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Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Redeemable debt securities

Question
Do redeemable debt securities (cases where the issuer has the right to redeem the security before maturity) fall under the scope of Article 1(4), point (j) of the Prospectus Regulation?

ESMA Answer

27-07-2021

Original language

Answer provided by the European Commission (Published as Prospectuses Q&A 15.8)

Article 1(4), point (j), of the Prospectus Regulation [1] sets out an exemption from the obligation to publish a prospectus, under certain conditions, for an offer to the public of non-equity securities issued in a continuous or repeated manner by a credit institution. One of the aforementioned conditions is that those securities do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument. It is considered that such reference to a derivative instrument refers only to a derivative component that affects the right of the investor and not to the risk hedging of the issuer. Therefore, the fact that in this type of securities the issuer enters into a derivative contract in order to cover its risk does not exclude them from the scope of Article 1(4), point (j).

The same consideration relates to Article 1(5), point (i), first subparagraph, of the Prospectus Regulation.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council on 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).