

Luxembourg – a selection of key new prospectus rules.

The 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 (the “**Prospectus Regulation**”), as complemented by the Luxembourg law of 16 July 2019 on prospectuses for securities (the “**Prospectus Law**”) came into force on 21 July 2019.



Positive changes

Prospectuses to contain the necessary information **which is material to an investor** for making an informed assessment including **the reasons for the issuance and its impact on the issuer**.

Good to know: The aim of “material to investors” is to allow for prospectus disclosure to be shorter and more to the point to avoid inadvertently obscuring information relevant to investor decisions.

Expanded list of documents **incorporated by reference**.

Good to know: Cross-reference list requirement maintained.

Alleviated disclosure regime for wholesale issuers.

Good to know: Includes non-equity securities admitted to trading on a professional segment designed for qualified investors (available for both the Euro MTF and the regulated market of the Luxembourg Stock Exchange).

Universal registration document applicable to frequent issuers (two consecutive years) which benefit from a faster approval process.

Good to know: Can be used to fulfil the ongoing requirements to file annual financial statements under the Transparency Directive.

New exemption for public offers not exceeding €8m over 12 months.

Good to know: The CSSF must however be informed, and an information note needs to be published for offers ≥ €5m (over 12 months).

- > A Base Prospectus may be drawn up as **a single document** or as **separate documents**.
- > **EU Growth prospectus:** calibrate and proportionate disclosure regime applicable to SMEs.
- > Prospectuses require only a warning that the **tax** laws of the investor’s Member State and of the issuer’s Member State might have an impact on the income received from the securities.
- > Removal of the requirement (contained previously in the Prospectus Directive) to obtain an **auditor’s report** when a **profit forecast** is included in the prospectus.
- > Simplified disclosure regime **for secondary issuances** available for issuers who have been admitted to trading on a regulated market or SME growth market for at least 18 months.



Challenges

More rigorous prescriptions **on summary:** shorter (max. 7 A4-sized pages), concise, structured into four sections with key information on issuer, securities and market/offer, accurate, fair, clear and not misleading, using comprehensible and non-technical jargon.

Good to know: The Delegated Regulation (EU) 2019/979 provides regulatory technical standards on key financial information in the prospectus summary, no need for summary in Base Prospectus, and summary can be re-used to comply with KID requirements under the PRIIPs Regulation.

New format for inclusion of **risk factors**, supported by **ESMA guidelines:** specific material, corroborated and presented in categories.

Good to know: Generic **risk factors**, mitigation wording and risk factors serving as disclaimers are expected to be challenged by national competent authorities (“**NCA**s”); **Read more**

New 20% cap **on listing shares** resulting from conversion or exchange of other securities or the exercise of rights conferred by other securities, without prospectus.

Good to know: The exemption does not apply to an offer to the public.

- > Expanding burden **on advertisement regime** include (i) broader scope, (ii) additional content for retail investors and (iii) control by NCAs in home and host Member States (subject to proportionate fees).



What does not change?

- > **Three different approved regimes:** (i) EU regime applicable to admission to trading on regulated market and public offers (Part II of the Prospectus Law), (ii) out of scope prospectus regime ("alleviated" prospectus) (Part III of the Prospectus Law) and (iii) admission to trading on a "non" regulated market (the Euro MTF) (Part IV) of the Prospectus Law.
- > NCA in Luxembourg: the Commission de Surveillance du Secteur Financier (the "**CSSF**") in relation to admission to trading on regulated market/public offers. Prospectus approval for Euro MTF listing by the Luxembourg Stock Exchange.
- > Existing public offer **exemptions** retained notably for wholesale regime (\geq €100,000/qualified investors within the meaning of **MiFID II**).
- > Format and content of prospectuses structured by reference to specific annexes (**building blocks**) set out in the new **Delegated Regulation (EU) 2019/980**.
- > Base Prospectuses valid for **12 months**.
- > **Passporting** in the EU.
- > **Supplement** required.
- > Use of **language**: English, French, German and Luxembourgish.
- > **Summary** for retail issuances only.
- > **EU sovereign and supranational entities** are out of scope of the prospectus rules.
- > **Timing** of approval remains unchanged (10 business days extended to 20 business days where the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public).



Useful to note:

- > **Grandfathering:** prospectuses approved before 21 July 2019 remain valid and governed by the "old" regime until their expiry date.
- > ESMA published new **Q&As** relating to the Prospectus Regulation but continues publishing Q&As in relation to the Prospectus Directive until the end of the grand fathering period (ie 20 July 2020).
- > The CSSF published **Circular 19/724 of 19 July 2019** on technical specifications regarding the submission to the CSSF of documents under the Prospectus Regulation and the Prospectus Law and general overview of the regulatory framework on prospectuses.

Find out more about the new EU prospectus regime on [Linklaters.com](https://linklaters.com)

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice.

Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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