



Brussels, 4.6.2020
C(2020) 3508 final

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

of 4.6.2020

**amending and correcting Commission Delegated Regulation (EU) 2019/980
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**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. General background

The Prospectus Regulation¹ 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. The Prospectus Regulation also empowers and requires the Commission to lay down some details of the new rules.

In this context, Articles 9(14), 13(1), 13(2), 14(3), 15(2) and 20(11) empower the Commission to adopt delegated acts to:

- lay down the information that must be included in the prospectus and its relating documents;
- lay down the criteria for scrutiny and the procedures for approval of the prospectus and of the universal registration document.

The basis for the delegated act that bundles those six empowerments (in accordance with Better Regulation rules), is the technical advice that ESMA delivered to the Commission on 31 March 2018. In addition, ESMA advised the Commission to introduce operative provisions similar to Articles 4 to 20 of Commission Regulation (EC) No 809/2004².

The Commission adopted the delegated act in the form of Commission Delegated Regulation (EU) 2019/980³ on 14 March 2019.

1.2. Objectives of the Delegated Regulation

The objective of this Delegated Regulation is to amend and correct Commission Delegated Regulation (EU) 2019/980. All amendments and corrections listed below were presented to the Expert Group of the European Securities Committee (EGESC) in presence of observers from the European Parliament on 27 September 2019.

1.2.1. Amendments to the Delegated Regulation

- To pursue the objective of aligning Delegated Regulation (EU) 2019/980 with the primary act, all references to shares, debt and derivative securities included in ESMA's technical advice and in Commission Regulation (EC) No 809/2004 were changed to references to equity and non-equity securities as defined in the Prospectus Regulation. In doing so, the following overarching principles were consistently applied:

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).

² Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1).

³ Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 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 (OJ L 166, 21.6.2019, p. 26).

- (a) a prospectus drawn up for an offer or an admission to trading of equity securities must include both a registration document and a securities note relating to equity securities;
- (b) a prospectus drawn up for an offer or an admission to trading of non-equity securities must include both a registration document and a securities note relating to non-equity securities.

During the scrutiny of Delegated Regulation (EU) 2019/980 it emerged that such overarching principles should not apply to certain types of hybrid securities such as certain convertible, exchangeable and derivative securities. Under Commission Regulation (EC) No 809/2004, such securities were subject to a dual disclosure regime, which was lighter for the issuer of the debt or derivative securities as opposed to the issuer of the underlying shares. As those rules have proven to work well and have not affected the level of investor protection, it would be appropriate to subject issuers of those convertible, exchangeable and derivative securities to the lighter disclosure rules applicable to non-equity securities.

- Delegated Regulation (EU) 2019/980 requires an issuer using the option to disclose the annual financial report in the universal registration document to provide the whole universal registration document in Extensible Hypertext Markup Language (XHTML) format, which is a disproportionate administrative burden. Article 24(4) and Article 25(5) of Delegated Regulation (EU) 2019/980 should therefore be amended to allow the issuer to submit only the information contained in the annual financial report in XHTML format.
- Delegated Regulation (EU) 2019/980 sets out the standardised format and sequence of the EU Growth prospectus, in accordance with the Prospectus Regulation. In some circumstances, additional information about underlying shares, derivative securities and the consent given to use the prospectus may also be required. Article 32, Annex 26 and Annex 27 of Delegated Regulation (EU) 2019/980 should be amended to set out placeholders where such additional information, where applicable, should be inserted in the EU Growth prospectus.
- An inaccuracy about the information relating to audit reports, which affects several Annexes to Commission Delegated Regulation (EU) 2019/980, should be amended.
- Annex 4 to Delegated Regulation (EU) 2019/980 lays down a list of sections and items that a collective investment undertaking must provide where the simplified disclosure regime for secondary issuances is applicable. Such list should be amended to add information on material contracts and to exclude pro forma financial information.
- In the securities note for secondary issuances of non-equity securities, the description of the type, class, and amount of the securities being offered and/or admitted to trading, which is currently set out as category A, should be moved to category B as not all details of that information are known at the time of approval of the base prospectus. In addition, to align with the disclosure requirements for primary issuances, it should be clarified that if the prospectus summary for a secondary issuance of retail non-equity securities includes a PRIIPS KID, that information should also be contained in the securities note, since the prospectus summary must be consistent with the other parts of the prospectus. Annex 16 of Delegated Regulation (EU) 2019/980 should be amended accordingly.

- Finally, the new Regulation (EU) 2019/2115 of the European Parliament and of the Council⁴ amended the requirement to disclose the working capital statement in the EU Growth prospectus, making such requirement applicable to all issuers of equity securities irrespective of their market capitalisation. Point (g) of Article 32(1) and Annex 26 to Delegated Regulation (EU) 2019/980 should be amended to reflect such change.

1.2.2. Corrections to the Delegated Regulation

- To be fully compliant with the Prospectus Regulation, point (g) of Article 42(2) of Delegated Regulation (EU) 2019/980 should be corrected to clarify that the appendix must be submitted to the competent authority in searchable electronic format via electronic means only where such appendix is required under Article 26(4) of the Prospectus Regulation.
- Finally, one incorrect cross reference contained in Article 33(7) should be corrected.

2. 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 the following provisions and Annexes to Delegated Regulation (EU) 2019/980:
 - Articles 2, 4, 12, 13, 24, 25, 28, 30 and 32;
 - Annexes 1, 3, 4, 6, 7, 8, 9, 16, 24, 25, 26 and 27.
- Article 2 of this Delegated Regulation corrects the following provisions and Annexes to Delegated Regulation (EU) 2019/980:
 - Articles 33(7) and 42(2).

⁴ Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1).

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

of 4.6.2020

amending and correcting Commission Delegated Regulation (EU) 2019/980 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

(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/EC⁵, and in particular paragraphs 1 and 2 of Article 13, Article 14(3) and Article 15(2) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2019/980⁶ lays down the information that issuers of equity and non-equity securities are required to disclose. Non-equity securities are subject to less stringent disclosure requirements than equity securities. Some equity securities, such as certain types of convertible, exchangeable and derivative securities, are similar to non-equity securities before being converted or before the rights conferred by them being exercised. Therefore, it is appropriate to subject issuers of those convertible, exchangeable and derivative securities to the lighter disclosure rules applicable to non-equity securities.
- (2) Under Regulation (EU) 2017/1129, issuers can use a universal registration document to disclose the annual financial report required under Directive 2004/109/EC of the European Parliament and of the Council⁷. Delegated Regulation (EU) 2019/980 requires issuers using that option to provide the complete universal registration document in Extensible Hypertext Markup Language (XHTML) format, which is a disproportionate administrative burden. Article 24(4) and Article 25(5) of Delegated Regulation (EU) 2019/980 should therefore be amended to allow issuers to submit only the information contained in the annual financial report in XHTML format.

⁵ OJ L 168, 30.6.2017, p. 12.

⁶ Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 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 (OJ L 166, 21.6.2019, p. 26).

⁷ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

- (3) Section 3 of Chapter II of Delegated Regulation (EU) 2019/980, on additional information to be included in the prospectus, applies to all types of prospectuses, including the EU Growth prospectus. As the EU Growth prospectus is subject to a standardised format and sequence, it is necessary to clarify the order of disclosure of information items relating to derivative securities and, where applicable, to the underlying shares and/or to the information to be disclosed if consent to use the prospectus is given in accordance with Article 5(1) of Regulation (EU) 2017/1129. Article 32 of Delegated Regulation (EU) 2019/980 and Annexes 26 and 27 to that Regulation should be updated accordingly.
- (4) Article 2(4) of Regulation (EU) 2019/2115 of the European Parliament and of the Council⁸ amended Annex V to Regulation (EU) 2017/1129 by making the requirement to disclose the working capital statement in the EU Growth prospectus applicable to all issuers of equity securities, irrespective of their market capitalisation. Article 32(1), point (g), of Delegated Regulation (EU) 2019/980 and Annex 26 to that Regulation should be amended accordingly.
- (5) Annexes 1, 3, 6 to 9, 24 and 25 to Delegated Regulation (EU) 2019/980 require that for most equity and non-equity securities, the historical annual financial information is to be independently audited and that the audit report is to be prepared in accordance with Directive 2006/43/EC of the European Parliament and of the Council⁹ and Regulation (EU) No 537/2014 of the European Parliament and of the Council¹⁰. Those Annexes also require that, where Directive 2006/43/EC and Regulation (EU) No 537/2014 do not apply and where those audit reports on the historical financial information have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers or an emphasis of matter, such qualifications, modifications, disclaimers or emphasis be reproduced in full and the reasons given. To enable investors to take informed investment decisions, it is appropriate to subject issuers to the aforementioned disclosure requirements, irrespective of whether Directive 2006/43/EC or Regulation (EU) No 537/2014 apply. Annexes 1, 3, 6 to 9, 24 and 25 to Delegated Regulation (EU) 2019/980 should therefore be amended accordingly.
- (6) Where the simplified disclosure regime for secondary issuances is applicable, Annex 4 to Delegated Regulation (EU) 2019/980 requires collective investment undertakings to provide information stemming from certain sections and items of Annex 3. To align with the disclosure requirements for primary issuances, that list of sections and items should be amended to include information on material contracts and exclude pro forma financial information.
- (7) In the securities note for secondary issuances of non-equity securities, the description of the type, class, and amount of the securities being offered or admitted to trading should be set out under category B in the same way as for primary issuances, as not all details of that information are known at the time of approval of the base prospectus.

⁸ Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1).

⁹ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

¹⁰ Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).

Furthermore, to align with the disclosure requirements for primary issuances, it is necessary to clarify that for secondary issuances of retail non-equity securities, where the prospectus summary is substituted in part with the information set out in Article 8(3), points (c) to (i) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council¹¹, that information should also be contained in the securities note. Annex 16 to Delegated Regulation (EU) 2019/980 should be amended accordingly.

- (8) Article 33(7) of Delegated Regulation (EU) 2019/980 erroneously refers to Annex 22 to that Regulation, instead of Annex 23. That error should be corrected.
- (9) Article 26(4) of Regulation (EU) 2017/1129 requires that a registration document or a universal registration document notified in accordance with paragraph 2 of that Article contains an appendix setting out the key information on the issuer referred to in Article 7(6) of that Regulation. Point (g) of Article 42(2) of Delegated Regulation (EU) 2019/980 erroneously requires that such appendix is to be submitted in any case and not only where such appendix is required. That error should be corrected.
- (10) Regulation (EU) 2017/1129 and Delegated Regulation (EU) 2019/980 started applying as of 21 July 2019. For reasons of legal certainty and to ensure that issuers are not subject to unnecessary administrative burdens, Article 1, points (1) to (8), and Article 2 of this Delegated Regulation should have the same date of application as Regulation (EU) 2017/1129 and Delegated Regulation (EU) 2019/980.
- (11) In the interest of legal certainty, prospectuses approved between 21 July 2019 and [*Publications office, please insert the date before the date of entry into force of this amending and correcting act in the OJ*], should continue to be valid until the end of their validity,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2019/980

Delegated Regulation (EU) 2019/980 is amended as follows:

- (1) Article 2 is replaced by the following:

‘Article 2

Registration document for equity securities

- 1. For equity securities, the registration document shall contain the information referred to in Annex 1 to this Regulation, unless it is drawn up in accordance with Articles 9, 14 or 15 of Regulation (EU) 2017/1129.
- 2. By way of derogation from paragraph 1, the registration document for the following securities, where those securities are not shares or other transferrable securities equivalent to shares, may be drawn up in accordance with Article 7 of this Regulation for retail securities or Article 8 of this Regulation for wholesale securities:
 - (a) the securities referred to in Articles 19(1) and 20(1) of this Regulation;

¹¹ 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).

- (b) the securities referred to in Article 19(2) of this Regulation, where those securities are exchangeable for or convertible into shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market;
 - (c) the securities referred to in Article 20(2) of this Regulation, where those securities give the right to subscribe or acquire shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market.';
- (2) Article 4 is replaced by the following:

'Article 4

Registration document for secondary issuances of equity securities

1. A specific registration document for equity securities that is drawn up in accordance with Article 14 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 3 to this Regulation.
 2. By way of derogation from paragraph 1, the registration document for the following securities, where those securities are not shares or other transferrable securities equivalent to shares, may be drawn up in accordance with Article 9:
 - (a) the securities referred to in Articles 19(1) and 20(1) of this Regulation;
 - (b) the securities referred to in Article 19(2) of this Regulation, where those securities are exchangeable for or convertible into shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market;
 - (c) the securities referred to in Article 20(2) of this Regulation, where those securities give the right to subscribe or acquire shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market.';
- (3) Article 12 is replaced by the following:

'Article 12

Securities note for equity securities or units issued by collective investment undertakings of the closed-end type

1. For equity securities or units issued by collective investment undertakings of the closed-end type, the securities note shall contain the information referred to in Annex 11 to this Regulation, unless it is drawn up in accordance with Articles 14 or 15 of Regulation (EU) 2017/1129.
 2. By way of derogation from paragraph 1, the securities note for the securities referred to in paragraphs 1 and 2 of Article 19 and paragraphs 1 and 2 of Article 20 of this Regulation, where those securities are not shares or other transferrable securities equivalent to shares, shall be drawn up in accordance with Article 15 of this Regulation for retail securities or Article 16 of this Regulation for wholesale securities.';
- (4) Article 13 is replaced by the following:

'Article 13

Securities note for secondary issuances of equity securities or of units issued by collective investment undertakings of the closed-end type

1. A specific securities note for equity securities or units issued by collective investment undertakings of the closed-end type that is drawn up in accordance with Article 14 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 12 to this Regulation.
 2. By way of derogation from paragraph 1, the specific securities note for the securities referred to in paragraphs 1 and 2 of Article 19 and paragraphs 1 and 2 of Article 20 of this Regulation, where those securities are not shares or other transferrable securities equivalent to shares, shall be drawn up in accordance with Article 17 of this Regulation.’;
- (5) in Article 24, paragraph 4 is replaced by the following:
- ‘4. Where a universal registration document is used for the purposes of Article 9(12) of Regulation (EU) 2017/1129, the information referred to in that Article shall be presented in accordance with Commission Delegated Regulation (EU) 2019/815*.
-
- * Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143, 29.5.2019, p. 1).’;
- (6) in Article 25, paragraph 5 is replaced by the following:
- ‘5. Where a universal registration document is used for the purposes of Article 9(12) of Regulation (EU) 2017/1129, the information referred to in that Article shall be presented in accordance with Commission Delegated Regulation (EU) 2019/815.’;
- (7) Article 28 is replaced by the following:

Article 28

EU Growth registration document for equity securities

1. A specific registration document for equity securities drawn up in accordance with Article 15 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 24 to this Regulation.
2. By way of derogation from paragraph 1, the specific registration document for the following securities, where those securities are not shares or other transferrable securities equivalent to shares, may be drawn up in accordance with Article 29 of this Regulation:
 - (a) the securities referred to in Articles 19(1) and 20(1) of this Regulation;
 - (b) the securities referred to in Article 19(2) of this Regulation, where those securities are exchangeable for or convertible into shares that are or will be issued by an entity belonging to the issuer’s group and that are not admitted to trading on a regulated market;
 - (c) the securities referred to in Article 20(2) of this Regulation, where those securities give the right to subscribe or acquire shares that are or will be

issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market.';

- (8) Article 30 is replaced by the following:

'Article 30

EU Growth securities note for equity securities

1. A specific securities note for equity securities drawn up in accordance with Article 15 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 26 to this Regulation.
 2. By way of derogation from paragraph 1, the specific securities note for the securities referred to in paragraphs 1 and 2 of Article 19 and paragraphs 1 and 2 of Article 20 of this Regulation, where those securities are not shares or other transferrable securities equivalent to shares, shall be drawn up in accordance with Article 31 of this Regulation.';
- (9) in Article 32(1), point (e) is replaced by the following:
- ‘(e) the information referred to in section 1 of Annex 24 and section 1 of Annex 26, or the information referred to in section 1 of Annex 25 and section 1 of Annex 27 to this Regulation, depending on the type of securities;’;
- (10) in Article 32(1), point (g) is replaced by the following:
- ‘(g) for equity securities, the information referred to in item 2.1 of Annex 26 and, where equity securities are issued by an issuer with a market capitalisation above EUR 200 000 000, the information referred to in item 2.2 of Annex 26 to this Regulation;’;
- (11) in Article 32(1), the following points (p) and (q) are added:
- ‘(p) where information on the underlying share is required pursuant to Article 19(2), point (b), Article 19(3) or Article 20(2), point (b) of this Regulation, the information referred to in section 6 of Annex 26 to this Regulation or the information referred to in section 6 of Annex 27 to this Regulation, depending on the type of securities;
- (q) where the issuer or the person responsible for drawing up a prospectus consents to its use as referred to in the second subparagraph of Article 5(1) of Regulation (EU) 2017/1129, the information referred to in section 7 of Annex 26 or in section 7 of Annex 27 to this Regulation, depending on the type of securities.’;
- (12) the following Article 46a is inserted:

'Article 46a

Prospectuses approved between 21 July 2019 and [Publications office, please insert the date before the entry into force of this amending and correcting act in the OJ]

Prospectuses 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 and correcting act in the OJ] shall continue to be valid until the end of their validity.';

- (13) Annex 1 is amended in accordance with Annex I to this Regulation;
- (14) Annex 3 is amended in accordance with Annex II to this Regulation;

- (15) Annex 4 is amended in accordance with Annex III to this Regulation;
- (16) Annex 6 is amended in accordance with Annex IV to this Regulation;
- (17) Annex 7 is amended in accordance with Annex V to this Regulation;
- (18) Annex 8 is amended in accordance with Annex VI to this Regulation;
- (19) Annex 9 is amended in accordance with Annex VII to this Regulation;
- (20) Annex 16 is amended in accordance with Annex VIII to this Regulation;
- (21) Annex 24 is amended in accordance with Annex IX to this Regulation;
- (22) Annex 25 is amended in accordance with Annex X to this Regulation;
- (23) Annex 26 is amended in accordance with Annex XI to this Regulation;
- (24) Annex 27 is amended in accordance with Annex XII to this Regulation.

Article 2

Corrections to Delegated Regulation (EU) 2019/980

- (1) in Article 33 of Delegated Regulation (EU) 2019/980, paragraph 7 is replaced by the following:
 - ‘7. The specific summary may use sub-headings to present the information referred to in sections 2, 3 and 4 of Annex 23 to this Regulation.’;
- (2) in Article 42(2), point (g) is replaced by the following:
 - ‘(g) an appendix where required by Article 26(4) of Regulation (EU) 2017/1129, unless no summary is required pursuant to the second subparagraph of Article 7(1) of that Regulation;’.

Article 3

Entry into force and date of 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, points (1) to (8), 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