

REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE DELEGATED ACTS  
CONCERNING THE REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ON THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE  
OFFERED TO THE PUBLIC OR ADMITTED TO TRADING ON A REGULATED  
MARKET

(UPDATED 18.06.2018)

With this mandate to ESMA, the Commission seeks ESMA's technical advice on possible delegated acts to supplement certain elements of the Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "**Regulation**")<sup>1</sup>. These delegated acts should be adopted in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final policy decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**")<sup>2</sup>, the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**")<sup>3</sup>, and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (the "**Interinstitutional Agreement**")<sup>4</sup>.

This request for technical advice will be made available on DG FISMA's website once it has been sent to ESMA.

The formal mandate consists of two parts.

**Part I**

The technical advice for the following delegated acts should be received by the Commission within 13 months following the receipt of this mandate:

a) The measures specifying the criteria for the scrutiny and review of the universal registration document and any amendments thereto, and the procedures for the approval and filing of those documents as well as the conditions under which the status of frequent issuer is lost (Article 9(14) of the Regulation);

b) The measures specifying the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus, including LEIs and ISINs (Article 13(1) of the Regulation);

<sup>1</sup> Reference is made to the text approved by the European Parliament on 5 April 2017 and adopted by the Council on 16 May 2017 (<http://data.consilium.europa.eu/doc/document/PE-63-2016-INIT/en/pdf>).

<sup>2</sup> Communication of 9.12.2009. COM (2009) 673 final.

<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC. OJ L331/84, 15.12.2010, p.84.

<sup>4</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L123/1, 12.05.2016, p.1.

c) The measures setting out the schedule defining the minimum information contained in the universal registration document (Article 13(2) of the Regulation);

d) The measures specifying the reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances (Article 14(3) of the Regulation);

e) The measures specifying the reduced content and standardised format and sequence for the EU Growth prospectus, as well as the reduced content and standardised format of its specific summary (Article 15(2) of the Regulation);

f) The measures specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus (Article 20(11) of the Regulation).

## **Part II**

The technical advice for the following delegated acts should be received by the Commission within 25 months for point g) and 42 months for point h) following the receipt of this mandate:

g) The measures setting out the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of Article 1 (documents containing minimum information describing a takeover by way of exchange offer, a merger or a division) (Article 1(7) of the Regulation);

h) The measures establishing general equivalence criteria, based on the requirements laid down in Articles 6, 7, 8 and 13 (equivalence of information requirements imposed by third countries) (Article 29(3) of the Regulation).

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The European Parliament and the Council have been duly informed about this mandate.

The powers of the Commission to adopt delegated acts are subject to Article 44 of the Prospectus Regulation.

## 1. CONTEXT

### 1.1 Scope

On 30 November 2015, the Commission published its proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading. On 7 December 2016 the European Parliament and the Council reached political agreement on a compromise text of the Regulation. This compromise text was endorsed by the COREPER on 20 December 2016 and approved by the ECON Committee of the European Parliament on 25 January 2017.

The main objectives of the Regulation are to reduce the administrative burden for issuers when drawing up a prospectus, in particular for SMEs, frequent issuers of securities and secondary issuances; to make the prospectus a more relevant disclosure tool for potential investors, especially when investing in SMEs; and to avoid overlaps between the EU prospectus and other EU disclosure rules.

Certain elements of the Regulation need to be further specified in delegated acts to be adopted by the Commission no later than 18 months after the entry into force of the Regulation.

The Regulation emphasizes a number of high level principles and objectives the Commission should take into account when exercising its delegated powers, in particular as regards investor protection, transparency in financial markets, proportionality, innovation in financial markets, reduction of administrative burden and cost and easier access to capital markets for issuers, including SMEs<sup>5</sup>.

### 1.2 Principles that ESMA should take into account

In developing its technical advice, ESMA should take account of the following principles:

- **Lamfalussy:** The principles set out in the de Larosière Report and the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- **Internal Market:** The need to ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regards to the financial markets, and a high level of investor protection.
- **Proportionality:** The technical advice should not go beyond what is necessary to achieve the objectives of the Regulation. It should be simple and avoid creating divergent practices by national competent authorities in the application of the Regulation.
- **Comprehensive:** ESMA should provide comprehensive advice on all subject matters covered by the mandate regarding the delegated powers included in the Regulation.
- **Coherent:** While preparing its advice, ESMA should ensure coherence within the wider regulatory framework of the Union.
- **Autonomy in working methods:** ESMA will determine its own working methods, including the roles of ESMA staff or internal committees. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different strands of work being carried out by ESMA.

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<sup>5</sup> See Recital 83.

- **Consultation:** ESMA is invited to consult market participants (practitioners, consumers and end-users) in an open and transparent manner. ESMA should provide advice which takes account of different opinions expressed by the market participants during their consultation. ESMA should provide a feed-back statement on the consultation justifying its choices vis-à-vis the main arguments raised during the consultation.

- **Evidenced and justified:**

ESMA should justify its advice by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each. The results of this assessment should be submitted alongside the advice to assist the Commission in preparing its delegated acts. Where administrative burdens and compliance costs on the side of the industry could be significant, ESMA should where possible quantify these costs.

ESMA should provide sufficient factual data backing the analyses and gathered during its assessment. To meet the objectives of this mandate, it is important that the presentation of the advice produced by ESMA makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the possible delegated acts.

ESMA should provide comprehensive technical analysis on the subject matters described below, covered by the delegated powers included in the relevant provisions of the Regulation, in the corresponding recitals as well as in the relevant Commission's request included in this mandate.

- **Clarity:** The technical advice carried out should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology used in the field of securities markets and company law at European level.
- **Advice, not legislation:** ESMA should provide the Commission with a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology used in the field of securities markets in the Union.
- **Responsive:** ESMA should address to the Commission any question it might have concerning the clarification on the text of the Regulation, which it should consider of relevance to the preparation of its technical advice.

## 2. PROCEDURE

The Commission requests the technical advice of ESMA for the purpose of the preparation of the delegated acts to be adopted pursuant to the legislative act and described in section 3 of this mandate.

The Commission reserves the right to revise and/or supplement this mandate if needed. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**"), the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**"), and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (the "**Interinstitutional Agreement**").

The European Parliament and the Council have been duly informed about this mandate.

After the delivery of the technical advice by ESMA, in accordance with the Annex to the Interinstitutional Agreement, signed on 13 April 2016, the Commission will continue to consult experts designated by the Member States in the preparation of draft delegated acts.

In accordance with the Annex to the Interinstitutional Agreement, the Commission services will state the conclusions they have drawn from the discussions of any meeting with Member States' experts on draft delegated acts, including how they will take the experts' views into consideration and how they intend to proceed. When they consider this necessary, the European Parliament and the Council may each send experts to these meetings.

The powers of the Commission to adopt delegated acts are subject to Article 44 of the Prospectus Regulation.

When preparing and drawing up the delegated act, the Commission will ensure a timely and simultaneous transmission of all documents, including the draft acts, to the European Parliament and the Council at the same time as Member States' experts.

As soon as the Commission adopts delegated acts, it will simultaneously notify to the European Parliament and the Council.

### **3. ISSUES ON WHICH ESMA IS INVITED TO PROVIDE TECHNICAL ADVICE**

#### **3.1 The format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus (Article 13(1) of the Regulation)**

Since Directive 2003/71/EC (the Prospectus Directive) will be repealed when the Prospectus Regulation comes into application, so will Regulation (EU) No 809/2004 and all the schedules and building blocks it contains. It is therefore necessary to establish a new and complete set of disclosure schedules for different types of securities and issuers.

ESMA is invited to reassess whether the information items currently required in the existing schedules and building blocks are still fit for purpose, provide benefits to investors that are commensurate with their associated cost, or whether they should be deleted. ESMA should also reassess the general order of presentation of the information items, based on the experience gained by competent authorities.

- ESMA is invited to provide technical advice on the format of the prospectus and the schedules defining the specific information which must be disclosed in a prospectus.
- ESMA should follow the "building block approach" established by Regulation (EU) No 809/2004, distinguishing between the schedules for registration documents and those for securities notes, as well as any other appropriate building blocks.
- Specific schedules should be established for different types of securities (shares, non-equity securities with a denomination per unit above or below 100 000 EUR, asset-backed securities, depositary receipts on shares, units or shares of closed-ended collective investment undertakings). In a spirit of simplification, ESMA could explore ways to streamline these schedules in order to reduce the overall number of annexes compared to those currently included in Regulation (EU) No 809/2004.
- ESMA should evaluate whether specific schedules should be established for certain types of issuers such as issuers with a complex financial history, issuers which have made a significant financial commitment, or so-called "specialist issuers". If ESMA concludes that specific schedules are needed for some or all of such types of issuer, it should provide technical advice accordingly.
- ESMA is invited to carry forward the disclosure items currently required by Regulation (EU) No 809/2004 into the new schedules only once it has verified that they represent an appropriate balance between investor protection and cost to the issuers. For example, when disclosed in a prospectus, profit forecasts or estimates (Items 13.2 of Annexes I and X, 9.2 of Annex IV, and 8.2 of Annex XI of Regulation (EU) No 809/2004) must currently be accompanied by a report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. ESMA is invited to consider the effects of repealing such requirement by assessing the benefits of such report to investors against the cost this entails for issuers to have them produced.
- When drafting the required minimum information items of the prospectus schedules, ESMA should ensure consistency and adequate alignment with the disclosure requirements of other pieces of EU legislation, like Directive 2004/109/EC (TD) and Directive 2013/34/EU<sup>6</sup>, so that issuers may easily incorporate by reference in their prospectus all or parts of the content of documents required under those acts (e.g. management reports, corporate governance statements, remuneration reports). In this respect, ESMA is asked to revisit the drafting of the section on the operating and financial review to ensure that the corresponding contents of the issuer's management report drawn up under Directive 2004/109/EC can easily be incorporated by reference in that section of the prospectus.
- ESMA is also invited to provide technical advice on the format of the base prospectus and the final terms. In that context, ESMA should preserve the flexibility of the base

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<sup>6</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

prospectus regime and aim to considerably decrease compliance costs for issuers using base prospectuses.

- To ensure a consistent application of the Regulation across the Union, ESMA is asked to carry forward in its advice the principles currently laid out in Regulation (EU) No 809/2004 whereby issuers are entitled to include additional information going beyond the information items of the schedules and building blocks, while competent authorities may not require that a prospectus contain information items which are not included in such schedules and building blocks.

### **3.2 The schedule defining the minimum information contained in the universal registration document (Article 13(2) of the Regulation)**

The universal registration document (URD) is designed as an optional shelf registration for companies that expect to frequently issue securities ("frequent issuers"). It is based on the premise that an issuer that draws up, every year, a complete registration document in the form of a URD should benefit from a fast-track approval (5 working days, instead of 10) when the competent authority approves a prospectus consisting of separate documents.

The logic behind the URD is to grant procedural alleviations to those issuers that intend to have frequent recourse to capital markets and choose to commit to draw up a URD every year. In exchange, those issuers will be able to swiftly seize market opportunities.

A URD functions as a registration document that can be used by issuers to offer securities, irrespective of their type (shares, debt, derivatives) or of the nature of the issuer (large company or SME). It follows that the content of a URD must be aligned with the disclosure standard for a share registration document and should be similar, in terms of the range of information covered, to what would be required in the context of an initial public offering on a regulated market.

A URD should be a comprehensive source of reference for investors, consolidating in one single document all information investors may need to know about a particular issuer, and avoiding duplicative disclosures by issuers. The Regulation allows frequent issuers to use the URD as a medium to publish the periodic information required by Directive 2004/109/EC (Transparency Directive).

- ESMA is invited to provide technical advice on the schedule defining the minimum information to be contained in the URD, taking into account recitals 39 to 45 of the Regulation. ESMA should base its work on the disclosure standard appropriate for a share registration document.
- When establishing the schedule defining the content of the URD, ESMA is asked to ensure that the information items that correspond to the content of the annual financial report and half-yearly financial report required under the Transparency Directive (historical financial information, operating and financial review, corporate governance) are drafted in a way that is aligned as much as possible with the relevant parts of Directive 2004/109/EC and Directive 2013/34/EU, enabling frequent issuers to incorporate such information by reference or to disclose them directly in the URD according to the arrangements set out in Article 9(12) and (13) of the Regulation.

### **3.3 The reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances (Article 14(3) of the Regulation)**

A new alleviated prospectus regime will apply for issuers which have had securities admitted to trading on a regulated market or an SME growth market continuously for at least 18 months. When proceeding with a secondary issuance, such issuers will have the option to draw up a simplified prospectus taking into account the information they have already disclosed to the market on an ongoing basis under Regulation (EU) No 596/2014 (MAR)<sup>7</sup>, and where applicable, under Directive 2004/109/EC (TD) or the market rules of the SME growth market.

Issuers who opt to draw up this simplified prospectus are subject to a distinct "disclosure test", set out in Article 14(2) of the Regulation. This article defines the reduced information they are expected to disclose and clarifies that the simplified prospectus should be an autonomous document enabling investors to make an informed investment decision based on a more limited and focused set of relevant information. Recital 48 highlights that the rationale for simplifying the content of the prospectus: information already made available to investors by the issuer under its ongoing disclosure obligations (MAR and TD) need not be repeated in the prospectus.

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<sup>7</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance

- ESMA is invited to provide technical advice on the schedules applicable under the simplified disclosure regime for secondary issuances, taking into account recitals 48 to 50 of the Regulation. ESMA should develop specific draft schedules for both registration documents and securities notes, at least for shares and debt securities. When defining the information items of these schedules, ESMA shall take into account ongoing disclosure requirements of TD and MAR that would enable investors to have access to such items elsewhere than in a prospectus.
- ESMA is invited to clarify what form the concise summary of the relevant information disclosed under Regulation (EU) No 596/2014 (MAR) over the past 12 months<sup>8</sup> should take in order for issuers to adequately inform their potential investors in a relevant and cost-efficient way, without merely repeating the contents of previous disclosures made under MAR.

### **3.4 The content, format and sequence of the EU Growth prospectus including its specific summary (Article 15(2) of the Regulation)**

The EU growth prospectus is designed for offers of securities by three types of issuers: SMEs, companies traded on SME growth markets as long as their market capitalization does not exceed 500M€ and unlisted companies with less than 499 employees that raise below 20M€<sup>9</sup> (jointly referred to as "SMEs and midcaps"). The EU growth prospectus is optional and cannot be used for an admission to trading on a regulated market.

The EU growth prospectus aims at facilitating access to financing on capital markets and reducing the administrative costs of raising capital for SMEs and midcaps. Its information content should be reduced compared to the prospectus used by issuers admitted to regulated markets, without compromising investor protection.

- ESMA is invited to identify the minimum disclosure requirements of the EU growth prospectus and to define the order of presentation of such disclosures (referred to as "sequence" in Article 15(2)).
- ESMA should adopt a "bottom-up approach" and avoid taking the existing Annexes of Regulation (EC) No 809/2004 as a starting point. This means that the exercise should not consist in identifying information which could be omitted from a full prospectus. Instead, ESMA should devise a new, substantially alleviated standard of disclosure from scratch without being guided by the content and format of the prospectus which applies to issuers on regulated markets. In particular, ESMA should take as a benchmark the content of admission documents required by markets where the prospectus obligation does not apply, e.g. the rules of MTFs that cater for SMEs and midcaps.
- When calibrating the content of the EU growth prospectus, ESMA should aim to ensure that SMEs and midcaps are obliged to disclose sufficient information on their strategy and prospects to allow investors to take an investment decision. ESMA should not propose information items which would imply high costs for SMEs with only a low corresponding added value for investors (e.g. items involving statements by independent accountants or

<sup>8</sup> Referred to in letter (c) of the second subparagraph of Article 14(3) of the Regulation

<sup>9</sup> As defined in Regulation (EU) 2015/1017 on the European Fund for Strategic Investments.

auditors).

- There should be a tangible difference between the reduced content of the EU growth prospectus and the content of the prospectus which applies to issuers on regulated markets.
- ESMA should develop specific draft schedules for both registration documents and securities notes, based on the high-level outlines featured in Annexes IV and V of the Regulation. Schedules should be developed at least for shares, debt and derivatives.
- ESMA should develop the minimum disclosure requirements for the EU Growth prospectus, following a standardized sequence.
- To make it easy for SMEs and midcaps to draw up an EU growth prospectus, ESMA should aim to create schedules and headings that allow SMEs to prepare their prospectus with no or little external advice, if they wish to do so.
- ESMA is also invited to advise the Commission on the content and standardized format applying to the specific summary of an EU growth prospectus. Such content should be a considerably shorter version of the summary set out in Article 7, and should not include the key information corresponding to disclosure items which are not required in the EU growth prospectus.

### **3.5 The criteria for the scrutiny of prospectuses and URDs and the procedures for their approval (Articles 9(14) and 20(11) of the Regulation)**

The decision of the competent authority to approve a prospectus involves analysis of, and changes to, the draft prospectus on the part of the issuer to ensure that the prospectus meets the requirement of completeness, consistency and comprehensibility.

The reform of the EU prospectus regime aims to create a single rulebook that ensures a coherent implementation throughout the EU. The practices of competent authorities concerning scrutiny and approval should be aligned so as to avoid supervisory forum shopping.

A swift and efficient scrutiny of prospectuses is conducive to facilitating fundraising on capital markets, allowing issuers to seize market windows speedily.

- ESMA is invited to provide technical advice on the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus.
- ESMA's technical advice is expected to accommodate a proportionate approach by competent authorities in the scrutiny of prospectuses based on the specific circumstances of the issuer and the issuance.
- Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 specifies the

requirements regarding the procedures for approval of prospectuses. Since that Regulation will cease to apply when the new Prospectus Regulation comes into application, ESMA is invited to incorporate the content of that Regulation, bearing in mind that some of the requirements of that Regulation have already been introduced in the Prospectus Regulation.

- With respect to scrutiny and approval, ESMA is invited to provide technical advice that is the same for both URDs and prospectuses. This is without prejudice to ESMA's technical advice on the procedures for the filing and (ex-post) review of URDs and on the conditions where the status of frequent issuer is lost.

### **3.6 The procedures for the filing of the URD, the criteria for the review of the URD and the conditions under which the status of frequent issuer is lost (Article 9(14) of the Regulation)**

After a frequent issuer has had a URD approved by a competent authority for two consecutive financial years, subsequent URDs may be filed with the competent authority without prior approval. Following such filing, the competent authority may, at any time, review the contents of a filed URD and of any amendments thereto. The Regulation acknowledges that it is up to competent authorities to decide if and when such ex-post review should be carried out. As indicated in Recital 40, each competent authority may decide the frequency of such review taking into account its assessment of the risks of the issuer, the quality of its past disclosures, or the length of time elapsed since a filed URD has been last reviewed.

In essence, the scrutiny and the review of a URD should involve the same kind of work from a competent authority (checking the completeness, the consistency and the comprehensibility of the information given in the universal registration document and amendments thereto), the only difference being that scrutiny occurs ex ante, before the approval of a URD, whilst a review occurs ex post, following the filing of a URD and subject to a decision of the competent authority to conduct such a review.

The status of frequent issuer is gained from the moment an issuer submits its first URD for approval to the competent authority. Yet, due to the conditions set out in Article 9(11) of the Regulation, such status may be challenged at various points in time thereafter. Indeed, upon each filing or submission for approval of a URD, and every time an application for approval of a prospectus consisting of separate documents (including a URD) is made, the provision of certain statements and, where applicable, amendments to the URD will be required for such a frequent issuer to keep its status and benefit from the fast-track approval.

- ESMA is invited to provide technical advice on the procedures for the filing and the criteria for the review of the URD and the conditions under which the status of frequent issuer is lost.
- In doing so, ESMA should take into account the fact that the objectives and criteria of the ex-post review of URD are aligned with those of an ex-ante scrutiny and relate to the completeness, the consistency and the comprehensibility of the information provided by the issuer.

### 3.7 The minimum information content of documents describing a merger or a takeover by way of exchange offer (Article 1(7) of the Regulation)

Points (f) and (g) of Article 1(4) and points (e) and (f) of the first subparagraph of Article 1(5) of the Regulation grant a prospectus exemption where the following securities are either offered to the public or admitted to trading on a regulated market (or both):

- securities offered in connection with a **takeover** by means of an exchange offer,
- securities offered, allotted or to be allotted in connection with a **merger or division**.

Such an exemption is conditional on a document being made available to the public containing information "*describing the transaction and its impact on the issuer*".

This represents an alleviation compared to the corresponding exemptions of Directive 2003/71/EC – set out in points (b) and (c) of Article 4(1) and points (c) and (d) of Article 4(2) of that Directive – where the precondition to be fulfilled was that a document be available containing information "*which is regarded by the competent authority as being equivalent to that of a prospectus*".

The Commission notes that the information provided to the public in the context of takeovers and mergers, as well as the way such information is controlled by competent authorities, is prescribed in national corporate laws, including laws implementing Directive 2004/25/EC on takeover bids<sup>10</sup>. The implementing measures to be taken by the Commission in that field under the empowerment of Article 1(7) are therefore not intended to interfere with these laws, and their focus should be limited to ensuring a minimum harmonisation of these documents for the purpose of applying the exemption granted in points (f) & (g) of Article 1(4) and points (e) & (f) of the first subparagraph of Article 1(5) of the Regulation, without prejudice to the ability of national laws to require more information from issuers involved in takeovers and mergers for other purposes (including supplying adequate information to existing shareholders in the context of a vote in an annual general meeting).

- ESMA is invited to provide technical advice on the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of Article 1, taking into account recital 16 of the Regulation. In particular, ESMA is invited to define how the impact of the transaction on the issuer should be presented in such documents.

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<sup>10</sup> Article 6(2) of that Directive requires the initiator of a bid to submit to its competent authority "*an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid*", before making such offer document public. Such an offer document may be subject to the prior approval of the competent authority. Article 6(3) of that Directive prescribes a minimum content for such offer document.

### **3.8 General equivalence criteria for prospectuses drawn up under the laws of third countries (Article 29(3) of the Regulation)**

Issuers domiciled in a third country may only carry out an offer of securities to the public or an admission to trading on a regulated market in the EU using a prospectus drawn up under the laws of that third country provided that the Commission has taken a decision stating that the information requirements contained in the laws of such third country are equivalent to the information requirements of the Prospectus Regulation (an "equivalence decision").

Such issuers can then elect a home Member State, among those allowed under Article 2 (m) (ii) and (iii) of the Regulation. Provided it has concluded cooperation arrangements with the relevant supervisory authorities of the third country, the competent authority of this home Member State can then approve the prospectus drawn up under the laws of that third country. Such a prospectus is subject to the language rules of the Regulation and can benefit from the EU passport.

An equivalence decision by the Commission must rely on general equivalence criteria based on the requirements of the Regulation applying to the general disclosure test (Article 6), the summary (Article 7), the base prospectus (Article 8) and the minimum information and format of registration documents and securities notes (Article 13).

- ESMA is invited to provide technical advice on general equivalence criteria to guide future assessments of national laws of third countries in relation to disclosures when securities are either offered to the public or when an admission to trading on a regulated market is sought. These criteria should reflect the requirements laid down in Articles 6, 7, 8 and 13 of the Prospectus Regulation.
  
- As regards the general equivalence criteria reflecting Article 13 of the Regulation, the Commission does not expect ESMA to proceed schedule by schedule. Instead, ESMA should focus on the minimum content and format of prospectuses for equity securities and for non-equity securities (potentially distinguishing between debt and derivatives).

## **4. INDICATIVE TIMETABLE**

This mandate takes into consideration the expected date of application of the Regulation, that ESMA needs enough time to prepare its technical advice, and that the Commission needs to adopt the delegated acts in accordance with Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Article 44 of the Regulation.

The delegated acts provided for by the Regulation and addressed under **points 3.1 to 3.6** of this mandate should be adopted no later than 18 months following the entry into force of the Regulation. Therefore the deadline set to ESMA to deliver the technical advice is **thirteen (13) months** after the date of receipt of this mandate, i.e. **31 March 2018**.

The Regulation does not envisage any deadline for the adoption of the delegated acts addressed under **points 3.7 and 3.8** of this mandate. Therefore, the Commission asks ESMA to deliver its technical advice on these two items:

- by **31 March 2019** for the delegated act referred to under **points 3.7** (i.e. twenty five (25) months after the date of receipt of this mandate);
- by **31 August 2020** for the delegated act referred to under **points 3.8** (i.e. forty two (42) months after the date of receipt of this mandate).

**Indicative timetable for the delegated acts referred to in points 3.1 to 3.6**

<b>Deadline</b>	<b>Action</b>
20 July 2017	Date of entry into force of the Regulation (twentieth day following that of its publication in the Official Journal of the European Union)
March 2018 (13 months after date of receipt of the request)	ESMA provides its technical advice on <b>points 3.1 to 3.6</b> .
Until June 2018	Preparation of the draft delegated acts by Commission services on the basis of the technical advice by ESMA.  The Commission will consult with experts appointed by the Member States within the Expert Group of the European Securities Committee (EG ESC) on the draft delegated acts.
Until October 2018	Translation and adoption procedure of draft delegated acts.
Until April 2019	Objection period for the European Parliament and the Council (three months which can be extended by another three months)
21 July 2019 (24 months after entry into force)	Date of application of the Prospectus Regulation and delegated acts.