



## 1 Introduction

On 21 July 2019, the new [Prospectus Regulation \(EU\) 2017/1129](#) (the [New Prospectus Regulation](#)) and its related delegated acts came into full effect across the European Union.

The New Prospectus Regulation was adopted by the EU as part of its capital markets union plan to improve the prospectus regime. This plan specifically aims to (i) decrease (financial) thresholds for smaller companies to access capital, (ii) harmonize the prospectus regime across the EU; (iii) simplify and increase flexibility for “frequent issuers” and (iv) accommodate specific information and protection needs of (retail) investors.

In previous Capital Market Headlines we gave a [general overview of the regime](#) and discussed the proportionate disclosure regime for certain offers and listings that [the Belgian legislator](#) has adopted, using the flexibility offered by the New Prospectus Regulation.

In this Capital Markets Headline we give you a brief recap of the most important changes under the new regime.

## 2 The new landscape

The new legal landscape as regards a prospectus looks as follows in Belgium:

TYPE	LINK
<b>New Prospectus Regulation</b>	<a href="#">Regulation (EU) 2017/1129</a> 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 (dated 14 June 2017, published in the Official Journal on 30 June 2017)
“Level 2”	<a href="#">Commission delegated Regulation (EU) 2019/980</a> supplementing the EU Prospectus Regulation as regards the format, content, scrutiny and approval of the prospectus (the <a href="#">Delegated Regulation FCSA</a> )
	<a href="#">Commission delegated Regulation (EU) 2019/979</a> supplementing EU Prospectus Regulation 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 (the <a href="#">Delegated Regulation RTS</a> )
“Level 3”	ESMA <a href="#">Q&amp;A document on prospectus related issues</a> (lastly updated on 12 July 2019 at the time of this Capital Markets Headline)
	ESMA <a href="#">guidelines on risk factors</a> under the EU Prospectus Regulation.
	ESMA technical advice on <a href="#">Minimum Information Content for Prospectus Exemption</a>
<b>Belgian legislation</b>	<a href="#">The new Belgian prospectus law</a> of 11 July 2018 (the <a href="#">New Prospectus Law</a> ).

### 3 Key changes

#### 3.1 Prospectus Summary

While the New Prospectus Regulation upholds the concept of summaries, their format and required content change drastically. Key changes include:

- The summary should be a **self-contained part** of the prospectus (i.e., no incorporation of, or referencing to, information in the prospectus) and focus on key information allowing investors to decide whether they want to review the prospectus as a whole.
- It should be **short** (in principle up to 7 sides of A4 pages), simple and easy for investors to understand and written in plain (non-technical and concise) language.
- It should be made in **the form of a Q&A and consist of up to 4 sections**: (a) an introduction, containing warnings, (b) key information on the issuer, (c) key information on the securities, (d) key information on the offer of securities to the public and/or the admission to trading on a regulated market.
- The summary should only include the **15 most material risk factors**.
- **Certain key financial information** should be included in the summary and follow a prescribed **template**.

#### 3.2 Risk factors

The risk factors to be included in the prospectus should now meet the following criteria:

- The risk factor must be **specific**. There must be a clear and direct link between the risk factor and the issuer, the guarantor or the securities and it must be drafted specifically for this purpose.
- It must describe a **material risk**. The potential negative impact of a risk must be clear by disclosing the probability of materialization of the risk as well as the magnitude of the impact by using a quantitative approach or, if no quantitative information is available, a qualitative approach (for example, by applying a scale ranging from low to high).
- **Mitigating language** may not compromise the description of the materiality of the risk. While mitigating language is permitted to demonstrate the materiality of a risk, it must not be included in a risk factor where it reduces the investor's understanding of such materiality and leaves the potential negative impact unclear.
- The information elsewhere in the prospectus should **corroborate** that the risk factor is material and specific.
- The presentation of risk factors should be **concise and in a comprehensible** form.
- Risk factors should be presented by **categorizing** them under a number of appropriate (sub)headings and, within each category, the most material risk factor should be presented first, it being understood that an issuer can only use up to 10 different categories or sub-categories.

#### 3.3 Audit report of profit forecasts or profit estimates

It is no longer required to provide for an auditor report in case profit forecasts or profit estimates are included in the prospectus. Such requirement created additional costs for issuers without having a clear added value for investors. Nevertheless, based on ESMA's consultation, the majority of responding stakeholders were inclined to maintain the reporting requirement.

#### 3.4 Tax disclosure

The requirement to include tax disclosure in respect of each jurisdiction where the securities are being offered to the public is replaced by a general tax warning and a requirement for particular disclosure only where there is a specific tax regime applicable to the securities.

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### 3.5 Use of proceeds

ESMA specified that the blanket phrase “for general corporate purposes” should be avoided and if proceeds are being raised for specific purposes these must now be stated. If any proceeds are to be used for sustainability purposes this should also be specifically disclosed.

### 3.6 Selected financial information

The requirement under the current regime for certain prospectuses to include a “selected financial information” section is removed, as it was considered redundant given requirements to present selected historical financial information in the summary and the audited financial statements to be included elsewhere in the prospectus.

### 3.7 Universal registration document (URD)

Issuers, whose securities are traded on a regulated market or multilateral trading facility, may draw up a universal registration document (a URD) once per financial year. Such URD describes the issuer’s organization, financials, governance, etc. Once the FSMA has approved a URD for 2 consecutive financial years, the concerned issuer may file subsequent URDs without prior approval.

This URD allows for frequent issuers to keep information up-to-date and draw up a prospectus when market conditions become (more) favorable, by simply adding a securities note and a summary to the URD. Another benefit of this multi-purpose “shelf registration” is the shorter approval process for the prospectus making use of such URD (5 working days).

### 3.8 Secondary issuances and offers to directors and employees

Secondary issuances will be subject to more relaxed prospectus requirements, and offers to directors and employees continue to be exempt from the obligation to publish a prospectus.

### 3.9 EU Growth Prospectus

The New Prospectus Regulation introduces the concept of an EU Growth Prospectus for certain issuances by SMEs, which allows for a simplified standard of disclosure in a standardized format.

### 3.10 Advertisements and incorporation by reference

Issuers should be wary of the broadened definition of **advertisements**, which now refers to a “communication” rather than to “announcements”. All advertisements that are published after 21 July 2019 must comply with the EU Prospectus Regulation as they are not subject to the grandfathering principle (see below).

The scope of **incorporation by reference** is further broadened. The purpose of this change is to facilitate the procedure of drawing up a prospectus while at the same time lowering the costs for the issuers without having to trade-off investor protection. Now, documents such as audit reports, financial or governance statements, articles of association and other documents, which have been approved (or filed) with a competent authority, can be incorporated by reference in a prospectus. The prospectus should further include a cross-reference list with hyperlinks to all documents.

### 3.11 Grandfathering

The New Prospectus Regulation will not have a retroactive effect. Therefore, any prospectus which has been approved under the previous regime will remain governed by said regime.

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