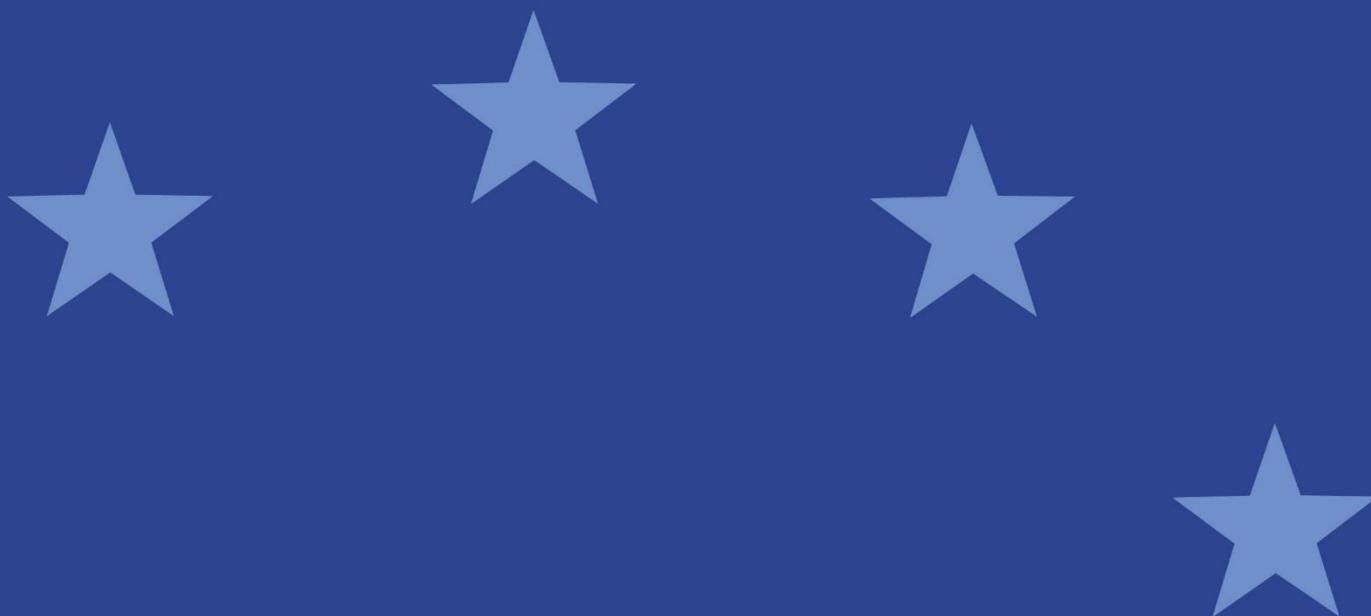


Final Report

On the draft RTS amending Delegated Regulation (EU) 2019/979 containing regulatory technical standards under the Prospectus Regulation



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Executive summary

Reasons for publication

Regulation (EU) 2017/1129 ('Prospectus Regulation') was published in the Official Journal of the European Union on 30 June 2017 and entered into force 20 days after its publication on 20 July 2017. The Regulation required ESMA to develop draft regulatory technical standards ('RTS') covering specific areas, namely the content of the key financial information for the prospectus summary, the data for classification of prospectuses and the practical arrangements to ensure that such data is machine readable, provisions concerning advertisements and situations where a supplement to a prospectus is required as well as the technical arrangements for the functioning of the notification portal to be established by ESMA.

The RTS was published by ESMA on 17 July 2018. The RTS was adopted by the European Commission and published on 21 June 2019 as Commission Delegated Regulation (EU) 2019/979 (the 'Delegated Regulation').

The draft RTS contained in this Final Report aim to make some minor amendments to the Delegated Regulation in respect of certain errors identified in the Delegated Regulation.

Content

The draft RTS contained in Annex I to this Final Report amend the relevant provisions in the Delegated Regulation where clerical and minor errors have been identified.

Next steps

The Final Report containing the draft RTS will be sent to the Commission.

1 Background to the draft RTS contained in Annex I

1.1 Legal basis

1. Based on the empowerments contained in Articles 7(13), 21(12), 21(13), 22(9), 23(7) and 25(7) of the Prospectus Regulation, the European Securities and Markets Authority (ESMA) published on 17 July 2018 a draft RTS on the content of the key financial information for the prospectus summary, the data for classification of prospectuses and the practical arrangements to ensure that such data is machine readable, provisions concerning advertisements and situations where a supplement to a prospectus is required as well as the technical arrangements for the functioning of the notification portal to be established by ESMA. The draft RTS was adopted on 21 June 2019 by the European Commission as Delegated Regulation (EU) 2019/979 ('the Delegated Regulation'). The Delegated Regulation has entered into application since 21 July 2019.
2. The draft RTS contained in Annex I comprises of minor updates which have been made primarily to correct clerical errors observed in the Delegated Regulation and as such do not constitute new policy or substantial changes to existing policy.
3. The procedure in Article 10(1) of the ESMA Regulation normally requires that ESMA consult the market in relation to its regulatory technical standards. However, ESMA has decided not to consult in this specific case, because it would be disproportionate in relation to the scope and impact of the amendments and considering the urgency of the matter.

1.2 Content

4. ESMA proposes the following amendments to the Delegated Regulation:
 - Pursuant to Article 18 of Commission Delegated Regulation (EU) 2019/979, issuers of securities convertible or exchangeable into third party shares are required to publish a supplement to their prospectus. By contrast, Commission Delegated Regulation (EU) No 382/2014, which was replaced by the Delegated Regulation (EU) 2019/979, did not require the publication of a supplement in those situations. As the intention of Delegated Regulation (EU) 2019/979 was not to increase the legal requirements for issuers of securities convertible or exchangeable into third party shares by asking them to publish a supplement and as those rules have proven to work well and have not affected the level of investor protection, all references to issuers of securities convertible or exchangeable into third party shares should be removed from the list in Article 18(1) of Delegated Regulation (EU) 2019/979.
 - The third year of cash flow information was omitted from the key financial information in the summaries of prospectuses. Therefore, an additional column relating to the cash flow information for the two years prior to the year of the

prospectus is inserted into table 3 of Annex I to the Delegated Regulation. This ensures that cash flow information is included for each year covered by the historical financial information that is included in the prospectus.

- Field 26 of Annex VII to the Delegated Regulation, which relates to depository receipts, erroneously refers to 'DRCP'. This draft RTS amends the field in the Delegated Regulation which refers to 'DPRS' to align with the terminology used in the Financial Instruments Reference Data System.
- In the English version of the Delegated Regulation, the word 'available' has been omitted from Article 21 due to a clerical mistake. The draft RTS on the Delegated corrects this.

1.3 Next Steps

5. ESMA will submit this Final Report to the European Commission (EC).

Annex I

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

of **XXX**

amending Commission Delegated Regulation (EU) 2019/979 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council 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 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/EC¹, and in particular Articles 7(13), 21(13) and 23(7) thereof,

Whereas:

- (1) Under Commission Delegated Regulation (EU) 2019/979², issuers of securities convertible or exchangeable into third party shares are currently required, in the situations listed in Article 18, to publish a supplement to their prospectus. By contrast, Commission Delegated Regulation (EU) No 382/2014³, which has been replaced by the Delegated Regulation (EU) 2019/979, did not require the publication of a supplement by such issuers in those situations. As the intention of Delegated Regulation (EU) 2019/979 was not to increase the legal requirements for issuers of securities convertible or exchangeable into third party shares by asking them to publish a supplement and as such requirement does not affect the level of investor protection, all references to issuers of securities convertible or exchangeable into third party shares should be removed from the list in Article 18(1) of Delegated Regulation (EU) 2019/979.
- (2) To provide investors with a comparative overview of the evolution of the cash flow statement of a non-financial entity issuing equity securities, the column relating to the

¹ OJ L 168, 30.6.2017, p. 12.

² Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council 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, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301 (OJ L 166, 21.6.2019, p. 1).

³ Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus (OJ L 111, 15.4.2014, p. 36).

cash flow information for the two years prior to the year of the prospectus should be inserted in table 3 of Annex I to Delegated Regulation (EU) 2019/979.

- (3) Field 26 of Annex VII to Delegated Regulation (EU) 2019/979, which relates to depository receipts, refers to ‘DRCP’. That field should however refer to ‘DPRS’, which is the reference used in the Financial Instruments Reference Data System (FIRDS) operated by the European Securities and Markets Authority (ESMA) in accordance with Regulation (EU) No 600/2014⁴.
- (4) In the English⁵ version of Article 21 of Delegated Regulation (EU) 2019/979, the word ‘available’ has been omitted due to a clerical mistake.
- (5) Delegated Regulation (EU) 2019/979 should therefore be amended accordingly.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (7) In the interest of legal certainty, summaries of prospectuses approved between 21 July 2019 and [please insert the date before the date of entry into force of this amending act in the OJ] should continue to be valid until the end of the validity of those prospectuses.
- (8) Regulation (EU) 2017/1129 and Delegated Regulation (EU) 2019/979 apply as of 21 July 2019. For reasons of legal certainty and to ensure the correct functioning of the prospectus notification portal, points (1), (2), (4) and (5) of Article 1 and Article 2 of this Delegated Regulation should have the same date of application as Regulation (EU) 2017/1129 and Delegated Regulation (EU) 2019/979.
- (9) Given the urgency of this matter and the limited scope and impact of the draft regulatory standards on which this Regulation is based, ESMA has not conducted open public consultations or analysed the potential related costs and benefits. ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁶;

HAS ADOPTED THIS REGULATION:

Article 1
Amendments to Delegated Regulation (EU) 2019/979

Delegated Regulation (EU) 2019/979 is amended as follows:

- (1) Article 18(1) is amended as follows:
 - (a) in point (a), points (i) and (ii) are replaced by the following:
 - ‘(i) an issuer where a prospectus relates to shares or other transferable securities equivalent to shares;

⁴ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

⁵ ESMA suggests that the Commission check if other language versions of the Delegated Regulation (EU) 2019/979 are affected and amend those versions accordingly.

⁶ 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 L 331, 15.12.2010, p. 84).

- (ii) an issuer of the underlying shares or other transferable securities equivalent to shares in case of securities referred to in Articles 19(2) or 20(2) of Delegated Regulation (EU) 2019/980;’;
- (b) in point (d), points (i) and (ii) are replaced by the following:
- ‘(i) an issuer where a prospectus relates to shares or other transferable securities equivalent to shares;
 - (ii) an issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to securities referred to in Articles 19(2) or 20(2) of Delegated Regulation (EU) 2019/980;’;
- (c) point (e) is replaced by the following:
- ‘(e) third parties make a new takeover bid as defined in Article 2(1)(a) of Directive 2004/25/EC of the European Parliament and of the Council* or the result of any takeover bid becomes available in respect of any of the following:
 - (i) the equity of the issuer where a prospectus relates to shares or other transferable securities equivalent to shares;
 - (ii) the equity of the issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to the securities referred to in Articles 19(2) or 20(2) of Delegated Regulation (EU) 2019/980;
 - (iii) the equity of the issuer of the underlying shares of depository receipts where a prospectus is drawn up in accordance with Articles 6 and 14 of Delegated Regulation 2019/980;
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- * Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 12).’;
- (d) in point (f), points (i) and (ii) are replaced by the following:
- ‘(i) shares or other transferable securities equivalent to shares;
 - (ii) securities as referred to in Article 19(2) of Delegated Regulation (EU) 2019/980;’;
- (e) point (h) is replaced by the following:
- ‘(h) in the case of a prospectus relating to shares or other transferable securities equivalent to shares or to the securities referred to in Articles 19(2) or 20(2) of Delegated Regulation (EU) 2019/980, a new significant financial commitment is likely to give rise to a significant gross change as defined in point (e) of Article 1 of that Delegated Regulation;’;
- (2) Article 21 of Delegated Regulation (EU) 2019/979 is replaced by the following:

‘Article 21

Download of documents and accompanying data

ESMA shall ensure that the notification portal makes any uploaded documents and accompanying data available to the relevant competent authorities.’.

- (3) the following Article 22a is inserted:

‘Article 22a

Summaries of prospectuses approved between 21 July 2019 and [Publications office, please insert the date before the date of entry into force of this amending act in the OJ] for non-financial entities issuing equity securities

Summaries of prospectuses that contain information as referred to in Table 3 of Annex I and 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 act in the OJ] shall continue to be valid until the end of the validity of those prospectuses.’;

- (4) Table 3 of Annex I is replaced by the following:

‘Table 3

Cash flow statement for non-financial entities (equity securities)

	Year	Year -1	Year -2	Interim	Comparative interim from same period in prior year
*Relevant net Cash flows from operating activities and/or cash flows from investing activities and/or cash from financing activities					

(5) Table 1 of Annex VII is amended as follows:

In entry 26, reference to ‘DRCP’ is replaced by reference to ‘DPRS’.

Article 2

Entry into force and application

This Regulation shall enter into force on the third day of its publication in the *Official Journal of the European Union*.

However, point (1), (2), (4) and (5) of Article 1 shall apply from 21 July 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Jean-Claude JUNCKER