

# Final Report

RTS concerning documents incorporated by reference

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# 1 Executive Summary

## Reasons for publication

This report is being published to present regulatory technical standards to update the list of documents from which information can be incorporated by reference into prospectuses in accordance with the Prospectus Regulation<sup>1</sup>.

## Contents

The regulatory technical standards presented in this report add the following types of documents to the list of documents set out in Article 19(1) of the Prospectus Regulation from which information can be incorporated by reference:

- documents which have been approved by or filed with a competent authority in accordance with the Prospectus Directive<sup>2</sup>; and
- pre-issuance disclosures for issuers of bonds marketed as environmentally sustainable or of sustainability-linked bonds as referred to in Article 20 of European Green Bond Regulation (EU)<sup>3</sup>.

## Next Steps

The regulatory technical standards set out in this report will be submitted to the European Commission for adoption. From the date of submission, the European Commission shall take a decision on whether to adopt the regulatory technical standards within three months. The Commission may extend that period by one month.

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<sup>1</sup> 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 (OJ L 168, 30.6.2017, p. 12 – 82).

<sup>2</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC ([OJ L 345, 31.12.2003, p. 64](#)).

<sup>3</sup> Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (OJ L, 2023/2631, 30.11.2023).

## 2 Introduction

1. This Final report presents regulatory technical standards (“RTS”) to update the list of documents set out in Article 19(1) of the Prospectus Regulation<sup>4</sup> from which information can be incorporated by reference into prospectuses. ESMA has developed these RTS using the empowerment set out in Article 19(4) of the Prospectus Regulation to update the list with the following document types:
  - a. documents which have been approved by or filed with a competent authority in accordance with the Prospectus Directive<sup>5</sup>; and
  - b. pre-issuance disclosures for issuers of bonds marketed as environmentally sustainable or of sustainability-linked bonds as referred to in Article 20 of the European Green Bond Regulation<sup>6</sup> (the “EuGB Regulation”).

### 2.1 Documents approved or filed under the Prospectus Directive

2. ESMA is updating the list of documents in Article 19(1) of the Prospectus Regulation to include documents approved or filed under the Prospectus Directive to facilitate fungible issuances of non-equity securities that were originally offered to the public or admitted to trading on a regulated market under the Prospectus Directive. This effectively rolls back a change introduced by the Listing Act Regulation<sup>7</sup>, which removed the reference to the Prospectus Directive from the Prospectus Regulation to streamline the legislative text in Article 19(1).
3. This change impacted market practice relating to such fungible issues, because the terms and conditions of non-equity securities offered to the public or admitted to trading on a regulated market using a prospectus approved under the Prospectus Directive would previously be incorporated by reference into base prospectuses approved under the Prospectus Regulation. Without this possibility, it will be necessary for issuers to take other more burdensome approaches to the issue of such securities. Considering the objectives of the Listing Act Regulation, which include “[...] *to make public capital markets more attractive by reducing compliance costs, and by removing significant obstacles that hold back companies [...] from accessing public markets in the Union*”<sup>8</sup>, ESMA considers it

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<sup>4</sup> 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 (OJ L 168, 30.6.2017, p. 12 – 82).

<sup>5</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

<sup>6</sup> Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (OJ L, 2023/2631, 30.11.2023).

<sup>7</sup> Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises. “Amending Regulation” in this Final Report focuses on the amendments to the PR or Regulation 2017/1129 (OJ L, 2024/2809, 14.11.2024).

<sup>8</sup> Recital 5.

appropriate to remove this obstacle since these fungible issuances contribute to issuers' ability to access public markets to satisfy their funding needs.

4. Furthermore, the practice of the incorporation by reference of documents approved or filed under the Prospectus Directive has been uncontroversial and ESMA is not aware of any issues arising in the past due to the incorporation by reference of such documents. Therefore, ESMA does not expect any negative impact on investors.

## 2.2 Optional pre-issuance disclosures

5. Optional pre-issuance disclosures are being added to the list of documents that can be incorporated by reference as part of the follow up to ESMA's Final report on its technical advice concerning the Prospectus Regulation and the RTS updating the CDR on metadata<sup>9</sup>. The Final report follows up on a consultation in which ESMA proposed to allow the incorporation by reference of optional pre-issuance disclosures into prospectuses to facilitate the use of the optional disclosure templates for bonds marketed as environmentally sustainable and for sustainability-linked bonds in Title III of the EuGB Regulation<sup>10</sup>.
6. Respondents to the consultation almost unanimously considered that ESMA's proposals to incorporate by reference these documents would not impose additional costs or burdens on issuers. In fact, respondents highlighted that the approach provides flexibility and streamlines the issuance process.

## 2.3 Market consultation

7. ESMA is not consulting in relation to this RTS because it would be disproportionately burdensome considering that only two types of documents are being added to the list of documents from which information can be incorporated by reference into prospectuses. ESMA notes that the incorporation by reference of documents approved by or filed with an NCA under the Prospectus Directive has never presented an issue during the period in which it was possible and there is no reason to believe that circumstances have changed. Furthermore, the possibility of incorporating information from documents approved or filed under the Prospectus Directive contributes to issuers' ability to access the public markets and should therefore be implemented without unnecessary delay. In fact, stakeholders and national competent authorities have asked ESMA to address this situation due to the issues arising during the annual update of base prospectuses.
8. As already stated, the inclusion of optional pre-issuance disclosures in the list of documents from which information can be incorporated by reference was already consulted upon in the Consultation Paper on draft technical advice concerning the Prospectus

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<sup>9</sup> ESMA32-117195963-1417, paragraph 170, [5] June 2025.

<sup>10</sup> Consultation Paper on draft technical advice concerning the Prospectus Regulation and updating the CDR on metadata, ESMA32-117195963-1276, 28 October 2024.

Regulation and updating the CDR on metadata. Any additional consultation in relation to these documents would therefore be of little added value.

## **2.4 Cost benefit analysis**

9. Although no formal cost benefit analysis has been undertaken in relation to these regulatory technical standards, ESMA considers that it should be beneficial for stakeholders. These regulatory technical standards do not add any requirements for issuers. Instead, they provide more flexibility for issuers by allowing them to incorporate information included in existing disclosure by reference into their prospectuses, which allows them to avoid duplicating existing disclosure.
10. ESMA emphasises that the possibility to incorporate information by reference from documents approved by or filed with a national competent authority in accordance with the Prospectus Directive represents the return to a longstanding practice and is intended to reduce the regulatory burden on issuers.
11. The inclusion of optional pre-issuance disclosures in the list of documents from which information can be incorporated by reference into prospectuses is also expected to provide benefits to issuers. This is reflected in the Final report on ESMA's technical advice concerning the Prospectus Regulation and the RTS updating the CDR on metadata, which explains that respondents to the consultation considered that the proposal to incorporate optional pre-issuance disclosure by reference into prospectuses would reduce the burden on issuers and streamline the issuance process.

## **2.5 Period before the adoption of the regulatory technical standard**

12. As there will be a period in which these regulatory technical standards have been published but will not have been adopted into European law, ESMA expects national competent authorities to anticipate its adoption by accommodating issuers that wish to incorporate by reference information from documents approved by or filed in accordance with the Prospectus Directive in the period before these regulatory technical standards have entered into force.
13. If issuers were unable to incorporate information from documents approved by or filed with a competent authority under the Prospectus Directive into a base prospectus when it was last approved due to the changes introduced by the Listing Act Regulation, ESMA expects competent authorities to accommodate the incorporation by reference of such documents via the publication of a supplement in accordance with Article 23 of the Prospectus Regulation.

### 3 Annex I

#### RTS on incorporation by reference

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

of **XXX**

**supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards for updating the list of documents that can be incorporated by reference into prospectuses**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC<sup>11</sup>, and in particular Article 19(4), second subparagraph, thereof,

Whereas:

- (1) Regulation (EU) 2024/2809 of the European Parliament and of the Council<sup>12</sup> aims to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (SMEs). In order to meet these aims, that Regulation amends Regulation (EU) 2017/1129 with measures to address certain obstacles for companies, including SMEs, from accessing public markets in the Union.
- (2) In order to streamline the legislative text, a reference to Directive 2003/71/EC of the European Parliament and of the Council<sup>13</sup> was removed from Article 19(1), point (a), of Regulation (EU) 2017/1129. As a consequence, it is no longer possible to incorporate by reference documents which have been approved by a competent authority, or filed with

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<sup>11</sup> OJ L 168, 30.06.2017, p. 12.

<sup>12</sup> Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (OJ L, 2024/2809, 14.11.2024).

<sup>13</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

it, in accordance with Directive 2003/71/EC. This impacts fungible issuances of non-equity securities that were originally offered to the public or admitted to trading on a regulated market under Directive 2003/71/EC, since the terms and conditions of these securities were normally incorporated by reference into the prospectus approved under Regulation (EU) 2017/1129. This increases issuers' administrative burden when such securities are offered to the public and admitted to trading on a regulated market.

- (3) Recital 42 of Regulation (EU) 2024/2809 provides the justification for amending Article 19 of Regulation (EU) 2017/1129, that the possibility to incorporate certain information into prospectuses by reference is to reduce the burden on issuers and to avoid duplication of information that has already been disclosed and published under other Union financial services law. However, the removal of the reference to documents approved by or filed with a competent authority in accordance with Directive 2003/71/EC increases the burden and duplicates information to be provided under other Union financial services law, with significant consequences for issuers as a result.
- (4) This Regulation adds to the list of documents that can be incorporated by reference into prospectuses documents which have been approved by a competent authority, or filed with it, in accordance with Directive 2003/71/EC so as to maintain the preexisting requirements and reduce the burden and duplication of information that has already been disclosed and published under other Union financial services law.
- (5) Additionally, Regulation (EU) 2023/2631 of the European Parliament and of the Council<sup>14</sup>, introduces optional sustainable disclosure templates for bonds marketed as environmentally sustainable and for sustainability-linked bonds to facilitate comparison and address greenwashing. To incentivise the use of these optional pre-issuance disclosures by issuers, this Regulation adds these disclosures to the list of documents that can be incorporated by reference into prospectuses. This should reduce the costs associated with drawing up the additional disclosure on the ESG aspects of the securities.
- (6) Given the urgency of this matter and the limited scope and impact of the draft regulatory standards on which this Regulation is based, ESMA has neither conducted open public consultations, nor analysed the potential related costs and benefits, as it would be highly disproportionate to do so.
- (7) In relation to documents which have been approved by a competent authority, or filed with it, in accordance with Directive 2003/71/EC, the practice of incorporating these documents by reference aligns with the objectives of Regulation (EU) 2024/2809 and was previously provided for in Regulation (EU) 2017/1129 for the same objectives. The reinstatement of this provision is also urgent to ensure issuers are not subject to any unnecessary administrative burden and that there is no duplication of information. The practice of incorporating these documents contributes to issuers' ability to access the public markets to satisfy their funding needs, which is consistent with the goals of the

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<sup>14</sup> Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (OJ L, 2023/2631, 30.11.2023).



Savings and Investments Union<sup>15</sup>. In relation to the incorporation by reference of optional pre-issuance disclosure documents under Regulation (EU) 2023/2631, ESMA gathered feedback from stakeholders in its Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata<sup>16</sup> and stakeholders supported the incorporation by reference of these documents.

- (8) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.<sup>17</sup>
- (9) This Regulation should enter into force on the third day after the publication of the act in the *Official Journal of the European Union* because the unnecessary administrative burden and duplication of requirements should be addressed by this Regulation as soon as possible so as to enable continued access to markets by affected companies including SMEs. This will allow issuers to continue with fungible issuances non-equity securities that were originally offered to the public or admitted to trading under Directive 2003/71/EC,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The list set out in paragraph 1 of Article 19 of Regulation (EU) 2017/1129 is updated to include the following additional types of documents:

- (a) documents which have been approved by a competent authority, or filed with it, in accordance with Directive 2003/71/EC;
- (b) pre-issuance disclosures for issuers of bonds marketed as environmentally sustainable or of sustainability-linked bonds as referred to in Article 20 of Regulation (EU) 2023/2631.

#### *Article 2*

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*. This Regulation shall be binding in its entirety and directly applicable in all Member States.

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<sup>15</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, Savings and Investments Union, 'A Strategy to Foster Citizens' Wealth and Economic Competitiveness in the EU', Brussels, 19.3.2025, COM(2025) 124 final.

<sup>16</sup> ESMA32-117195963-1276, 28 October 2024.

<sup>17</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Done at Brussels,

*For the Commission  
The President*