

*Handbook of CONSOB' guidance relating to the prospectus
published pursuant to Regulation (EU) No.1129/2017 and related
supplementing regulations*



CONSOB

COMMISSIONE NAZIONALE
PER LE SOCIETÀ E LA BORSA

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This handbook is meant purely as a documentation tool providing an overview of guidance published by Consob as regards application of the EU legal framework relating to the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

Consob communications on this matter provide clarifications for the application of the European and Italian legal provisions which reference should be made to.

If you wish to consult Consob communications no longer current, because concerning matters now governed by the Prospectus Regulation, you may consult the item of the Consob website "*Historical Archive of communications no longer valid regarding the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market*".

The Consob information contained in this document is not intended to alter the European level 3 measures provided by ESMA and is designed to help issuers and practitioners apply the EU Prospectus rules.

For Level 3 measures adopted by the European Securities and Markets Authority (ESMA) to promote convergent supervisory practices and approaches in the area of the prospectus published pursuant to Regulation (EU) No. 1129/2017, please consult the following hyperlink (<https://www.esma.europa.eu/issuer-disclosure/prospectus>) on the <https://www.esma.europa.eu/> website.

Please, consider that only the Italian version is authentic.

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SECTION I

GUIDANCE FOR SUBMISSION AND FOLLOW-UP OF A PROSPECTUS APPROVAL REQUEST

"INDICATIONS ABOUT THE PROCESS OF PROSPECTUS SCRUTINY AND APPROVAL BY CONSOB"

pursuant to Article no. 20, paragraph 7, Regulation (EU) 2017/1129

Consob has published the following guidance on the scrutiny and approval process in order to facilitate the efficient and timely approval of the prospectuses and to support external parties throughout the formalities required for their filing (updated in light of the amendments made by Consob resolution no. 23016 of 20 February 2024, in force since 29 February 2024).

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1. Reference legislation

The legislation applicable to the prospectuses to be published for a public offer and/or admission to trading of securities on a regulated market is listed thereunder:

European legislation	
Normative reference	link
Regulation (EU) 2017/1129 (hereinafter also "Prospectus Regulation") and subsequent amendments and additions relating to the prospectus to be published for the public offer or admission to trading of securities on a regulated market	https://www.consob.it/web/consob-and-its-activities/regulatory-framework-on-prospectuses
Delegated Regulation (EU) 2019/979, and subsequent Amendments and additions, which supplements Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to the regulatory technical standards relating to key financial information in the summary of the prospectus, publication and classification of prospectuses, disclosure of securities, supplements to the prospectus and notification portal.	
Delegated Regulation (EU) 2019/980, and subsequent amendments and additions, which supplements Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, control and approval of the prospectus to be published for the public offer or admission to trading of securities on a regulated market	

L3 ESMA measures	
Normative reference	link
ESMA <i>Recommendations</i> ESMA/2013/319 (Applicable for the part relating to specialized issuers referred to in the Article no. 39 of the Delegated Regulation (EU) 2019/980)	https://www.esma.europa.eu/issuer-disclosure/prospectus
ESMA <i>Guidelines on Alternative Performance Measures</i> (APMs) ESMA 32-51-370	
ESMA <i>Questions and Answers</i> on the Prospectus Regulation ESMA31-62-1258	
ESMA <i>Guidelines on risk factors pursuant to the ESMA Prospectus Regulation</i> ESMA 31-62-1293	

ESMA Guidelines on disclosure requirements under the Prospectus Regulation ESMA 32-3821138	
ESMA Public Statement Sustainability disclosure in prospectuses ESMA32-1399193447-441	https://www.esma.europa.eu/sites/default/files/2023-07/ESMA32-1399193447-441_Statement_on_sustainability_disclosure_in_prospectuses.pdf

Primary national legislation	
Normative reference	link
Legislative Decree no. 58/1998 (hereinafter also "TUF")	https://www.consob.it/web/consob-and-its-activities/regulatory-framework-on-prospectuses https://www.consob.it/web/consob-and-its-activities/laws-and-regulations

Secondary national legislation	
Normative reference	link
Issuers' Regulation, adopted with Resolution no. 11971/1999 (hereinafter also the "Issuers' Regulation")	https://www.consob.it/web/consob-and-its-activities/laws-and-regulations
Markets Regulations, adopted with Resolution no. 20249/2017	

Consob guidelines	
Normative reference	link
Advertisements	https://www.consob.it/web/consob-and-its-activities/other-regulatory-measures
Application of the definition of offer of securities and other financial products to the public	
Execution of the offer and disclosure obligation	
Content, update and publication of the prospectus	
Withdrawal right	

Scrutiny of the prospectus by Consob	
Admission to trading	
Filing of the prospectus	
Other operative measures	https://www.consob.it/web/consob-and-its-activities/operational-instructions

From 21 July 2019, the European Union legislation on the prospectus set by Regulation (EU) 2017/1129 ("Prospectus Regulation") is fully applicable in the legal systems of the Member States of the European Union, including Italy. This Regulation, relating to the prospectus to be published for the public offer or admission to trading of securities on a regulated market, repealed Directive 2003/71/EC (so-called "Prospectus Directive").

The Prospectus Regulation is a legislative source with direct effects on national law. Therefore, it is directly applicable in all EU Member States.

The Prospectus Regulation has been supplemented by two EU Delegated Regulations detailed below which, while repealing the previous Regulation (EC) 2004/809 and Delegated Regulations (EU) 2014/382 and (EU) 2016/301, regulate:

- both the format and content of the prospectus to be published for the public offer or admission to trading of securities on a regulated market (based on the type of issuer, the type of security, the type of issue/listing), and the approval of the prospectus by the competent Authority (EU Delegated Regulation 2019/980);
- the key financial information in the summary of the prospectus, the publication and classification of the prospectuses, advertising relating to the securities, supplements to the prospectus and the notification portal (EU Delegated Regulation 2019/979).

The European Union prospectus framework is completed with some L3 measures issued by ESMA, such as guidance/guidelines, recommendations, *Questions and Answers*, published on its website (see above).

With reference to the aspects left by the Prospectus Regulation to the competence of individual Member States, the national, primary (TUF) and secondary (Issuers' Regulation) regulations are applied.

In compliance with Articles 20 and 23 of the Prospectus Regulation, Consob is the competent authority for the approval of the prospectus and the related supplement, drawn up for a public offer of securities and/or for the admission of securities to trading on a regulated market, where Italy is the home Member State.

Consob has published on its website guidelines developed from time to time on specific prospectus issues, also to address questions posed by external parties, organized and

systematized within a single document called “Collection of CONSOB's application guidelines on prospectus drafted pursuant to Regulation (EU) No. 1129/2017 and its supplementary EU regulations.”. These include, in particular, the Consob Communication no. 7/2020 of 9 July 2020 related to the *"Criteria for the control of the prospectus by Consob within the framework of the provisions of EU Regulation no. 1129/2017 and the EU Commission Delegated Regulation no. 980/2019"*.

On Consob's website www.consob.it, in the section “Prospectuses and Takeover Bids Documents - Prospectuses” are collected all documents and information related to prospectuses and, in particular:

- in the “Application for Approval/passport request” section, the electronic templates to be used for submitting the application for approval of the prospectus (or its constituent parts, including the universal registration document) and the supplement, as well as for requesting their passporting to other EU countries;
- in the “Other Operational Measures” section, information regarding the transmission of the application for approval of a prospectus/supplement to Consob and the steps to be taken following its approval;
- in the “Regulatory Framework on prospectuses” and “Guidelines” sections, regulatory references regarding prospectuses, as well as related interpretative guidance.

The administrative procedure is governed by Law no. 241/1990, by the Consob Regulation on administrative procedures adopted with Resolution no. 18388/2012 and by the provisions of the Consob Regulation on issuers adopted with Resolution no. 11971/1999 and its following amendments and additions.

2. How to submit a ‘Prefiling’ request

Pursuant to article 4, paragraph 2 (case of *public offer*) or article 52, paragraph 2 (case of *admission to trading on a regulated market*) or article 63, paragraph 2 (case of *admission to trading on a regulated market following an offer to the public*) of Consob Regulation 11971/99 (‘Issuers’ Regulation’), in advance of a formal application, the Issuer and/or the Offeror and/or the Person requesting admission to trading may submit to the competent Consob Units issues of particular importance concerning the offer/admission to listing, also by sending information taken from the documents of interest via email to segr.dve@consob.it or via Certified e-mail (consob@pec.consob.it).

The Issuer and/or the Offeror and/or the Person requesting admission may request a preliminary meeting with the competent Consob Units at the email addresses indicated above.

If a request is made for a meeting, said email should point out the subject matters and the topics that are intended to be submitted to the attention, provide a description of the transaction to be carried out, identify the participants and their role in the transaction and provide a short note describing the issuer.

If the issues to be submitted to a preliminary discussion with Consob are related to specific issues of historical and/or proforma financial information to be included in a prospectus and/or the

development and performance of the issuer's business, the Issuer/Offeror/Person requesting admission is invited to kindly submit appropriate documentation to allow a preliminary examination of the relevant issue.

3. Drafting of the application for approval of the prospectus (or constituent parts thereof)

Except for cases of inapplicability or exemption from the prospectus obligation, pursuant to Articles 1 and 3 of the Prospectus Regulation, for the purposes of the public offer of securities and/or their admission to trading on a regulated market, a prospectus must be published after the Consob approval. Pursuant to Article 20, paragraph 1, of the Prospectus Regulation, the prospectus cannot be published before its approval by the competent authority (i.e. Consob when Italy is the home Member State).

For the purpose of the approval of the prospectus, the Issuer/Offeror/Person requesting the admission to trading (hereinafter also the "applicant") sends Consob the application for approval provided for by article 4 (case of *public offer*) or by article 52 (case of *admission to trading on a regulated market*) or by article 63 (case of *admission to trading on a regulated market following an offer to the public*) of the Issuers' Regulation.

The application for approval may concern:

- the prospectus/base prospectus (drawn up as a single document or as separate documents), hereinafter "Prospectus";
- the registration document;
- the universal registration document;
- the securities note and, where applicable, the summary;
- the supplements to the above documents;

The application for approval of the prospectus, or of constituent parts thereof (Registration Document, Securities Note, Summary Note), must be prepared by filling out the specific electronic form applicable to the case, available on Consob's institutional website (<https://www.consob.it/>) in the section dedicated to Prospectuses / Application for Approval (<https://www.consob.it/web/consob-and-its-activities/application-for-approval/-passport-request>) and must be accompanied by the documents required in the aforementioned electronic form, pursuant to Article 42 of Delegated Regulation (EU) 2019/980. The application forms are available in Italian and English.

The application for approval, if completed, is dated the day on which it is received by Consob. Pursuant to Article 20, paragraph 4, of the Prospectus Regulation, if Consob finds that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that changes or supplementary information are needed, it informs the applicant of that fact promptly and at the latest within the time limits set out by the

aforementioned provision. In this case, Consob shall clearly specify the changes or supplementary information that are needed. Further, in such cases, the time limit set out in Article 20, paragraph 2, of the Prospectus Regulation (Article 23, paragraph 1, if the application relates to a supplement) applies only from the date on which a revised draft prospectus or the supplementary information requested are submitted to Consob, without prejudice of any additional request of comments by the latter.

It is worth clarifying that where the issuer has expressed in the application form a specific timetable for the execution of the transaction, it is assumed that the missing information and documents will be sent to Consob in time to allow the approval of the prospectus well in advance of the start date of the transaction indicated in this calendar.

Regarding the approval of the prospectus and the supplement for offers of financial products other than securities, please refer to art. 94-*bis* of Legislative Decree no. 58 of 24 February 1998 and art. 8 of the Issuers' Regulation.

The operational indications for the transmission of the application for approval of the prospectus are provided in the following paragraphs.

4. Information systems for transmission of the application for approval of the prospectus (or constituent parts thereof) and login credentials

For securities other than units or shares of closed UCITS, the application for approval, accompanied by the documents and information provided by the application form based on the characteristics of the securities, in force of Art. 42 of Commission Delegated Regulation (EU) 2019/980, needs to be sent in electronic format, not exceeding 100 MB for each single attached file, through the SIPROEM (Issuers' Prospectus System). This Information System is available on the Consob institutional website (<https://www.consob.it/>), in the Section "Services for Supervised Subjects (SIPROEM)" (<https://www.consob.it/web/services-for-supervised-subjects/prospectus-approval>).

The login credentials (*username and password*) issued by Consob can be used to access SIPROEM. These credentials, for listed entities, correspond to the access credentials to the *Teleraccolta* (*telematic collection of information data*) systems. Unlisted entities can request credentials through the appropriate accreditation procedure to be carried out on the Consob institutional website (<https://www.consob.it/>), within the section "Services for Operators/Credentials Issue/Prospectus" (<https://www.consob.it/web/area-operativa-interattiva/prospetti2>). For this accreditation, please, send copy of the identity document of the holder of the credentials and the form attached to these instructions to the following email address: segr.dve@consob.it.

The request for login credentials can only be made by the Issuer or the Offeror or by the Person requesting the admission of securities to trading on a regulated market. Therefore, it is not possible to issue credentials to Legal Firms.

On the Consob institutional website (<https://www.consob.it/>), under the section "Services for Operators" (<https://www.consob.it/web/services-for-supervised-subjects/prospectus>), the SIPROEM User Handbook is available, in Italian and English. This Handbook describes the steps to follow for accreditation and transmission of the request for credentials.



The release of the access credentials is carried out *via* PEC at the address indicated in the request.

Upon initial access to SIPROEM, through the credentials issued by Consob, the system requires to change the *password*.

It is suggested that the request for credentials be made at least 10 days before the expected date for sending the application for approval due to the technical time laps required for implementing legal- administrative formalities.

In the event of technical problems, it is possible to contact the help desk service at the telephone national number 06-8477388 (+39-6-8477388 from abroad), on working days from 7.30 a.m. to 8.00 p.m. and on Saturdays from 9.00 a.m. to 2.00 p.m.. Alternatively, you may write to the e-mailaddress siproem@consob.it.

The credentials issued will be valid for the entire life of the Company and, therefore, can be used for any further request for approval of offer/listing documents as well as for the fulfilment of any obligations regarding *Teleraccolta (telematic collection of information data)* that the company may be called upon to fulfil on the basis of the applicable regulations.

5. How to send the application for approval

As mentioned above, pursuant to art. 4 of the Issuers' Regulation, the application for approval of the prospectus, or constituent parts thereof, relating to securities other than units or shares of closed UCITS needs to be sent to Consob through the SIPROEM system.

The application for approval of the prospectus relating to units or shares of closed-end UCIs, accompanied by the documents and information indicated in the aforementioned electronic application form for the type of securities under comment, needs to be sent in electronic format *via* certified e-mail (consob@pec.consob.it).

The SIPROEM User Handbook (<https://www.consob.it/web/services-for-supervised-subjects/prospectus>), in Italian and English, which describes the steps to follow in order to proceed with the submission of the application for approval of the prospectus (or constituent parts thereof), is available on the Consob institutional website (<https://www.consob.it/>), under the section "Services for supervised subjects / Approved Prospectus".

Users are advised to carefully follow the aforementioned Handbook, also taking into account the different types of prospectuses (*equity, non-equity, IPO*) and documents for which approval is requested (prospectus drawn up as a single document, registration document, universal registration document, securities note and summary).

If the application for approval is transmitted by selecting an incorrect option (e.g. equity prospectus instead of IPO), once the scrutiny of the prospectus has started, the request for correction should be sent to the competent Office, as identified in the SIPROEM assignment, by sending an email to the Secretariat of the Department in charge of the application as indicated in the delivery receipt issued related to the application (as better specified in paragraph 6). That



will link to the official who is in charge for the proceedings. Once the correction will be made, the applicant shall fill in the mandatory metadata required by the SIPROEM system for the correct option in order to allow the system to be unlocked.

The SIPROEM system is in operation 24h.

When the application is successfully uploaded, the SIPROEM system automatically will forward an electronic receipt containing the identification number of the application on the SIPROEM system ("Siproem ID"). This identification number does not match with the administrative procedure number, pursuant to Article 7 of Law No. 241/90. Said number will be communicated to the applicant promptly and at the latest within the time limits set out by Art. 20, paragraph 4, of the Prospectus Regulation (see next paragraph no. 6). In the event of technical problems, it is possible to contact the help desk service at the telephone number 06-8477388, operating - as mentioned above – on working days from 7.30 a.m. to 8.00 p.m. and on Saturdays from 9.00 a.m. to 2.00 p.m.. Alternatively, you may write to the e-mail address siproem@consob.it.

6. Consob contact points

For securities other than units or shares of closed UCITS, in the event of a positive outcome of the submission of the application for approval, the SIPROEM automatically transmits, *via* PEC, to the applicant the indication of the Consob Office competent for processing the request. The Office can be contacted through the number 06-84771, providing the reference number of the application.

After the uploading of the application with a positive outcome, the applicant will promptly and at the latest within the set time limits be informed that the proceeding has been started by Consob all along with the indication of the administrative procedure number pursuant to article 7 of Law 241/90 and the indication of the Procedure Manager that can be contacted during the entire preliminary proceedings.

Before receiving the communication related to the starting of the procedure, it is always possible to contact the secretariat of the Department to which the proceeding has been assigned, as resulting from the delivery receipt issued by the application for securities other than units or shares of closed UCITS, at number 06-84771, to establish a link with the Official who is in charge of the scrutiny.

For closed UCITS units or shares, within two working days from the date of submission (*via* PEC) of the application, a communication related to the starting of the proceeding by Consob is sent to the applicant, pointing out the reference number of the application, the administrative procedure number pursuant to article 7 of Law 241/90 and the details of the Procedure Manager and the Consob organisational unit with whom it is possible to make contact during the entire procedure.

Before receiving the note related to the starting of the proceeding, it is always possible to contact the secretariat of the Intermediaries Department (DIN) at 02.724201 (Milan office), which will establish contact with the official in charge of the investigation.

All through the procedure, the contact points of Consob are represented by:

- the SIPROEM system, dedicated to the exchange between the Authority and the instant subjects of the formal correspondence relating to the investigation;
- the phone number of the Process Manager and any Assignee of the application, as indicated by the Procedure Manager himself;
- the email addresses of the Process Manager and any Assignee.

7. Time of approval and execution of the administrative procedure

The time limits of the prospectus (or its constituent parts) approval are defined by Article 20 of the Prospectus Regulation, while the progress of the administrative procedure is governed by Law no. 241/1990 (and by article 8 of the Issuers' Regulation with regards to the approval of the prospectus and any supplement related to financial instruments other than securities).

For non-equity prospectuses, Consob has envisaged tighter scrutiny and approval timeframes than those required by the applicable regulations. Please refer to what is published on Consob's institutional website (www.consob.it) in the area “Timeframes for the scrutiny and approval of non-equity prospectuses” (<https://www.consob.it/web/consob-and-its-activities/timeframes-for-the-scrutiny-and-approval-of-non-equity-prospectuses>) for the necessary information and guidance for this purpose.

8. Motivated rejection of the approval of the prospectus

Consob may refuse the approval of the prospectus and terminate the review process, pursuant to Article 20, paragraph 5, of the Prospectus Regulation, where the issuer, the offeror or the person asking for admission to trading on a regulated market is unable or unwilling to make the necessary changes or to provide the supplementary information requested by Consob in accordance with paragraph 4 of the same provision (within the time limits provided for by article 8, paragraph 4, of the Issuers' Regulation in case of financial instruments other than securities).

In this case, Consob sends the applicant a notice of rejection, pursuant to article 10-bis of Law no. 241/1990 for which *"In proceedings at the request of a party, the person in charge of the procedure or the competent authority, before the formal adoption of a negative measure, promptly communicates to the applicants the reasons that prevent the acceptance of the application"* (a similar provision can be found in article 12 of Consob's general regulation on administrative procedures pursuant to article 24 of Law no. 262 of 28 December 2005, and article 2, paragraph 5, of Law no. 241 of 7 August 1990, adopted with resolution no. 18388 of 28 November 2012).

Within 10 days since the receipt of the preliminary notice of rejection, the applicant can submit written remarks, possibly accompanied by documents.

The notice of rejection suspends the deadlines for the conclusion of the proceeding which begins to run again ten days after the date of submission of the above observations or, failing that, from the expiry of the 10-day deadline set for their submission.

If the applicant is unable or unwilling to make the necessary changes or to provide the supplementary information requested with the notice of rejection, within the terms indicated above, Consob issues the final provision of refusal to approve the prospectus, notifying the applicant, pursuant to Article 20, paragraph 5, of the Prospectus Regulation.

The refusal decision is also published in the Consob Bulletin and information is made available through *Consob Informa*, in accordance with the provisions of Article 3, paragraph 3, of the Consolidated Law on Finance (TUF) for which “*The regulations and general provisions of the Bank of Italy and Consob are published in the Official Gazette. The other relevant provisions relating to supervised entities are published on the Bank of Italy or Consob website*”.

9. Exchange of correspondence during the investigation

The exchange of correspondence between the applicant and Consob is formally and exclusively carried out through SIPROEM for securities other than units or shares of closed UCITS and for the latter through PEC (consob@pec.consob.it), during the entire scrutiny process, from sending the application for approval to the document approval (with the exclusion of cases of prefiling). Therefore, SIPROEM allows for the interaction between Consob and the applicant as well as to make available the documentation of the complete scrutiny process in dematerialized form.

Each incoming and outgoing communication transmitted through SIPROEM is subject to registration.

All communications sent by Consob to the applicants, and collected in the SIPROEM electronic dossier, are notified to the latter via Certified Electronic Mail (PEC).

Subsequent versions of the prospectus (or constituent parts thereof) shall be sent in searchable electronic *pdf* format. They must always also contain, pursuant to Article 43 of the Delegated Regulation (EU) 2019/980, a draft of the document marking the changes made to the document with respect to the latest version registered in SIPROEM or sent by certified e-mail for closed UCITS. In addition, each new version of the document submitted after the first draft prospectus must be accompanied by a letter highlighting the reasons for failing to implement any requests for additional information previously made by the competent office.

Any further changes made to a draft prospectus (or constituent parts thereof) not arising from the need to address requests for additional information by Consob but carried out at the initiative of the applicant in subsequent versions of the prospectus shall be accompanied by a letter describing such changes.

10. Transmission of the final draft of the prospectus (or constituent parts thereof)

Pursuant to Article 44 of Delegated Regulation (EU) 2019/980, the final draft of the document

filed at the end of the scrutiny process, prior to the issuance of its approval, must be submitted together with all documents attached to the application for approval that have changed since the version originally submitted. In the event that such documents have not changed, a statement to that extent must be included in the letter transmitting the final draft of the prospectus.

11. Notification of the decision by the Commission

The Consob decision is notified to the applicant through the SIPROEM system and to the relevant PEC address.

The assignment of the outcome of the approval decision in SIPROEM determines the closure of the SIPROEM dossier so that no other communications can be entered in the same, including the filing of the prospectus (see below paragraph no. 12).

For units or shares of closed UCITS, the outcome of the Consob decision is communicated by certified e-mail to the address of the applicant.

12. Filing and publication of the prospectus (or of constituent parts thereof)

The prospectus (or constituent parts thereof), after its approval, pursuant to Article 9 of the Issuers' Regulations, needs to be filed within the DEPROEM System for all securities with the exception of units or shares of closed UCITS, available on the Consob institutional website (<https://www.consob.it/>), in the section “Prospectuses /Operational instructions” (<https://www.consob.it/web/consob-and-its-activities/operational-instructions>) and in the section “DEPROEM” (<https://www.consob.it/web/services-for-supervised-subjects/approved-prospectus>).

For closed UCITS units or shares, the filing needs to take place in the DEPROF System, available on the Consob institutional website (<https://www.consob.it/>), in the section “Prospectuses /Operational instructions” (<https://www.consob.it/web/consob-and-its-activities/operational-instructions>) and in the section “Services for Supervised Subjects / Filing of CIS Offering Documents” (<https://www.consob.it/web/services-for-supervised-%20subjects/filing-of-cis-offering-documents>).

The e-systems DEPROEM and DEPROF perform the function of collecting the prospectuses (or constituent parts thereof) approved by Consob, including notices on the results of the offer, the final terms/Summaries, the supplementary notices of the terms of the offer.

For gaining access to DEPROEM, the Issuer/Offeror/Subject requesting admission to trading needs to use the login credentials (*username and password*) provided by Consob for the Remote Collection System or originally issued by Consob during the accreditation phase in the SIPROEM system.

The DEPROEM User Handbook, in Italian, is available under the section “Services for supervised subjects / Approved Prospectus” (<https://www.consob.it/web/services-for-supervised-subjects/approved-prospectus>), which describes the steps to be followed for filing the prospectus (or constituent parts thereof). These methods are summarized in the



Communication no. 9/2020 of 24 November 2020, where a specific attachment contains the list of metadata that shall be provided upon filing (https://www.consob.it/web/consob-and-its-activities/bullettin/documenti/english/resolutions/c20201124_09_en.htm?hkeywords=&docid=43&page=0&hits=172&nav=false).

The DEPROF User Manual is available under the section “Prospectuses / Operational Instructions” (<https://www.consob.it/web/consob-and-its-activities/operational-instructions>) and in the “Services for Supervised Subjects” in the following hyperlink (<https://www.consob.it/web/services-for-supervised-subjects/filing-of-cis-offering-documents>).

In the event of technical problems, please contact the help desk service at the telephone number 06-8477445, on working days from 7.30 a.m. to 8.00 p.m. and on Saturdays from 9.00 a.m. to 2.00 p.m., or send an e-mail to Deposito_prospetti@consob.it or , for units or shares of closed-end UCIs, to saivif@consob.it).

The filing of the approved document needs to be made, pursuant to the aforementioned Article no. 9 of the Issuers' Regulations, no later than the end of the first working day following the communication of the approval in order to allow Consob to comply with the notification obligation to ESMA.

The document filed after the approval shall be identical to the version approved by Consob.

Once filed, the prospectus (or constituent parts thereof) is published on the Consob website (<https://www.consob.it/web/consob-and-its-activities/approved-prospectuses>). Furthermore, at the same time of the filing, the prospectus (or constituent parts thereof) is notified to ESMA, pursuant to Article 20 paragraph 2, subparagraph 3, of the Prospectus Regulation, and is published by ESMA in its Prospectus Register (https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_prii_documents).

The foregoing is without prejudice to the obligations of publication of the document by the Issuer/Offeror/Person requesting admission to trading pursuant to Article 21, of Article 9, paragraph 4, and of Article 10, paragraph 2, of the Prospectus Regulation.

The publication of the prospectus (or constituent parts thereof) on the website of the Issuer/Offeror/ Person requesting admission to trading must be carried out together with the publication of any documents included by reference and the Summary, pursuant to Articles 19, paragraph 2, and 21 of the Prospectus Regulation. In this regard, it is specified that the prospectus (or constituent parts thereof) shall contain hyperlinks to the individual documents incorporated by reference.

13. Withdrawal of the application for approval

The Withdrawal of the Application for approval by the applicant can take place at any time in the process, by sending a request for withdrawal of the application for approval via SIPROEM, provided that the Dossier has not already been assigned an outcome (approval/denial).

In the event of a "*Withdrawal of Application*" communication, the SIPROEM File is closed, and the application can be resubmitted only as a "First Submission" which results in a new SIPROEM dossier.

For closed UCITS units or shares, Withdrawal of the Application for Approval by the applicant can be done at any time during the process by sending a Notice of Withdrawal of Application for Approval to the PEC address (consob@pec.consob.it).

14. Request for a passport (i.e., to make a notification pursuant to Articles 25 and 26 of the Prospectus Regulation)

Any request for a passport (i.e., to be able to use the prospectus approved by Consob to carry out an offer and/or admission to trading in another EU Member State), pursuant to Articles 25 and 26 of the Prospectus Regulation, can be made in the application for approval or later during the validity period of the prospectus (which is remembered to last 12 months from the date of approval). In the latter case, the request needs to be sent via certified email.

The passport request must be made by filling out the form published on Consob's institutional website (<https://www.consob.it/>) in the section dedicated to Prospectuses/Passport Request (<https://www.consob.it/web/consob-and-its-activities/application-for-approval/-passport-request>)

The passport request form is available both in Italian and English.

The request shall indicate the host Member State(s) and, when relevant, the home Member State for the approval of the prospectus for which the notification is required.

Furthermore, the request shall include the translation of the requested documents (e.g. prospectus, securities note, summary) as requested by the host Member State, produced under the responsibility of the Issuer, the Offeror, the Person requesting admission to trading on the regulated market or the person responsible for the prospectus.

All files shall be sent in a searchable electronic format.

The applicant will be notified of the successful passporting via certified email.

15. Storage of approved and passported prospectuses

As indicated above, the filing in DEPROEM or DEPROF (the latter for closed UCITS) of the prospectus (or constituent parts thereof) will result in the publication of the document:

- on the Consob website in the section "Consob and its activities / Prospectuses and take over bids Documents / Prospectuses / Approved Prospectuses / Domestic Prospectuses" (<https://www.consob.it/en/web/consob-and-its-activities/prospectuses>), pursuant to Article no. 21, paragraph 5, of the Prospectus Regulation;
- on the ESMA website in the specific section ESMA Register Prospectus

(https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_priii_documents), pursuant to Article no. 21, paragraph 6, of the Prospectus Regulation;

- on any of the following websites: website of the issuer, of the offeror or of the entity requesting admission to trading on a regulated market, on the website of the financial intermediaries who place or sell the securities, including paying agents, on the website of the regulated market where admission to trading is requested or on the website of the operator of the MTF, pursuant to Article no. 21, paragraph 2, of the Prospectus Regulation.

In accordance with Article no. 21, paragraph 7, of the Prospectus Regulations, the approved prospectuses remain available to the public in electronic format on the aforementioned websites for at least ten years after their publication.

In the aforementioned *Esma Prospectus Register*, all the prospectuses approved in the various EU countries (so-called home Member States) by the respective national Authorities are published, further with the indications of the countries in which the prospectus has been passported (so-called host Member States) for the purposes of offer / listing in those countries.

Pursuant to Article no. 21, paragraph 5, of the Prospectus Regulation, the competent authority of the host Member State publishes on its website information on all notifications received in accordance with Article no. 25 of the Prospectus Regulation. On the Consob website, the aforementioned notifications of prospectuses (or constituent parts thereof) approved by the National Authorities of other EU countries are published in the section "Consob and its activities / Prospectuses and take over bids documents / Prospectuses / Approved Prospectuses / EU prospectuses" (<https://www.consob.it/en/web/consob-and-its-activities/ue-passports>).

16. Operational guidance for Supplements

The above procedure relating to the application for approval, the filing/publication of a prospectus (or constituent parts thereof) and the request for passport, if any, also applies to the Supplement approved by Consob pursuant to Article 23 of the Prospectus Regulation and Article 18 of the Delegated Regulation (EU) 2019/979. The timing of the Supplement approval is set out by the just mentioned Article 23.

The request for approval of the Supplement must be made by filling out the form published on Consob's institutional website (<https://www.consob.it/>) in the section dedicated to Prospectuses / Application for Approval (<https://www.consob.it/en/web/consob-and-its-activities/application-for-approval/-passport-request>). The application form for approval of the Supplement is available both in Italian and English. The Supplement is approved in the same manner as the Prospectus within a maximum of five working days.

17. Operational guidance for Universal Registration Documents

The above procedure relating to the request for approval and the filing/publication of a prospectus, or its constituent parts, also applies to the Universal Registration Document (URD) approved by Consob pursuant to Article no. 9, paragraph 2, of the Prospectus Regulation.

The procedure described above for the filing of the prospectus also applies to URDs filed with Consob without prior approval, pursuant to the said Article no. 9, paragraph 2, second subparagraph, as well as to any modification of the same filed without prior approval (so-called amendments) in accordance with Article no. 9, paragraph 7 of the Prospectus Regulations.

For any specific questions regarding the URD, please, send an email to segr.dve@consob.it.

18. Prospectuses made of separate documents

The procedure described in this guidance also applies to prospectuses, made of separate documents referred to in Article no. 10 of the Prospectus Regulation. Therefore, the Issuer/Offeror/Person requesting admission to trading that has already obtained the approval of the Registration Document or the URD from Consob, pursuant to Article no. 9 of the Prospectus Regulation, or which required the notification in Italy of a Registration Document or a URD approved by another EU Authority, pursuant to Article no. 26 of the Prospectus Regulations, is required to draw up only the securities note and the summary, subject to separate approval. For these purposes, the procedure described in these guidelines is applicable as well.

However, with a view to lowering the timeframe required for drawing up a prospectus consisting of separate documents, pending the approval procedure of the registration document, it is possible to submit an application for approval of the securities note and, where applicable, of the summary. In this case, in compliance with Article no. 10 of the Prospectus Regulation, the approval of the securities note and the summary is in any case subject to the prior or simultaneous approval of the registration document or of any supplement thereof presented during the approval process of the aforementioned documentation related to offer/admission to listing.

If the URD has been filed without prior approval, pursuant to Article no. 9, paragraph 2, second subparagraph of the Prospectus Regulation, the prospectus consisting of this document, its amendments, the securities note and the summary are subject to approval and filing according to the procedure described in this guidance.

19. Request for transfer of approval of the prospectus to an Authority of a different EU Member State

The Issuer/Offeror/Person requesting the admission to trading may submit a request for a preliminary discussion with the competent Consob Offices for the purpose of transferring the approval of the prospectus to an Authority of a different EU Member State, pursuant to Article 20, paragraph 8, of the Prospectus Regulation.

In this regard, the same operating procedures defined for the pre-filing apply (see above paragraph 2 Methods for activating pre-filing). In particular, an email shall be sent to segr.dve@consob.it containing:

- (i) an indication of the reason why the approval of the prospectus by an authority of a different Member State is preferred;
- (ii) the draft prospectus.

The subsequent formal request for transfer needs to be sent via certified email (consob@pec.consob.it) to the competent Consob office.

Pursuant to Article 20, paragraph 8, of the Prospectus Regulation, Consob transfers the approval of the prospectus to the competent authority of another Member State, upon prior communication to ESMA and the agreement of that competent authority. On the date of the decision, Consob transmits to the competent authority of the other Member State, in electronic format, the documentation filed by the Issuer/Offeree/Person requesting the admission to trading, together with its decision to grant the transfer. Consob notifies the applicant this transfer within three working days from the date of its decision.

20. Methods for determining the supervisory fees

The approval of the prospectus (or constituent parts thereof) and of the supplement as well as the withdrawal of the application for approval are subject to fees, according to the methods and terms defined annually by Consob through a specific resolution.

In December, Consob publishes the resolution defining the contribution regime for the current year, pursuant to article 40, paragraph 3, of Law no. 724/1994 which governs the Consob financing system. This resolution is made available on the Consob institutional website (<https://www.consob.it/>), in the section "Services for Supervised Subjects / Annual Fees" (<https://www.consob.it/web/services-for-supervised-subjects/annual-fees>). In this section there is also a summary document of the "Answers to the most frequently asked questions on the contribution regime".

With reference to the IPO and Equity prospectuses, for the purposes of determining the amount of the fee due, the applicants must complete and send, to the competent offices of the Issuers Supervision Department of Consob, the summary sheet of the leading elements of the transaction reported in attachment no. 1 to the cited document "*Answers to the most frequently asked questions on the contribution regime*" or, as soon as available, enter the data relating to the results of the offer (public and/or institutional) in the DEPROEM system following the instructions given in the DEPROEM User Handbook (please, see paragraph 12). For units or shares of closed-end UCIs, the data and information aimed at calculating the supervisory fees due needs to be transmitted according to the procedure set out in Communication no. 12094970 of 5 December 2012 (<https://www.consob.it/web/consob-and-its-activities/bullettin/documenti/english/resolutions/c12094970.html>).

If the aforementioned Consob resolution provides for exemptions in the payment of supervisory fees, the Issuer/Offeree/Person requesting the admission to trading needs to prove that the conditions for application of the exemption are met. To this end, the Issuer/Offeree/Person requesting the admission to trading needs to send an email to: contributions@pec.consob.it including the declarations, drawn up on headed paper and signed by the legal representative, and the documents certifying the possession of the requirements. In the absence of documentation within the terms provided in the Consob resolution in question, the exemption will not be applied.



Form to be filled in order to get credential to access SIPROEM and DEPROEM systems

The Issuer [Please provide the following details]

Legal name _____
Legal address (street name) _____
Unit No. _____
City _____
State _____
Postal code _____
Telephone number _____
Fax number _____
Tax code _____
PEC _____

would like to get its credential in order to access Consob SIPROEM and DEPROEM for the following User of these systems:

Forename: [Please indicate your Forename] _____
Surname: [Please indicate your Surname] _____
Tax code _____
Place and date of birth _____
Professional email address _____
Cellular telephone number _____
PEC _____

In order to notify the credential to access SIPROEM and DEPROEM, please, consider that Consob may contact:

Forename: [Please indicate the Forename of the contact person] _____
Surname: [Please indicate the Surname of the contact person] _____
Fixed telephone number: [Please indicate the fixed phone number of the contact person] _____
Professional email address: [Please indicate the professional email address of the contact person] _____

CRITERIA FOR THE SCRUTINY OF THE PROSPECTUS BY CONSOB WITHIN THE FRAMEWORK OF THE RULES SET OUT IN EU REGULATION NO. 1129/2017 AND THE EU COMMISSION'S DELEGATED REGULATION NO. 980/2019

Communication no. 7/2020 of 9 July 2020

Subject: **Criteria for the scrutiny of the prospectus by Consob within the framework of the rules set out in EU Regulation no. 1129/2017 and the EU Commission's Delegated Regulation no. 980/2019** (this Communication has been revised and updated in March 2023 in light of the outcome of ESMA “Peer review of the scrutiny and approval procedures of prospectuses by competent authorities” included in the related *Final Report*, published by ESMA on 21 July 2022)

1. The current regulatory framework on the scrutiny of the prospectus

As from 21 July 2019, the new European rules on prospectuses set forth in EU Regulation no. 1129/2017 of 14 June 2017 (hereinafter the "Prospectus Regulation")¹ and in the EU Commission Delegated Regulation no. 980/2019 of 14 March 2019 (hereinafter the "Delegated Regulation"), issued pursuant to article 44 of the Prospectus Regulation², shall be fully applicable in the legal systems of the Member States of the European Union.

The Prospectus Regulation and the Delegated Regulation contain rules on the scrutiny that the competent national authorities (hereinafter also ACN) are called upon to carry out for the purpose of approving offer prospectuses or admission to securities trading, with the aim of harmonising the scrutiny criteria at European level and proceeding to optimise them³.

The Prospectus Regulation defines the approval of the prospectus as "*the positive act upon completion of the scrutiny, by the competent authority of the home Member State, of the completeness, consistency and comprehensibility of the information provided in the prospectus*" (article 2, paragraph 1, letter r of the Prospectus Regulation).

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, published in the OJEU series L 168, p. 12 of 30 June 2017.

² 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, published in OJEU Series L 166, p. 26 of 21 June 2019. For the sake of completeness, it should be recalled that the new European regulatory framework for prospectuses also consists of Commission Delegated Regulation (EU) No 979/2019 of 14 March 2019 which supplements Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards concerning key financial information in the summary note of the prospectus, publication and classification of prospectuses, disclosure relating to securities, supplements to the prospectus and the notification portal, and which repeals Commission Delegated Regulations (EU) No 382/2014 and (EU) 2016/301, published in the OJEU series L 166, p. 1 of 21 June 2019.

³ Cf. Considering (60) to the Prospectus Regulation. Furthermore, the Report accompanying the text of the Delegated Regulation specifies that this Regulation "*aims to create a single set of rules that can be implemented consistently across the EU*".

By virtue of the legislative delegation contained in the Prospectus Regulation (Article 20, paragraph 11), the Delegated Regulation specifies the criteria for the scrutiny of the completeness (article 36), comprehensibility (article 37) and consistency (article 38) of the information provided in the prospectus.

The Delegated Regulation also provides that "*If necessary for investor protection, the competent authority may apply additional criteria to those set out in articles 36, 37 and 38 for the purposes of scrutinising the completeness, comprehensibility and consistency of the information contained in the draft prospectus*" (article 40).

The Delegated Regulation also contains provisions aimed at allowing the ACN to carry out an activity of proportional scrutiny in the presence of information already subject to scrutiny or review by the same authority (art. 41).

The objectives of simplification and clarity, underlying numerous provisions of the Prospectus Regulation and the Delegated Regulation, must also be taken into consideration in the context of the scrutiny of prospectuses carried out by the authority.

In fact, the Prospectus Regulation provides that the information in the prospectus must be drawn up and presented in an easily analysable, succinct and comprehensible manner (article 6, paragraph 2, Prospectus Regulation).

Provisions aimed at simplifying and clarifying the information to be included in the prospectus also concern the way risk factors are represented, which must be specific to the issuer and/or the securities and relevant to investment decisions as well as consistent with the overall contents of the prospectus (article 16 Prospectus Regulation). In accordance with the provisions of article 16, paragraph 4 of the Prospectus Regulation, ESMA has published the "*Guidelines on risk factors pursuant to the Prospectus Regulation*" (01/10/2019|ESMA31-62-1293 IT), which Consob has declared it complies with.

The following constitute further and innovative simplifications for operators:

- the introduction of the universal registration document (DRU) and the related *fast track* in the approval of the prospectus following the acquisition of the *status of* frequent issuer (*cf.* articles 9 and 20, paragraph 6 of the Prospectus Regulation);
- the extension of the possibility of using *incorporation by reference* and therefore of being able to recall information already published by the issuer in compliance with other obligations (*cf.* article 19 of the Prospectus Regulation);
- the new disclosure rules in relation to the summary note (*cf.* article 7 of the Prospectus Regulation);
- the possibility that the base prospectus may consist of separate documents and the provision of a summary note for the base prospectus only with reference to the individual issue once the relevant final terms have been drawn up (*cf.* article 8, paragraph 6 and 8 of the Prospectus Regulation);

- the provision of simplified and more streamlined disclosure systems for transactions on the secondary market (*cf.* article 14 of the Prospectus Regulation) or for SMEs (*cf.* article 15 of the Prospectus Regulation).

Moreover, some national institutions such as the so-called *pre-filing*, i.e. the possibility for issuers and offerors to start a prior dialogue with the Authority before the formal start of an investigation, continue to still be applied in the current system, and indeed their usefulness is renewed with a view to simplifying and reducing the burdens on issuers⁴.

It appears from the above that, in examining the issue of scrutiny criteria, particular attention should be paid to the simplification and clarity of the information to be included in the prospectuses. These objectives must therefore necessarily be taken into account by Consob in the scrutiny of prospectuses, but at the same time must guide the conduct of issuers and persons required to draw up a prospectus so that the inclusion of information in prospectuses effectively complies with the principles underpinning the new rules.

Ultimately, Consob's scrutiny must include the verifications required by the Prospectus Regulation, the Delegated Regulation and the ESMA guidelines, and at the same time ensure compliance by issuers with the objective of a significant simplification of the prospectus, also favouring the use of all the instruments offered by the new regulations.

2. The purpose of this Communication

In 2009, Consob had clarified the tasks that the Prospectus Directive and the national implementing rules contained in the Consolidated Law on Finance assigned to Consob when approving prospectuses and any supplements thereto⁵.

The aim of this communication is, therefore, to provide the public with guidance related to the application of the current regulatory framework with regard to the following profiles:

- the criteria for the scrutiny of the prospectus provided for in the Delegated Regulation;
- the excluded checks during the review activity of prospectuses;
- the application of the proportionate approach to the scrutiny of prospectuses, their constituent parts and supplements.

However, it should be clarified that the content of this Communication should be complemented by the positions taken or to be taken in the future by ESMA, which is entrusted with the task of ensuring convergence of practices by the authorities of Member States⁶.

⁴ *Cf.* article 4, paragraph 2, article 52, paragraph 2, and article 63, paragraph 1, of the Issuers' Regulation.

⁵ Although that Communication (DEM/9025420 of 24 March 2009) specifically referred to the approval of prospectuses for equity securities, it also contained indications that could easily be referred to debt securities prospectuses.

⁶ In fact, consider what is reported in the ESMA Document of 28 March 2018 (ESMA31-62-800) "*Final Report. Technical advice under the Prospectus Regulation*" under paragraph 838 "*Once the new Level 2 measures are put in place and it has been possible to assess how they function, ESMA will consider whether there is a need for further*

3. The criteria for scrutiny of the prospectus provided for in the Delegated Regulation

In order to ensure that competent authorities apply criteria for scrutiny of the prospectus harmonised at European level, the Delegated Regulation has established provisions on the criteria for scrutinising the completeness (article 36), comprehensibility (article 37) and consistency (article 38) of the information contained in the draft prospectus⁷.

These criteria apply to the prospectus or its constituent parts (Registration Document, Securities Note and Summary Note), including the universal registration document (DRU), submitted for approval or filed without prior approval (where applicable), and to all related amendments to the DRU, as well as to supplements to the prospectus (article 35 of the Delegated Regulation).

The provisions indicate the elements to be taken into account by the authorities when scrutinising the completeness (article 36, paragraph 1), comprehensibility (article 37, paragraph 1) and consistency (article 38) of the information contained in the draft prospectus. These criteria, considering the regulatory framework of the Delegated Regulation, must be applied by all the competent authorities and can therefore qualify as mandatory or *standard*.

The provisions also provide specific powers for the authority to scrutinise the completeness (article 36, paragraph 2)⁸ and comprehensibility (article 37, paragraph 2)⁹ of the information.

In the case of prospectuses to be used exclusively for admission to trading on a regulated market of securities other than equity securities for which no summary note is required, in accordance with article 7 of the Prospectus Regulation, the Delegated Regulation provides for the application to the prospectus of a smaller number of mandatory scrutiny criteria¹⁰.

guidance at Level 3 in relation to the criteria for scrutiny and review. Such guidance might be delivered as guidelines, in response to the specific empowerment in PR Article 20(12), or in the form of other Level 3 measures.”

⁷ It is useful to recall here Recital (21) to the Delegated Regulation and also paragraph 835 of the *ESMA Final Report. Technical advice under the Prospectus Regulation* quote: “ESMA is mindful that Level 1 has set a goal of harmonising the criteria for scrutiny of the prospectus and observes that the lists of criteria for scrutiny of completeness, comprehensibility and consistency in the proposed Article A [Note: article A of the Technical Advice contained the provisions now included in articles 36, 37, 38 of the Delegated Regulation] pursue this goal. Currently no across-the-board scrutiny criteria exist and NCAs are therefore free to determine their individual approaches to scrutiny, within the framework of the prospectus regime. Establishing a set of standardised rules for scrutiny of prospectuses, the lists of criteria in the proposed Article A (now Article N) will therefore undoubtedly harmonise the scrutiny process.”

⁸ Specifically, it has been provided that, if the issuer has a complex financial history or has made a significant financial commitment pursuant to article 18 of the Delegated Regulation, the competent authorities may require the issuer to include, amend or remove information from the draft prospectus, taking into account the circumstances indicated in the said article 36, paragraph 2 of the Delegated Regulation.

⁹ In particular, it has been provided that competent authorities may, on a case-by-case basis and in addition to the information set out in the Prospectus Regulation for the summary note and the Delegated Regulation for the specific summary note of the EU growth prospectus, request that certain information provided in the draft prospectus be included in the summary note.

¹⁰ Cf. article 37, paragraph 1, subparagraph 2 of the Delegated Regulation. A summary note is not required under article 7, paragraph 1, subparagraph 2, of the Prospectus Regulation, if the prospectus concerns the admission to trading on a regulated market of securities other than equity securities, provided that: a) such securities are traded exclusively on

Moreover, on 21 July 2022 ESMA published its *Report* on the outcome of the *peer review* of the criteria for the scrutiny and approval procedures of prospectuses¹¹ which also describes the practices applied by other national competent Authorities, with particular regard to the exchange of information and additional controls¹².

CONSOB, in applying the control criteria, complies with the indications contained in the Delegated Regulations as well as with the recommendations and good practices set out in the Report indicated above¹³, taking into account the specificities of each individual offer and admission to listing covered by the prospectus.

4. Application of the proportionate approach to scrutiny of prospectuses, its constituent parts and supplements

The Delegated Regulation contains provisions defining a proportionate approach to scrutiny of prospectuses.

Article 41, paragraph 1, of the Delegated Regulation provides that when a first draft prospectus submitted to the ACN for approval is substantially similar to a prospectus that has already been approved by the ACN and highlights all the changes made with respect to the already approved prospectus, the Authority is required to apply *standard* scrutiny criteria only to those parts of the prospectus that have been amended with respect to the prospectus already approved by the ACN.

This rule requires that the draft prospectus submitted to the authority must highlight all the changes compared to the approved prospectus; therefore, in order to apply the proportionate approach, it is necessary that the issuer or the offeror highlights the changes with respect to the already approved prospectus.

With regard to the notion of a substantially similar prospectus, since the provision in question requires that prospectuses should be similar in substance only, the proportionate approach applies even if the format used to draw up the draft prospectus is different to that of the already approved prospectus (for example, where the draft prospectus consists of separate documents and the already approved prospectus is a single document).

Moreover, in compliance with the provisions of article 35 of the Delegated Regulation (according to which "[...], references to the prospectus shall indicate the prospectus or its constituent parts [...]"), the assessment of the substantial similarity of the information may also be carried out with reference to each of the constituent parts of the prospectus (for example, by comparing only the draft securities

a regulated market, or a specific segment thereof, to which only qualified investors have access for the purpose of trading such securities; or b) such securities have a unit par value of at least EUR 100,000.

¹¹ *Peer review of the scrutiny and approval procedures of prospectuses by competent authorities – Peer review report* (21 July 2022 | ESMA42-111-7170).

¹² In this regard, ESMA invited the European Commission to clarify the notion of “additional criteria” (Section 12, page 140, of the mentioned ESMA *Peer review report*). This issue is currently under discussion in the legislative negotiation related to the European Commission’s proposal named Listing Act published on 7 December 2022, which also includes amendments to the Prospectus Regulation.

¹³ Cf. respectively Section 11, pages. 131-138, and Section 13, pages 142-146, of the said ESMA *Peer review report*.

note with the already approved one). This assessment should also take into account the information included in the already approved prospectus, or in a constituent part of it, through any subsequent supplements.

Article 41 of the Delegated Regulation provides for the application of the proportionate approach in the following cases too:

- when the ACN has already reviewed a universal registration document (DRU) filed without prior approval, when it carries out its scrutiny of the said DRU or its amendments for the purpose of approving the prospectus, it must apply the *standard* scrutiny criteria only to those parts of the DRU or its amendments which have not already been reviewed (article 41, paragraph 2, Delegated Regulation);
- if the first draft prospectus submitted for approval incorporates by reference information contained in a document that has already been approved, the ACN must apply only the consistency checks set out in article 38 of the Delegated Regulation (article 41, paragraph 3, Delegated Regulation) to such information subject to *incorporation by reference*.

It is understood that in the cases described above, the information contained in the final version of the prospectus must in any case be up-to-date and comply with the information requirements set out in the relevant prospectus schedules prescribed by the Delegated Regulation.

The proportionate approach provides that, in case of subsequent draft prospectuses, during the scrutiny phase the competent authority shall apply the scrutiny criteria only to the amendments made to the previous draft and to any other information on which such amendments have an impact (article 41, paragraph 5, Delegated Regulation).

In this respect, both recital 26 of the Delegated Regulation, which clarifies that "*an iterative procedure is applied for the scrutiny and approval of a prospectus*", i.e. that the decision on the approval of a prospectus "*may require several cycles of analysis of the draft prospectus and subsequent improvements by the issuer, the offeror or the person asking for admission to trading (...) to ensure that it meets the requirements of completeness, comprehensibility and consistency (...)*", should be taken into account, as well as the statements made by ESMA in the development of the rules on the proportionate approach contained in the Delegated Regulation.

On that occasion, ESMA clarified that, in order to ensure its goal of investor protection, the Authority has the power/duty to also request information on non-amended parts where significant issues arise at a later stage with respect to the first request for information or amendment. However, according to ESMA, the competent authority *should endeavour* to request amendments or additional information to the draft prospectus as soon as possible¹⁴.

¹⁴ This is the conclusion in the *ESMA Final Report. Technical advice under the Prospectus Regulation* cit. paragraphs 871 and 872, stating that: "[...] In relation to the suggestion that NCAs be prohibited from raising comments on parts of the prospectus which they have already scrutinised, ESMA maintains the position set out in connection with its work under the Omnibus II Directive that it would run contrary to the general PR objective of investor protection to outlaw such comments as this could effectively result in NCAs being prohibited from commenting on significant matters in the prospectus where such are discovered in a subsequent round of scrutiny. However, NCAs should always endeavour to raise comments on the draft prospectus at the earliest possible opportunity. (872) Furthermore, ESMA

The rules of the aforementioned article 41 regarding the proportionate approach also apply, pursuant to article 35 of the said Regulation, to the scrutiny of supplements. And notwithstanding the provisions of article 23, paragraph 1 of the Prospectus Regulation which states that *"any significant new fact, material mistake or inaccuracy relating to the information contained in the prospectus (...) shall be mentioned without undue delay in a supplement to the prospectus"*.

In carrying out its scrutiny, Consob takes the above provisions into account, in accordance with ESMA's instructions, in order to reduce administrative burdens on issuers and make administrative activity more efficient.

5. Excluded checks during the review activity of prospectuses

Under the new rules, the following checks cannot be considered to be included in the scope of the scrutiny of the information contained in the prospectuses for the purposes of approval by the Authority:

- check that the facts set out in the prospectus are true;
- check of the compliance of the financial information with the reference legislation;
- examination of the compliance of the financial statement data contained in the prospectus with the corporate accounts;
- the timely review of the correspondence with the accounting data of the reworkings carried out for the purposes of inclusion in the prospectus;
- check of the compliance of the corporate transaction with the applicable legislation.

Such exclusion, already present in the previous regulations laid down in the Prospectus Directive, is confirmed by the rules set out in the Prospectus Regulation.

In fact, the approval of the prospectus concerns the information contained in it and not the approval by the authority of the offer/admission to trading; moreover, the application of the criteria of completeness, consistency and comprehensibility cannot take the form of a *due diligence* activity carried out by the Authority on the data and information provided in the prospectus by the issuer¹⁵.

In this sense, the prospectus schedules, annexed to the Delegated Regulation, provide for the inclusion of a statement that the competent authority approves the document *"only to the extent that it meets*

fully agrees that NCAs should remain mindful of the consistency of the prospectus when applying the proportionate approach permitted by proposed Article B (now Article O) [Note: now the reference is to article 41 of the Delegated Regulation]; this is in line with its position that the application of the derogations should never compromise the NCA's obligation to ensure the completeness, comprehensibility and consistency of the draft prospectus [...]."

¹⁵ ESMA also stated this in its consultation paper regarding its technical advice concerning the criteria for scrutiny of the prospectus (ESMA31-62-650|6 July 2017): "[...] ESMA is of the view that the criteria do not imply an obligation for NCAs to verify the truthfulness of the information provided in the prospectus or to perform due diligence on individual pieces of information in the prospectus or on the prospectus in its entirety. Similarly, ESMA considers that NCAs are not required to assess whether the information in the prospectus complies with other legislative requirements than those of the prospectus regime. [...]" (paragraph 28).

the requirements of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129" (emphasis added) and that "such approval should not be considered an endorsement of the issuer", nor "an endorsement of the quality of the securities (see, for example, Annexes 1, 6, 11 and 14, points 1.5, to the Delegated Regulation).

In another part of the Prospectus Regulation, it also states that responsibility for the information contained in the prospectus lies at least with the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for admission to trading or the guarantor, as the case may be. On this point, article 11 of the Prospectus Regulation leaves the implementation of this principle to the national regulatory authority.

The exclusion of the checks referred to above from the activity of approving the prospectus is, moreover, supported by the rules of the Prospectus Regulation which provide the timing for approval of the prospectus and communication of the amendments, requests for additional information and decisions of the authority to the issuer, offeror or person asking for admission to trading (article 20, paragraphs 2, 3, 4 and 6) which cannot be considered compatible with the carrying out of activities consisting in checking the truthfulness of information.

This implies, therefore, that Consob, when approving a prospectus, cannot request the amendment of the transaction or of the financial statements included in the prospectus, but can only request amendments or additional information to be included in the prospectus in order to enable investors to make informed investment choices, or to represent to the persons responsible for the prospectus the reasons why such document is not suitable for approval¹⁶.

In the event of breaches of the Prospectus Regulation by persons required to request the approval of a prospectus by the competent authority, Consob may activate its own precautionary and sanctioning powers or report significant facts and circumstances to the competent judiciary, as indicated in particular in article 32 of the Prospectus Regulation

6. Scope of the Communication

It should be noted that the indications given in this Communication replace those set out in Communication DEM/9025420 of 24 March 2009.

This Communication includes indications on prospectuses falling within the scope of application of Regulation 1129/2017; the same indications, where compatible, shall apply to prospectuses for financial products other than securities.

THE PRESIDENT
Paolo Savona

¹⁶ This conclusion derives, as well as from the provisions of the Delegated Regulation, from Articles 20, paragraphs 4, 5, 6, and 32 of the Prospectus Regulation.



HOW TO FILE THE APPROVED PROSPECTUS WITH CONSOB

Communication no. 9/2020 of 24 November 2020

SUBJECT: Procedure for filing the prospectus related to public offer and/or admission of securities to trading on a regulated market pursuant to Article 9, paragraph 1, of the Issuers' Regulation

With this communication, implementing Article 9, paragraph 1, of the Issuers' Regulation¹, indications are provided regarding the methods of filing the prospectus and any related supplement, approved by Consob.

The prospectus (or constituent parts thereof) and any supplements relating to the securities must be filed, within the period established by the aforementioned Article 9, paragraph 1, of the Issuers' Regulation, through the Deproem System, available on Consob's institutional website (www.consob.it), in the section "*Services for Supervised Subjects / Procedures / Offer Documentation Filing*" (<http://www.consob.it/web/area-operativa-interattiva/deposito-prospetti>).

To access Deproem, the Issuer/Offeror/Person requesting admission to trading must use the credentials (username and password) provided by Consob for the Remote Collection System ('Teleraccolta') or originally issued by Consob during the accreditation phase in the Siproem system.

The Deproem User Handbook is available in Italian and English in the section "*Services for Supervised Subjects / Procedures / Offer Documentation Filing*" (<http://www.consob.it/web/area-operativa-interattiva/deposito-prospetti>). It describes the steps to be followed to file the prospectus (or the constituent parts thereof) as well as the supplements.

In this regard, it is recalled that the Deproem system performs the function of collecting not only the prospectuses (or the constituent parts thereof) and supplements approved by Consob, but also the final terms relating to the base prospectuses, including the attached summaries specific to the individual issues, and any supplementary notices of the terms of the offer.

This system has been recently revised to allow its adaptation to the new storage mechanism for prospectuses implemented at ESMA (so-called Prospectus Register or ESMA Register) and the sending to it of data pursuant to Article 21, para. 5.2 of Regulation (EU) 2017/1129 (so-called Prospectus Regulation) and Articles 11 and 12 and Annex VII of Delegated Regulation (EU) 2019/979.

As outcome of this revision of the Deproem system, the procedures for filing the prospectus related to an offer of securities to the public and/or admission to trading (or its constituent parts) have been significantly simplified, since the new version of the system, to complete the filing, requires the entry of a significantly lower amount of data than that required in the previous version.

These data are shown in Annex 1 and must be provided by filling in specific fields of the Deproem system when the documents approved by Consob or the final terms of the base prospectus are filed

¹ Pursuant to this provision "*the approved prospectus and the approved supplement shall be filed with Consob no later than the end of the first working day following the notification of the approval, according to the methods specified by Consob with its own communication*".



with Consob, as indicated in the Deproem User Handbook, to which reference is also made for the technical details on filling in the individual computer fields.

With the transitional regime established by ESMA to notify the data required by Regulation (EU) 2019/979 ending on 25 November 2020, the current version of the Deproem system will cease to operate and the new version will be operational from 26 November 2020. The starting date aims at making it possible to publish prospectuses and data on the ESMA website from 30 November 2020, in line with the new format of the Prospectus Register.

With reference to prospectuses for financial products other than securities, the specific methods for filing offer documentation will be indicated in the communication of approval of the relevant prospectus.

THE PRESIDENT
Paolo Savona

Annexes: 1

DATA TO BE ENTERED IN DEPROEM WHEN FILING THE PROSPECTUS (OR CONSTITUENT PARTS) AND THE SUPPLEMENT

Assigned name	Format	Requested to file
LEI of the Issuer	Text	-
National Unique Code (SIPROEM)	Text	Prospectus, Registration Document, Supplement
Approval Date	Date	Prospectus, Registration Document, Supplement
Document Type	Text (closed list)	Prospectus, Registration Document, Supplement, Final Terms
Prospectus Type	Text (closed list)	Prospectus
Prospectus Format	Text (closed list)	Prospectus
Growth Outlook (SMEs)	Text (closed list)	Prospectus, Registration Document
List of annexes to Regulation 2019/980/EU	Whole list	Prospectus, Registration Document
ISIN	Text	Prospectus, Final Terms
Financial Instrument Short Name (FISN)	Text	Prospectus, Final Terms
Type of financial product	Text (closed list)	Prospectus, Final Terms
Currency	Text	Prospectus, Final Terms
CFI Code	Text	Prospectus, Final Terms
Type of Offer/Admission to listing	Text (closed list)	Prospectus, Final Terms
Due Date	Date	Prospectus, Final Terms
Par Value	Number	Prospectus, Final Terms
Underlying	Text	Prospectus, Final Terms

Trading method list	Text (closed list)	Prospectus, Final Terms
Price	Number	Prospectus, Final Terms
Offer quantity	Number	Prospectus, Final Terms
Offer value	Number	Prospectus, Final Terms
Approval Number	Text	Prospectus, Registration Document, Supplement
Financial Product Class	Text (closed list)	Prospectus
Admission to Listing	YES / NO	Prospectus
Offer to the public	YES / NO	Prospectus
IPO	YES / NO	Prospectus
Offer Type	Text (closed list)	Prospectus
Registration Document Class	Text (closed list)	Registration Document
Summary description	Text	Prospectus, Final Terms, Notice
Extended product name	Text	Prospectus (not base), Final Terms
Sub-type of financial product	Text (closed list)	Prospectus (not base), Final Terms
Offer Start Date	Date	Prospectus (not base), Final Terms
Offer End Date	Date	Prospectus (not base), Final Terms
Trading start date	Date	Prospectus (not base), Final Terms
Issue Date	Date	Prospectus (not base), Final Terms
Subject to Bail-In	YES / NO	Prospectus (not base), Final Terms
Placement methods	Text (closed list)	Prospectus (not base), Final Terms
Placement agent list	Text (closed list)	Prospectus (not base), Final Terms
Southern Economy Products	YES / NO	Prospectus (not base), Final Terms
Guarantees	Text (closed list)	Prospectus (not base), Final Terms
Capital protections	Text (closed list)	Prospectus (not base), Final Terms
Redemption method	Text (closed list)	Prospectus (not base), Final Terms
Automatic Redemption	YES / NO	Prospectus (not base), Final Terms
Redemption Value	Number	Prospectus (not base), Final Terms
Subordination Clauses	Text (closed list)	Prospectus (not base), Final Terms



SECTION II

GUIDANCE ON APPLICATION OF THE PROSPECTUS DISCLOSURE REQUIREMENTS

RISK FACTORS OF THE PROSPECTUS: COMPLIANCE WITH ESMA GUIDELINES

Warning Notice no. 4/2019 of September 18, 2019

Subject: ESMA guidelines on risk factors pursuant to the new Prospectus Regulation and revocation of CONSOB Recommendations no. 7105108 (29.11.2007) and no. 0096857 (28.10.2016) concerning, respectively, the risk factors and the “Warnings for the investor ”of the prospectuses.

Prospectus Regulation (Reg. (UE) no. 1129/2017) - which came into effect on 21.7.2019 and is applicable in all EU countries, together with the related implementing provisions¹ - exceeds the previous Directive², through binding provisions for the formulation and presentation of risk factors in the prospectus and in the Summary.

According to the new European regulations, the risk factors included in the prospectus must concern the most significant and specific risks for the issuer and its securities and must be confirmed by the content of the prospectus. The new legislation also indicates the methods of classification and description, requiring explaining clearly and concisely how the risk factor may affect the issuer or the securities.

In the case of the *retail* prospectuses, the regulation summary has relevance, too. This Note must be prepared in a concise and easily understandable form: It must also provide a limited selection of specific risks (maximum 15 risk factors) that the issuer judges of greatest relevance for the investor's investment decision.

To further integrate the regulatory framework on the subject, on 29 March 2019 the *European Securities and Markets Authority* (ESMA) published, on its website - pursuant to art. 16 (4) ("Risk Factors") of the Prospectus Regulation - its own guidelines ("Guidelines") concerning risk factors in English. The Guidelines will soon be published in the official languages of the European Union countries, and it will be made also available on the CONSOB website.

These Guidelines further the adequate, targeted and more optimized information on risk factors, in an easily analysable, concise and understandable form, assisting the competent authorities in their examining of the prospectus pursuant to Article 20 of the Prospectus Regulation. Those who are responsible for the prospectus will also have to take this into account in order to speed up the approval process related to the prospectus.

¹ EU Regulation 2019/980 of 14 March 2019 on the form, content, control and approval of the prospectus; EU Reg 2019/979 of 14 March 2019 containing, among other things, technical regulations for the managing of information summary keys, publication and classification of the prospectus, advertisements, supplement and the prospectus notification portal.

² Directive 2003/71/EC.



CONSOB decided to comply with the Guidelines in implementing the new regulations, taking into account the relevant new elements introduced by it.

Given the above, it is recalled the attention of those who are responsible for the prospectus about the compliance with the new EU regulations governing the prospectus and, in particular, about the provisions relating to risk factors and the Summary note, so as supplemented by the ESMA Guidelines.

Given the above, it is believed that the aforementioned EU legislation on the prospectus now supersedes the indications provided in the past by CONSOB to national market operators, with specific reference to risk factors and Warnings. Regarding the Warnings, it is emphasized that their purpose is assigned, by the current European regulation on the prospectus, to the risk factors and to the Summary note, whose identification criteria and preparation modalities are explicitly defined.

CONSOB Recommendations no. 7105108 (29.11.2007) and no. 0096857 (28.10.2016) concerning the risk factors and the "Warnings for the investor" are therefore revoked with reference to the offer and quotation documents prepared according to the new regulation.

As required by the ESMA Guidelines, CONSOB incorporates the same Guidelines in its supervisory practices and monitors that issuers, and other subjects responsible for drawing up the prospectus, be compliant with it, being able, wherever necessary, to exercise the powers established by Article 114, paragraph 5, of the Consolidated Law on Finance (Testo unico della finanza – Tuf).

THE PRESIDENT
Paolo Savona

DISCLOSURE REQUIREMENTS UNDER THE PROSPECTUS REGULATION: COMPLIANCE WITH ESMA GUIDELINES

Consob Warning notice no. 5/21 of 29 April 2021

Subject: Compliance with ESMA Guidelines on disclosure requirements pursuant to the Prospectus Regulation

On 15 July 2020, the *European Securities and Markets Authority* (ESMA) published, pursuant to Article No 16, paragraph 1, of Regulation (EU) No 2010/1095 (ESMA regulation), the final report on the feedback from the public consultation concerning its draft Guidelines on disclosure requirements pursuant to the Prospectus Regulation¹ (ESMA/31-62-1426).

On 4 March 2021, ESMA published the translation into the official EU languages of the same Guidelines. The aforementioned final report and the translation into Italian of these ESMA Guidelines (ESMA 32-382-1138) are also available on the CONSOB website <http://www.consob.it/web/area-pubblica/prodotti-orientamenti-esma>.

The Guidelines apply from 5 May 2021, and they are addressed to competent authorities under the Prospectus Regulation and to market participants, including persons responsible for a prospectus.

The Guidelines update the previous CESR Recommendations (ESMA/2013/319, in the revised version of 20 March 2013) with the exception of those concerning specialist issuers referred to in Annex No 29 of the Delegated Regulation (EU) 2019/980, which have not been converted into Guidelines and still remain applicable².

Therefore, starting from 5 May 2021, the references made by previous CONSOB communications to the aforementioned CESR Recommendations on the prospectus are consequently replaced with the aforementioned ESMA Guidelines, including the references in Communication No DEM/6064293 dated 28 July 2006 concerning the net financial position.

The purpose of the Guidelines is to establish uniform, efficient and effective supervisory practices among competent authorities when assessing the completeness, comprehensibility and consistency of the information contained in the prospectuses, as well as to ensure the common, uniform and

¹ Regulation (EU) 1129/2017.

² The CESR Recommendations were partly updated by ESMA, most recently in 2013; see *ESMA update of the CESR recommendations for the consistent implementation of the Commission Regulation (EC) No 809/2004, ESMA/2013/319/20 March 2013*. In the *Statement* published on 30 September 2020 (available on the CONSOB website at: <http://www.consob.it/web/area-pubblica/prodotti-orientamenti-esma>), ESMA highlighted the parts of the aforementioned CESR recommendations that still remain applicable. The main changes made by the ESMA Guidelines in question to the aforementioned CESR Recommendations are analyzed in the "*Annex I: Cost-benefit analysis*" of the document ESMA 31-62-1426 of 15 July 2020: *Final Report ESMA Guidelines on disclosure requirements under the Prospectus Regulation* (available on the CONSOB website at: <http://www.consob.it/web/area-pubblica/prodotti-orientamenti-esma>).



consistent application of the disclosure requirements established by the Delegated Regulation (EU) 2019/980.

In accordance with Article No 16, paragraph 3, of the ESMA regulation, competent authorities and financial market participants must make every effort to comply with the ESMA Guidelines. CONSOB complies with these Guidelines by incorporating them into its supervisory practices and by monitoring that the issuers and other persons responsible for the preparation of the prospectus comply with them, being able, where necessary, to exercise the powers provided for by Article No 114, paragraph 5, of the Consolidated Law on Finance (TUF).

Since the prospectuses approved by CONSOB, starting from 5 May 2021, must comply with the ESMA Guidelines, the attention of financial market participants is drawn to the need that the draft prospectus submitted for CONSOB's approval be in accordance with these Guidelines.

For further evidence, the scope and terms of application of the Guidelines are summarized below.

Persons required to comply

The Guidelines apply to:

- the competent authorities, as defined in the Prospectus Regulation and
- market participants, including persons responsible for a prospectus, pursuant to Article No 11, paragraph 1, of the Prospectus Regulation.

Purpose

The Guidelines are aimed at helping market participants to comply with the disclosure obligations established in the Delegated Regulation (EU) 2019/980 and to encourage a more uniform interpretation of the annexes of this regulation throughout the Union.

Application

The Guidelines are applicable from 5 May 2021.

THE PRESIDENT
Paolo Savona

GUIDANCE ON INFORMATION RELATED TO THE SUPERVISORY REVIEW AND EVALUATION PROCESS TO BE INCLUDED IN THE PROSPECTUS AND/OR IN PERIODIC FINANCIAL REPORTS

Communication No 6 of 15 March 2019

Subject: Disclosure of information on the *Supervisory Review and Evaluation Process* to be made in the prospectus and/or in the periodic financial reporting

1. Premise

Communication No 0090883 of 26 November 2015 provided banks with some information relevant to the information requirements for the public in relation to the results of the *Supervisory Review and Evaluation Process* ('SREP').¹

Since the publication of the above-mentioned Communication some changes in the context of reference have occurred, mainly determined by the introduction of the new provisions on the disclosure to the public of inside information provided for in Article 17 of the European Regulation on Market Abuse No 596/2014 ("MAR") and the related European and Italian rules for implementation and adaptation².

In the light of the changes mentioned above, the said Communication No 0090883 of 26 November 2015 must be regarded as no longer effective, as reiterated in Communication No 5/19 of 15 March 2019.

Moreover, in the latest SREP communications, prudential supervisors have distinguished the category of 'prudential requirements'³ (quantitative and qualitative), binding on credit institutions, from the 'recommendations' (e.g., *guidance* on capital guidance — so-called *Pillar 2 Guidance* — or supervisory expectations regarding non-performing loans).

In order to contribute to the clarity of the reference regulatory framework and to promote maximum transparency towards investors, taking into account also the comments received during the market consultation held on 31 December 2018, we hereby provide guidance on the disclosures to be made in prospectuses relating to the offer to the public and/or admission to trading of instruments issued and/or

¹ Article 97 of Directive 2013/36/EU of 26 June 2013 (Directive on the Access to the Activity of Credit Institutions and on the prudential supervision of credit institutions and investment firms, hereinafter CRD IV) provides that prudential supervisors must review the organisation, strategies, processes and methodologies that banks put in place to address all the risks to which they are exposed. With this process, known as the *Supervisory Review and Evaluation Process* (SREP), prudential supervisors review and evaluate the internal capital adequacy assessment process (ICAAP) conducted by supervised banks, analyse the bank's risk profiles individually and from an aggregate perspective, including under stress conditions, and its contribution to systemic risk; they evaluate the corporate governance system, the functionality of the organs, the organisational structure and the system of internal controls and verify compliance with the set of prudential rules. At the end of the SREP, the prudential supervisory authorities formulate an overall opinion on the bank and have the power, pursuant to Article 104 of CRD IV, to impose, where necessary, a wide range of supervisory measures (organisational, capital, liquidity), aimed at strengthening the overall situation of banks by mitigating the impact of the identified shortcomings.

² Finally, those introduced by Legislative Decree No 107 of 10 August 2018 in force since 29 September 2018 which updated Legislative Decree 58/1998 ("TUF").

³ This concept includes both qualitative and quantitative own funds requirements and any liquidity requirements.

guaranteed by banking entities and in the periodic financial reports published by those entities.

If further specific information on the subject matter of this Communication is provided at European level, the changed regulatory framework should be considered.

2. Information to be made in the prospectus

With reference to prospectuses relating to the offer to the public and/or admission to trading on regulated markets of financial instruments issued and/or guaranteed by banking entities, we highlight at the present time the absence, at EU level, of specific guidelines that provide guidance on the circumstances and methods of inclusion in the prospectus of specific information relating to the results of the *Supervisory Review and Evaluation Process* (SREP).

The legislation provides in general that: *‘the prospectus shall contain the necessary information that is relevant to an investor in order to be able to carry out an informed assessment of: a) the balance sheet, economic performance, financial situation and prospects of the issuer and any guarantors; b) the rights related to securities; and (c) the reasons for the issue and its impact on the issuer’*⁴.

Moreover, it is the MAR legislation (i.e., Article 116, paragraph 1-bis of the TUF for issuers with instruments disseminated to the public to a significant extent) which establishes conditions and methods of public disclosure regarding the results of the SREP. It follows that, for bank issuers within that regulatory scope, there is natural consistency between the concept of privileged information and information relevant for the purposes of the prospectus regulation.

In general, it should also be noted that, for all issuers, disclosures concerning binding quantitative prudential requirements resulting from SREP present the conditions of relevance for inclusion in the prospectus.

With regard to further SREP findings (e.g., any binding qualitative requirements or *guidance* on capital - so-called *Pillar 2 Guidance*), the information originating from the SREP process may present on a case-by-case basis the material requirements for inclusion in the prospectus; it is therefore the issuer’s responsibility to provide information functional to the assumption of informed choices by potential investors receiving the same document⁵. In the context of the *Pillar 2 Recommendations*, it is considered that at least the possibility of non-compliance with the capital ratios and the possible initiatives that can be taken by the prudential supervisory authorities will become relevant.

For the period in which a prospectus already approved is still valid, it is necessary to assess whether the information contained in the SREP *letter* integrates the conditions of the *‘significant new fact’* referred to in Article 94(7) of the TUF, thus⁶ entailing the obligation to publish a specific supplement

⁴ See Article 6(1) of Regulation (EU) No 1129/2017, the full text of which is as follows: *‘Without prejudice to Articles 14(2) and 18(1), the prospectus shall contain the necessary information which is relevant to an investor in order to be able to carry out an informed assessment: the balance sheet, economic performance, financial situation and prospects of the issuer and any guarantors; rights related to securities; and (c) the reasons for the issue and its impact on the issuer. This information may vary depending on the following elements: the nature of the issuer; the type of securities; the situation of the issuer; where relevant, the fact that securities other than equity instruments have a denomination per unit of at least EUR 100 000 or are traded exclusively on a regulated market, or in a specific segment thereof, to which only qualified investors can have access for the purposes of trading them.’*

⁵ The same assessments must be made by the guarantor (banking entity), where present, in relation to the parties within its competence.

⁶ Similar considerations apply, within the meaning of Article 113(2) of the TUF, in the case of admission to trading, where the significant new fact occurs between the date of approval and the date of commencement of negotiations.

to the prospectus. Particular attention should be paid in the consideration of the information elements that have occurred, especially at the stages in which the offer is being carried out and, even more so, in the vicinity of their closure.

In any case, it remains clear that Consob, in the context of the tasks assigned to it pursuant to the provisions on the *pro tempore* prospectus in force and in particular where the prospectus is subject to its approval, may exercise the powers aimed, inter alia, to verify the completeness, consistency and comprehensibility of the information included in the document as well as, in extreme cases, to suspend or prohibit the execution of the offer.

3. Periodic financial reporting

In the context of periodic financial reports, the relevance of the results of the SREP process shall be assessed in accordance with the IAS/IFRS accounting rules; in light of the fact that, pursuant to Legislative Decree No 38 of 8 February 2005 (application of Regulation (EC) No 1606/2002)⁷, the financial statements of Italian banks with securities admitted to trading on a regulated market must be drawn up solely on the basis of international accounting standards IAS/IFRS.

As regards the information on the binding SREP capital requirements to be reported in the notes to the financial statements or in the management report, it is necessary first to consider the requirements of the *International Accounting Standard IAS 1 "Presentation of Financial Statements"* on capital disclosure⁸, and the provisions of the Bank of Italy in Section F of Circular 262 "The bank financial statement" regarding information on own funds and the supervisory ratios. The *European Banking Authority* (EBA) and the European Central Bank (ECB) also draw attention to the *disclosure* to the public of capital requirements deemed relevant to investors⁹.

Therefore, based on the above provisions, it is considered that the information relating to the binding capital requirements established in the SREP decision (the so-called *Pillar 2 capital requirements*) present the conditions of relevance also for the purposes of inclusion in the *disclosure* to be reported in the periodic financial reports.

With reference to the additional SREP findings, it is recalled that the financial reporting rules require that additional information should be provided in the notes to the financial statements¹⁰ or in the management report, in respect to what is required by specific accounting standards, where such information is relevant to the public's understanding of the impact of specific transactions, other facts and conditions on the financial position or economic performance of the reporting entity. The periodic financial reporting on SREP findings should therefore also be assessed in the light of these rules.

THE VICAR PRESIDENT
Anna Genovese

⁷ As updated following Law No 145 of 30 December 2018 (so-called Budget Law 2019).

⁸ See IAS 1 paragraph 135 (d) and (e).

⁹ Reference is made to *Opinion* EBA/Op/2015/24 of 16 December 2015 ('*Opinion of the European Banking Authority on the interaction of Pillar 1, Pillar 2 and combined buffer requirements and restrictions on distributions*') and the latest edition (2017) of the SREP methodology of the Single Supervisory Mechanism published by the ECB - Banking Supervision ('*2017 SREP Methodology Booklet*').

¹⁰ See IAS 1 paragraph 17(c) and paragraph 31.

ALTERNATIVE PERFORMANCE MEASURES (APMs): ESMA GUIDELINES

Communication No 0092543 of 3 December 2015

SUBJECT: Communication on the application of the ESMA Guidelines on Alternative Performance Indicators (updated in March 2023 considering modifications in the EU legislation on prospectuses)

ESMA's new guidance on alternative performance indicators

On 5 October 2015, the *European Securities and Markets Authority* (ESMA) published, pursuant to Article 16 of Regulation No 1095/2010/EU, its guidelines on the criteria for the presentation of alternative performance indicators (APMs) included in regulated information and prospectuses, where such indicators are not defined or provided for in the financial reporting framework.

The Guidelines, which update the previous CESR Recommendation (CESR/05-178b), are aimed at promoting the usefulness and transparency of APMs included in regulated information or prospectuses within the scope of Regulation (EU) 2017/1129 (Prospectus Regulation). ESMA considers that compliance with the guidelines will improve the comparability, reliability and comprehensibility of APMs.

The Italian translation of these ESMA Guidelines (ESMA/2015/1415), applicable from 3 July 2016, is also available on the CONSOB website <http://www.consob.it/web/area-pubblica/prodotti-orientamenti-esma>¹.

As of that date, the references in previous CONSOB documents to the 'CESR 2005 Recommendation (CESR/05-178b)' will be considered replaced by the ESMA/2015/1415 Guidelines.

This is with particular reference to the information to be included in the Management Report and in the press releases issued on the occasion of the approval of the periodic financial reports referred to in the Communications DEM/6064293 and DME/6064291 of 28 July 2006.

As required by the Guidelines, CONSOB incorporates these guidelines into its supervisory practices and will monitor whether issuers and entities responsible for drawing up the prospectus will abide by it.

Below, the scope of those Guidelines is highlighted.

Subject to observance

These guidelines are addressed:

- issuers with securities admitted to trading on a regulated market, as defined by Directive 2004/109/EC (Transparency Directive), excluding States;
- persons responsible for a prospectus drawn up in accordance with Regulation (EU) 2017/1129 (Prospects Regulation).



Documents considered relevant to the application of the Guidelines

The ESMA Guidelines will apply to documents containing regulated information as well as prospectuses.

Examples of documents relevant to the application of the guidelines are:

- the sections of the annual and semi-annual financial reports, in particular management reports or interim management reports,
- information published pursuant to Article 17 of the Market Abuse Regulation, e.g., press releases regarding economic and financial performance,
- prospectuses and related supplements.

On the other hand, data included in the financial statements and indicators included in the prospectus are excluded in accordance with the prospectus rules already in force (such as pro forma data, forecasts or profit estimates, the statement on borrowing and capitalisation) and, more generally, APMs published under prudential measures, including measures defined in the Capital Requirements Regulation and Directive — CRR/CRD IV.

Deadline of applicability

The Guidelines are applicable from 3 July 2016 for the presentation of Alternative Performance Indicators disseminated in regulated information or prospectuses published after that date.

* * *

Finally, it should be noted that these guidelines do not derogate from the requirements laid down in the EU directives and regulations so far.

THE PRESIDENT
Giuseppe Vegas



SECTION III

GUIDANCE ON SPECIAL CASES

SAVINGS SECURITIES FOR THE ITALIAN SOUTHERN ECONOMY

Communication No 12025673 of 2 April 2012

SUBJECT: Savings Securities for the Southern Economy (updated in March 2023 considering modifications in the EU legislation on prospectuses)

With the entry into force of the Decree of the Minister for Economic Affairs and Finance laying down the rules governing '*Savings Securities for the Southern Economy*', the implementing measures of Article 8(4) of Decree Law 70/2011 were laid down to allow Italian, EU and non-EU banks to issue savings securities in order to promote the territorial rebalancing of credit flows for medium to long-term investments of small and medium-sized enterprises and to support ethical projects in the Mezzogiorno.

In particular, under the legislation in question, Italian, EU and non-EU banks authorized to operate in Italy can issue '*Savings Securities for the Southern Economy*' (the '**Securities**') provided that:

- the Securities: (i) are financial instruments with a maturity of not less than 18 months; (ii) are not subordinated, irredeemable or refundable with the authorization of the Bank of Italy (pursuant to Article 12 paragraph 7 of the Consolidated Banking Act); (iii) pay interest at least annually; (iv) are signed by physical persons not engaged in business activities; and (v) are not countable in the issuer's regulatory capital;
- the following dimensional requirements are met: (i) there is a maximum total nominal amount of issuable securities of EUR 3 billion for the current calendar year (the "*Plafond*"); (ii) there are also individual limits for the individual issuer and banking group, in particular, for each banking group the limit is 20 % of the *Plafond* (i.e. EUR 600 million) while for individual banks not part of a banking group the limit is 5 % of the aforementioned *Plafond* (i.e. EUR 150 million). In any event, emissions cannot exceed 30 % of the core capital ('Tier 1') as shown in the most recent published annual financial statements or the most recent half-yearly situation, if published;
- the offer period shall not exceed 60 working days.

The securities thus issued shall be subject to a 5 % substitute tax on interest generated.

It should be recalled that, pursuant to Article 2(1) of the Ministerial Decree, incremental flows of medium to long-term investments towards small and medium-sized enterprises with registered office in the regions of the Mezzogiorno (Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sardinia and Sicily) attributable to the issuer, must be, during the lifetime of the



securities, at least equal to the collection carried out through the issuance of the mentioned Securities.

The issuers wishing to issue the Securities must send a specific communication to CONSOB, between 30 and 20 working days before the date of issue or the beginning of the offer period, by sending the Communication Form (Annex 1) duly completed, signed and accompanied by the relevant supporting documentation (including a photostatic copy of the identity document of the legal representative of the applicant, requested for the purposes of art. 38, paragraph 3, of Presidential Decree no. 445 of 28 December 2000). This documentation must be transmitted exclusively by certified e-mail ("PEC") to the following PEC address [sudbond@pec.consob.it].

Communications received outside the time frame indicated above, or by means of alternative methods to the PEC, are considered inadmissible. The transmission of the Communication Form by the issuer entails the opening of an administrative procedure, ex L. 241/90. The communications shall be examined and processed in the chronological order of receipt recorded by the PEC, with the following clarifications:

- in the event of incomplete communication, the time limits of the procedure shall start to run from the date of completion of the communication itself;
- the eventual request, made by Consob to the issuer, to provide clarifications or further information determines the suspension of the terms of the procedure, which start to run again, for the remaining part, from the date of receipt of the requested information.

Consob provides feedback to the issuer of the opening of the administrative procedure. Within 10 working days from the date of receipt of the Communication Form, Consob informs the issuer of any obstacles to the issue (e.g., conditions of incapacity of the Plafond). If, as a result of the communications made by the issuers after the closing of the offer period (and resulting in a lower issue than the authorized one), the capacity of the overall Plafond, or the individual one, is restored, new emissions can be authorized, up to the amount made available. For this purpose, preventive communications received after the restoration of the Plafond will be taken into account.

The communications by Consob take place exclusively through PEC.

It should be noted that where the offer period is between two calendar years (i.e., 2012 and 2013) the reported amount will commit the Plafond for the year in which the offer began (e.g., the 2012 Plafond).

Within 5 working days following the closing of the offer period, the issuer must communicate to Consob, exclusively by means of PEC at the following PEC address [sudbond@pec.consob.it], using the Communication Form (Annex 2), the countervalue of the issued securities and, where different, the amount actually placed, together with the information concerning the fulfilment of the requirements relating to the characteristics of the holders of the Securities. The same communication must also be forwarded to the Minister for Economic Affairs and Finance, Department of the Treasury, exclusively by means of PEC to the following PEC address



[dipartimento.tesoro@pec.mef.gov.it], recipient, pursuant to Article 2 of the mentioned Ministerial Decree, of the information relating to the definition of small and medium-sized enterprise adopted by the issuer, as well as the information relating to medium to long-term investments in favor of small and medium-sized enterprises with registered office in the regions of the Mezzogiorno.

Consob publishes on its website the list of the names of the issuers and the countervalues of the issued Securities, relating to each calendar year, and shall update them within 10 working days from the receipt of the communication following the closure of each offer period.

Where the commitment of the Plafond is equal to 80 % of the total annual amount of issue, CONSOB must inform the Minister for Economic Affairs and Finance by means of PEC.

Finally, as regards the distribution and offer to the public of the Securities, all the laws and regulations on financial instruments issued by banks, the distribution rules provided for in Directive 2014/65/EU and the rules on public offering provided for in Regulation (EU) 2017/1129, as well as the provisions laid down in the relevant implementing and transposition provisions, shall apply.

THE PRESIDENT
Giuseppe Vegas



SAVINGS SECURITIES FOR THE SOUTHERN ECONOMY

PREVENTIVE COMMUNICATION

Form 1 - Communication concerning the intention to issue the Savings Securities for the Southern Economy referred to in Article 1(3) of the Ministerial Decree implementing Article 8(4) of Decree Law 70/2011.

To be addressed to:

CONSOB

**DIVISIONE VIGILANZA EMITTENTI
UFFICIO PROSPETTI INFORMATIVI**

SUDBOND@PEC.CONSOB.IT

1. ISSUER NAME:

.....

TAX CODE

REGISTERED OFFICE

2. NAME OF BANKING GROUP¹:

.....

3. ISSUER NATIONALITY²:

☐ ITALIAN

☐ FOREIGN³(to specify)

.....

.....

CONTACT PERSON

CONTACT PERSON (PHYSICAL PERSON)

PHONE

FAX

E-MAIL

¹ Information required if the issuer belongs to a banking group.

² The parties interested in the issue of the Securities are Italian, EU and non-EU banks authorized to operate in Italy.

³ In the case of a non-EU bank, please provide a declaration about the authorization to operate in Italy.



4. FEATURES OF THE SECURITIES:

TYPE⁴: ____

ISIN CODE⁵: ____

DENOMINATION⁶: ____

TYPE OF COUPON RATE⁷: ____

- ☐ MATURITY NOT LESS THAN 18 MONTHS
- ☐ REGISTERED SECURITIES
- ☐ BEARER SECURITIES
- ☐ PERIODICITY OF INTEREST AT LEAST ANNUALLY
- ☐ NON-SUBORDINATED, IRREDEEMABLE OR REFUNDABLE WITH THE AUTHORIZATION OF THE BANK OF ITALY
- ☐ INSTRUMENTS NOT COMPUTABLE IN THE REGULATORY CAPITAL
- ☐ THE INSTRUMENTS ARE SUBJECT TO THE RULES OF LEGISLATIVE DECREE NO 58/1998, PART III, TITLE II, CHAPTER II, SECTION I

MAXIMUM ISSUE AMOUNT (EUR MLN): ____

EXPECTED DATE OF ISSUE⁸: ____

OR

⁴ Specify the type of financial instrument (i.e. bonds).

⁵ If possible (indicate if already known).

⁶ If possible (indicate if already known).

⁷ If possible, specify the type of rate (e.g. fixed rate, variable rate, etc.).

⁸ The communication referred to in this Form must be between 30 and 20 working days prior to the issue or the beginning of the offer period.



EXPECTED OFFER PERIOD⁹: ____

5. THE OFFER IS BASED ON:

- ☐ Base prospectus approved on...
☐ Offer prospectus approved on...
☐ Exempt¹⁰
☐ “Passported” Prospectus¹¹ approved by the Authority... on...

6. DIMENSIONAL REQUIREMENTS¹²:

- a. TOTAL AMOUNT OF THE SECURITIES ISSUED¹³ (CURRENT YEAR) ((EUR MLN): ____
b. TOTAL AMOUNT OF SECURITIES ALREADY REQUESTED^{14 15} AND NOT ISSUED (CURRENT YEAR) (EUR MLN): ____

REGULATORY CAPITAL¹⁶ (TIER 1) (EUR MLN): ____

c. 30 % OF TIER 1 (EUR MLN): ____

REFERENCE DATE¹⁷: ____

⁹ The offer period cannot exceed 60 working days.

¹⁰ Exemption provided for in the Reg prospectus (Art.1(4)(J) Reg 1129/2017) for offers of securities other than equity securities issued continuously or repeatedly by credit institutions where the total aggregate consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a 12-month period, provided that such securities:

- i) are not subordinated, convertible or exchangeable; and
- ii) they do not confer the right to subscribe to or acquire other types of securities and are not linked to a derivative instrument.

¹¹ Pursuant to Articles 24 and 25 of the Prospectus Regulation 1129/2017.

¹² The sum of the amounts referred to in points (a) and (b) shall not exceed EUR 150 million for individual banks that do not belong to a banking group or EUR 600 million for each banking group. In any case, the sum of these amounts cannot exceed the value referred to in point (c).

¹³ Where the issuer is part of a banking group, the data shall refer to the total amount issued by the banking group.

¹⁴ Where the issuer is part of a banking group, the data shall refer to the total amount requested by the banking group.

¹⁵ Include in this amount even the issue covered by this Communication.

¹⁶ The data refers to consolidated equity in the case of a banking group or individual bank.

¹⁷ The figure refers to the most recent published financial statements or the most recent six-monthly situation, if published.



7. ATTACHED DOCUMENTATION^{18 19}

A. The Issuer declares that this communication and the attached documentation are a certified copy of the original.

DATE AND PLACE.....

SIGNATURE OF THE LEGAL REPRESENTATIVE OF THE ISSUER OR OF THE PERSON(S) WITH THE NECESSARY POWERS

(In accordance with Article 38(3) of Presidential Decree No. 445 of 28 December 2000, the communication is signed and presented together with a copy of an identity document of the subscriber)

SIGNATURE.....

(to be filled in capital letters)

NAME AND SURNAME.....

POSITION/QUALIFICATION.....

TAX CODE

¹⁸ The Italian banks must produce an extract from the annual financial statements/six-monthly situation showing compliance with the capital requirements referred to in Article 8, paragraph 4, letter e) of Decree-Law no.70 of 13 May 2011. Where the issuer is part of a banking group, the extract shall refer to the consolidated/half yearly financial statements.

¹⁹ Foreign banks must produce appropriate documentation from the local supervisory Authority containing the information relating the dimensional requirements referred to in Article 8, paragraph 4, letter e) of Decree-Law no.70 of 13 May 2011.



**SAVINGS SECURITIES FOR THE SOUTHERN ECONOMY
SUBSEQUENT COMMUNICATION**

Form 2 – Communication relating to the amount of the issued Savings Securities of the Southern Economy, pursuant to art. 1 paragraph 5 of the Ministerial Decree Implementing Article 8(4) of Decree Law 70/2011.

To be addressed to:

C O N S O B
DIVISIONE VIGILANZA EMITTENTI
UFFICIO PROSPETTI INFORMATIVI
sudbond@pec.consob.it

**MINISTERO DELL'ECONOMIA
E DELLE FINANZE**
DIPARTIMENTO DEL TESORO
dipartimento.tesoro@pec.mef.gov.it

N. Procedure

Recipient code

1. ISSUER NAME:

.....

TAX CODE

REGISTERED OFFICE

2. NAME OF BANKING GROUP²⁰:

.....

3. ISSUER NATIONALITY²¹

☐

ITALIAN

☐

FOREIGN(to specify)

²⁰ Information required if the issuer belongs to a banking group

²¹ The parties interested in the issue of the Securities are Italian, EU and non-EU banks authorized to operate in Italy



CONTACT PERSON

CONTACT PERSON (PHYSICAL PERSON)
PHONE
FAX
E-MAIL

4. FEATURES OF THE SECURITIES:

TYPE²²:

ISIN CODE:

DENOMINATION:

TYPE OF COUPON RATE:

MATURITY:

COUPON FREQUENCY:

AMOUNT OF ISSUED SECURITIES (EUR MLN):

DATE OF ISSUE:

CLOSING DATE OF OFFER PERIOD:

A. The Issuer declares that the Securities covered by this communication have been signed by physical persons not engaged in business activities.

5. FURTHER COMMUNICATIONS PURSUANT TO ARTICLE 2 OF THE DECREE OF THE MINISTER FOR ECONOMIC AFFAIRS AND FINANCE 1 DECEMBER 2011 PUBLISHED IN OFFICIAL GAZETTE NO. 28 OF 3 FEBRUARY 2012 IMPLEMENTING ARTICLE 8(4) OF DECREE LAW 70/2011

MEDIUM TO LONG -TERM INVESTMENTS (WITH A MATURITY OF MORE THAN 18 MONTHS):

DEFINITION OF SMALL AND MEDIUM-SIZED ENTERPRISE ADOPTED FROM ISSUER²³:

.....

²² Specify the type of financial instrument (i.e., bonds).

²³ Definition of small and medium-sized enterprise adopted by the issuer pursuant to Article 2(1) of the Decree of the Minister for Economic Affairs and Finance on "Savings Securities for the Southern Economy" of 1 December 2011 published in the Official Gazette No 28 of 3 February 2012.



TOTAL AMOUNT OF FUNDING²⁴ WITH A MATURITY OF MORE THAN 18 MONTHS DISBURSED TO SMALL AND MEDIUM-SIZED ENTERPRISES²⁵ WITH REGISTERED OFFICE IN THE REGIONS OF MEZZOGIORNO²⁶ (EUR/MLN): _____

B. The Issuer states to make available to small and medium-sized enterprises with registered office in the regions of the Mezzogiorno during the life of the Securities incremental flows of medium to long-term investments at least equal to the amount of the issued Savings Securities for the Southern Economy.

* * *

C. The Issuer hereby declares that this communication is a certified copy of the original.

Date AND PLACE

Signature of the Legal Representative of the Issuer or of the person(s) with the necessary powers

(In accordance with Article 38(3) of Presidential Decree No 445 of 28 December 2000, the communication is signed and presented together with a copy of an identity document of the subscriber)

SIGNATURE.....

(to be filled in capital letters)

NAME AND SURNAME.....

POSITION/QUALIFICATION.....

TAX CODE

²⁴ The figure refers to the last published financial statements prior to the date of issue or to the most recent half-yearly situation, if published, prior to the date of issue. Where the issuer is part of a banking group, the data shall refer to that group.

²⁵ As defined in the previous field.

²⁶ Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sardinia and Sicily.



COMMITTEES PROMOTING THE ESTABLISHMENT OF COMPANIES (IN PARTICULAR, CREDIT INSTITUTIONS)

Communication No. 11029531 of 8 April 2011 *(updated in March 2023 in light of Regulation EU 2017/1129 and supplementing Commission Delegated Regulations EU 2019/980 and 2019/979)*.

SUBJECT: “Prospectuses of Committees promoting the establishment of companies (in particular credit institutions)”

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INTRODUCTION

The present guidance is based on the experience Consob has gathered from the scrutiny of prospectuses related to offers to the public of shares that are issued by start-up banks according to the public subscription procedure for the constitution of a new bank provided by the Italian legal framework. The latter provides for that a joint-stock company may be established by means of either a simultaneous constitution procedure or a public subscription procedure. In the latter case, according to articles 2333-2336 c.c., the articles of association are signed at the end of a complex procedure that allows collecting the initial capital among the public and is designed in such a way as to subordinate the stipulation of the articles of association to the prior subscription of the capital itself. As can be seen from the prospectuses published in the past, the constitution by public subscription is very frequently used for the establishment of banks, especially cooperative credit, intended to operate in a very limited territorial context with a prevailing mutuality perspective. These initiatives often involve individuals, professionals, small and medium-sized enterprises, in a promoting committee set up specifically to set up a new bank.

The provisions of the Civil Code, which provide for the drafting of various documents, such as the program of activities and the draft of the articles of association and memorandum of association of the newly established company, must then be coordinated with the provisions of the Regulation EU no. 1129/2017 (Prospectus Regulation), the Consolidated Law of Financial Intermediation ("TUF"), the Issuers' Regulation relating to the offer of securities to the public as well as with those of the Consolidated Banking Act ("TUB") and the Supervisory Instructions of the Bank of Italy on the subject of authorization to carry out banking activities.

Concerning the regulation of the public offer for subscription of securities, Art. 3 of the Prospectus Regulation provides for the obligation to draw up a prospectus to be published before the transaction, subject to the approval of the competent authority, i.e., Consob in Italy. Pursuant to Art. 6 a prospectus shall contain *"...the necessary information which is material to an investor for making an informed assessment of: (a) the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor; (b) the rights attaching to the securities; and (c) the reasons for the issuance and its impact on the issuer. That information may vary depending on any of the following: (a) the nature of the issuer; (b) the type of securities; (c) the circumstances of the issuer; (d) where relevant, whether or not the non-equity securities have a denomination per unit of at least EUR 100 000 or are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in the securities."* Such information shall be written and presented in an easily, analysable, concise and comprehensible form, taking into account the factors just listed above.

In this regard, it should be borne in mind that in the cases in question, since they are related to issuers that have yet to be constituted, the relative available information is objectively limited.

Furthermore, as the offer is undertaken by a person other than the issuer to be constituted, i.e., the promoters usually brought together in a committee, some of the information which is material to investor relates to these promoters.

Pursuant to Art. 13 of the Prospectus Regulation, the Commission has adopted delegated acts to regulate the format and content of the prospectus, taking into account of, amongst other things, where applicable, the specific nature of the activities of the issuer. For this purpose, the Commission Delegated Regulation (EU) no. 980/2019, supplementing the Prospectus Regulation, has set out various prospectus schedules

most applied in practice depending on the type of issuer and securities.

In this context, while a prospectus schedule specifically applicable to the type of constituent banks has not been provided, the same EU regulation highlights the possibility, for some categories of issuers, identified as specialized (and listed in Annex 29 of Delegated Regulation (EU) no. 980/2019) including start-up companies, which can be in some way assimilated to the newly established companies, that national authorities can request additional information (Article 39).

Therefore, this guidance is aimed at providing Consob's instructions as regards the disclosure requirements of the prospectuses relating to the offers in question, in order to meet the objectives, set at a general level by Articles 3, 6 and 13 of the Prospectus Regulation. These instructions constitute an adaptation of the disclosure requirements provided by Annexes 1 and 11 of the aforementioned Delegated Regulation (EU) no. 980/2019 regarding issuers of shares and also take into account the need to avoid duplication of information already present within the prospectus or its annexes.

CONTENT OF THE PROSPECTUS RELATED TO THE OFFER TO THE PUBLIC OF SHARES OF CONSTITUENT BANKS

The following instructions should be meant as a useful point of reference for the preparation of the prospectus relating to the public offer for subscription of shares of a newly established bank and are divided into paragraphs, followed by a comment to clarify the reasons for the choices made. In the case of non-bank companies, it may be needed to make the appropriate adjustments to the information referred to below. Such a case, however, in the light of the experience gained during the scrutiny relating to prospectuses of newly established companies, is to be considered completely marginal and residual. Those paragraphs of the mentioned Annexes 1 and 11 which are not applicable, even abstractly, to public offers of shares of constituting banks have not been considered.

Further, at high level, in the application of the Prospectus Regulation the following Level 3 measures adopted by ESMA should be considered:

- ESMA Guidelines on risk factors under the Prospectus Regulation (ESMA31-62-1293) aimed to encourage adequate, targeted and more optimised information on risk factors, in an easily analysable, concise and comprehensible form and to assist competent authorities in their examination of the specificity and materiality of risk factors and their categorisation⁵⁸. The Consob, pursuant to paragraph 3 of article 16 of Regulation (EU) 2010/1095, has publicly stated to have notified ESMA of its compliance with these Guidelines by incorporating them into their supervisory frameworks as appropriate;
- ESMA Guidelines on disclosure requirements under the Prospectus Regulation (ESMA32-382-1138), aiming to establish common regulatory and supervisory standards and practices amongst NCAs in their examination of the completeness, comprehensibility and consistency of information included in prospectuses and to ensure that market participants have a uniform understanding of

⁵⁸ Available in Italian on the Consob's website (<http://www.consob.it/web/area-pubblica/prodotti-orientamenti-esma>) and in English on the Esma's website under the following link: https://www.esma.europa.eu/sites/default/files/library/esma31-62-1293_guidelines_on_risk_factors_under_the_prospectus_regulation.pdf.

the relevant disclosure required in the various Annexes included in the Commission Delegated Regulation (EU) 2019/980⁵⁹;

- ESMA update of the CESR recommendations ESMA/2013/319, still applicable to specialist issuers, such as start-up, as stated by ESMA in paragraph 10 of the document “ESMA31-62-1426 | 15 July 2020”, *Final Report “ESMA Guidelines on disclosure requirements under the Prospectus Regulation”*.

In consideration of all the above, in the section "Risk Factors", it should be highlighted the following:

- the bank, at the prospectus date, has not yet been established and that there is no assurance of the results of the public subscription as well as of the actual incorporation of the company. Therefore, at the date of the prospectus, the composition of the corporate bodies that will be called upon to perform the functions of administration, management and control of the company has not been defined;
- the incorporation of the bank could take place only and exclusively following the issuance of the authorization by the ECB, upon the proposal of the Bank of Italy, subject to verification of the existence of all the conditions provided for by law pursuant to art. 14 TUB including, among other things, the business plan and the existence of the requisites of integrity and professionalism for the corporate bodies. Therefore, the plans described in the prospectus as well as their sustainability have not yet been subject to any assessment by the Bank of Italy. It should also be noted that all the elements of the constitutive project (ownership structure, governance, business plan) may undergo changes, even significant, following the observations, if any, made by the Bank of Italy itself during its preliminary investigation. Finally, it should be highlighted that, if the said authorization is not issued, or if the registration of the deed of incorporation with the Register of Companies is not carried out, the bank will not be constituted, and any amount paid by investors for the subscription of shares will without delay be given back to them;
- where profit forecasts have been included in the prospectus, a statement drawing the investor's attention to those uncertain factors which could materially change both the outcome and timing of the forecasts;
- investors will pay up the subscribed shares only at a time after the successful conclusion of the offer, exclusively by bank transfer to the only banking current account unavailable for purposes other the public offer and whose details should be provided; the amounts paid will be unavailable until the completion of the bank's constitution process;
- expenses related to the establishment of the bank, whose estimated amount should be indicated, will be divided according to the provisions of art. 2338 of the Italian Civil Code, also specifying any amount to be borne by the subscriber.

⁵⁹ Also these Guidelines are available on the Consob's website as specified in the former footnote and under the following link: https://www.esma.europa.eu/sites/default/files/library/esma32-382-1138_guidelines_on_disclosure_requirements_under_the_prospectus_regulation.pdf

Comments: based on the examination of issues arisen in the scrutiny of prospectuses relating to offers to the public of shares of banks to be established, it is deemed important to draw potential investors' attention to even greater risks of the proposed investment than those already inherent in an activity just started (typical of start-up companies), as the company has not yet been established and its actual incorporation is subject to authorization of the ECB, upon proposal of the Bank of Italy. The latter, in fact, during its preliminary investigation, may impose significant changes to all the elements of the constitutive project (ownership structure, governance, business plan) described in the prospectus and in the attached documents.

Regarding the second bullet above, in cases where the authorization measure for the establishment of the bank is the responsibility of a Region with special statute, subject to the binding opinion of the Bank of Italy, pursuant to art. 159 TUB, it should be considered that the disclosure to be provided may need to be adjusted, as appropriate, to the specific circumstances of the case.

The plans described in the prospectus and their sustainability are not submitted to any assessment by the Authority, which will have to propose authorisation to the ECB to carry on banking activities. Furthermore, it should be noted that at the date of the prospectus the governance structure of the company itself is unknown, as neither the corporate bodies nor the senior managers have yet been appointed.

Thus, where profit forecasts are included in the prospectus, it needs to be further highlighted that they present profiles of absolute uncertainty regarding both their actual implementation and the possible timing.

Also Risk Factors section needs to draw investors' attention to the circumstance that any payment of the subscribed shares can be requested only once the offer has been successfully concluded, as provided for by art. 2334 of the Italian Civil Code for the establishment of companies by public subscription. Any request for payment prior to that time is, in fact, to be considered unlawful.

Details of the method for paying up the shares are also set out (bank transfer), as, at least at high level, appear to be the most appropriate to ensure that the sums paid by investors are used for the purposes indicated in the prospectus. Until the conclusion of the constitutive process of the newly established bank, in fact, the sums paid directly by the subscribers to the account by bank transfer will be unavailable. Lastly, shouldn't the transaction described in the prospectus be achieved, the needs to disclose in the risk factors that the subscribers will not be required to incur any expenses, except, possibly, those relating to the authentication of subscriptions (imposed by Article 2333 of the Italian Civil Code) and / or the granting of a special power of attorney to participate in the incorporation meeting of the company (possible choice available to the subscriber) is also underlined.

SECTION I - SUMMARY

Reference is made in this regard to the provisions of recitals (28 to 32) of Art. 7 of the Prospectus Regulation and Delegated Regulation (EU) 2019/979 on the content of the Summary. In the absence of historical financial data, it should be noted that, pursuant to Art. 7, paragraph 9, of the Prospectus Regulation and Article 1, paragraph 3 of the Delegated Regulations cited above, the issuer may add sub-headings, where necessary, and include other financial data (such as forecasts) to the extent that they are key for the investment decision.

SECTION II – REGISTRATION DOCUMENT

The Registration Document shall contain the information referred to in Annex 1 of Delegated Regulation (EU) 2019/980, taking into account the following application guidance.

1. PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND STATEMENTS OF INTEREST

Responsible persons at least comprise all those who, pursuant to the provisions of the Civil Code on the matter of constitution by public subscription, are to be qualified as promoters (Article 2337 of the Civil Code: "*Promoters are those who in the constitution by public subscription have signed the program in accordance with the second paragraph of art. 2333*"; art. 2339 of the Italian Civil Code: "*The promoters are jointly and severally liable towards the company and towards third parties: [...] 3) for the veracity of the communications made by them to the public for the incorporation of the company*").

Where applicable, the information provided by points 1.3 and 1.4 of Annex 1 of Delegated Regulation (EU) No 980/2019 shall be included.

Comments: the above clarification on the responsible persons takes into account the personal nature of the liability assumed by each promoter of the initiative.

2. STATUTORY AUDITORS

Due to the lack of audited historical financial information, this section may provide an indication of the provisions of the template of the articles of association of the new bank regarding the task to be assigned for the statutory audit of the issuer's financial reporting.

3. RISK FACTORS

In view of the peculiar common characteristics of banks established by public subscription, it should be noted that the content of the risk factors relating to a newly established bank tends to be standardized. In such cases, in fact, the main critical issues appear to be attributable to common issues, such as:

- **concerning the risk factors relating to the issuer:** (i) the complexity of the constitutive and authorization process regulated by mandatory legal provisions, with the consequent discipline of the expenses incurred and the return of any payments in case of failure of the initiative, (ii) the absence of economic and financial history of a company yet to be established, (iii) the risk that future results or performance may differ materially from those set out based on the assumptions of the business plan and the circumstance that the distribution of dividends is limited by legal provisions (for example in the case of BCC), (iv) the forecast increase in shareholders in line with the assumptions of the business plan;
- **regarding risk factors related to the company's operations:** (i) the nature of credit and financial intermediation activities that the newly established bank will carry out, (ii) any peculiarities of the economic context in which the issuer will operate;
- **regarding risk factors related to the offer and the securities:** (i) the nature of illiquid security and the difficulties of divesting the shares of a new bank, (ii) the length of the time period of the offer and

any extension of the same, in the latter case with the clarification that if such extension goes beyond the validity period of the approved prospectus a new prospectus shall be submitted to the Consob's approval, (iii) investors shall have the right to withdraw their acceptances also when a new approved prospectus is published relating to the extension of the offer, (iv) any statutory and legal provisions that cause, for example, limitations on shareholding, transferability, voting rights or regulate cases of exclusion or withdrawal of shareholders (as for BCCs).

Comments: based on the experience gained during the scrutiny of prospectuses relating to offers to the public of shares of banks to be set up, the main risk factors that are typically represented in these prospectuses are recalled. This, of course, does not exclude that specific particularities may rise to the rank of Risk Factors even outside the aforementioned list, which therefore remains merely as illustrative example.

4. INFORMATION ABOUT THE ISSUER

In this section, a description of the constituent process of the issuer according to the rules of the Civil Code and the TUB should be provided. If, then, the business plan is included among the documents available to the public (see § 8 below), the latter may constitute the source of the information to be provided in the prospectus regarding the constituent issuer and the overview of future activities (such as the nature of the issuer's business and its key factors, description of the main markets, breakdown of loans and deposits by asset category and geographic market, etc., as required by Section 5 of Annex 1 to Delegated Regulation (EU) No 980/2019).

If quantitative data are not provided, as required by paragraph 137 of document ESMA/2013/319 of 20 March 2013 (containing recommendations for the uniform implementation of the European Commission Regulation on prospectuses) with reference to start-up companies, the description of the issuer and its activity will be qualitative.

Comments: since the prospectus relates to shares of a new bank, the information required by Sections 5 to 8 of Annex 1 to Delegated Regulation (EU) No 980/2019 should undergo substantial adaptations. If the business plan is among the documents available to the public listed in the prospectus, such information may also be gathered, within the limits deriving from the nature of a company yet to be incorporated, by that document. Otherwise, the legal information of the issuer should be provided in the paragraph in question (future legal name, future place of registration, date by which the articles of association must be drawn up and duration as provided for in the template of the articles of association attached to the prospectus, legal premises and legal form, legislation on the basis of which it will operate, country of future constitution) and the future activity of the newly established bank should be described in broad terms.

5. PROFIT FORECASTS (IF ANY)

Where an issuer chooses to include profit forecasts, your attention is drawn to the guidance provided above related to the "Risk Factors" regarding the fact that the company has not yet been established, that the composition of the corporate bodies has not even been defined, that the plans provided and their sustainability have not been submitted to any assessment of the Bank of Italy and that the profit forecasts provided present profiles of absolute uncertainty regarding their actual implementation and the expected timing of the same.

If the prospectus refers to a Business Plan made available to the public, reference should be made to Chapter 21.

The Business Plan, where included in the prospectus, shall provide:

- a description of the principal assumptions upon which the promoters have based the issuer's forecasts;
- a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies. The assumptions must be reasonable, readily understandable by investors, specific and precise and not relate to the general accuracy of the estimates underlying the forecast.

Further, the prospectus shall include a statement that the profit forecast has been compiled and prepared on a basis which is both: (a) comparable with the annual financial statements; (b) consistent with the issuer's accounting policies (please, see item 11.3 of Annex 1 of the Delegated Regulation quoted above).

If a profit forecast has been published and is still outstanding, but no longer valid, the promoters shall then provide a statement to that effect and an explanation of why such forecast is no longer valid (e.g., in the new prospectus related to the extension of the period of the offer). Where such forecast is still valid it shall be included in the prospectus.

Attention is also drawn to the aforementioned ESMA Guidelines on disclosure requirements under the Prospectus Regulation, and in particular to Guidelines 11-13 on profit forecasts/estimates included in a prospectus.

Comments: as brought forward in the introduction, newly established banks do not have historical financial information. In the absence of specific prospectus schedules provided for by current EU legislation for this type of issuer, in order to meet the prospectus information purposes, set out at high level by Articles 3, 6 and 13 of the Prospectus Regulation, in consistency with the approach already followed in the past, it is expected that the promoting committees of established banks will include any forecast data in the prospectus.

In this regard, attention is drawn to the provisions in Section 11, item 11.2, of Annex 1 to Delegated Regulation (EU) no.980/2019 (relating to the schedule of registration document for equity securities) according to which *'Where an issuer chooses to include a new profit forecast or a new profit estimate, or a previously published profit forecast or a previously published profit estimate pursuant to item 11.1, the profit forecast or estimate shall be clear and unambiguous and contain a statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate. The forecast or estimate shall comply with the following principles: (a) there must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; (b) the assumptions must be reasonable, readily understandable by investors, specific and precise and not relate to the general accuracy of the estimates underlying the forecast; (c) in the case of a forecast, the assumptions shall draw the investor's attention to those uncertain factors which could materially change the outcome of the forecast.'*

Therefore, the above guidance takes up the information requirements just specified as well as the recommendations provided in paragraphs 135-139 of the mentioned Document ESMA/2013/319.

It should be noted that when the committee of promoters is set up and the raising of capital is started, no "Technical Report" is yet available in the strict sense, i.e., the document required by the Bank of Italy for supervisory purposes, for the issue of the authorization to carry out banking activities. This report is drawn up by the bank only after the raising of capital has been completed, since only based on the capital raised can assumptions of a sustainable development be formulated. Therefore, the data extracted from the Business Plan have not yet been subject to scrutiny by the Banking Supervisory Authority and may undergo material changes in relation to the comments made by the Bank of Italy as outcome of its scrutiny.

As regards the statement related to the consistency of the profit forecasts with the issuer's accounting policies, first, it should be noted that, taking into account the general requirement of consistency of the prospectus pursuant to art. 38 of Delegated Regulation (EU) no. 980/2019, such statement also assumes the verification of the consistency of the forward-looking information included in the prospectus both with respect to the assumptions upon which the forecasts are based and to the intrinsic accuracy of these information elements. Thus, for example, the persons responsible for the prospectus need to verify that the actions envisaged by the business plan are compatible and consistent. Furthermore, taking into account the requirements of completeness and comprehensibility of the prospectus pursuant to articles. 36 and 37 of Delegated Regulation no. 980/2019, it is considered that the profit forecasts included in the prospectus need to be complete regarding the assumptions on which the forecast data are based.

In other words, there must be no shortcomings and inaccuracy in the profit forecasts included in the prospectus, such as when the issuer does not specify which assumption it has used to determine the volumes of funding/lending or assumes in a macroeconomic and microeconomic context at least flat a significant prospective growth of the activity (reference is made to the case of unreasonable assumptions) or even when a forecast cash flow statement is included with stock and non-flow data (this refers to cases of significant errors that can be found through a mere mathematical recalculation of the magnitudes of the cash flow statement). It is also expected that the sources used for the preparation of the business plan be updated with respect to the prospectus date.

Concerning the examination by the persons responsible for the prospectus of the consistency of the accounting basis adopted with the accounting policies applied by the issuer, since the issuer has not yet been established, this verification is considered limited to ascertaining that the reference accounting principles have been correctly applied in the preparation of the profit forecasts. These checks, therefore, relate to the formal correctness, from an accounting point of view, of the forecast data.

Finally, it should be noted that since this verification activity needs to concern all the information included in the prospectus regarding profit forecasts, it includes, among other things, the sensitivity analysis of the main expected economic margins in the event of a change, compared to the basic scenarios considered, of the key variables used for the preparation of forecast data.

6. INFORMATION ON THE PROMOTERS OF THE INITIATIVE

The disclosure required by item 12.1, second part, of Annex 1 of Delegated Regulation (EU) no.980/2019, referring to the promoters of the initiative should be referred to the promoters. Whether they intend to take up positions in the newly established bank or become partners should also be specified. In this case, it

needs to be specified whether these promoters meet the requirements of the applicable discipline of the TUB.

Comments: in case of offers to the public of shares of to be established banks, the disclosure requirement of Sections 12- 17 of Annex 1 of Delegated Regulation (EU) no.980/2019 may not be applied to the issuer, as the company is not yet incorporated and the information available at the prospectus date is only relating to the rules of composition and functioning of the corporate bodies, which can be obtained from the draft deed of incorporation and articles of association. These documents are, however, annexed to the prospectus and referred to in the following paragraph dealing with additional information.

On the other hand, the promoters of the initiative are the only representatives of the investors, until the establishment of the company and the appointment of the first corporate bodies, and assume, as per the provisions of the Civil Code, a series of responsibilities towards third parties and subscribers of the shares.

Therefore, it seems appropriate that information e required by item 12.1, second part of Annex 1 relating to the good repute and the absence of official convictions, sanctions or incriminations - that, as a rule, are required for the members of the corporate bodies and for those who participate in the management of the company – as well as those relating to any positions held in the banking and financial system (which, moreover, promoters generally indicate in the curricula vitae attached to the prospectus) be referred to the promoters.

In addition, the promoters, in most cases, undertake to subscribe to shares of the newly established bank and, sometimes, state their intention to apply to enter the corporate bodies of the future issuer. In such cases, it may be appropriate for the prospectus to contain a statement that these persons meet the requirements of the TUB. Concerning the requirements of the shareholders, a statement needs to be included in the prospectus only if requested by the committee from investors at the time of subscription.

7. ADDITIONAL INFORMATION

The disclosure provided by Section 19 of Annex 1 of Delegated Regulation (EU) no.980/2019, if any, should refer to draft deed of association and articles of association made available to the investor.

Comments: additional information provided by Section 19 of Annex 1 relate to the share capital as well as to the articles of association and the deed of association of the issuer. While the former does not apply to a company not yet incorporated, the latter can be provided by means of an appropriate reference to the corresponding documents made available to the investor.

8. DOCUMENTS AVAILABLE TO THE PUBLIC

In this section, it should be included the statement provided for by Section 21 of Annex 1 of Delegated Regulation (EU) no.980/2019, where applicable.

SECTION III – SECURITIES NOTE

For the shares that will be issued by the bank to be established, the securities note shall contain the information referred to in Annex 11 of Delegated Regulation (EU) no.980/2019, considering the following instructions.

1. PERSONS RESPONSIBLE

Please, refer to the above guidance included in paragraph 1 of Section II.

2. RISK FACTORS

Please, refer to the above guidance included in paragraph 3 of Section II.

3. ESSENTIAL INFORMATION

The required description of any interest, including a conflict of interest that is material to the issue/offer, should be referred to individuals and legal persons involved in the offer; if the amount of the issue/offer is not fixed, disclosures of the reasons for the offer and use of proceeds should also be provided with reference to the maximum amount of shares to be offered.

Comments: as the bank has not yet been established, the disclosure requirements related to the working capital statement, capitalisation and indebtedness are not applicable. By contrast, disclosure requirements provided by items 3.3 and 3.4 in Annex 11 of Delegated Regulation (EU) no.980/2019 are applicable.

4. INFORMATION CONCERNING THE SECURITIES TO BE OFFERED

The information required by Section 4 of Annex 11 of Delegated Regulation (EU) no.980/2019 shall be provided.

Comments: as the disclosure requirements in question are applicable to equity securities, there are no particular adjustments to be made due to the fact that they are shares of a constituent bank.

5. TERMS AND CONDITIONS OF THE OFFER OF THE SECURITIES TO THE PUBLIC

The information provided by Section 5 of Annex 11 of Delegated Regulation (EU) no.980/2019 may need appropriate adjustments considering the nature of the offer of shares of a constituent bank.

To this end, the following clarifications should be provided:

- i. with reference to the conditions to which the offer is subject, specify that this includes the achievement of the minimum subscription target for the shares indicated in the prospectus and the completion of the constitutive and authorisation process of the issuer;
- ii. as regards the total amount of the offer, specify the minimum and maximum amount offered, if any, indicating the consequences if either objective is not attained;
- iii. regarding the methods of subscription, specify, even in negative, if the offer will take place off-site or through distance communication techniques, pursuant to Articles. 30 and 32 of the TUF;
- iv. concerning the period of validity of the offer, to be presented the required information in tabular format, also indicating the timing of completion of the constitutive process and the maximum term within which the memorandum of association must be stipulated. Considering that according to Art. 12 of the Prospectus Regulation the prospectus validity is of 12 months, if the duration of the

offer exceeds this limit, also specify that the period of validity of the offer may be extended only in the event of publication of a new prospectus submitted to the prior approval of CONSOB;

- v. as regards whether subscriptions may be withdrawn, specify that this possibility also exists in the event of a possible extension of the offer, if a new prospectus is published representing new facts, circumstances or information, such as to affect the valuation of the securities subject to the offer, in favour of those who have subscribed based on the information contained in the original prospectus and to whom such securities have not yet been delivered;
- vi. with reference to the payment methods, specify that payment will take place only after the success of the offer has been verified, exclusively by bank transfer to an unavailable current account, of which the details must be specified, intended only for the collection of subscribers' payments.

Comments: attention is drawn to the following clarifications regarding the most common issues arisen in the scrutiny of prospectuses related to shares of banks to be established.

In particular:

- the committee should specify if the offer will take place off-site or through at a distance communication technique, and if so, that it does it in compliance with the provisions of Articles 30 and 32 of the TUF. In this regard, for the purpose of identifying the notion of principal place of business of the promoting committee, useful to exclude the off-site offer pursuant to art. 30 of the TUF, reference can be made to what is specified in Consob communication no. 2049613 of 2002. In order for the principal place of business of the committee to be considered as such, therefore, it is necessary that there are: *a permanent establishment of means and people*, which occurs when the premises used are permanently intended for carrying out the typical activity of the committee (and this results from formal documentation, such as, for example, from the deed of incorporation, statute, resolution of competent bodies of the committee, as well as being disclosed in the prospectus) and if in such premises there is everything that is necessary to carry out the aforementioned activity continuously and for the entire duration of the initiative; *technical and decision-making autonomy*, which implies the presence of adequate structures and personnel to allow the principal place of business to operate autonomously. Specifically, in the principal place of business there should be at least one employee able to provide the prospectus on request, to answer any questions asked by investors regarding the committee's initiative, as well as to organize the collection of subscriptions according to the formalities referred to in art. 2333 of the Italian Civil Code; *the performance of the typical activity*, in the sense that the premises should be clearly separated from those in which any other activity is carried out by persons belonging to the Committee or third parties. The immediate traceability of the premises to the activities of the committee is, in fact, a necessary condition to avoid the occurrence of the so-called "*surprise effect*" in investors, which could be induced to give their consent to unexpected investment proposals without being able to sufficiently weight them and, therefore, potentially prejudicial;
- regarding the off-site offer, it should be noted that the mere disjunction of the authentication of the signatures of the subscribers of the shares carried out by the notary, provided for by art. 2333 of the Italian Civil Code, from the actual collection of the subscriptions themselves, carried out at the premises of the Committee, does not seem to constitute a hypothesis of "promotion and placement off-site". In other means, in this case the subscriber would remain free to choose the time and place of authentication of the signature, without necessarily having to choose the notary possibly present at the premises of the committee. In order, then, to avoid forms of promotion and placement that may give

rise to the doubt of configuring a distance offer, the committee that has decided to collect subscriptions exclusively at its premises is invited not to make the subscription form available by post and not to allow it to be downloaded via the internet from the committee's website;

- the extension of the offer after the expiration of the original prospectus, not being banned by any regulatory provision, is to be considered admissible provided that a succeeding prospectus is approved and published no later than the last day of validity of the previous prospectus and appropriate disclosure is provided for in the initial prospectus about this possible occurrence, with indication (i) of the maximum duration of the offer, including any extension, so that the investor is informed from the beginning of the maximum duration limit of the legal constraint arising from his deed of subscription; (ii) that if such event occurs, the publication of a new prospectus is needed where the duration of the offer extends beyond twelve months of validity of the prospectus from the publication of the original prospectus, pursuant to Art. 12 of the Prospectus Regulation. Please, consider that any issues related to a possible suspension of the offer due to the new prospectus not being published at the end of the validity of the previous one should be solved; (iii) that investors who have already agreed to subscribe for the shares will have the right to withdraw their acceptances;
- the acknowledgement of the investors' right to withdraw their subscriptions even when there is an extension of the original duration of the offer that needs the publication of a new prospectus finds its rationale based on the consideration that the content of the new prospectus may be impacted by a significant new factor, a material mistake or a material inaccuracy related to information included in the initial prospectus which may affect the assessment of the securities subject to the offer by the investor who has already subscribed such securities before the publication of the new prospectus. Thus, such situation is akin to the effects of the publication of a supplement when the prospectus is still valid regulated by Art. 23, paragraph 2, of the Prospectus Regulation;
- regarding the methods of payment of the subscribed shares, please, refer to the comments expressed above relating to "Risk Factors". It should also be noted that the details of the unavailable current account cannot be changed, unless this change is made known through the publication of a supplement pursuant to art. 23 of the Prospectus Regulation, until the payment for subscriptions by investors is completed. In fact, the disclosure provided in the prospectus as regards the method of payment of cash contributions is a useful safeguard for investors, who so know from the beginning how (bank transfer) and where (current account details) to make such payments and can compare these indications with those provided by the promoters pursuant to art. 2334 of the Italian Civil Code. It is believed that, subsequently, any decisions to move the sums from an unavailable current account to another account, with the same characteristics at another bank that can offer better conditions, may be implemented within the limits and according to the procedures referred to in art. 2331, paragraph 4 of the Italian Civil Code. According to the latter *"The sums deposited pursuant to the second paragraph of art. 2342 [payment in cash] may not be handed over to directors unless they prove that the company has been entered in the register. If within ninety days from the signing of the deed of incorporation or the issuance of the authorizations provided for by no. 3 of art. 2329 [in the case of banks it is the authorization of the Bank of Italy] the registration has not taken place, they are returned to the subscribers and the deed of incorporation loses effectiveness "*.

6. EXPENSE OF THE ISSUE/OFFER

The information required by Section 8 of Annex 11 of Delegated Regulation (EU) no.980/2019 shall be provided. Regarding the costs of the offer, the break-up of the same must be specified in accordance with

the provisions of art. 2338 c.c.

Comments: the costs of the offer, and in general all the expenses necessary for the start of the initiative and the establishment of the company, according to the provisions of art. 2338 of the Italian Civil Code are the responsibility of the promoters, who may be taken over by the new company in the event of a positive outcome of the process, according to the procedures and to the extent provided for in paragraph 2 of art. 2338 c.c. If the company is not yet incorporated, the promoters cannot claim against the subscribers of the shares. The promoters, in fact, have not been delegated to act on behalf of third parties, but behave as simple mediators of the initiative, assuming entirely the risks of its possible failure.

7. ADDITIONAL INFORMATION

The information required by Section 10 of Annex 11 of Delegated Regulation (EU) no.980/2019 shall be provided, where applicable.

DOCUMENTS AVAILABLE TO THE PUBLIC

The statement to be provided in the prospectus relating to documents that can be inspected is expected to include the following:

- a) Articles of Association of the Promoters Committee and any annexes thereto (shares subscription regulations, committee regulations, etc.);
- b) Plan of activities required by art. 2333 of the Italian Civil Code;
- c) Business Plan, where required;
- d) Draft of the Articles of Association and the Memorandum of Association of the newly established company;
- e) Draft Power of attorney for the exercise of voting rights at the Constitutive Shareholders' Meeting;
- f) Curriculum Vitae of the members of the Promoters Committee.

Comments: the documents listed in the statement relating to documents that can be inspected shall at all times be identical to the original version. The information contained in these documents needs also be consistent with the content of the prospectus.

Regarding the plan of activities, this is a document expressly required by the Civil Code, which sets out its mandatory minimum content (scope and share capital of the newly established company, main provisions of the articles of association and the memorandum of association, any participation of the promoters in profits, deadline within which the articles of association must be stipulated). The same code discipline, however, does not rule out that the plan in question may take on a broader content, even by way of derogation from the applicable legal provisions (e.g., art. 2334, paragraph 1 provides particular procedures for notifying subscribers to proceed with the payment of tenths; art. 2334, paragraph 3 provides a deadline other than the legal one of twenty days for convening the shareholders' meeting). The plan of activities shall also be signed by the promoters with a certified signature, as art. 2337 of the Italian Civil Code expressly qualifies as promoters those who have signed the program in the public subscription.

As the plan of activities is a key element of the constituent process according to the Civil Code, even if supplemented by the provisions of the TUF in the case of an offer of securities to the public, and without prejudice that it is beyond the Consob' tasks to verify the obligations provided for by the Civil Code for the promoters of a new joint-stock company, it should be noted that any amendments or additions to this document, with particular reference to the provision of additional premises of the Committee, to changes to the instructions relating to the methods and time of the public subscription procedure or to the entry and exit of the promoters from the initiative, are subject to the same formal and advertising charges as provided for the initial draft of the plan. Further, where changes or additions are made to the initial plan, attention is drawn to the provisions of Art. 23 of the Prospectus Regulation related to the supplement.

Concerning the draft power of attorney, as it is aimed exclusively at participating in the company's constitutive shareholders' meeting, it should be noted that it should contain no reference to the subscription of the shares or to the payment of the capital. In fact, the latter two are stages occurring prior to the constitutive shareholders' meeting, and so will have already to be executed at the time when this power of attorney will be prepared.

ADDITIONAL DOCUMENTS TO BE SENT TO CONSOB

As for any other prospectus relating to public offers for subscription of shares, the provisions of Annex 1A to the Issuers' Regulation on application pursuant to art. 4 of the same Regulation and documentation to be attached to the communication apply. Specifically, the following documents listed in Annex 1A, point 2, are applicable to the case of prospectuses of newly established companies:

- a) the prospectus containing the information required by the applicable schedules, as amended and supplemented by this Communication;
- b) where the order of items of information in the prospectus is different from that of the applicable schedule, a list of cross references indicating to which items of the annexes to Delegated Regulation (EU) no. 980/2019 the information corresponds and any items set out in the Annexes to this Regulation that, due to the nature or type of issuer, securities, offer or admission to trading, have not been included in the draft prospectus;

In addition to the documentation listed in Section 21 of the registration document, a copy of the contract relating to the unavailable bank account to which payments are to be made by bank transfer needs to be sent to Consob, or made available on the website, expressly indicating the unavailable nature of such account. Where the unavailability clause does not arise directly from the contract, a statement of the custodian bank attesting to such unavailability needs to be sent.

Concerning the provisions of art. 2334 of the Italian Civil Code regarding the timing of payment of the subscribed capital, pursuant to art. 97 of the TUF, it is kindly requested that committee also sends to Consob the following documents;

- c) where applicable, the balance of the unavailable bank account for the collection of subscription payments on a date close to that of application for approval of the new prospectus relating to the possible extension of the offer;



- d) an official summary of all the financial transactions that occurred within the said bank account at a date close to the shareholders' meeting provided for by art. 2335 of the Italian Civil Code if the offer has been successful.

THE PRESIDENT
Giuseppe Vegas

LIST OF CONSOB Q&AS REGARDING APPLICATION OF REGULATION EU No.1129/2017 AND RELATED SUPPLEMENTING EU DELEGATED REGULATIONS WITH A LINK TO THE CONSOB WEBSITE WHERE THEY ARE AVAILABLE.

NUMBER AND SUBJECT MATTER
<p><u>Consob Communication No. 0685312 of 15 July 2020</u> - Query on the applicability of the rules on the appeal to public savings to a non-proportional partial demerger with an asymmetric option_</p> <p>https://www.consob.it/web/consob-and-its-activities/bullettin/documenti/english/resolutions/c0685312e.htm</p>
<p><u>Consob Communication No 0385340 of 28 April 2020</u> - Answer to the question concerning ‘<i>Request for a prior opinion on the correct classification of a real estate transaction relating to the purchase and sale of a real estate bare ownership</i>’</p> <p>https://www.consob.it/web/consob-and-its-activities/bullettin/documenti/english/resolutions/c0385340e.htm</p>