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Regulations applicable to prospectuses

25 February 2020

What is a public offer? How to prepare the prospectus to be published for a public offer of financial securities or with a view to the admission of financial securities to trading on a regulated market? What are the procedures for submitting the prospectus to the AMF? We remind you of the regulations and answer the most frequently asked questions regarding these regulations.

Procedures for submitting the prospectus

Find the procedures for submitting the prospectus to the AMF in a dedicated section on "[Submitting financial information](https://www.amf-france.org/en/professionals/listed-companies-issuers/my-relations-amf/file-financial-and-non-financial-disclosures/submitting-information-part-financial-transaction)" URL = [https://www.amf-france.org/en/professionals/listed-companies-issuers/my-relations-amf/file-financial-and-non-financial-disclosures/submitting-information-part-financial-transaction]" or in Instruction [DOC-2019-21](https://doctrine.amf-france.org/Reglementation/Doctrine/Doctrine-list/Doctrine?docId=workspace%3A%2F%2FSpacesStore%2Fcbdc1928-21ff-4917-b6a9-c6fe2d88e6bd&category=I+-+Emetteurs+et+information+financi%C3%A8re) URL = [https://doctrine.amf-france.org/Reglementation/Doctrine/Doctrine-list/Doctrine?docId=workspace%3A%2F%2FSpacesStore%2Fcbdc1928-21ff-4917-b6a9-c6fe2d88e6bd&category=I+-+Emetteurs+et+information+financi%C3%A8re].

This instruction clarifies the procedures for submitting the various documents such as the prospectus, the universal registration document, the supplements and marketing documentation. It specifies the documents to be provided when making the submission to the regulator. Lastly, it provides models of inserts to be shown on the cover of these documents and models of the liability statement.

Transition from the Prospectus Directive to the Prospectus Regulation

Do you still have questions concerning the application of the Prospectus Regulation? Here is a list of questions and answers designed to help you better understand these regulations.

Applicable regulations

What are the delegated Regulations adopted pursuant to the Prospectus Regulation?

The European Commission has published:

- European Delegated Regulation 2019/980 on the form, content, examination and approval of prospectuses; and
- European Delegated Regulation 2019/979 on the key financial information in the abstract, the publication and classification of prospectuses, marketing communications, supplements to the prospectus, publication and the notification portal.

What are the guidelines to the Prospectus Regulation published by ESMA?

On 1 October, ESMA published on its website guidelines for national authorities on the presentation of risk factors in the prospectus. In a [press release on 29 November](https://www.amf-france.org/fr/actualites-publications/actualites/prospectus-lamf-applique-les-orientations-de-lesma-sur-les-facteurs-de-risque) URL = [https://www.amf-france.org/fr/actualites-publications/actualites/prospectus-lamf-applique-les-orientations-de-lesma-sur-les-facteurs-de-risque], the AMF stated that it would apply these guidelines as of 4 December 2019.

Furthermore, ESMA is working on updating the CESR¹ recommendations on prospectuses in order to take into account the Prospectus Regulation and transform these CESR recommendations into ESMA guidelines.

In its Q&A on the Prospectus Regulation (see question 3 below), ESMA clarified the fact that the CESR recommendations remain applicable provided that they are compatible with the new regulations.

What are the Q&As relating to prospectuses published by ESMA?

On its website, ESMA has published [Q&A on the Prospectus Regulation](https://si-bo.amf-france.org/sites/default/files/2020-02/esma31-62-1258_prospectus_regulation_qas.pdf) URL = [https://si-bo.amf-france.org/sites/default/files/2020-02/esma31-62-1258_prospectus_regulation_qas.pdf].² These Q&As refer to the transition regime and the grandfather clause provided for in Article 46(3) of the Regulation, and the procedures for updating the registration document or universal registration document.

Furthermore, ESMA is working on updating the old ESMA³ Q&As, notably to take into account the changes resulting from the Prospectus Regulation. These old Q&As remain applicable provided that they are compatible with the new regulations.

Threshold

What is the threshold below which a public offer does not require the publication of a prospectus?

Pursuant to Article 3(2) of the Prospectus Regulation, a Member State may decide to exempt from the obligation of publishing a prospectus offers of securities to the public not requesting admission to a regulated market, up to the amount of €8 million per twelve-month period.

France chose this threshold of €8 million as indicated in the [AMF press release of 20 July 2018](https://www.amf-france.org/en/news-publications/news-releases/amf-news-releases/amf-amends-its-general-regulation-and-publishes-instruction-following-entry-force-new-prospectus) URL = [https://www.amf-france.org/en/news-publications/news-releases/amf-news-releases/amf-amends-its-general-regulation-and-publishes-instruction-following-entry-force-new-prospectus].

On 8 February 2019, ESMA published [a table listing, for each Member State, the national prospectus threshold and a summary of the regime applicable below that threshold](https://si-bo.amf-france.org/sites/default/files/2020-02/esma31-62-1193_prospectus_thresholds-1.pdf) URL = [https://si-bo.amf-france.org/sites/default/files/2020-02/esma31-62-1193_prospectus_thresholds-1.pdf].

Risk factors

What are the main novelties of the Prospectus Regulation in the chapter dedicated to risk factors?

All the prospectuses submitted for approval since 21 July 2019 apply the Prospectus Regulation, and in particular its Article 16 on risk factors.

Article 16 of the Prospectus Regulation mentions, in particular, the following three characteristics:

- Specific: Only risks that are specific to the issuer and/or the securities and which are important for taking an investment decision should be included in the prospectus. Note that issuers operating in a given sector of activity may be exposed to similar risks, and therefore certain risk factors relating to these issuers may be similar. However, sector-specific risks may affect the issuers differently, depending, for example, on their size or their market share. Accordingly, these differences should also be reflected in the description of said risk factor;
- Corroborated: Risk factors should be corroborated by the content of the registration document and the prospectus;
- Important note:
 - The importance of each risk factor is assessed according to the probability that it will materialise and the estimated extent of its negative impact;
 - The description of each risk factor should be appropriate, explaining in what way the risk factor affects the issuer or the securities;
 - The description of all the risk factors is covered by a limited number of categories depending on their nature. In each category (and sub-category), the most important risk factors are mentioned first.

Moreover, ESMA's objective is that the maximum number of categories and sub-categories in the prospectus should be 10. Now, the total number of risk factors in the abstract cannot be more than 15 (Article 7 of the Prospectus Regulation). The issuer will therefore have to be attentive to the links between this requirement of at most 15 risk factors in the abstract and the requirement of at most 10 categories and sub-categories of risk factors in the body of the prospectus.

On 1 October, ESMA published on its website guidelines for national authorities on the inclusion of risk factors in issuers' prospectus. In a [press release on 29 November](https://www.amf-france.org/fr/actualites-publications/actualites/prospectus-lamf-applique-les-orientations-de-lesma-sur-les-facteurs-de-risque), URL = [https://www.amf-france.org/fr/actualites-publications/actualites/prospectus-lamf-applique-les-orientations-de-lesma-sur-les-facteurs-de-risque] the AMF stated that it would apply these guidelines as of 4 December 2019.

From the registration document to the universal registration document

Since 21 July 2019, only a universal registration document (URD) complying with the Prospectus Regulation may be submitted to or registered with the AMF.

How to update a registration document submitted or registered in the first half of 2019 after the entry into force on 21 July 2019?

Issuers who have submitted their registration document or had it registered by the AMF before 21 July 2019 may update it after that date.

For this purpose, the issuer shall submit to the AMF a universal registration document or have such a document registered by it.

An issuer who wants to submit or have registered a universal registration document incorporating a registration document will be free to do so provided that the universal registration document complies with the Prospectus Regulation.

How to update the registration document with the half-yearly financial statements published after 21 July 2019?

Issuers who have submitted their 2018 registration document or had it registered by the AMF before 21 July 2019 may update it with the half-yearly financial statements after 21 July 2019 by submitting a universal registration document (URD) to the AMF or having such a document registered by it. An indicative format using incorporation by reference is presented below.

What will be the control regime (ex ante/ex post) applied to a universal registration document submitted or registered in the second half of 2019?

Pursuant to Article 9 of the Prospectus Regulation, to be able to submit the universal registration document to the AMF without prior approval, the universal registration document must have been approved for two financial years running. Issuers who have had their registration document approved by the AMF for at least two financial years running before 21 July 2019 may therefore submit a universal registration document to the AMF without prior approval after 21 July 2019.

The Prospectus Regulation specifies that to benefit from the ex post control regime the document must have been approved in two consecutive financial years. For example, an issuer which has its registration document registered for the first time in the first half of 2019 (for financial year 2018) will need to have its universal registration document

approved again in 2020 (for financial year 2019), even if said issuer has had a universal registration document registered with the AMF in the second half of 2019.

Can a registration document submitted or approved before 21 July 2019 be used for a prospectus which would be approved after the entry into force of the Prospectus Regulation on 21 July 2019?

Yes, insofar as:

- a registration document submitted or approved before 21 July 2019 can be incorporated by reference in a universal registration document after 21 July 2019, as described in the question above; and
- said universal registration document can be used within the framework of a prospectus after 21 July 2019.

Prospectus approved before 21 July 2019

Is it possible to incorporate only certain information of the registration document submitted or approved before 21 July 2019 in a prospectus which is approved after 21 July 2019?

Yes, it is also possible to incorporate certain information of the registration document submitted or registered before 21 July 2019 in a prospectus which is approved after the entry into force of the Prospectus Regulation on 21 July 2019 if the sections in question comply with the requirements of the Prospectus Regulation.

Is a prospectus approved before 21 July 2019 still valid after 21 July 2019?

Article 46(3) of the Prospectus Regulation stipulates that a prospectus approved in accordance with the national law transposing Directive 2003/71/EC before 21 July 2019 continues to be covered by said national law until the end of its validity or until the end of the period of twelve months from 21 July 2019, the date selected being that which is closest.

This article refers only to approved prospectuses and therefore does not concern registration documents (for more details on the registration documents, see question 7).

On its website, ESMA has published Q&As on the Prospectus Regulation (see question 3 above) which also deal with subjects discussed in questions 12 to 14 below.

Can a prospectus approved before 21 July 2019 be updated after 21 July 2019?

Yes, an issuer can update a prospectus approved before 21 July 2019 after that date via a supplement under the conditions provided for in Article 46(3) of the Prospectus Regulation. It is planned that these supplements will be governed by the national law transposing Directive 2003/71/EC.

Is it possible to submit final conditions after 21 July 2019 concerning a prospectus approved before 21 July 2019?

Yes, an issuer can submit final conditions relating to a prospectus approved before 21 July 2019 after that date, under the conditions provided for in Article 46(3) of the Prospectus Regulation. It is planned that these final conditions will be governed by the national law transposing Directive 2003/71/EC.

Can a prospectus approved before 21 July 2019 be passported after 21 July 2019?

A prospectus approved before 21 July 2019 can be passported after that date in accordance with the national legislation transposing the Prospectus Directive.

 Download content

[1] ESMA 2013/319: CESR recommendations, updated in 2013

<https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-319.pdf>

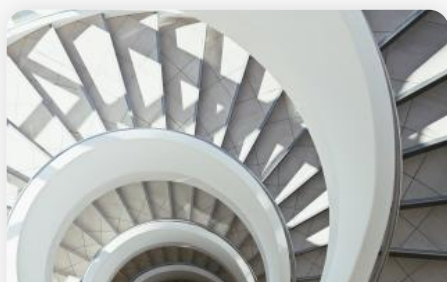
[2] ESMA31/62/258: Q&A on the Prospectus Regulation, updated on 4 December 2019

https://www.esma.europa.eu/sites/default/files/library/esma31-62-1258_prospectus_regulation_qas.pdf

[3] ESMA31/62/780 : Q&A sur la directive prospectus, mis à jour janvier 2019

Keywords

FINANCIAL DISCLOSURES & CORPORATE FINANCING



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