



Brussels, 14.3.2019
C(2019) 2022 final

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

of 14.3.2019

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. General background

Regulation (EU) 2017/1129 of the European Parliament and of the Council¹ (the Prospectus Regulation) is due to become applicable on 21 July 2019. It creates a new and harmonised set of rules that helps companies raising money on capital markets to invest and grow and at the same time helps investors make better and more informed decisions. For its implementation, it requires the European Securities and Markets Authority (ESMA) to develop regulatory technical standards (RTSs) to lay down some of the technical details of the new rules. The Commission is empowered to adopt such draft RTSs in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council².

The reform of prospectus requirements is an important component of the action plan for building a Capital Markets Union (CMU action plan). These draft RTSs provide some technical details essential to understand the prospectus such as key financial information in the summary, publication of the prospectus, data for classification of prospectuses, supplements to the prospectus, advertisements, and notification portal. They contribute to the completion of the action plan, as set out in the communication from the Commission on the mid-term review of the Capital Markets Union³.

1.2. Objectives

In accordance with the Prospectus Regulation, the RTSs aim to achieve the following objectives:

- set out a brief set of key financial information taking into account the various categories of issuers and types of securities that can be accommodated within the seven-page limit of the prospectus summary;
- specify requirements relating to the publication of prospectuses by (i) carrying forward existing Level 2 provisions which have not already been incorporated in the Prospectus Regulation or become obsolete; (ii) removing the ban on hyperlinks in prospectuses;
- set out a list of data that will allow ESMA to (i) provide a centralised storage mechanism of prospectuses allowing access free to charge and appropriate search facilities for the public; (ii) draw up the annual report containing statistics on prospectuses and an analysis of trends that will facilitate the future evaluation of prospectus rules;
- strengthen the protection of investors about advertisements and allow competent authorities to supervise the advertising activity and cooperate in a more efficient way;

¹ 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. 12-82).

² 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. 84-119).

³ COM(2017)292 final.

- specify situations that require the publication of a supplement to the prospectus by adapting recent RTSs addressing the same issue to the new prospectus regime and adding measures to cover the new elements set out in the Prospectus Regulation;
- specify the technical arrangements to expand ESMA's IT system to cover the whole set of documents that will be passported through the notification portal.

1.3. Legal background

The RTSs, which are based on the empowerments set out in Articles 7(13), 21(12), 21(13), 22(9), 23(7) and 25(7) of the Prospectus Regulation, are combined into a single Commission Delegated Regulation, this choice being based on substantial links amongst the provisions laid down in the RTSs.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 10(1) of Regulation (EU) No 1095/2010, before submitting the RTSs to the Commission, ESMA conducted an open public consultation from 15 December 2017 to 9 March 2018. The Securities and Markets Stakeholders Group (SMSG) and 29 different entities responded to the public consultation. ESMA also performed a cost-benefit analysis, which was included in the final report together with the outcome of the public consultation and ESMA's responses to stakeholders. ESMA sent the final report on RTSs to the Commission in July 2018, in accordance with the deadline set out in the Prospectus Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation aims to specify some technical details of the new prospectus regime that do not imply strategic decisions or policy choices. They complement the policy framework laid down in Regulation (EU) 2017/1129 with more details and clarifications for those elements covered by the empowerments.

- Chapter I lays down the minimum content and the format of presentation of the key financial information in the prospectus summary.
- Chapter II introduces some requirements relating to the publication of the prospectus.
- Chapter III specifies the data necessary for the classification of prospectuses and practical arrangements to ensure the machine readability of such data.
- Chapter IV further specifies some provisions of Regulation (EU) 2017/1129 about advertisements and their dissemination. It establishes as well an efficient cooperation procedure between competent authorities to assess the consistency between the advertisement and the information in the prospectus.
- Chapter V lays down the situations where the publication of a supplement to the prospectus is required.
- Chapter VI sets out the technical arrangements necessary for the functioning of the notification portal.

- Chapter VII provides for the repeal of the existing Commission Delegated Regulation (EU) No 382/2014⁴ and Commission Delegated Regulation (EU) 2016/301⁵ and the entry into application of this Delegated Regulation on 21 July 2019, which will coincide with the entry into application of most provisions of the Prospectus Regulation⁶.

⁴ 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. 36–39).

⁵ Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004 (OJ L 58, 4.3.2016, p. 13–20).

⁶ Pursuant to Article 49(2) of Regulation (EU) 2017/1129, Regulation (EU) 2017/1129 shall apply from 21 July 2019, except for Article 1(3) and Article 3(2) which shall apply from 21 July 2018 and points (a), (b) and (c) of the first subparagraph of Article 1(5) and the second subparagraph of Article 1(5) which shall apply from 20 July 2017.

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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

(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/EC⁷, and in particular Articles 7(13), 21(12), 21(13), 22(9), 23(7) and 25(7) thereof,

Whereas:

- (1) The key financial information in the summary of a prospectus should present the key financial figures that provide investors with a succinct overview of the issuer's assets, liabilities and profitability, as well as any other key financial information that is relevant for investors to make a preliminary assessment of the financial performance and financial position of the issuer. In order to ensure that this information is concise and relevant, it is therefore necessary to identify a limited number of disclosures, specify their layout and calibrate the financial information to take account of different types of issuers and securities.
- (2) In order to avoid misleading investors, issuers should be entitled to include specific additional disclosures, including alternative performance measures, where they consider that the required disclosures do not provide a clear picture of their performance and financial position. However, to ensure that investors focus primarily on the figures stemming from financial statements, alternative performance measures should not be given more prominence in the prospectus than the figures extracted from the historical financial information.
- (3) In order to reduce compliance costs and administrative burdens on issuers, the key financial information in the summary of a prospectus, including additional line items and alternative performance measures, should reproduce information disclosed in the body of the prospectus.
- (4) It is appropriate that the key financial information in the summary of a prospectus is adapted to the economic activity of the issuer, its industrial sector, the major line items of its financial statements and the type of securities being issued or offered. However, it is not possible to provide specific templates for all types of issuers.

⁷ OJ L 168, 30.6.2017, p. 12-82.

- (5) To avoid misleading investors and ensure consistency with the information included in the prospectus, where the historical financial information included in the prospectus is restated in case of material errors contained in the financial statements or changes in accounting standards, the key financial information in the summary of a prospectus should reflect that restated historical financial information.
- (6) Where an issuer has a complex financial history, it should, where appropriate, present both its financial information and the financial information relating to another entity or entities within a standalone section in the summary of the prospectus.
- (7) Investors need clarity as regards which information forms part of the prospectus and to whom an offer of securities to the public is addressed. Therefore, with the exception of information incorporated by reference, where the prospectus contains hyperlinks, it should inform investors that the information on the related websites is not part of the prospectus and has not been scrutinised or approved by the competent authority. Furthermore, measures should be established to prevent websites used for the publication of the prospectus targeting residents in Member States or third countries where the offer of securities to the public does not take place, such as by including on the website a statement identifying the addressees of the offer.
- (8) Reporting and publication of data in an electronic, machine-readable format facilitates the efficient use and exchange of that data. The list of data fields to be reported to the European Securities and Markets Authority (ESMA) for the classification of prospectuses should therefore be specified and the use of XML format templates should be required to ensure that such fields are machine-readable. The list of data should be sufficiently comprehensive to ensure that ESMA meets its mandate under Article 47 of Regulation (EU) 2017/1129 to publish a yearly report containing statistics on the prospectuses approved and notified in the Union, as well as an analysis of trends taking into account the type of issuers and the type of issuances.
- (9) To avoid misleading retail investors during the process of marketing any security proposed for public offers or admission to trading on a regulated market, an advertisement should not purport to be the principal information document. Accordingly and in order to avoid confusion with the prospectus, advertisements should not be inappropriately long.
- (10) Advertisements relating to an offer of securities to the public or an admission to trading on a regulated market can become inaccurate or misleading where a significant new factor, material mistake or material inaccuracy relating to the information in the corresponding prospectus arises. Requirements should be established to ensure that advertisements are amended without undue delay where they become inaccurate or misleading due to such a new factor, material mistake or material inaccuracy.
- (11) To allow investors to take informed investment decisions, the information contained in advertisements should not present an unbalanced view for example by presenting negative aspects of such information with less prominence than the positive aspects.
- (12) As alternative performance measures can disproportionately influence investment decisions, information about an offer to the public or an admission to trading on a regulated market circulated outside the prospectus should not be permitted to contain such measures, unless they are included in the body of the prospectus.
- (13) Competent authorities in host Member States do not scrutinise prospectuses. Therefore, to ensure that investors in host Member States are adequately protected, when the competent authority of the host Member State seeks the assistance of the

competent authority in the home Member State, it should communicate the information that is relevant for the competent authority in the home Member State to assess the consistency of the advertisement with the content of the prospectus. Such communication should occur within the appropriate timeframe to ensure that investors in host Member States are not penalised by the fact that host competent authorities do not scrutinise prospectuses and have sufficient time to analyse the underlying public offering. The competent authority in the host Member State should be informed to the degree necessary to exercise control over the compliance of advertising activity in its jurisdiction.

- (14) To ensure a consistent application of Regulation (EU) 2017/1129 and to take account of technical developments on financial markets, it is necessary to specify situations where the publication of supplements to the prospectus is required. It is not possible to identify all situations where a supplement to the prospectus is required as this may depend on the issuer and securities involved. Therefore, it is appropriate to specify the minimum situations where a supplement is required.
- (15) Annual audited financial statements are crucial for investors when making investment decisions. To ensure that investors base their investment decisions on the most recent financial information, it is necessary to require the publication of a supplement incorporating new annual audited financial statements of issuers of equity securities and issuers of underlying shares where depository receipts are published after the approval of the prospectus.
- (16) Given that profit forecasts and profit estimates can influence an investment decision, it is necessary to publish a supplement containing any amendments to implicit or explicit figures constituting profit forecasts or profit estimates or the withdrawal of a profit forecast or profit estimate already included in the prospectus. For the same reason, in case of equity securities and depository receipts, it is also necessary to produce a supplement to the prospectus where a new profit forecast or profit estimate has been published before the end of the offer period or before admission to trading.
- (17) Information concerning the identity of the main shareholders or any controlling entity of the issuer is vital for an informed assessment of the issuer. However, change of control of the issuer is particularly significant where the offer refers to equity securities, which are generally more price sensitive to changes of issuers. Therefore, a supplement should be published where there is a change of control of an issuer of equity securities or an issuer of underlying shares of depository receipts.
- (18) It is essential that potential investors assessing an outstanding offer of equity securities are in a position to compare the terms and conditions of such an offer with the price or exchange terms attached to any public takeover bid announced during the offer period. Moreover, the result of a public takeover bid is significant for the investment decision as investors need to know whether it implies or not a change of control of the issuer. It is therefore necessary to publish a supplement in the case of any new public takeover bid.
- (19) Where the working capital statement is no longer valid, investors are unable to make a fully informed investment decision about the issuer's financial situation. Investors should be in a position to reassess their investment decisions in light of the new information on the issuer's ability to access cash and other available liquid resources to meet its liabilities. In order to do so, a supplement is necessary.

- (20) After the approval of a prospectus, an issuer or offeror may decide to offer the securities in Member States other than those referred to in the prospectus, or to apply for admission to trading of the securities on regulated markets in Member States other than those provided for in the prospectus. Information about such offers and admissions therein is important for the investor's assessment of certain aspects of the issuer's securities and it is therefore appropriate to require a supplement in such cases.
- (21) The financial position or the business of the entity is likely to be affected by a significant financial commitment. Therefore, investors should be entitled to receive additional information on the consequences of that commitment in a supplement to the prospectus.
- (22) An increase of the aggregate nominal amount of an offering programme provides information on issuers' increased financing needs or an increase in demands for the issuers' securities. In such a case, a supplement to the prospectus should be published.
- (23) Relevant competent authorities should receive in a timely manner via the notification portal the prospectus and accompanying data, together with a certificate of approval that states that the prospectus has been drawn up in accordance with Regulation (EU) 2017/1129. ESMA should ensure that the notification portal preserves the security and integrity of the information exchanged between competent authorities. Competent authorities remain responsible for the submission of such information. In order to enable a smoothly and timely operation of the notification portal, it is necessary to specify the accompanying data that is to be uploaded to that notification portal.
- (24) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁸, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation. However, ESMA has not consulted that stakeholder group on the draft regulatory technical standards on the technical arrangements for the notification portal as those arrangements only affect ESMA and national competent authorities.
- (25) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (26) Since this Regulation replaces Commission Delegated Regulation (EU) No 382/2014⁹ and Commission Delegated Regulation (EU) 2016/301¹⁰, those Delegated Regulations become obsolete and should therefore be repealed.
- (27) As this Regulation supplements provisions of Regulation (EU) 2017/1129, its application should be deferred until the date of application of Regulation (EU) 2017/1129,

⁸ 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. 84-119).

⁹ 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. 36-39).

¹⁰ Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004 (OJ L 58, 4.3.2016, p. 13-20).

HAS ADOPTED THIS REGULATION:

CHAPTER I

KEY FINANCIAL INFORMATION IN THE PROSPECTUS SUMMARY

SECTION 1

CONTENT OF THE KEY FINANCIAL INFORMATION IN THE PROSPECTUS SUMMARY

Article 1

Minimum content of the key financial information in the summary of a prospectus

1. The key financial information in the summary of a prospectus shall be made up of the financial information laid down in the Annexes to [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004]¹¹.
2. Where any information referred to in the relevant tables set out in Annexes I to VI to this Regulation is not included in the financial statements of the issuer, the issuer shall disclose a corresponding item from its financial statements instead.
3. The issuer may include additional line items or alternative performance measures in the summary of a prospectus where these are key financial information on the issuer or on the securities being offered or admitted to trading on a regulated market. For the purposes of the first sentence, alternative performance measures shall be financial measures of historical or future financial performance, financial position or cash flows, other than financial measures defined in the applicable financial reporting framework.
4. Issuers who do not fall under any of the types of issuers identified in Articles 2 to 8 shall present the key financial information referred to in the tables that they consider correspond most closely to the type of securities issued.
5. The key financial information shall be presented for the number of years required by [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004] for the type of issuance and the type of securities being issued.

¹¹ C(2019) 2020

Article 2

Key financial information for non-financial entities issuing equity securities

Where the issuer is a non-financial entity issuing equity securities, the summary of a prospectus shall contain the key financial information referred to in the tables set out in Annex I.

Article 3

Key financial information for non-financial entities issuing non-equity securities

Where the issuer is a non-financial entity issuing non-equity securities, the summary of a prospectus shall contain the key financial information referred to in the tables set out in Annex II.

Article 4

Key financial information for credit institutions

Where the issuer is a credit institution, the summary of a prospectus shall contain the key financial information referred to in the tables set out in Annex III.

Article 5

Key financial information for insurance companies

Where the issuer is an insurance company, the summary of a prospectus shall contain the key financial information referred to in the tables set out in Annex IV.

Article 6

Key financial information for special purpose vehicles issuing asset backed securities

Where the issuer is a special purpose vehicle issuing asset backed securities, the prospectus summary shall contain the key financial information referred to in the tables set out in Annex V.

Article 7

Key financial information for closed end funds

Where the issuer is a closed end fund, the summary of a prospectus shall contain the key financial information referred to in the tables set out in Annex VI.

Article 8

Key financial information for guarantors

Where a guarantee is attached to the securities, the key financial information on the guarantor shall be presented as if the guarantor were the issuer of the same type of security that is the subject of the guarantee using the tables set out in Annexes I to VI. Where the guarantee is given for asset-backed securities, the key financial information on the guarantor shall be presented as if the guarantor were the issuer of the underlying securities.

SECTION 2

FORMAT OF THE KEY FINANCIAL INFORMATION IN THE PROSPECTUS SUMMARY

Article 9

Format of the key financial information in the summary of a prospectus

1. The key financial information shall be presented in tabular format in accordance with the tables of Annexes I to VI to this Regulation.
2. Any historical financial information in the summary of a prospectus, which is not extracted from the financial statements, shall be identified as such.
3. Where pro forma information to be included in the summary of a prospectus affects the key financial information referred to in the relevant table of Annexes I to VI to this Regulation, that pro forma information shall be presented in additional columns in the tables set out in Annexes I to VI to this Regulation or as a separate table. Where necessary for its understanding, the pro forma information shall be accompanied by a brief explanation of the figures presented in the additional columns or separate table.

Where in the case of a significant gross change only qualitative information is included in the prospectus, a statement to that effect shall be included in the summary of that prospectus.

4. Where the issuer has a complex financial history as set out in Article 18 of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004], the key financial information in the summary of the prospectus shall be presented in a manner consistent with the prospectus and using the relevant tables in Annexes I to VI to this Regulation.

CHAPTER II PUBLICATION OF THE PROSPECTUS

Article 10

Publication of the prospectus

1. Where a prospectus, whether a single document or consisting of separate documents, contains hyperlinks to websites, it shall include a statement to the effect that the information on the websites does not form part of the prospectus and has not been scrutinised or approved by the competent authority. That requirement shall not apply to hyperlinks to information that is incorporated by reference.
2. Where a prospectus is published in accordance with Article 21(2) of Regulation (EU) 2017/1129, measures shall be taken on websites used for the publication of the prospectus to avoid targeting residents of Member States or third countries other than those where the securities are offered to the public.

CHAPTER III

MACHINE READABLE DATA FOR THE CLASSIFICATION OF PROSPECTUSES

Article 11

Data for classification of prospectuses

When providing ESMA with an electronic copy of an approved prospectus, including any supplements thereto and final terms where applicable, the competent authority shall also provide to ESMA with the relevant accompanying data for the classification of prospectuses in accordance with the tables set out in Annex VII to this Regulation.

Article 12

Practical arrangements to ensure the machine readability of the data

The competent authority shall provide the accompanying data referred to in Article 11 in a common XML format and in accordance with the format and standards set out in the tables in Annex VII.

CHAPTER IV

ADVERTISEMENTS

Article 13

Identification of the prospectus

Where the issuer, the offeror or the person asking for admission to trading on a regulated market is subject to the obligation to draw up a prospectus, an advertisement shall clearly identify that prospectus by:

- (a) clearly identifying the website where the prospectus is published, or will be published, where the advertisement is disseminated in written form and by means other than electronic means;
- (b) including a hyperlink to the prospectus and to the relevant final terms of a base prospectus where the advertisement is disseminated in written form by electronic means, or by including a hyperlink to the page of the website where the prospectus will be published if the prospectus has not yet been published;
- (c) including accurate information on where the prospectus may be obtained, and accurate information on the offer of securities or the admission to trading on a regulated market to which it relates, where the advertisement is disseminated in a form or by means not falling within the scope of points (a) or (b).

Article 14

Required content

1. Advertisements disseminated to potential retail investors shall include the following elements:
 - (a) the word ‘advertisement’, in a prominent manner. Where an advertisement is disseminated in an oral form, the purpose of the communication shall be clearly identified at the beginning of the message;

- (b) a statement that the approval of the prospectus should not be understood as an endorsement of the securities offered or admitted to trading on a regulated market where the advertisement contains a reference to a prospectus approved by a competent authority;
 - (c) a recommendation that potential investors read the prospectus before making an investment decision in order to fully understand the potential risks and rewards associated with the decision to invest in the securities where the advertisement contains a reference to a prospectus approved by a competent authority;
 - (d) the comprehension alert required pursuant to point (b) of Article 8(3) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council¹² where:
 - (i) the advertisement relates to complex securities other than the financial instruments referred to in points (i), (ii) and (vi) of Article 25(4)(a) of Directive 2014/65/EU of the European Parliament and of the Council¹³ and;
 - (ii) the comprehension alert is, or will be, included in the summary of the prospectus.
2. Advertisements in written form, which are disseminated to potential retail investors, shall be sufficiently different in format and length from the prospectus that no confusion with the prospectus is possible.

Article 15

Dissemination of advertisements

1. Advertisements disseminated to potential investors shall be amended where:
- (a) a supplement to the prospectus is subsequently published in accordance with Article 23 of Regulation (EU) 2017/1129;
 - (b) the significant new factor, material mistake or material inaccuracy mentioned in the supplement renders the previously disseminated advertisement materially inaccurate or misleading.
- The first subparagraph shall not apply after the final closing of the offer period to the public or after the time when trading on a regulated market begins, whichever occurs later.
2. Advertisements amended as referred to in paragraph 1 shall be disseminated to potential investors without undue delay following the publication of the supplement to the prospectus and shall contain all of the following:
- (a) a clear reference to the inaccurate or misleading version of the advertisement;
 - (b) an explanation that the advertisement has been amended as it contained materially inaccurate or misleading information;
 - (c) a clear description of the differences between the two versions of the advertisement.

¹² Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1-23).

¹³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349-496).

3. With the exception of orally disseminated advertisements, advertisements amended pursuant to paragraph 1 shall be disseminated through at least the same means as the previous advertisement.

Article 16

Information concerning offers of securities

1. Information disclosed in oral or written form concerning an offer of securities to the public or an admission to trading on a regulated market, whether as an advertisement or for other purposes, shall not:
 - (a) contradict the information in the prospectus;
 - (b) refer to information which contradicts the information in the prospectus;
 - (c) present the information in the prospectus in a materially unbalanced way, including by way of presentation of negative aspects of such information with less prominence than the positive aspects, omission or selective presentation of certain information;
 - (d) contain alternative performance measures unless they are contained in the prospectus.
2. For the purposes of the paragraph 1, information in the prospectus shall consist of either information included in the prospectus, where already published, or information to be included in the prospectus, where the prospectus is to be published at a later date.
3. For the purposes of point (d) of the paragraph 1, alternative performance measures shall consist of financial measures of historical or future financial performance, financial position or cash flows, other than financial measures defined in the applicable financial reporting framework.

Article 17

Procedure for the cooperation between competent authorities

1. Where the competent authority of a Member State in which an advertisement is disseminated believes that the content of that advertisement is inconsistent with the information in the prospectus, it may request the assistance of the competent authority of the home Member State. Where requested, the competent authority in which the advertisement is disseminated shall communicate the following to the competent authority of the home Member State:
 - (a) its reasons for believing that the content of the advertisement is inconsistent with the information in the prospectus;
 - (b) the relevant advertisement and, where necessary, a translation of the advertisement in the language of the prospectus or in a language customary in the sphere of international finance.
2. The competent authority of the home Member State shall transmit to the competent authority in which the advertisement is disseminated as soon as possible the results of its assessment of the consistency of the advertisement with the information in the prospectus.

CHAPTER V

SUPPLEMENTS TO THE PROSPECTUS

Article 18

Publication of a supplement to the prospectus

1. A supplement to the prospectus shall be published where:
 - (a) new annual audited financial statements are published by any of the following:
 - (i) an issuer where a prospectus relates to equity securities;
 - (ii) an issuer of the underlying shares or other transferable securities equivalent to shares in case of securities referred to in Articles 19(2), 19(3) or 20(2) of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004];
 - (iii) an issuer of the underlying shares of depository receipts referred to in Articles 6 and 14 of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004];
 - (b) an issuer has published a profit forecast or estimate following the approval of the prospectus, where a profit forecast or estimate is required to be included in the prospectus pursuant to [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004];
 - (c) an amendment to, or a withdrawal of, a profit forecast or a profit estimate is included in the prospectus;
 - (d) a change in control occurs in respect of any of the following:
 - (i) an issuer where a prospectus relates to equity securities;
 - (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), 19(3) or 20(2) of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004];

- (iii) an issuer of the underlying shares of depository receipts referred to in Articles 6 and 14 of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004];
- (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 Council¹⁴ or the result of any takeover bid becomes available in respect of any of the following type of securities:
- (i) the equity of the issuer where a prospectus relates to equity securities;
 - (ii) the equity of the issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to securities referred to in Articles 19(2), 19(3) or 20(2) of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004];
 - (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 [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004];
- (f) the working capital statement included in a prospectus becomes sufficient or insufficient for the issuer's present requirements, in relation to:
- (i) equity securities;
 - (ii) securities which are convertible or exchangeable as referred to in Articles 19(2) and 19(3) of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004];
 - (iii) depository receipts issued over shares as referred to in Articles 6 and 14 of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public

¹⁴ 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. 12-23).

or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004].

- (g) an issuer is seeking admission to trading on at least one additional regulated market in at least one additional Member State or is intending to make an offer of securities to the public in at least one additional Member State that is not mentioned in the prospectus;
- (h) in the case of a prospectus relating to equity securities or to other securities referred to in Articles 19(2), 19(3) or 20(2) of [OP please insert a reference to the Commission Delegated Regulation supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004], a new significant financial commitment is likely to give rise to a significant gross change within the meaning of Article 1(e) of that Delegated Regulation;
- (i) the aggregate nominal amount of the offering programme is increased.

CHAPTER VI

TECHNICAL ARRANGEMENTS FOR THE FUNCTIONING OF THE NOTIFICATION PORTAL

Article 19

Upload of documents and accompanying data

When uploading any documents referred to in Article 25(6) of Regulation (EU) 2017/1129 into the notification portal, the competent authority shall ensure those documents are in a searchable electronic format that cannot be modified and are accompanied by the data relating to those documents as specified in the tables of Annex VII to this Regulation in a common XML format.

Article 20

Processing and notification of documents and accompanying data

1. ESMA shall ensure that the notification portal automatically processes and checks all uploaded documents and accompanying data and notifies the uploading competent authority of whether the upload was successful and whether the upload contained any error.
2. ESMA shall ensure that the notification portal sends notifications of uploaded documents and accompanying data to the relevant competent authorities.

Article 21

Download of documents and accompanying data

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

CHAPTER VII FINAL PROVISIONS

Article 22

Repeal

Delegated Regulation (EU) No 382/2014 is repealed.

Delegated Regulation (EU) 2016/301 is repealed.

Article 23

Entry into force

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

It shall apply from 21 July 2019.

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

Done at Brussels, 14.3.2019

For the Commission

The President

Jean-Claude JUNCKER