of the prospectus notification portal, Article 1, points (1), (3), and (4), and Article 2 of this Delegated Regulation should have the same date of application as Regulation (EU) 2017/1129 and Delegated Regulation (EU) 2019/979.
- (9) Given the urgency of this matter and the limited scope and impact of the draft regulatory standards on which this Regulation is based, ESMA has neither conducted open public consultations, nor analysed the potential related costs and benefits. ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>10</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Amendments to Delegated Regulation (EU) 2019/979**

Delegated Regulation (EU) 2019/979 is amended as follows:

- (1) Article 18(1) is amended as follows:
  - (a) in point (a), points (i) and (ii) are replaced by the following:
    - (i) an issuer where a prospectus relates to shares or other transferrable securities equivalent to shares;
    - (ii) an issuer of the underlying shares or other transferable securities equivalent to shares in case of securities referred to in Articles 19(2) or 20(2) of Delegated Regulation (EU) 2019/980<sup>9</sup>;
  - (b) in point (d), points (i) and (ii) are replaced by the following:

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<sup>9</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>10</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- ‘(i) an issuer where a prospectus relates to shares or other transferrable securities equivalent to shares;
  - (ii) an issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to securities referred to in Articles 19(2) or 20(2) of Delegated Regulation (EU) 2019/980;’;
- (c) point (e) is replaced by the following:
- ‘(e) third parties make a new takeover bid as defined in Article 2(1)(a) of Directive 2004/25/EC of the European Parliament and of the Council\* or the result of any takeover bid becomes available in respect of any of the following:
    - (i) the equity of the issuer where a prospectus relates to shares or other transferrable securities equivalent to shares;
    - (ii) the equity of the issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to the securities referred to in Articles 19(2) or 20(2) of Delegated Regulation (EU) 2019/980;
    - (iii) the equity of the issuer of the underlying shares of depository receipts where a prospectus is drawn up in accordance with Articles 6 and 14 of Delegated Regulation 2019/980;

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\* Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 12).’;

- (d) in point (f), points (i) and (ii) are replaced by the following:
- ‘(i) shares or other transferrable securities equivalent to shares;
  - (ii) securities as referred to in Article 19(2) of Delegated Regulation (EU) 2019/980;’;
- (e) point (h) is replaced by the following:
- ‘(h) in the case of a prospectus relating to shares or other transferrable securities equivalent to shares or to the securities referred to in Articles 19(2) or 20(2) of Delegated Regulation (EU) 2019/980, a new significant financial commitment is likely to give rise to a significant gross change as defined in Article 1, point (e), of that Delegated Regulation;’;

(2) the following Article 22a is inserted:

*‘Article 22a*

**Summaries of prospectuses approved between 21 July 2019 and  
[Publications office, please insert the date before the date of entry into force of  
this amending act in the OJ] for non-financial entities issuing equity  
securities**

Summaries of prospectuses that contain information as referred to in Table 3 of Annex I and that have been approved between 21 July 2019 and [Publications office, please insert the date before the date of entry into force of this amending act in the OJ] shall continue to be valid until the end of the validity of those prospectuses.’;

- (3) Annex I is amended in accordance with Annex 1 to this Regulation;
- (4) Annex VII is amended in accordance with Annex 2 to this Regulation.

*Article 2*

**Corrections to Delegated Regulation (EU) 2019/979**

Article 21 of Delegated Regulation (EU) 2019/979 is replaced by the following:

*‘Article 21*

**Download of documents and accompanying data**

ESMA shall ensure that the notification portal makes any uploaded documents and accompanying data available to the relevant competent authorities.’

*Article 3*

**Entry into force and application**

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

However, Article 1, point (1), (3) and (4) and Article 2 shall apply from 21 July 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4.6.2020

*For the Commission*

*The President*

*Ursula VON DER LEYEN*