« LISTING ACT »

RÉSUMÉ DE LA PROPOSITION DE LA COMMISSION EUROPÉENNE

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La Commission européenne a publié le 8 décembre 2022 sa proposition de « *Listing Act* », incluant d'une part, un règlement (et annexes) modifiant les règlements prospectus et abus de marché et, d'autre part, une directive modifiant la directive MIF II et une directive relative aux actions à droits de vote multiples. La Commission a également publié une analyse d'impact.

La présente note expose les modifications proposées par la Commission européenne.

L'attention du lecteur est attirée sur le fait que cette note constitue un résumé, reprenant les termes principaux des réformes introduites par le « Listing act ». Elle ne prétend donc aucunement à l'exhaustivité.

MODIFICATIONS APPORTÉES AU RÈGLEMENT « PROSPECTUS »

1. Abrogation du prospectus de relance

Le « prospectus de relance » introduit par le règlement (UE) 2021/337 du 16 février 2021 est abrogé et l'article 12a supprimé en conséquence. Toutefois, plusieurs caractéristiques du prospectus de relance sont préservées. Il en va ainsi notamment du plafond de 150 000 000 € pour les émissions de titres autres que les actions (et assimilés) par les établissements de crédit en dessous duquel l'émetteur établissement de crédit est dispensé de publier un prospectus. En outre, le « follow-on prospectus » et le « EU growth issuance document » sont largement inspirés du prospectus de relance.

2. Les exemptions à l'obligation de publier un prospectus

Les exemptions à l'obligation de publier un prospectus sont étendues, étant entendu qu'il demeure loisible à l'émetteur de publier un prospectus, y compris dans le cas où il en est exempté (*art. 4*).

La notion d'émission secondaire, utilisée dans l'énumération ci-après, fait référence àune émission de titres fongibles avec des titres déjà admis à la négociation ou offerts au public.

1. Le seuil en-dessous duquel les États membres peuvent exempter les émetteurs de publier un prospectus est relevé de 8 000 000 € à 12 000 000 € (*art. 3.2(b)*).
2. Les émissions secondaires de titres offerts au public (*art. 3.1*) ne donneront plus lieu à publication d'un prospectus lorsque l'offre au public ou l'admission à la négociation sur un marché réglementé ou un marché de croissance PME est d'un montant inférieur à 40% du nombre de titres déjà admis à la négociation sur le même marché. Ce seuil de 40% est apprécié sur une période de 12 mois (sans que le terminus ad quem ne soit indiqué ; il s'agit certainement de la date de l'émission secondaire) (*art. 1.4(da)*).
3. Les émissions secondaires de titres offerts au public (*art. 3.1*) ne donnent plus lieu à publication d'un prospectus lorsque les titres ont été négociés sur un marché réglementé ou un marché de croissance PME de manière ininterrompue depuis au moins 18 mois précédant l'offre (ici le terminus ad quem est indiqué). Cette exemption ne s'applique pas en cas d'offre d'achat, d'échange, de fusion ou division ou si l'émetteur fait l'objet d'une procédure collective. Dans ces situations, un résumé (*voir l'encadré vert ci-dessous*) doit être publié (*art. 1.4(db)*).

4. Les émissions de titres autres que les titres de capital émis par un établissement de crédit pour un montant global inférieur à 150 000 000 € (apprécié au niveau de l'Union européenne) sur une période de 12 mois ne donnent plus lieu à publication d'un prospectus (*art. 1.4(j)*). À noter qu'au début de la crise sanitaire, le prospectus de relance avait permis d'augmenter le seuil de 75 000 000 € à 150 000 000 € ; ce seuil est donc pérennisé.
5. Par parallélisme avec les points 2 et 3 de cette énumération qui concernent les émissions secondaires par appel au public, les mêmes règles s'appliquent si l'émission secondaire est admise à la négociation sur un marché réglementé (*art. 3.3 du règlement*). Sont exemptées les émissions secondaires fongibles avec des titres déjà admis à la négociation sur ce même marché réglementé si elles représentent moins de 40% des titres déjà admis à la négociation et celles qui sont fongibles avec les titres négociés depuis plus de 18 mois sur ce marché réglementé. Dans ce dernier cas, le résumé de l'annexe IX doit être publié (*articles 4.5(a), 4.5(b) et 4.5(ba)*).

Résumé de l'annexe IX

Les articles 1.4(db) et 5.1(ba) introduisent un résumé que l'émetteur doit publier dans certains cas d'exemption à l'obligation de publier un prospectus. Le contenu de ce résumé est indiqué en annexe IX, nouvellement ajouté au règlement prospectus.

L'article 1.4(l), *nouveau*, énumère les caractéristiques de ce résumé.

3. Introduction du « follow-on prospectus » et « EU growth issuance document »

Lorsqu'un émetteur émet des titres nouveaux qui ne sont pas fongibles avec les titres déjà admis à la négociation, les exemptions énumérées ci-dessus ne s'appliquent pas. Il peut alors établir un « follow-on prospectus » ou un « EU growth issuance document » dont les régimes sont largement inspirés du prospectus de relance (*resp. art. 14b et 15a*).

a. Le « follow-on prospectus »

Les émetteurs dont les titres sont admis à la négociation sur un marché réglementé ou un marché de croissance PME depuis au moins 18 mois et les vendeurs de titres admis à la négociation depuis au moins 18 mois peuvent publier un « follow-on prospectus », sauf si cet émetteur n'a émis que des titres autres que des actions (*art. 14b*) auquel cas, l'émetteur doit publier un prospectus

Le « follow-on prospectus » doit contenir d'une part, les informations permettant aux investisseurs de comprendre les perspectives et la performance financière de l'émetteur et les changements importants dans la position financière ou d'affaires de l'émetteur depuis un an et, d'autre part, les informations clés relatives aux titres, les raisons de l'émission et l'impact sur l'émetteur (*art. 14b.2*). La forme et le contenu de ces prospectus sont indiqués en annexe IV et V du règlement.

On notera que le « follow-on prospectus » relatif aux actions et équivalents ne peut dépasser 50 pages.

b. Le « EU growth issuance document »

Certains émetteurs peuvent publier un « EU growth issuance document » en lieu et à la place d'un prospectus. Il s'agit des émetteurs dont les titres ne sont pas admis à la négociation sur un marché réglementé et qui :

- Sont des PME ou
- Sans être PME, ont des titres admis à la négociation sur un marché de croissance PME ou
- Ont pour moins de 50 000 000 € de titres admis à la négociation dans l'Union sur les 12 mois écoulés, qui ne sont pas admis à la négociation sur un SMN et qui ont moins de 499 salariés.

Les vendeurs de titres de PME ou d'émetteurs dont les titres sont admis à la négociation sur un marché de croissance PME sont également autorisés à publier un « EU growth issuance document ».

D'une longueur de 75 pages au plus, le « EU growth issuance document » doit permettre aux investisseurs de comprendre les mêmes éléments que ceux indiqués pour le « follow-on prospectus ».

4. Forme du prospectus

Plusieurs règles sont introduites concernant la forme du prospectus, étant entendu qu'à de multiples reprises, le texte insiste sur la clarté du langage et la lisibilité de la police de caractères.

Tout d'abord, le prospectus peut désormais être publié au format électronique exclusivement, sans possibilité pour l'investisseur de demander le format papier. Le format électronique est défini par renvoi à la directive MIF (*art. 4.5.62(bis)*) comme étant tout support durable autre que le papier. La dernière phrase de l'article 21.11, est supprimée en conséquence.

On notera que les communications en cas de publication d'un supplément sont également au format électronique désormais (*art. 23.3*).

Ensuite, le contenu du prospectus et l'ordre de présentation[1] sont uniformisés davantage (*art. 6.1*).

La longueur du document est limitée à 300 pages si l'émission concerne des actions ou titres financiers équivalents (sans prise en compte du résumé) (*art. 6.4*) ; à comparer avec les 50 pages du « follow-on prospectus » et 75 pages du « EU growth issuance document ».

En quatrième lieu, le prospectus peut désormais être publié en anglais uniquement, tant que le résumé (*art. 7*) est publié dans la langue officielle de chaque État membre (*art. 27.2*).

[1] Le texte introduit à plusieurs endroits les mots « dans l'ordre suivant » pour insister sur l'ordre dans lequel les informations contenues dans le prospectus sont publiées (*v. notamment art. 7.4, 7.5 et 7.8*).

5. Contenu du prospectus

- Certains éléments du prospectus peuvent être incorporés par référence (*art. 19*).
- La description des facteurs de risque ne peut pas être rédigée de manière générale mais doit être catégorisée et détaillée concrètement avec la probabilité de réalisation du risque et l'importance de l'impact (*art. 16*).
- Lorsque le prix ou la quantité des titres à offrir au public ne peut pas être publié dans le prospectus, l'émetteur est dispensé de publier un supplément si le prix final varie de moins de 20% du prix maximal indiqué dans le prospectus (*art. 17.2*).

6. Information des investisseurs si un supplément est publié

Lorsque les investisseurs ont acquis les titres à travers un intermédiaire, l'intermédiaire doit informer les investisseurs qu'un supplément au prospectus a été publié. Cette information peut se faire désormais sur le site internet de l'intermédiaire (*art. 23.3*).

7. Délais

Plusieurs délais ont été modifiés.

- Lorsque le prix ou la quantité des titres à offrir au public ne peut pas être publié dans le prospectus, les investisseurs ont désormais 3 jours à compter de la publication de ces éléments pour retirer leur acceptation et non 2 jours comme précédemment (*art. 17.1.a)*) ;
- Dans le cas d'un IPO, le prospectus doit être publié 3 jours ouvrés avant la fin de l'offre, et non 6 jours ouvrés comme précédemment (*art. 21.1*) ;
- En cas de publication d'un supplément, l'investisseur dispose désormais de 3 jours ouvrés et non de 2 pour retirer son acceptation (*art. 23.2*).

8. Émetteurs de pays tiers

À certaines conditions, les prospectus établis dans les pays tiers sont reconnus dans l'Union (*art. 29*). Les émetteurs de pays tiers peuvent demander que leurs titres soient admis à la négociation sur un marché réglementé de l'Union après publication d'un prospectus publié conformément au droit du pays tiers, à condition que :

- La Commission européenne ait pris une décision d'équivalence conformément à un RTS qui comporte les éléments indiqués à l'article 29.5 ;
- L'autorité compétente a autorisé le prospectus de l'émetteur de pays tiers ;
- L'émetteur de pays tiers prouve que son autorité a approuvé le prospectus et communique les coordonnées de celle-ci ;

- Le prospectus remplit les conditions relatives à la langue dans laquelle le prospectus est rédigé ;
- L'émetteur respecte les dispositions relatives aux communications à caractère promotionnel (*art. 22.2 à 22.5*) ;
- Il existe un accord de coopération entre l'ESMA et l'autorité du pays tiers.

À noter que les accords de coopération sont désormais conclus entre l'ESMA et les autorités de pays tiers et non plus entre l'autorité nationale compétente et l'autorité de pays tiers (*art. 30*).

MODIFICATIONS APPORTÉES AU RÈGLEMENT « ABUS DE MARCHÉ »

1. Exemption pour les programmes de rachat et de stabilisation

Les interdictions prévues aux articles 14 et 15 du règlement (relatifs aux interdictions d'opérations d'initiés et de divulgation illicite d'informations privilégiées et à l'interdiction des manipulations de marché) ne s'appliquent pas à la négociation d'actions propres dans le cadre de programmes de rachat sous certaines conditions (*art. 5*).

La proposition précise à quelle autorité l'émetteur doit déclarer toutes les transactions pour bénéficier de cette exemption, à savoir à l'autorité compétente du marché le plus pertinent en termes de liquidité (*art. 5.3*). Elle précise de plus que cette autorité compétente doit transmettre sur demande ces informations aux autorités compétentes de la plateforme de négociation sur laquelle les actions ont été admises à la négociation et sont échangées.

2. Informations privilégiées

a. Clarification de la définition

Les informations privilégiées comprennent plusieurs types d'informations. La proposition étend la définition de l'information privilégiée (*art. 7.1 d)*) en désignant désormais non seulement les informations communiquées par le client concernant ses ordres en attente, mais également celles communiquées par une personne agissant pour le compte du client ou les informations connues du fait de la gestion pour compte propre ou d'un fonds géré.

b. Limitation de l'obligation de divulgation des informations privilégiées

Le champ d'application de l'obligation de divulguer une information privilégiée est réduit. Le texte précise désormais que cette obligation ne s'applique pas aux étapes intermédiaires dans un processus dit « prolongé » (*art. 7.2 et 7.3*), lorsqu'elles sont connectées et liées à une réalisation commune (*art. 17.1*).

c. Précisions sur les informations à divulguer et le moment de cette divulgation

En plus de réduire le champ d'application de la divulgation d'une information privilégiée, la Commission européenne entend clarifier l'obligation de divulgation en ce qui concerne d'une part les informations elles-mêmes et d'autre part le moment de divulgation de ces informations.

Dans ce cadre :

- La Commission est habilitée à prendre un acte délégué comprenant une liste des informations privilégiées pertinentes à divulguer (*art. 17.1a*).
- L'émetteur doit assurer la confidentialité des informations privilégiées jusqu'à ce qu'elles soient divulguées. S'il n'est pas en mesure d'assurer cette confidentialité, l'information doit être communiquée au public dans les meilleurs délais (*art. 17.1b*).
- Il existe une possibilité de différer la divulgation de ces informations privilégiées.
    - La proposition de texte précise les conditions selon lesquelles l'émetteur a la possibilité de différer la divulgation. La condition que la divulgation immédiate porte préjudice aux intérêts légitimes de l'émetteur et celle que l'émetteur soit en mesure d'assurer la confidentialité de l'information sont maintenues. La condition visant à ce que la divulgation différée n'induise pas le public en erreur est précisée et déclinée en trois points dans la proposition (*art. 17.4.b*). Autrement dit, la Commission détaille ce que signifie « induire le public en erreur ».
    - La proposition de texte modifie le moment de notification du retard de divulgation. La Commission propose que l'émetteur procède à cette notification juste après la décision de différer la divulgation, et non plus immédiatement après la divulgation publique de l'information comme c'est le cas actuellement

d. Clarification du *safe harbour* dans le cadre d'un sondage de marché

Il existe un *safe harbour* pour protéger les acteurs qui réalisent des sondages de marché d'une allégation de divulgation illégale d'informations privilégiées. Grâce au *safe harbour,* l'intervenant de marché divulgateur est réputé ne pas avoir illicitement divulgué une information privilégiée puisqu'il intervient dans l'exercice normal de ses fonctions.

La proposition cherche à clarifier la nature de ce *safe harbour* en précisant que l'intervenant de marché divulgateur peut choisir de remplir toutes les conditions énumérées, ce qui lui permet de bénéficier du *safe harbour*. Ce n'est cependant pas une obligation, ce qui implique que le fait de ne pas remplir toutes les conditions n'est pas automatiquement exclusif du *safe harbour* (*art. 11.4*).

En outre, l'obligation pour l'intervenant de marché qui réalise le sondage de marché d'informer le destinataire des informations que ces dernières ont cessé d'être privilégiées ne s'applique pas lorsque l'information est annoncée publiquement par ailleurs (*art. 11.6*).

3. Listes d'initiés

La Commission introduit la notion de « liste permanente », applicable uniquement aux émetteurs et qui englobe toutes les personnes qui, agissant au sein de l'émetteur, ont par nature accès de manière régulière à des informations privilégiées (*art. 18.1*).

Elle maintient par ailleurs l'obligation existante que les personnes qui agissent au nom et pour le compte de l'émetteur sont tenues d'établir leurs propres listes d'initiés (*art. 18.1a*).

En revanche, les États membres ont la possibilité d'exiger des émetteurs ayant des titres financiers admis à la négociation sur un marché règlementé depuis au moins cinq années qu'ils établissent une liste complète des initiés (au-delà de la liste d'initiés permanents). Autrement dit, les États membres peuvent

déroger aux allègements pour ces émetteurs et si cela est justifié par des préoccupations nationales en matière d'intégrité du marché (*art.18.1.b*).

La Commission étend les allègements relatifs à la tenue des listes d'initiés introduits par le règlement 2019/2115 relatifs au marché de croissance des PME à tous les émetteurs (*art. 18.9*).

4. Transactions des dirigeants

La Commission propose de relever le seuil à partir duquel les dirigeants sont tenus de notifier leurs transactions de 5 000 à 20 000 euros du montant total des transactions atteint au cours de l'année civile (*art. 19.8*). Dans cette logique, l'autorité compétente peut décider de relever le seuil à 50 000 euros au lieu de 20 000 euros dans le texte actuel (*art. 19.9*).

MODIFICATIONS APPORTÉES À LA DIRECTIVE MIF II

1. Modification de la définition du marché de croissance des PME

La définition de marché de croissance des PME est étendue. Le marché de croissance des PME peut être un système multilatéral de négociation enregistré en tant que tel ou seulement un segment de ce type de système (*art. 4 (12*)).

En conséquence, la proposition précise les modalités de mise en œuvre si le marché de croissance des PME prend place uniquement sur un segment du système multilatéral de négociation. Le segment devra être indépendant des autres segments de marché, tout comme les transactions réalisées doivent être distinguées des autres activités de marché. Une liste des instruments admis sur le marché de croissance des PME devra également être communiquée sur demande de l'autorité nationale compétente du système multilatéral de négociation (*art. 33, 1 (3a)*). Les obligations prévues aux points 3 et 3a de l'article 33 sont applicables en intégralité sans considération de la forme de marché choisie.

2. Consécration de la recherche sponsorisée

La proposition modifie l'article 24 de la directive 2014/65/UE en ajoutant les articles 24.3b, 24.3c et 24.3d, afin de clarifier le cadre de la recherche sponsorisée.

Un article concernant la recherche en général est ajouté pour préciser que la recherche doit être exacte, non trompeuse, et clairement étiquetée comme telle (*art. 24 (3a)*).

Concernant la recherche sponsorisée, elle est définie comme celle qui est financée en tout ou en partie par l'émetteur et qui est encadrée par un code de conduite émanant de l'industrie. Le code de conduite devra

en effet être développé ou endossé par un opérateur de marché[2] enregistré dans un État membre ou par une autorité nationale compétente. Il devra fixer des exigences d'indépendance et d'objectivité. Enfin, il devra être publié sur le site de l'opérateur de marché ou de son autorité nationale compétente et mis à jour tous les deux ans (*art. 24 (3b) et (3c)*).

La recherche sponsorisée par l'émetteur doit mentionner sur la première page qu'elle a été conduite conformément à un code de conduite. L'opérateur de marché ou l'autorité nationale compétente ayant autorisé ledit code de conduite doit également être rendu visible. La recherche financée sans se conformer aux règles issues des points ci-ajoutés sera considérée comme une communication commerciale et non pas comme de la recherche sponsorisée (*art. 24 (3d)*).

Enfin, la possibilité de combiner le paiement des services d'exécution avec celui de la recherche (bundling) est étendue aux émetteurs dont la capitalisation boursière sur les 36 mois précédant la provision est inférieure à 10 milliards d'euros. Le texte prévoyait précédemment une capitalisation boursière de 1 milliard d'euros (*art. 24 (9a)*).

3. Précision des conditions de l'admission des titres à la négociation

Un nouvel article mentionne les conditions particulières concernant l'admission des titres à la négociation sur un marché règlementé (*art. 51a*). Les sociétés souhaitant faire coter leurs titres sur les marchés réglementés doivent avoir 1 million d'euros minimum de capitalisation boursière ou, si la capitalisation boursière ne peut pas être définie 1 million d'euros minimum de capitaux propres et réserves, ou un équivalent dans une autre monnaie. Elles doivent également s'assurer que 10 % au minimum du capital est souscrit et détenu par le public.

De plus grandes prérogatives sont accordées à la Commission européenne. Elle dispose dorénavant du pouvoir d'adopter des actes visant à modifier ces seuils (le seuil de capital et le seuil de détention capitalistique par le public) lorsqu'ils entravent la liquidité sur les marchés, en prenant en considération leur évolution financière.

[2] Déjà défini à l'art. 4.1.(18) comme "a person or persons who manages and/or operates the business of a regulated market and may be the regulated market itself."

ANNEXE 1 – MODIFICATIONS APPORTÉES AU RÈGLEMENT PROSPECTUS

Article 1 Subject matter, scope and exemptions

1. This Regulation lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.

2. This Regulation shall not apply to the following types of securities:

   a) units issued by collective investment undertakings other than the closed-end type;
   b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States;
   c) shares in the capital of central banks of the Member States;
   d) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;
   e) securities issued by associations with legal status or non-profit-making bodies, recognised by a Member State, for the purposes of obtaining the funding necessary to achieve their non-profit-making objectives;
   f) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or a part thereof and where the shares cannot be sold on without that right being given up.

~~3. Without prejudice to the second subparagraph of this paragraph and to Article 4, this Regulation shall not apply to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months.~~

~~Member States shall not extend the obligation to draw up a prospectus in accordance with this Regulation to offers of securities to the public referred to in the first subparagraph of this paragraph. However, in those cases, Member States may require other disclosure requirements at national level to the extent that such requirements do not constitute a disproportionate or unnecessary burden.~~

4. The obligation to publish a prospectus set out in Article 3(1) shall not apply to any of the following types of offers of securities to the public:

   a) an offer of securities addressed solely to qualified investors;
   b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;
   c) an offer of securities whose denomination per unit amounts to at least EUR 100 000;
   d) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;

   da) an offer of securities to be admitted to trading on a regulated market or an SME growth market and that are fungible with securities already admitted to trading on the same market, provided that they represent, over a period of 12 months, less that 40% of the number of securities already admitted to trading on the same market;

db) an offer of securities fungible with other securities that have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities, provided that all of the following conditions are met:

(i) the securities offered to the public are not issued in connection with a takeover by means of an exchange offer, a merger or a division;
(ii) the issuer of the securities is not under an insolvency or restructuring procedure;
(iii) a document containing the information set out in Annex IX is filed with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2).

e) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;
f) securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;
g) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;
h) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
i) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer or allotment;
j) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 ~~75 000 000~~ per credit institution calculated over a period of 12 months, provided that those securities:
   (i) are not subordinated, convertible or exchangeable; and
   (ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument;
k) an offer of securities to the public from a crowdfunding service provider authorised under Regulation (EU) 2020/1503 of the European Parliament and of the Council, provided that it does not exceed the threshold laid down in point (c) of Article 1(2) of that Regulation;
~~l) from 18 March 2021 to 31 December 2022, non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities:~~
~~(i) are not subordinated, convertible or exchangeable; and~~
~~(ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.~~

The document referred to in point (ba)(iii) shall have a maximum length of 10 sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using

characters of readable size and shall be drawn up in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.

The total aggregated consideration of the offers of securities to the public referred to in the first subparagraph, point (i), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except for those offers of securities to the public that were subject to any other exemption from the obligation to publish a prospectus in accordance with the first subparagraph, or pursuant to Article 3(2).

5. The obligation to publish a prospectus set out in Article 3(3) shall not apply to the admission to trading on a regulated market of any of the following:
   a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than ~~20~~ 40 % of the number of securities already admitted to trading on the same regulated market;
   b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than ~~20~~ 40 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph;
   ba) securities fungible either with securities that have been admitted to trading on a regulated market continuously for at least the last 18 months before the admission to trading of the new securities, or with securities that have been offered to the public with a prospectus and admitted to trading on an SME growth market continuously for at least the last 18 months before the admission to trading of the new securities, provided that all of the following conditions are met:

      (i) the securities to be admitted to trading on a regulated market are not issued in connection with a takeover by means of an exchange offer, a merger or a division;
      (ii) the issuer of the securities is not under an insolvency or restructuring procedure;
      (iii) a document containing the information set out in Annex IX is filed with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2).
   c) securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU;
   d) shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, where the issuing of such shares does not involve any increase in the issued capital;
   e) securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;
   f) securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;
   g) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already

admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer or allotment;

h) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the securities and the reasons for and detail of the offer or allotment;

i) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR ~~75 000 000~~ 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities:
(i) are not subordinated, convertible or exchangeable; and
(ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument;

~~j) securities already admitted to trading on another regulated market, on the following conditions:~~
~~(i) that those securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months;~~
~~(ii) that, for securities first admitted to trading on a regulated market after 1 July 2005, the admission to trading on that other regulated market was subject to a prospectus approved and published in accordance with Directive 2003/71/EC;~~
~~(iii) that, except where point (ii) applies, for securities first admitted to listing after 30 June 1983, listing particulars were approved in accordance with the requirements of Council Directive 80/390/EEC (1) or Directive 2001/34/EC of the European Parliament and of the Council;~~
~~(iv) that the ongoing obligations for trading on that other regulated market have been fulfilled~~
~~(v) that the person seeking the admission of a security to trading on a regulated market under the exemption set out in this point (j) makes available to the public in the Member State of the regulated market where admission to trading is sought, in accordance with the arrangements set out in Article 21(2), a document the content of which complies with Article 7, except that the maximum length set out in Article 7(3) shall be extended by two additional sides of A4-sized paper, drawn up in a language accepted by the competent authority of the Member State of the regulated market where admission is sought; and~~
~~(vi) that the document referred to in point (v) states where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to ongoing disclosure obligations is available;~~

~~k) From 18 March 2021 to 31 December 2022, non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities:~~
~~(i) are not subordinated, convertible or exchangeable; and~~
~~(ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.~~
~~The requirement that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market as referred to in point (b) of the first subparagraph shall not apply in any of the following cases:~~
~~(a) where a prospectus was drawn up in accordance with either this Regulation or Directive 2003/71/EC upon the offer to the public or admission to trading on a regulated market of the securities giving access to the shares;~~

~~(b) where the securities giving access to the shares were issued before 20 July 2017;~~
~~(c) where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council (1) of an institution as defined in point (3) of Article 4(1) of that Regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that Regulation;~~
~~(d) where the shares qualify as eligible own funds or eligible basic own funds as defined in Section 3 of Chapter VI of Title I of Directive 2009/138/EC of the European Parliament and of the Council (1), and result from the conversion of other securities which was triggered for the purposes of fulfilling the obligations to comply with the Solvency Capital Requirement or Minimum Capital Requirement as laid down in Sections 4 and 5 of Chapter VI of Title I of Directive 2009/138/EC or the group solvency requirement as laid down in Title III of Directive 2009/138/EC.~~

The document referred to in point (ba)(iii) shall have a maximum length of 10 sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.

The total aggregated consideration of the offers of securities to the public referred to in the first subparagraph, point (i), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except for those offers of securities to the public that were subject to any other exemption from the obligation to publish a prospectus in accordance with the first subparagraph, or pursuant to Article 3(2).

6. The exemptions from the obligation to publish a prospectus that are set out in paragraphs 4 and 5 may be combined together. However, the exemptions in ~~points (a) and (b) of the first subparagraph of~~ paragraph 5, first subparagraph, points (a) and (b), shall not be combined together where ~~if~~ such combination could lead to the immediate or deferred admission to trading on a regulated market over a period of 12 months of more than ~~20~~ 40 % of the number of shares of the same class already admitted to trading on the same regulated market, without a prospectus being published.

6a. The exemptions set out in point (f) of paragraph 4 and in point (e) of paragraph 5 shall only apply to equity securities, and only in the following cases:

(a) the equity securities offered are fungible with existing securities already admitted to trading on a regulated market prior to the takeover and its related transaction, and the takeover is not considered to be a reverse acquisition transaction within the meaning of paragraph B19 of international financial reporting standard (IFRS) 3, Business Combinations, adopted by Commission Regulation (EC) No 1126/2008 (2); or

(b) the supervisory authority that has the competence, where applicable, to review the offer document under Directive 2004/25/EC of the European Parliament and of the Council (3) has issued a prior approval of the document referred to in point (f) of paragraph 4 or point (e) of paragraph 5 of this Article.

6b. The exemptions set out in point (g) of paragraph 4 and in point (f) of paragraph 5 shall apply only to equity securities in respect of which the transaction is not considered to be a reverse acquisition transaction within the meaning of paragraph B19 of IFRS 3, Business Combinations, and only in the following cases:

(a) the equity securities of the acquiring entity have already been admitted to trading on a regulated market prior to the transaction; or

(b) the equity securities of the entities subject to the division have already been admitted to trading on a regulated market prior to the transaction.

7. The Commission is empowered to adopt delegated acts in accordance with Article 44 supplementing this Regulation by setting out the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of this Article.

Article 2 – Definitions

~~(z) 'durable medium' means any instrument which:~~

~~(i) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period adequate for the purposes of the information; and~~

~~(ii) allows the unchanged reproduction of the information stored~~

(za) 'electronic format' means an electronic format as defined in Article 4(1), point (62a) of Directive 2014/65/UE

Article 3 – Obligation to publish a prospectus and exemption

1. Without prejudice to Article 1(4) and paragraph 2 of this Article, securities shall only be offered to the public in the Union after prior publication of a prospectus in accordance with this Regulation.
2. Without prejudice to Article 4, a Member State may decide to exempt offers of securities to the public from the obligation to publish a prospectus set out in paragraph 1 provided that:

(a) such offers are not subject to notification in accordance with Article 25; and

(b) the total consideration of each such offer in the Union is less than EUR 12 000 000 per issuer or offeror calculated over a period of 12 months1 ~~a monetary amount calculated over a period of 12 months which shall not exceed EUR 8 000 000~~.

~~Member States shall notify the Commission and ESMA whether and how they decide to apply the exemption pursuant to the first subparagraph, including the monetary amount below which the exemption for offers in that Member State applies. They shall also notify the Commission and ESMA of any subsequent changes to that monetary amount.~~

The total aggregated consideration for the securities offered, as referred to in the first subparagraph, point (b), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new

offer of securities to the public, except those offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus pursuant to Article 1(4), first subparagraph.

Where an offer of securities to the public is exempted from the obligation to publish a prospectus pursuant to the first subparagraph, a Member State may require other disclosure requirements at national level, to the extent that such requirements do not constitute a disproportionate or unnecessary burden.

3. Without prejudice to Article 1(5), securities shall only be admitted to trading on a regulated market situated or operating within the Union after prior publication of a prospectus in accordance with this Regulation.

Article 4 – Voluntary prospectus

1. Where an offer of securities to the public or an admission of securities to trading on a regulated market is ~~outside the scope of this Regulation in accordance with Article 1(3), or~~ exempted from the obligation to publish a prospectus in accordance with Article 1(4), 1(5) or 3(2), an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to voluntarily draw up a prospectus in accordance with this Regulation.

2. Such voluntarily drawn up prospectus approved by the competent authority of the home Member State, as determined in accordance with point (m) of Article 2, shall entail all the rights and obligations provided for a prospectus required under this Regulation and shall be subject to all provisions of this Regulation, under the supervision of that competent authority.

Article 5 – Subsequent resale of securities

1. Any subsequent resale of securities which were previously the subject of one or more of the types of offer of securities to the public listed in ~~points (a) to (d) of~~ Article 1(4), points (a) to (db), shall be considered as a separate offer and the definition set out in ~~point (d)~~ of Article 2 point (d)[3] shall apply for the purpose of determining whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus unless one of the exemptions listed in points (a) to (d) of Article 1(4) applies in relation to the final placement.

No additional prospectus shall be required in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 12 and the issuer or the person responsible for drawing up such prospectus consents to its use by means of a written agreement.

[3] À plusieurs endroits, la modification du texte est purement rédactionnelle. Ces modifications ne sont pas incorporées dans ce document avec des marques de révision.

Article 6 – The prospectus

1. Without prejudice to Articles 14b(2), 145a(2) and 18(1), a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of:

   (pas d'autres modifications à cet art. 6.1)

2. The prospectus shall be a document of a standardised format and the information disclosed in a prospectus shall be presented in a standardised sequence, in accordance with delegated acts referred to in Article 13(1). The information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible form, taking into account the factors set out in the second subparagraph of paragraph 1.

3. *(pas de modifications)*

4. A prospectus that relates to shares or other transferrable securities equivalent to shares in companies shall be of maximum length of 300 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.

5. The summary, the information incorporated by reference in accordance with Article 19 or the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Commission Delegated Regulation (EU) 2019/980, shall not be taken into account for the maximum length referred to in paragraph 4 of this Article.

Article 7 – The prospectus summary

(7.1 et 7.2 non modifies)

3. The summary shall be drawn up as a short document written in a concise manner and of a maximum length of seven sides of A4-sized paper when printed. The summary shall:

   (a) be presented and laid out in a way that is easy to read, using characters of readable size;

   (b) be written in a language and a style that facilitate the understanding of the information, in particular, in language that is clear, non-technical, concise and comprehensible for investors.

4. The summary shall be made up of the following ~~four~~ sections in the following order:

   (a) an introduction, containing warnings;

   (b) key information on the issuer;

   (c) key information on the securities;

   (d) key information on the offer of securities to the public and/or the admission to trading on a regulated market

5. The section referred to in ~~point (a)~~ of paragraph 4 point (a) shall contain the following information in the following order:

(…)

(e) the date of approval of the prospectus;

It shall contain the following warnings in the following order:

(a) the summary should be read as an introduction to the prospectus;

7. The section referred to in ~~point (c) of~~ paragraph 4 point (c) shall contain the following information in the following order:

(a) under a sub-section entitled 'What are the main features of the securities?', a brief description of the securities being offered to the public and/or admitted to trading on a regulated market including at least:

(i) their type, class and ISIN

(ii) where applicable, their currency, denomination, par value, the number of securities issued and the term of the securities;

(iii) the rights attached to the securities;

(iv) the relative seniority of the securities in the issuer's capital structure in the event of insolvency, including, where applicable, information on the level of subordination of the securities and the potential impact on the investment in the event of a resolution under Directive 2014/59/EU;

~~(v) any restrictions on the free transferability of the securities;~~

(v) Where the summary contains the information referred to in the first subparagraph, point (c), the maximum length set out in paragraph 3 shall be extended by one additional side of A4-sized paper, where there is one guarantor only, or by 3 additional sides of A4-sized paper where there are more guarantors.

(vi) where applicable, the dividend or payout policy;

8. The section referred to in ~~point (d) of~~ paragraph 4 point (d) shall contain the following information in the following order:

(énumération non modifiée)

~~12a. By way of derogation from paragraphs 3 to 12 of this Article, an EU Recovery prospectus drawn up in accordance with Article 14a shall include a summary drawn up in accordance with this paragraph.~~

~~The summary of an EU Recovery prospectus shall be drawn up as a short document written in a concise manner and of a maximum length of two sides of A4-sized paper when printed. The summary of an EU Recovery prospectus shall not contain cross-references to other parts of the prospectus or incorporate information by reference and shall:~~

~~(a) be presented and laid out in a way that is easy to read, using characters of readable size;~~

~~(b) be written in a language and a style that facilitate the understanding of the information, in particular, in language that is clear, non-technical, concise and comprehensible for investors;~~

~~(c) be made up of the following four sections:~~

~~(i) an introduction, containing all of the information referred to in paragraph 5 of this Article, including warnings and the date of approval of the EU Recovery prospectus;~~

~~(ii) key information on the issuer, including, if applicable, a specific reference of not less than 200 words to the business and financial impact on the issuer of the COVID-19 pandemic;~~

~~(iii) key information on the shares, including the rights attached to those shares and any limitations on those rights;~~

~~(iv) key information on the offer of shares to the public and/or the admission to trading on a regulated market.~~

12b. By way of derogation from paragraphs 3 to 12 of this Article, an EU Follow-on prospectus drawn up in accordance with Article 14b or an EU Growth issuance document drawn up in accordance with Article 15a shall contain a summary drawn up in accordance with this paragraph.

The summary of an EU Follow-on prospectus or of an EU Growth issuance document shall be drawn up as a short document written in a concise manner and of a maximum length of 5 sides of A4-sized paper when printed.

The summary of an EU Follow-on prospectus or of an EU Growth issuance document shall not contain cross-references to other parts of the prospectus or incorporate information by reference and shall comply with the following requirements:

(a) it shall be presented and laid out in a way that is easy to read, using characters of readable size;

(b) it shall be written in a language that is clear, non-technical, concise and comprehensible for investors and in a style that facilitates the understanding of the information;

(c) it shall be made up of the following four sections in the following order:

(i) an introduction, containing all of the information referred to in paragraph 5 of this Article, including warnings and the date of approval of the EU Secondary prospectus or of the EU Growth issuance document;

(ii) key information on the issuer;

(iii) key information on the securities, including the rights attached to those securities and any limitations on those rights;

(iv) key information on the offer of securities to the public or the admission to trading on a regulated market, or both;

(v) where there is a guarantee attached to the securities, key information on the guarantor and on the nature and scope of the guarantee.

Without prejudice to the third subparagraph, points (a) and (b), the summary of an EU Follow-on prospectus or of an EU Growth issuance document may present or summarize information in the form of charts, graphs or tables.

Where the summary of an EU Follow-on prospectus or of an EU Growth issuance document contains the information referred to in the third subparagraph, point (c)(v), the maximum length as referred to in the second subparagraph shall be extended by one additional side of A4-sized paper, where there is one guarantor only, or by 3 additional sides of A4-sized paper where there are more guarantors.

Article 9 – the universal registration document

1. Any issuer whose securities are admitted to trading on a regulated market or an MTF may draw up every financial year a registration document in the form of a universal registration document describing the company's organisation, business, financial position, earnings and prospects, governance and shareholding structure.

2. Any issuer that chooses to draw up a universal registration document every financial year shall submit it for approval to the competent authority of its home Member State in accordance with the procedure set out in Article 20(2) and (4).

   After the issuer has had a universal registration document approved by the competent authority for ~~two consecutive financial years~~ one financial year, subsequent universal registration documents may be filed with the competent authority without prior approval.

   Where the issuer thereafter fails to file a universal registration document for one financial year, the benefit of filing without prior approval shall be lost and all subsequent universal registration documents shall be submitted to the competent authority for approval until the condition set out in the second subparagraph is met again.

   (…)

Article 11 – Responsibility attaching to the prospectus

1. *(pas de modifications)*

2. Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to those persons responsible for the information given in a prospectus.

   However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary pursuant to Article 7 ~~or the specific summary of an EU Growth prospectus pursuant to the second subparagraph of Article 15(1),~~ including any translation thereof, unless:

   a. it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus; or

b. it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in the securities.

Article 13 – Minimum information and format

1. The Commission shall adopt delegated acts in accordance with Article 44 to supplement this Regulation regarding the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents.

In particular, when setting out the various prospectus schedules, account shall be taken of the following:

(a) the various types of information needed by investors relating to equity securities as compared with non-equity securities; a consistent approach shall be taken with regard to information required in a prospectus for securities which have a similar economic rationale, notably derivative securities;

(b) the various types and characteristics of offers and admissions to trading on a regulated market of non-equity securities;

(c) the format used and the information required in base prospectuses relating to non-equity securities, including warrants in any form;

(d) where applicable, the public nature of the issuer;

(e) where applicable, the specific nature of the activities of the issuer.

(f) whether the issuer is required to provide sustainability reporting, together with the related assurance opinion, in accordance with Directive 2004/109/EC and Directive 2013/34/EU of the European Parliament and of the Council;

(g) whether non-equity securities offered to the public or admitted to ng on a regulated market are advertised as taking into account environmental, social or governance (ESG) factors or pursuing ESG objectives

For the purposes of point (b) of the second subparagraph, when setting out the various prospectus schedules, the Commission shall set out specific information requirements for prospectuses that relate to the admission to trading on a regulated market of non-equity securities which:

(a) 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 such securities; or

(b) have a denomination per unit of at least EUR 100 000.

Those information requirements shall be appropriate, taking into account the information needs of the investors concerned.

2. The Commission shall~~, by 21 January 2019,~~ adopt delegated acts in accordance with Article 44 to supplement this Regulation by setting out the schedule defining the minimum information to be included in the universal registration document.

Such a schedule shall ensure that the universal registration document contains all the necessary information on the issuer so that the same universal registration document can be used equally for the subsequent offer to the public or admission to trading on a regulated market of equity or non-equity securities. With regard to the financial information, the operating and financial review and prospects and the corporate governance, such information shall be aligned as much as possible with the information required to be disclosed in the annual and half-yearly financial reports referred to in Articles 4 and 5 of Directive 2004/109/EC, including the management report and the corporate governance statement.

3. The delegated acts referred to in paragraphs 1 and 2 shall comply with ~~be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, in particular by the International Organisation of Securities Commissions (IOSCO), and on~~ Annexes I, II and III to this Regulation.

~~Article 14 – Simplified disclosure regime for secondary issuances~~

Supprimé en entier

~~Article 14a - EU Recovery prospectus~~

Supprimé en entier

Article 14b - EU Follow-on prospectus

1. The following persons may draw up an EU Follow-on prospectus in the case of an offer of securities to the public or of an admission to trading of securities on a regulated market:

(a) issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer to the public or the admission to trading on a regulated market of the new securities;

(b) offerors of securities admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of securities to the public.

By way of derogation from the first subparagraph, an issuer who has only non-equity securities admitted to trading on a regulated market or an SME growth market shall not be allowed to draw up an EU Follow-on prospectus for the admission to trading of equity securities on a regulated market.

2. By way of derogation from Article 6(1), and without prejudice to Article 18(1), the EU Follow-on prospectus shall contain all the information that investors need to understand all of the following:

(a) the prospects and financial performance of the issuer and the significant changes in the financial and business position of the issuer that have occurred since the end of the last financial year, if any;

(b) the essential information on the securities, including the rights attached to those securities and any limitations on those rights;

(c) the reasons for the issuance and its impact on the issuer, including on the overall capital structure of the issuer, and the use of proceeds.

3. The information contained in the EU Follow-on prospectus shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors, especially retail investors, to make an informed investment decision, taking into account the regulated information that has already been disclosed to the public pursuant to Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, information referred to in Commission Delegated Regulation (EU) 2017/565.

4. The EU Follow-on prospectus shall be drawn up as a single document containing the minimum information set out in Annex IV or Annex V, depending on the types of securities.

5. An EU Follow-on prospectus that relates to shares or other transferable securities equivalent to shares in companies shall be of maximum length of 50 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.

6. The summary, the information incorporated by reference in accordance with Article 19 of this Regulation or the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Delegated Regulation (EU) 2019/980, shall not be taken into account for the maximum length referred to in paragraph 5 of this Article.

7. The EU Follow-on prospectus shall be a document of a standardised format and the information disclosed in an EU Follow-on prospectus shall be presented in a standardised sequence based on the order of disclosure set out in Annex IV or Annex V, depending on the types of securities.

~~Article 15 – EU Growth Prospectus~~

Supprimé en entier

Article 15a - EU Growth issuance document

1. Without prejudice to Article 1(4) and Article 3(2), the following persons shall draw up an EU Growth issuance document in the case of an offer of securities to the public, provided that they have no securities admitted to trading on a regulated market:

(a) SMEs;

(b) issuers, other than SMEs, whose securities are, or are to be admitted to trading on an SME growth market;

(c) issuers, other than those referred to in points (a) and (b), where the total aggregated consideration in the Union for the securities offered to the public is less than EUR 50 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499;

(d) offerors of securities that have been issued by issuers as referred to in points (a) and (b).

By way of derogation from the first subparagraph, the persons referred to in points (a) and (b) of that subparagraph, whose securities have been admitted to trading on an SME growth market continuously for at least the last 18 months, may draw up an EU Follow-on prospectus in the case of an offer of securities to the public or an admission to trading on a regulated market, provided that those issuers have no securities already admitted to trading on a regulated market.

The total aggregated consideration for the securities offered to the public, as referred to in the first subparagraph, point (c), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except for offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus in accordance with Article 1(4), first subparagraph, or pursuant to Article 3(2).

2. By way of derogation from Article 6(1) and without prejudice to Article 18(1), an EU Growth issuance document shall contain the relevant reduced and proportionate information that is necessary to enable investors to understand the following:

(a) the prospects and financial performance of the issuer and the significant changes in the financial and business position of the issuer since the end of the last financial year, if any, as well as its growth strategy;

(b) the essential information on the securities, including the rights attached to those securities and any limitations on those rights;

(c) the reasons for the issuance and its impact on the issuer on the overall capital structure of the issuer, and the use of proceeds.

3. The information contained in the EU Growth issuance document shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors in particular retail investors, to make an informed investment decision.

4. The EU Growth issuance document shall be drawn up as a single document containing the information set out in Annex VII or Annex VIII, depending on the types of securities.

5. An EU Growth issuance document that relates to shares or other transferable securities equivalent to shares in companies shall be of maximum length of 75 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.

6. The summary, the information incorporated by reference in accordance with Article 19 or the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Delegated Regulation (EU) 2019/980, shall not be taken into account for the maximum length referred to in paragraph 5 of this Article.

7. The EU Growth issuance document shall be a document of a standardised format and the information disclosed in an EU Growth issuance document shall be presented in a standardised sequence based on the order of disclosure set out in Annex VII or Annex VIII, depending on the types of securities.

Article 16 - Risk factors

1. The risk factors featured in a prospectus shall be limited to risks which are specific to the issuer and~~/or~~ to the securities and which are material for taking an informed investment decision, as corroborated by the content of the registration document and the securities note.

A prospectus shall not contain risk factors that are generic, that only serve as disclaimers, or that do not give a sufficiently clear picture of the specific risk factors that investors are to be aware of.

When drawing up the prospectus, issuers, offerors or persons asking for admission to trading on a regulated market shall assess the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact.

The issuer, the offeror or the person asking for admission to trading on a regulated market shall adequately describe each risk factor, and explain how that risk factor affects the issuer, or affects the securities being offered or to be admitted to trading. Issuers, offerors or persons asking for admission to trading on a regulated market may also disclose the assessment of the materiality of the risk factors referred to in the third subparagraph by using a qualitative scale of low, medium or high, at their choice.

The risk factors shall be presented in a limited number of categories depending on their nature.

When drawing up the prospectus, the issuer, the offeror or the person asking for admission to trading on a regulated market shall assess the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact.

Each risk factor shall be adequately described, explaining how it affects the issuer or the securities being offered or to be admitted to trading. The assessment of the materiality of the risk factors provided for in the second subparagraph may also be disclosed by using a qualitative scale of low, medium or high.

The risk factors shall be presented in a limited number of categories depending on their nature. In each category the most material risk factors shall be mentioned first according to the assessment provided for in the second subparagraph.

Article 17 – Final offer price and amount of securities

1. Where the final offer price and/or amount of securities to be offered to the public, whether expressed in number of securities or as an aggregate nominal amount, cannot be included in the prospectus:

(a) the acceptances of the purchase or subscription of securities may be withdrawn for not less than ~~two~~ 3 working days after the final offer price and~~/or~~ amount of securities to be offered to the public has been filed; or

(b) the following shall be disclosed in the prospectus:

(i) the maximum price and/or the maximum amount of securities, as far as they are available; or

(ii) the valuation methods and criteria, and/or conditions, in accordance with which the final offer price is to be determined and an explanation of any valuation methods used.

2. The final offer price and amount of securities shall be filed with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2).

Where the final offer price referred to in the first subparagraph differs by no more than 20 % from the maximum price disclosed in the prospectus as referred to in paragraph 1, point (b)(i), the issuer shall not be required to publish a supplement in accordance with Article 23(1).

Article 19 – Incorporation by reference

1. Information that is to be included in a prospectus pursuant to this Regulation and the delegated acts adopted on the basis of it, shall ~~may~~ be incorporated by reference in ~~a~~ that prospectus where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the following documents:

(a) documents which have been approved by a competent authority, or filed with it, in accordance with this Regulation or Directive 2003/71/EC;

(b) documents referred to in ~~points (f) to (i) of~~ Article 1(4) first subparagraph ~~and~~ points (db) and (f) to (i) ~~(e) to (h)~~ and ~~point (j)(v) of the first subparagraph of~~ in Article 1(5), first subparagraph, points (ba) and (e) to (h);

(c) regulated information;

(d) annual and interim financial information;

(e) audit reports and financial statements;

(f) management reports as referred to in Chapters 5 and 6 of Directive 2013/34/EU including, where applicable, the sustainability report ~~of the European Parliament and of the Council~~

1a. Information that is not to be included in a prospectus may still be incorporated by reference in that prospectus on a voluntary basis, where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the documents referred to in paragraph 1, first subparagraph.

1b. An issuer, an offeror or a person asking for admission to trading on a regulated market shall not be required to publish a supplement pursuant to Article 23(1) for updating the annual or interim financial information incorporated by reference in a base prospectus that is still valid under Article 12(1).

Article 20 – Scrutinity and approval of the prospectus

(20.1 à 20.6 inclus pas de modifications)

~~6a~~ 6b. By way of derogation from paragraphs 2 and 4, the time limits set out in the first subparagraph of paragraph 2, first subparagraph, and paragraph 4 shall be reduced to ~~seven~~ 7 working days for an EU

~~Recovery~~ Follow-on prospectus. The issuer shall inform the competent authority at least ~~five~~ 5 working days before the date envisaged for the submission of an application for approval.

11. ~~The Commission shall, by 21 January 2019, adopt delegated acts in accordance with Article 44 to supplement this Regulation by specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus~~.

The Commission is empowered to adopt delegated acts in accordance with Article 44 to supplement this Regulation by specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus, and all of the following:

(a) the circumstances under which a competent authority is allowed to use additional criteria for the scrutiny of the prospectus, where deemed necessary for investor protection, and the type of additional information that may be required to be disclosed in such circumstances;

(b) the consequences for a competent authority that fails to take a decision on the prospectus as referred to in paragraph 2, second subparagraph;

(c) the maximum timeframe for a competent authority to finalise the scrutiny of the prospectus and to reach a decision on whether that prospectus is approved, or whether the approval is refused and the review process terminated.

The maximum timeframe referred to in point (c) shall include any competent authority's requests to issuers to change the prospectus or provide supplementary information, as referred to in paragraph 4.

13. Without prejudice to Article 30 of Regulation (EU) No 1095/2010, ESMA shall organise and conduct, at least once every 3 years, one peer review of the scrutiny and approval procedures of competent authorities, including notifications of approval between competent authorities. The peer review shall also assess the impact of different approaches with regard to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union. The report on the peer review shall be published by [3 years after the date of entry into force of this amending Regulation] and every 3 years thereafter ~~21 July 2022~~. In the context of the peer review, ESMA shall take into account the ~~opinions or~~ advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.

Article 21 – Publication of the prospectus

1. Once approved, the prospectus shall be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved.

In the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the prospectus shall be made available to the public at least 3 ~~six~~ working days before the end of the offer.

(pas d'autres modifications aux articles 21.1 à 21.5 inclus)

~~5a. An EU Recovery prospectus shall be classified in the storage mechanism referred to in paragraph 6 of this Article. The data used for the classification of prospectuses drawn up in accordance with Article 14 may be used for the classification of EU Recovery prospectuses drawn up in accordance with Article 14a, provided that the two types of prospectuses are differentiated in that storage mechanism.~~

5b. An EU Follow-on prospectus shall be separately classified in the storage mechanism referred to in paragraph 6.

5c. An EU Growth issuance document shall be classified in the storage mechanism referred to in paragraph 6 in a way that it is differentiated from the other types of prospectuses.

11. A copy of the prospectus ~~on a durable medium~~ shall be delivered in electronic format to any potential investor, upon request and free of charge, by the issuer, the offeror, the person asking for admission to trading on a regulated market or the financial intermediaries placing or selling the securities. ~~In the event that a potential investor makes a specific demand for a paper copy, the issuer, the offeror, the person asking for admission to trading on a regulated market or a financial intermediary placing or selling the securities shall deliver a printed version of the prospectus. Delivery shall be limited to jurisdictions in which the offer of securities to the public is made or where the admission to trading on a regulated market is taking place under this Regulation~~.

Article 23 – Supplements to the prospectus

1. Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay.

Such a supplement shall be approved in the same way as a prospectus in a maximum of five working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published in accordance with Article 21. The summary, and any translations thereof, shall also be supplemented, where necessary, to take into account the new information included in the supplement.

2. Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within 3 ~~two~~ working days after the publication of the supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.

The supplement shall contain a prominent statement concerning the right of withdrawal, which clearly states all of the following:

(a) ~~that~~ a right of withdrawal is only granted to those investors who had already agreed to purchase or subscribe for the securities before the supplement was published and where the securities had not yet been delivered to the investors at the time when the significant new factor, material mistake or material inaccuracy arose or was noted;

(b) the period in which investors can exercise their right of withdrawal; and

(c) whom investors may contact should they wish to exercise the right of withdrawal.

~~2a. By way of derogation from paragraph 2, from 18 March 2021 to 31 December 2022, where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within three working days after the publication of the supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement. The supplement shall contain a prominent statement concerning the right of withdrawal, which clearly states:~~

~~(a) that a right of withdrawal is only granted to those investors who had already agreed to purchase or subscribe for the securities before the supplement was published and where the securities had not yet been delivered to the investors at the time when the significant new factor, material mistake or material inaccuracy arose or was noted;~~

~~(b) the period in which investors can exercise their right of withdrawal; and~~

~~(c) whom investors may contact should they wish to exercise the right of withdrawal.~~

3. Where the ~~securities are~~ investors purchase~~d~~ or subscribe~~d~~ securities through a financial intermediary between the time when the prospectus for those securities is approved and the closing of the initial offer period, that financial intermediary shall:

(a) inform investors of the possibility of a supplement being published, where and when it would be published, including on its website, and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such case.

(b) inform those investors in which case the financial intermediary would contact them by electronic means pursuant to the second subparagraph to notify that a supplement has been published and subject to their agreement to be contacted by electronic means;

(c) offer those investors that agree to be contacted only by means other than electronic ones an opt-in for electronic contact solely for the purpose of receiving the notification of the publication of a supplement;

(d) warn those investors that do not agree to be contacted by electronic means and refuse the opt-in for electronic contact as referred to in point (c) to monitor the issuer's or the financial intermediary's website until the closing of the offer period or the delivery of the securities, whichever occurs first, to check whether a supplement is published.

~~The financial intermediary shall contact investors on the day when the supplement is published.~~

Where the investors referred to in the first subparagraph of this paragraph have the right of withdrawal referred to in paragraph 2, the financial intermediary shall contact those investors by electronic means by the end of the first working day following that on which the supplement is published.

Where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the possibility of a supplement being published and where it would be published and that, in such case, they could have a right to withdraw the acceptance.

~~3a. By way of derogation from paragraph 3, from 18 March 2021 to 31 December 2022, where investors purchase or subscribe securities through a financial intermediary between the time when the prospectus for those securities is approved and the closing of the initial offer period, that financial intermediary shall inform those investors of the possibility of a supplement being published, where and when it would be published and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such a case.~~

~~Where the investors referred to in the first subparagraph of this paragraph have the right of withdrawal referred to in paragraph 2a, the financial intermediary shall contact those investors by the end of the first working day following that on which the supplement is published. Where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the possibility of a supplement being published and where it would be published and that, in such a case, they could have a right to withdraw the acceptance.~~

4. Where the issuer prepares a supplement concerning information in the base prospectus that relates to only one or several individual issues, the right of investors to withdraw their acceptances pursuant to paragraph 2 shall only apply to the relevant issue(s) and not to any other issue of securities under the base prospectus.

4a. A supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus.

(pas de modifications aux articles 23.5 à 23.7)

8. ESMA shall by [2 years after the date of entry into force of this amending Regulation] develop guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus.

Article 27 – use of language

1. Where an offer of securities to the public is made or admission to trading on a regulated market is sought only in the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authority of the home Member State, or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.

The summary referred to in Article 7 shall be available in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State. That competent authority shall not require the translation of any other part of the prospectus.

2. Where an offer of securities to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authorities of each of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.

The summary referred to in Article 7 shall be available in the official language of each Member State, or at least one of the official languages of each Member State, or in another language accepted by the competent authority of each Member State. Member States shall not require the translation of any other part of the prospectus.

~~The competent authority of each host Member State shall require that the summary referred to in Article 7 be available in its official language, or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.~~

~~For the purpose of the scrutiny and approval by the competent authority of the home Member State, the prospectus shall be drawn up either in a language accepted by that authority or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market~~.

~~3. Where an offer of securities to the public is made or an admission to trading on a regulated market is sought in more than one Member State including the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State, and shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror, or the person asking for admission to trading on a regulated market.~~

~~The competent authority of each host Member State shall require that the summary referred to in Article 7 be available in its official language or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.~~

4. The final terms and the summary of the individual issue shall be drawn up in the same language as the language of the approved base prospectus.

The summary of the individual issue shall be available in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.

When, in accordance with Article 25(4), the final terms are communicated to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, the summary of the individual issue annexed to the final terms shall be available in the official language or at least one of the official languages of the host Member State, or in another language accepted by the competent authority of the host Member State in accordance with paragraph 2, second subparagraph ~~the following language rules shall apply to the final terms and the summary annexed thereto:~~

~~(a) the summary of the individual issue annexed to the final terms shall be available in the official language or at least one of the official languages of the host Member State, or in another language accepted by the competent authority of the host Member State in accordance with the second subparagraph of paragraph 2 or the second subparagraph of paragraph 3, as applicable;~~

~~(b) where the base prospectus is to be translated pursuant to paragraph 2 or 3, as applicable, the final terms and the summary of the individual issue annexed thereto, shall be subject to the same translation requirements as the base prospectus~~.

Article 29 – Equivalent ~~Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with the laws of a third country~~

(l'article 29 est en entier remplacé par le texte suivant)

1. A third country issuer may seek admission to trading of securities on a regulated market established in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that all of the following conditions are met:

(a) the Commission has adopted an implementing act in accordance with paragraph 5;

(b) the third country issuer has filed the prospectus with the competent authority of its home Member State;

(c) the third country issuer has provided a written confirmation that the prospectus has been approved by a third country supervisory authority and has provided the contact details of that authority;

(d) the prospectus fulfils the language requirements set out in Article 27;

(e) all relevant advertisements disseminated in the Union by the third country issuer comply with the requirements set out in Article 22(2) to (5);

(f) ESMA has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.

2. A third country issuer may also offer securities to the public in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that all the conditions referred to in points (a) to (f) of paragraph 1 are met and that the offer of securities to the public is accompanied with an admission to trading on either a regulated market or an SME growth market established in the Union.

3. Where, in accordance with paragraphs 1 and 2, a third country issuer offers securities to the public or seeks an admission to trading on a regulated market in a Member State other than the home Member State, the requirements set out in Articles 24, 25 and 27 shall apply.

4. Where all criteria laid down in paragraphs 1 and 2 are met, the third country issuer shall have the rights and be subject to all obligations in accordance with this Regulation under the supervision of the competent authority of the home Member State.

5. The Commission may adopt an implementing act, in accordance with the examination procedure referred to in Article 45(2), determining that the legal and supervisory framework of a third country ensures that a prospectus drawn up in accordance with the national law of that third country (hereinafter 'third country

prospectus') complies with legally binding requirements which are equivalent to the requirements referred to in this Regulation, provided that all of the following conditions are met:

(a) the third country's legally binding requirements ensure that the third country prospectus contains the necessary information that is material to enable investors to make an informed investment decision in an equivalent way as the requirements laid down in this Regulation;

(b) where retail investors are enabled to invest in securities for which a third country prospectus is drawn up, that prospectus contains a summary providing the key information that retail investors need to understand the nature and the risks of the issuer, the securities and, where applicable, the guarantor, and that is to be read together with the other parts of that prospectus;

(c) the third country's laws, regulations and administrative provisions on civil liability apply to the persons responsible for the information given in the prospectus, including at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market and, where applicable, the guarantor;

(d) the third country's legally binding requirements specify the validity of the third country prospectus and the obligation to supplement the third country prospectus where a significant new factor, material mistake or material inaccuracy of the information included in that prospectus could affect the assessment of the securities, as well as the conditions for investors to exercise their withdrawal rights in such a case;

(e) the third country's supervisory framework for the scrutiny and approval of third country prospectuses and the arrangements for the publication of third country prospectuses have an equivalent effect as the provisions referred to in Articles 20 and 21.

The Commission may make the application of such implementing act subject to the effective and continuous compliance by a third country with any requirements set out in that implementing act.

6. The Commission is empowered to adopt delegated acts, in accordance with Article 44, to supplement this Regulation by specifying further the criteria referred to in paragraph 5.

Article 30 – Cooperation with third countries

1. For the purpose of Article 29 and, where deemed necessary, for the purpose of Article 28, ESMA shall establish ~~the competent authorities of Member States shall conclude~~ cooperation arrangements with supervisory authorities of third countries concerning the exchange of information between ESMA and the with supervisory authorities in third countries concerned and the enforcement of obligations arising under this Regulation in third countries unless that third country, in accordance with a delegated act in force adopted by the Commission pursuant to Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council, is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union. Those cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.

~~A competent authority shall inform ESMA and the other competent authorities where it proposes to enter into such an arrangement~~.

~~2. For the purpose of Article 29 and, where deemed necessary, for the purpose of Article 28, ESMA shall facilitate and coordinate the development of cooperation arrangements between the competent authorities and the relevant supervisory authorities of third countries.~~

~~ESMA shall also, where necessary, facilitate and coordinate the exchange between competent authorities of information obtained from supervisory authorities of third countries that may be relevant to the taking of measures under Articles 38 and 39.~~

3. ESMA shall establish ~~The competent authorities shall conclude~~ cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 35. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

4. ~~ESMA may, or where the Commission so requests shall, develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 1 and the template document to be used therefor.~~

~~Power is delegated to the~~ The Commission is empowered to adopt delegated acts in accordance with Article 44 to supplement this Regulation by determining the minimum content of the cooperation arrangements referred to in paragraph 1 and the template document to be used for such cooperation arrangements ~~the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010~~.

e. Article 38 - Administrative sanctions and other administrative measures

1. Without prejudice to the supervisory and investigatory powers of competent authorities under Article 32, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in accordance with national law, provide for competent authorities to have the power to impose administrative sanctions and take appropriate other administrative measures which shall be effective, proportionate and dissuasive. Those administrative sanctions and other administrative measures shall apply at least to:

(a) infringements of Article 3, Article 5 and~~, Article~~ 6, Article 7(1) to (11) and (12b), Article 8 to ~~, Article 9, Article~~ 10, Article 11(1) and (3), Article 14b(1)~~ and (2)~~, Article 15a(1), Article 16(1), (2) and (3), Article 17 and~~, Article~~ 18, Article 19(1) to (3), Article 20(1), Article 21(1) to (4) and (7) to (11), Article 22(2) to (5), Article 23 (1), (2), (3), (4a) and (5), and Article 27;

Article 40 – Right of appeal

Member States shall ensure that decisions taken under this Regulation are properly reasoned and subject to a right of appeal before a tribunal.

For the purposes of Article 20, a right of appeal shall also apply where the competent authority has neither taken a decision to approve or to refuse an application for approval nor has made any request for changes

or supplementary information within the time limits set out in Article 20(2), (3) ~~and~~ (6) and (6b) in respect of that application.

Article 44 – Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 1(7), Article 9(14), Article 13(1) and (2), Article 14(3), ~~Article 15(2),~~ Article 16(5), Article 20(11) and Article 29(~~36~~) shall be conferred on the Commission for an indeterminate period from 20 July 2017.

3. The delegation of powers referred to in Article 1(7), Article 9(14), Article 13(1) and (2), ~~Article 14(3), Article 15(2),~~ Article 16(5), Article 20(11), ~~and~~ Article 29(~~36~~) and Article 30(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 1(7), Article 9(14), Article 13(1) and (2), ~~Article 14(3), Article 15(2),~~ Article 16(5), Article 20(11), ~~and~~ Article 29(~~63~~) and Article 30(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 47 – ESMA report on prospectuses

1. Based on the documents made public through the mechanism referred to in Article 21(6), ESMA shall publish every year a report containing statistics on the prospectuses approved and notified in the Union and an analysis of trends taking into account:

(a) the types of issuers, in particular the categories of persons referred to in Article 15a(1), points (a) to (d) ~~of Article 15(1)~~; and

(b) the types of issuances, in particular the total consideration of the offers, the types of transferable securities, the types of trading venue and the denominations.

2. The report referred to in paragraph 1 shall contain in particular:

(a) an analysis of the extent to which the disclosure regimes set out in Articles 14b and 15a ~~and~~ the universal registration document referred to in Article 9 are used throughout the Union;

(pas de changements aux points b à d)

3. In addition to the requirements set out in paragraphs 1 and 2, ESMA shall include in the report referred to in paragraph 1 the following information:

(a) an analysis of the extent to which the exemptions referred to in Article 1(4), first subparagraph, point (db), and in Article 1(5), first subparagraph, point (ba), are used throughout the Union, including statistics on the documents referred to in those Articles that have been filed with competent authorities;

(b) statistics on the universal registration documents referred to in Article 9 that have been filed with competent authorities;

~~**Article 47a - Time limitation of the EU Recovery prospectus regime**~~

~~The EU Recovery prospectus regime set out in Article 7(12a), Article 14a, Article 20(6a) and Article 21(5a) expires on 31 December 2022.~~

~~EU Recovery prospectuses approved between 18 March 2021 and 31 December 2022 shall continue to be governed in accordance with Article 14a until the end of their validity or until 12 months have elapsed after 31 December 2022, whichever occurs first.~~

Article 48 – review

1. By 31 December...[5 years from date of the entry into force of this amending Regulation] the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied, where appropriate, by a legislative proposal.

2. The report shall contain an assessment of, inter alia, whether the prospectus summary, the disclosure regimes set out in Articles 14b, 15a and the universal registration document referred to in Article 9 remain appropriate in light of their pursued objectives. The report shall contain all of the following:

(a) the number of EU Growth issuance documents of persons in each of the categories referred to in Article 15a(1), points (a) to (d), and an analysis of the evolution of each such number and of the trends in the choice of trading venues by the persons entitled to use the EU Growth issuance documents;

(b) an analysis of whether the EU Growth issuance document strikes a proper balance between investor protection and the reduction of administrative burdens for the persons entitled to use it;

(c) the number of EU Follow-on prospectuses approved and an analysis of the evolution of such number;

(d) an analysis of whether the EU Follow-on prospectus strikes the proper balance between investor protection and the reduction of administrative burden for the persons entitled to use it;

(e) the cost of preparing and having an EU Follow-on prospectus and an EU Growth issuance document approved compared to the current costs for the preparation and approval of a standard prospectus, together with an indication of the overall financial savings achieved and of which costs could be further reduced for both the EU Follow-on prospectus and the EU Growth issuance document;

(f) an analysis of whether the document set out in Annex IX strikes the proper balance between investor protection and the reduction of administrative burden for the persons entitled to use it

Article 50 - Transitional provisions

1. Article 14 of Regulation (EU) 2017/1129 as applicable on ... [date of entry into force of this amending Regulation minus one day] shall continue to apply to prospectuses drawn up in accordance with that Article 14 and approved before that date until the end of their validity.

2. Article 15 of Regulation (EU) 2017/1129 as applicable on ... [date of entry into force of this amending Regulation minus one day] shall continue to apply to EU Growth prospectuses approved before that date until the end of their validity.

(*Enfin, remplacement des annexes par ceux-ci : https://ec.europa.eu/finance/docs/law/221207-proposal-listing-regulation-annex_en.pdf*)

ANNEXE 2 – MODIFICATIONS APPORTEES À MAR

Article 5 Exemption for buy-back programmes and stabilisation

1. The prohibitions in Articles 14 and 15 of this Regulation do not apply to trading in own shares in buy-back programmes where:

(a) the full details of the programme are disclosed prior to the start of trading;

(b) trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public in an aggregated form ;

(c) adequate limits with regard to price and volume are complied with; and

(d) it is carried out in accordance with the objectives referred to in paragraph 2 and the conditions set out in this Article and in the regulatory technical standards referred to in paragraph 6.

2. In order to benefit from the exemption provided for in paragraph 1, a buy-back programme shall have as its sole purpose:

(a) to reduce the capital of an issuer;

(b) to meet obligations arising from debt financial instruments that are exchangeable into equity instruments; or

(c) to meet obligations arising from share option programmes, or other allocations of shares, to employees or to members of the administrative, management or supervisory bodies of the issuer or of an associate company.

3. In order to benefit from the exemption ~~provided for~~ laid down in paragraph 1, the issuer shall report all transactions relating to the buy-back programme to the competent authority of the most relevant market in terms of liquidity as referred to in Article 26(1) of Regulation (EU) No 600/2014. The receiving competent authority shall, upon request, forward the information to the competent authorities of the trading venue on which the shares have been admitted to trading and are traded ~~the trading venue on which the shares have been admitted to trading or are traded each transaction relating to the buy-back programme, including the information specified in Article 25(1) and (2) and Article 26(1), (2) and (3) of Regulation (EU) No 600/2014.~~

Article 7 - Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:

(…)

(d) ~~for persons charged with the execution of orders concerning financial instruments, it also means~~ information conveyed by a client ~~and relating to the client's~~ or by other persons acting on the client's behalf or information known by virtue of management of a proprietary account or of a managed fund and relating to pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

Article 11 - Market sounding

1. A market sounding comprises the communication of information, prior to the announcement of a transaction, if any, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:

(a) an issuer;

(…)

4. ~~For the purposes of Article 10(1), disclosure of inside information made in the course of a market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with paragraphs 3 and 5 of this Article.~~

A market participant may choose to comply with all of the following conditions:

(a) having obtained the consent of the person receiving the market sounding to receive inside information;

(b) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;

(c) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates;

(d) having informed the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential;

(e) having made and maintained a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d), and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure;

(f) having provided that record to the competent authority upon request.

In case of compliance with all those conditions, the market participant shall be deemed to have disclosed inside information made in the course of a market sounding in the normal exercise of a person's employment, profession or duties for the purposes of Article 10(1).';

~~5. For the purposes of paragraph 4, the disclosing market participant shall, before making the disclosure:~~

~~(a) obtain the consent of the person receiving the market sounding to receive inside information;~~

~~(b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;~~

~~(c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and~~

~~(d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.~~

~~The disclosing market participant shall make and maintain a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d) of the~~

~~first subparagraph, and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure. The disclosing market participant shall provide that record to the competent authority upon request.~~

6. Where information that has been disclosed in the course of a market sounding ~~ceases~~ pursuant to paragraph 4 to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible. This obligation shall not apply in cases where the information has been announced publicly otherwise.

The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the competent authority upon request.

7. Notwithstanding ~~the provisions of~~ this Article, the person receiving the market sounding shall assess for ~~itself~~ him- or herself whether ~~it~~ he or she possesses ~~is in possession of~~ inside information ~~or when it ceases to be in possession of inside information~~.

(…)

Article 13 - Accepted market practices

(*1 à 11 sans modifications*)

12. Without prejudice to accepted market practices as established in accordance with paragraphs 1 to 11 of this Article, an issuer of financial instruments admitted to trading on an SME growth market may enter into a liquidity contract for its shares where all of the following conditions are met:

(a) the terms and conditions of the liquidity contract comply with the criteria set out in paragraph 2 of this Article and in Commission Delegated Regulation (EU) 2016/908 ;

(b) the liquidity contract is drawn up in accordance with the Union template referred to in paragraph 13 of this Article;

(c) the liquidity provider is duly authorised by the competent authority in accordance with Directive 2014/65/EU and is registered as a market member with the market operator or the investment firm operating the SME growth market;

(d) the market operator or the investment firm operating the SME growth market acknowledges in writing to the issuer that it has received a copy of the liquidity contract ~~and agrees to that contract's terms and conditions.~~

Article 17 Public disclosure of inside information

1. An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. That requirement shall not apply to intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about a set of circumstances or an event.

1a. The Commission shall be empowered to adopt a delegated act to set out and review, where necessary, a non-exhaustive list of relevant information and, for each information, the moment when the issuer can be reasonably expected to disclose it.

1b. An issuer shall ensure the confidentiality of the information which meets the criteria of inside information set out in Article 7 until that information is disclosed pursuant to paragraph 1. Where the confidentiality of that inside information is no longer ensured, the issuer shall disclose that inside information to the public as soon as possible.

The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public and, where applicable, in the officially appointed mechanism referred to in Article 21 of Directive 2004/109/EC of the European Parliament and the Council (9). The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only traded on an MTF or on an OTF, issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State.

2. An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I to Directive 2003/87/EC or installations within the meaning of Article 3(e) of that Directive which the participant concerned, or its parent undertaking or related undertaking, owns or controls or for the operational matters of which the participant, or its parent undertaking or related undertaking, is responsible, in whole or in part. With regard to installations, such disclosure shall include information relevant to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.

The first subparagraph shall not apply to a participant in the emission allowance market where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of the application of the exemption provided for in the second subparagraph of this paragraph.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 specifying the competent authority for the notifications of paragraphs 4 and 5 of this Article.

4. An issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

(a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;

(b) ~~delay of disclosure is not likely to mislead the public;~~ the inside information that the issuer intends to delay meets the following conditions:

it is not materially different from the previous public announcement of the issuer on the matter to which the inside information refers to;

it does not regard the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced;

it is not in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, including interviews, roadshows or any other type of communication organised by the issuer or with its approval;

(c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

~~In the case of a protracted process that occurs in stages and that is intended to bring about, or that results in, a particular circumstance or a particular event, an issuer or an emission allowance market participant may on its own responsibility delay the public disclosure of inside information relating to this process, subject to points (a), (b) and (c) of the first subparagraph.~~

Where an issuer or emission allowance market participant ~~has~~ intends to delay~~ed~~ the disclosure of inside information under this paragraph, it shall inform the competent authority specified ~~under~~ in accordance with paragraph 3 of its intention to delay the ~~that~~ disclosure of ~~the~~ inside information ~~was delayed~~ and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the ~~information is disclosed to the public~~ decision to delay is taken. ~~Alternatively, Member States may provide that a record of such an explanation is to be provided only upon the request of the competent authority specified under paragraph 3.~~

~~By way of derogation from the third subparagraph of this paragraph, an issuer whose financial instruments are admitted to trading only on an SME growth market shall provide a written explanation to the competent authority specified under paragraph 3 only upon request. As long as the issuer is able to justify its decision to delay, the issuer shall not be required to keep a record of that explanation.~~

5. ~~In order to preserve the stability of the financial system, a~~An issuer that is a credit institution or a financial institution or an issuer that is a parent undertaking or related undertaking of such an institution, may, on its own responsibility, delay the public disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all of the following conditions are met:

(a) the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;

(b) it is in the public interest to delay the disclosure;

(c) the confidentiality of that information can be ensured; and

(d) the competent authority specified under paragraph 3 has consented to the delay on the basis that the conditions in points (a), (b) and (c) are met.

6. For the purposes of points (a) to (d) of paragraph 5, an issuer shall notify the competent authority specified under paragraph 3 of its intention to delay the disclosure of the inside information and provide evidence that the conditions set out in points (a), (b) and (c) of paragraph 5 are met. The competent authority specified under paragraph 3 shall consult, as appropriate, the national central bank or the macro-prudential authority, where instituted, or, alternatively, the following authorities:

(a) where the issuer is a credit institution or an investment firm the authority designated in accordance with Article 133(1) of Directive 2013/36/EU of the European Parliament and of the Council (10);

(b) in cases other than those referred to in point (a), any other national authority responsible for the supervision of the issuer.

The competent authority specified under paragraph 3 shall ensure that disclosure of the inside information is delayed only for a period as is necessary in the public interest. The competent authority specified under paragraph 3 shall evaluate at least on a weekly basis whether the conditions set out in points (a), (b) and (c) of paragraph 5 are still met.

If the competent authority specified under paragraph 3 does not consent to the delay of disclosure of the inside information, the issuer shall disclose the inside information immediately.

This paragraph shall apply to cases where the issuer does not decide to delay the disclosure of inside information in accordance with paragraph 4.

Reference in this paragraph to the competent authority specified under paragraph 3 is without prejudice to the ability of the competent authority to exercise its functions in any of the ways referred to in Article 23(1).

7. Where disclosure of inside information has been delayed in accordance with paragraph 4 or 5 and the confidentiality of that inside information is no longer ensured, the issuer or the emission allowance market participant shall disclose that inside information to the public as soon as possible.

This paragraph includes situations where a rumour explicitly relates to inside information the disclosure of which has been delayed in accordance with paragraph 4 or 5, where that rumour is sufficiently accurate and reliable to indicate that the confidentiality of that information is no longer ensured.

(*8 à 10 sans modifications*).

11. ESMA shall issue guidelines to establish a non-exhaustive indicative list of the legitimate interests of issuers, as referred to ~~in point (a) of~~ paragraph 4, point (a). ~~and of situations in which delay of disclosure of inside information is likely to mislead the public as referred to in point (b) of paragraph 4.~~

Article 18 - Insider lists

1. Issuers ~~and any person acting on their behalf or on their account,~~ shall ~~each~~:

(a) draw up a list of all persons who, due to the nature of their function or position within the issuer, have regular, access to inside information ~~and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies~~ (permanent insider list);

(b) promptly update the permanent insider list in accordance with paragraph 4; and

(c) provide the permanent insider list to the competent authority as soon as possible upon its request.

1a. Any person acting on the issuer's behalf or on the issuer's account shall draw up its own list of all persons having access to inside information that directly concerns that issuer. Paragraph 1, points (b) and (c), shall apply.

1b. By way of derogation from paragraph 1, and where justified by specific national market integrity concerns, Member States may require issuers whose securities have been admitted to trading on a regulated market for at least the last 5 years to draw up a list of all persons having access to inside information and working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, including advisers, accountants or credit rating agencies (full insider list). Paragraph 1, points (b) and (c), shall apply.

2. Issuers and any person acting on their behalf or on their account, shall ~~take all reasonable steps to ensure that any~~ request from the person on the insider list the acknowledges of their ~~in writing the~~ legal and regulatory duties entailed in a durable medium. ~~and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.~~

Where another person is requested by the issuer to draw up and update the issuer's insider list, the issuer shall remain fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list that the other person is drawing up.

3. The insider list shall include at least:

(a) the identity of any person having access to inside information;

(b) the reason for including that person in the insider list;

(c) the date and time at which that person obtained access to inside information; and That requirement shall not apply to intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about a set of circumstances or an event.

(d) the date on which the insider list was drawn up.

4. Issuers and any person acting on their behalf or on their account shall each update their insider list promptly, including the date of the update, in the following circumstances:

(a) where there is a change in the reason for including a person already on the insider list;

(b) where there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and

(c) where a person ceases to have access to inside information.

Each update shall specify the date and time when the change triggering the update occurred.

5. Issuers and any person acting on their behalf or on their account shall each retain their insider list for a period of at least five years after it is drawn up or updated.

~~6. Issuers whose financial instruments are admitted to trading on an SME growth market shall be entitled to include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information.~~

By way of derogation from the first subparagraph of this paragraph and where justified by specific national market integrity concerns, Member States may require issuers whose financial instruments are admitted to

trading on an SME growth market to include in their insider lists all persons referred to in point (a) of paragraph 1. Those lists shall comprise information specified in the format determined by ESMA pursuant to the fourth subparagraph of this paragraph.

The insider lists referred to in the first and second subparagraphs of this paragraph shall be provided to the competent authority as soon as possible upon its request.

ESMA shall develop draft implementing technical standards to determine the precise format of the insider lists referred to in the second subparagraph of this paragraph. The format of the insider lists shall be proportionate and represent a lighter administrative burden compared to the format of insider lists referred to in paragraph 9.

ESMA shall submit those draft implementing technical standards to the Commission by 1 September 2020.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

7. This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of an instrument only traded on an MTF or an OTF, have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State.

8. Paragraphs 1 to 5 of this Article shall also apply to:

(a) emission allowance market participants in relation to inside information concerning emission allowances that arises in relation to the physical operations of that emission allowance market participant;

(b) any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010.

9. ~~In order to ensure uniform conditions of application of this Article,~~ ESMA shall review the ~~develop draft~~ implementing technical standards ~~to determine the precise~~ on the alleviated format of the insider lists ~~and the format for updating insider lists referred to in this Article.~~ for issuers admitted to trading on SME growth markets to extend the use of such a format to all insider lists referred to in paragraphs 1, 1a and 1b.

ESMA shall submit those draft implementing technical standards to the Commission ~~by 3 July 2016.~~ [by 9 months after the application/entering into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 19 Managers' transactions

(*19.1 à 19.7 sans modifications*)

8. Paragraph 1 shall apply to any subsequent transaction once a total amount of EUR 20 000 ~~5 000~~ has been reached within a calendar year. The threshold of EUR 20 000 ~~5 000~~ shall be calculated by adding without netting all transactions referred to in paragraph 1.

9. A competent authority may decide to increase the threshold set out in paragraph 8 to EUR 50 000 ~~20 000~~ and shall inform ESMA of its decision and the justification for its decision, with specific reference to market conditions, to adopt the higher threshold prior to its application. ESMA shall publish on its website the list of thresholds that apply in accordance with this Article and the justifications provided by competent authorities for such thresholds.

(…)

12. Without prejudice to Articles 14 and 15, an issuer may allow a person discharging managerial responsibilities within it to trade or to make transactions on its own account or for the account of a third party during a closed period as referred to in paragraph 11 ~~either~~ :

(a) on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares; or

(b) due to the characteristics of the trading involved for transactions made under, or related to, an employee share or saving scheme, and employees' schemes concerning financial instruments other than shares, qualification or entitlement of shares and qualifications or entitlements of financial instruments other than shares, or transactions where the beneficial interest in the relevant security does not change ; or

(c) where those transactions or trade activities do not imply active investment decisions by the person discharging managerial responsibilities, or result from external factors or third parties, or are the exercise of derivatives based on predetermined terms.

Article 23 - Power of competent authorities

2. In order to fulfil their duties under this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers:

(a) to access any document and data in any form, and to receive or take a copy thereof;

(b) to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;

(c) in relation to commodity derivatives, to request information from market participants on related spot markets according to standardised formats, obtain reports on transactions, and have direct access to traders' systems;

(d) to carry out on-site inspections and investigations at sites other than at the private residences of natural persons;

(e) subject to the second subparagraph, to enter the premises of natural and legal persons in order to seize documents and data in any form where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation may be relevant to prove a case of insider dealing or market manipulation infringing this Regulation;

(f) to refer matters for criminal investigation;

(g) to require existing recordings of telephone conversations, electronic communications or data traffic records held by investment firms, credit institutions or financial institutions as well as benchmark administrators or supervised contributors;

(h) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to the investigation of an infringement of point (a) or (b) of Article 14 or Article 15;

(i) to request the freezing or sequestration of assets, or both;

(j) to suspend trading of the financial instrument concerned;

(k) to require the temporary cessation of any practice that the competent authority considers contrary to this Regulation;

(l) to impose a temporary prohibition on the exercise of professional activity; and

(m) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.

Where in accordance with national law prior authorisation to enter premises of natural and legal persons referred to in point (e) of the first subparagraph is needed from the judicial authority of the Member State concerned, the power as referred to in that point shall be used only after having obtained such prior authorisation.

3. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

This Regulation is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC that impose requirements in addition to the requirements of this Regulation.

4. A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.

Article 25 Obligation to cooperate

1. Competent authorities shall cooperate with each other and with ESMA where necessary for the purposes of this Regulation, unless one of the exceptions in paragraph 2 applies. Competent authorities shall render assistance to competent authorities of other Member States and ESMA. In particular, they shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

The obligation to cooperate and assist laid down in the first subparagraph shall also apply as regards the Commission in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I to the TFEU.

The competent authorities and ESMA shall cooperate in accordance with Regulation (EU) No 1095/2010, in particular Article 35 thereof.

Where Member States have chosen, in accordance with Article 30(1), second subparagraph, to lay down criminal sanctions for infringements of the provisions of this Regulation referred to in that Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible infringements of this Regulation and provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.

1a. ESMA shall facilitate and coordinate the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries. When justified by the character of the case, and at the request of the competent authority, ESMA shall contribute to the investigation of the case by the competent authority

(*pas de modifications des articles 25.2 à 25.5*)

6. The competent authority of one Member State may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

A requesting competent authority may inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA ~~shall, if requested to do so by one of the competent authorities,~~ may decide to coordinate the investigation or inspection.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) appoint auditors or experts to carry out the on-site inspection or investigation;

(e) share specific tasks related to supervisory activities with the other competent authorities.

Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

7. Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1, 3, 4 and 5 is not acted upon within a reasonable time or whose request for information or assistance is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA.

In those situations, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.

8. Competent authorities shall cooperate and exchange information with relevant national and third-country regulatory authorities responsible for the related spot markets where they have reasonable grounds to suspect that acts, which constitute insider dealing, unlawful disclosure of information or market manipulation infringing this Regulation, are being, or have been, carried out. Such cooperation shall ensure a consolidated overview of the financial and spot markets, and shall detect and impose sanctions for cross-market and cross-border market abuses.

In relation to emission allowances, the cooperation and exchange of information provided for under the first subparagraph shall also be ensured with:

(a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010; and

(b) competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC.

ESMA shall perform a facilitation and coordination role in relation to the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries. Competent authorities shall, where possible, conclude cooperation arrangements with third-country regulatory authorities responsible for the related spot markets in accordance with Article 26.

9. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 25a - Mechanism to exchange order book data

1. Competent authorities supervising trading venues with a significant cross-border dimension shall, by [12 months from the date of entry into force of this Regulation], set up a mechanism to permit ongoing and timely exchange of order book data referred to in paragraph 2 and collected from those trading venues in accordance with Article 25 of Regulation (EU) No 600/2014 with respect to the instruments traded in such market. Competent authorities may delegate the set-up of the mechanism to ESMA.

Where a competent authority submits a request for data under paragraph 2, the requested competent authority shall provide that data in a timely manner and not later than 1 calendar day from the date of the request. The request for ongoing data from a competent authority may be submitted for a specific set of instruments.

2. A competent authority may obtain order book data originating from a trading venue that has a cross-border dimension when that competent authority is the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 for the following financial instruments:

(a) shares;

(b) bonds;

(c) futures.

3. A Member State may decide that its competent authority participates in the mechanism set up pursuant to paragraph 1 even if none of the trading venues under the supervision of such competent authority has a significant cross-border dimension. Such decision shall be communicated to ESMA which shall make it public on its website.

When a competent authority is not part of the mechanism set up pursuant to paragraph 1, it shall still comply with a request of exchange of ongoing order book data pursuant to Article 25 in a timely manner and not later than 5 calendar days from the date of the request.

4. ESMA shall develop draft implementing technical standards to specify the appropriate mechanism for the exchange of order book data. In particular, the implementing technical standards shall lay down the operational arrangements to ensure the swift transmission of information between competent authorities.

ESMA shall submit those draft implementing technical standards to the Commission by [9 months after the application/entering into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the implementing technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. The Commission is empowered to adopt delegated acts to establish a list of designated trading venues that have a significant cross-border dimension in the supervision of market abuse, by taking into account at least the market share of the EN 71 EN trading venues on the instruments. The Commission shall review such list at least every 4 years.

6. The Commission is empowered to adopt delegated acts in accordance with Article 35 to amend paragraph 2 by updating the financial instruments, taking into account the developments in financial markets and the capacity of competent authorities to process the data on those financial instruments.

Article 25b - Collaboration platforms

1. ESMA may, on its own initiative or at the request of one or more competent authorities, in the case of concerns about market integrity or the good functioning of markets, set up and coordinate a collaboration platform.

2. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.

3. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.

ESMA may also decide to initiate and coordinate on-site inspections. It shall invite the competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform to participate in such on-site inspections.

ESMA may also set up a collaboration platform jointly with ACER and the public bodies monitoring wholesale commodity markets where the concerns about market integrity and the good functioning of markets affect both financial and spot markets.

~~Article 28 - Data protection~~

Supprimé

Article 29 - Disclosure of personal data to third countries

1. ~~The~~ Ccompetent authorit~~y~~ies of a Member State may transfer personal data to a third country provided the requirements of ~~Directive 95/46/EC~~ Regulation (EU) 2016/679 of the European Parliament and of the Council[4] are fulfilled and only on a case-by-case basis. ~~The~~ Ccompetent authorit~~y~~ies shall ensure that ~~the~~ such a transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State.

2. ~~The~~ Ccompetent authorit~~y~~ies of a Member State shall only disclose personal data received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained express agreement from the competent authority which transmitted the data and, where applicable, the data is disclosed solely for the purposes for which that competent authority gave its agreement.

~~3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with the national laws, regulations or administrative provisions transposing Directive 95/46/EC.~~

Article 30 – Administrative sanctions and other administrative measures

1. Without prejudice to any criminal sanctions and without prejudice to the supervisory powers of competent authorities under Article 23, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:

(a) infringements of Articles 14 and 15, Article 16(1) and (2), Article 17(1), (2), (4) and (5), and (8), Article 18(1) to (6), Article 19(1), (2), (3), (5), (6), (7) and (11) and Article 20(1); and

(b) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 23(2).

[4] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in point (a) or point (b) of that subparagraph are already subject to criminal sanctions in their national law by 3 July 2016. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.

By 3 July 2016, Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendments thereto.

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and to take at least the following administrative measures in the event of the infringements referred to in point (a) of the first subparagraph of paragraph 1:

(a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;

(b) the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;

(c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;

(d) withdrawal or suspension of the authorisation of an investment firm;

(e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms as well as benchmark administrators or supervised contributors;

(f) in the event of repeated infringements of Article 14 or 15, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms as well as benchmark administrators or supervised contributors;

(g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account as well as benchmark administrators or supervised contributors;

(h) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement, where those can be determined;

(i) in respect of a natural person, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 14 and 15, EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(ii) for infringements of Articles 16 and 17, EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and

(iii) for infringements of Articles 18, 19 and 20, EUR 500 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and

(j) in respect of legal persons, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 14 and 15, ~~EUR 15 000 000 or~~ 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body, or EUR 15 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(ii) for infringements of Articles 16 ~~and 17, EUR 2 500 000 or~~ , 2 % of its total annual turnover according to the last available accounts approved by the management body, or EUR 2 500 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; ~~and~~

(iii) for infringements of Articles 17, ~~18, 19 and 20,~~ 2 % of its total annual turnover according to the last available accounts approved by the management body. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose administrative sanctions of at least EUR 2 500 000, or, where the legal person is an SME, EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014~~.~~ if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low EN 73 EN with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h);

(iv) for infringements of Articles 18 and 19, 0,8 % of its total annual turnover according to the last available accounts approved by the management body. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose administrative sanctions of at least EUR 1 000 000, or where the legal person is an SME, EUR 400 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014 if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h);

(v) for infringements of Article 20, 0,8 % of its total annual turnover according to the last available accounts approved by the management body, or EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014. ;

References to the competent authority in this paragraph are without prejudice to the ability of the competent authority to exercise its functions in any ways referred to in Article 23(1).

For the purposes of points (j)(i) and (ii) of the first subparagraph, where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU (13), the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives – Council Directive 86/635/EEC (14) for banks and Council Directive 91/674/EEC (15) for insurance companies –

according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

3. Member States may provide that competent authorities have powers in addition to those referred to in paragraph 2 and may provide for higher levels of sanctions than those established in that paragraph.

4. For the purpose of this Article, 'small and medium-sized enterprise' or 'SME' means a micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to Commission Recommendation 2003/361/EC

Article 31 - Exercise of supervisory powers and imposition of sanctions

1. Member States shall ensure that when determining the type and level of administrative sanctions, competent authorities take into account all relevant circumstances, including, where appropriate:

(a) the gravity and duration of the infringement;

(b) the degree of responsibility of the person responsible for the infringement;

(c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;

(d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;

(e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous infringements by the person responsible for the infringement; ~~and~~

(g) measures taken by the person responsible for the infringement to prevent its repetition ; and

(h) the duplication of criminal and administrative proceedings and penalties for the same breach against the responsible person.

~~2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 30, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative sanctions that they impose, and the other administrative measures that they take, are effective and appropriate under this Regulation. They shall coordinate their actions in accordance with Article 25 in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative sanctions in respect of cross-border cases.~~

f. Article 35 - Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6(5) and (6), Article 12(5), ~~the third subparagraph of~~ Article 17(1), second subparagraph, Article 17(2), third subparagraph, Article 17(3), Article 19(13) and (14), Article 25a(6) and Article 38 shall be conferred on the Commission for a period of five years from 31 December ~~2019~~ 20XX. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph, ~~the third subparagraph of~~ Article 17(2), third subparagraph, Article 17(3), Article 19(13) and (14), Article 25a(6) and Article 38, may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), Article 17(1), second subparagraph, ~~the third subparagraph of~~ Article 17(2), third subparagraph, Article 17(3), Article 19(13) or (14), Article 25a(5), Article 25a(6) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

g. Article 38 - Report

By ~~3 July 2019~~ [5 years after entry into force of this amending Regulation], the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation, together with a legislative proposal to amend it if appropriate. That report shall assess, inter alia:

(a) the appropriateness of introducing common rules on the need for all Member States to provide for administrative sanctions for insider dealing and market manipulation;

(b) whether the definition of inside information is sufficient to cover all information relevant for competent authorities to effectively combat market abuse;

(c) the appropriateness of the conditions under which the prohibition on trading is mandated in accordance with Article 19(11) with a view to identifying whether there are any further circumstances under which the prohibition should apply;

(d) ~~the possibility of establishing a Union framework for cross-market order book surveillance in relation to market abuse, including recommendations for such a framework; and~~ the functioning of the cross-market order book surveillance mechanism in relation to market abuse, including recommendations for enforcing such mechanism; and

(e) the scope of the application of the benchmark provisions.

For the purposes of point (a) of the first subparagraph, ESMA shall undertake a mapping exercise of the application of administrative sanctions and, where Member States have decided, pursuant to the second subparagraph of Article 30(1), to lay down criminal sanctions as referred to therein for infringements of this Regulation, of the application of such criminal sanctions within Member States. That exercise shall also include any data made available under Article 33(1) and (2).

By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 adjusting the thresholds in Article 19(1a)(a) and (b), if it determines in that report that those thresholds should be adjusted.

ANNEXE 3 – MODIFICATIONS APPORTÉES À MIF

Article 4 - Definitions

(12) 'SME growth market' means a MTF, or a segment of a MTF, that is registered as an SME growth market in accordance with Article 33;

Article 24 - General principles and information to clients

1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and in Article 25.

2. Investment firms which manufacture financial instruments for sale to clients shall ensure that those financial instruments are designed to meet the needs of an identified target market of end clients within the relevant category of clients, the strategy for distribution of the financial instruments is compatible with the identified target market, and the investment firm takes reasonable steps to ensure that the financial instrument is distributed to the identified target market.

An investment firm shall understand the financial instruments they offer or recommend, assess the compatibility of the financial instruments with the needs of the clients to whom it provides investment services, also taking account of the identified target market of end clients as referred to in Article 16(3), and ensure that financial instruments are offered or recommended only when this is in the interest of the client.

3. All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

3a. Research provided by third parties to investment firms providing portfolio management or other investment or ancillary services and research prepared and distributed by such firms shall be fair, clear and not misleading. Research shall be clearly identifiable as such or in similar terms, provided that all conditions applicable to the research are met.

3b. Where the research is paid, fully or partially, by the issuer and disseminated to the public or to investment firms or to the clients of investment firms providing portfolio management or other investment or ancillary services, such research shall be labelled as "issuer-sponsored research" provided that it is produced in compliance with a code of conduct developed or endorsed by a market operator registered in a Member State or by a competent authority. The code of conduct shall set out minimum standards of independency and objectivity to be complied with by the providers of such research. The market operator or the competent authority shall publish the code of conduct on its website and review and re-endorse it every 2 years.

3c. Member States shall ensure that any issuer may submit its issuer sponsored research, as referred to in paragraph 3b of this Article, to the relevant collection body as defined in [Article 2(2) of the proposal for a Regulation on a European Single Access Point40].

3d. Research that is labelled as issuer-sponsored research shall indicate on its front page in a clear and prominent way that it has been prepared in accordance with a code of conduct. The name of the market operator or competent authority that has developed or endorsed such code of conduct shall also be

mentioned. Any other research material paid fully or in part by the issuer but not produced in compliance with a code of conduct as referred to in paragraph 3b shall be labelled as marketing communication.'

(*pas de modifications aux art. 24.4 à 24.9*)

9a. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under paragraph 1 if:

(a) before the execution or research services have been provided, an agreement has been entered into between the investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;

(b) the investment firm informs its clients about the joint payments for execution services and research made to the third party providers of research; and

(c) the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed ~~EUR 1 billion~~ EUR 10 billion, as expressed by end-year quotes for the years when they are or were listed or by the own-capital for the financial years when they are or were not listed.

For the purpose of this Article, research shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that industry or market.

Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm's decisions on behalf of clients being charged for that research.

(…)

Article 33 SME growth markets

1. Member States shall provide that the operator of a MTF may apply to its home competent authority to have the MTF or a segment thereof, registered as an SME growth market.

2. Member States shall provide that the home competent authority may register the MTF, or a segment thereof, as an SME growth market if the competent authority receives an application referred to in paragraph 1 and is satisfied that the requirements in paragraph 3 are complied with in relation to the MTF, or that the requirement in paragraph 3a are complied with in relation to a segment of the MTF.

3. Member States shall ensure that MTFs are subject to effective rules, systems and procedures which ensure that the following is complied with:

(a) at least 50 % of the issuers whose financial instruments are admitted to trading on the MTF are SMEs at the time when the MTF is registered as an SME growth market and in any calendar year thereafter;

(b) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;

(c) on initial admission to trading of financial instruments on the market there is sufficient information published to enable investors to make an informed judgment about whether or not to invest in the financial instruments, either an appropriate admission document or a prospectus if the requirements laid down in Directive 2003/71/EC are applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF;

(d) there is appropriate ongoing periodic financial reporting by or on behalf of an issuer on the market, for example audited annual reports;

(e) issuers on the market as defined in point (21) of Article 3(1) of Regulation (EU) No 596/2014, persons discharging managerial responsibilities as defined in point (25) of Article 3(1) of Regulation (EU) No 596/2014 and persons closely associated with them as defined in point (26) of Article 3(1) of Regulation (EU) No 596/2014 comply with relevant requirements applicable to them under Regulation (EU) No 596/2014;

(f) regulatory information concerning the issuers on the market is stored and disseminated to the public;

(g) there are effective systems and controls aiming to prevent and detect market abuse on that market as required under the Regulation (EU) No 596/2014.

3a. Member States shall ensure that the relevant segment of the MTF is subject to effective rules, systems and procedures which ensure that the conditions referred to in paragraph 3 and all of the following conditions have been complied with:

(a) the segment of the MTF registered as 'SME growth market' is clearly separated from the other market segments operated by the MTF operator, which is inter alia indicated by a different name, different rulebook, different marketing strategy, and different publicity, as well as a specific allocation of the market identification code to the SME growth market segment;

(b) the transactions made on the specific SME growth market segment are clearly distinguished from other market activity within the other segments of the MTF;

(c) upon request of the MTF's home competent authority, the MTF shall provide a comprehensivelist of the instruments listed on the SME growth market segment concerned, as well as any information on the operation of the SME growth market segment that the competent authority may request.'

4. The criteria in paragraph 3 and 3a are without prejudice to compliance by the investment firm or market operator operating the MTF, or a segment thereof, with other obligations under this Directive relevant to the operation of MTFs. ~~They also do not prevent the investment firm or market operator operating the MTF from imposing additional requirements to those specified in that paragraph.~~

5. Member States shall provide that the home competent authority may deregister a MTF, or a segment thereof, as an SME growth market in any of the following cases:

(a) the investment firm or market operator operating the MTF, or a segment thereof, ~~market~~ applies for its deregistration;

(b) the requirements in paragraph 3 or 3a are no longer complied with in relation to the MTF, or a segment thereof.

6. Members States shall require that if a home competent authority registers or deregisters an MTF, or a segment thereof, as an SME growth market under this Article, that authority ~~it~~ shall as soon as possible notify ESMA of that registration or deregistration. ESMA shall publish on its website a list of SME growth markets and shall keep that list up to date.

7. Member States shall require that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market only where the issuer has been informed and has not objected. In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME growth market.

8. The Commission ~~shall be~~ is empowered to adopt delegated acts in accordance with Article 89 to supplement this Directive to further specifying the requirements laid down in paragraph 3 and 3a of this Article. Those requirements ~~The measures~~ shall take into account the need ~~for the requirements~~ to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market. They shall also take into account ~~and~~ that de-registrations do not occur nor shall registrations be refused as a result of a merely because of a temporary failure to comply with the requirement laid down in paragraph 3, point (a), of this Article ~~meet the conditions set out in point (a) of paragraph 3 of this Article.~~

9. The Commission shall set up an expert stakeholder group by 1 July 2020 to monitor the functioning and success of SME growth markets. By 1 July 2021, the expert stakeholder group shall publish a report on its conclusions.

Article 51a - Specific conditions for the admission of shares to trading

1. Member States shall require that the foreseeable market capitalisation of the shares for which admission to trading is sought, or if this cannot be assessed, the company's capital and reserves, including profit and loss, from the last financial year, shall be at least EUR 1 000 000 or an equivalent amount in a national currency other than the Euro.

2. Paragraph 1 shall however not apply to the admission to trading of shares fungible with shares already admitted to trading.

3. Where, as a result of an adjustment of the equivalent amount of the Euro in national currency, the market capitalisation expressed in national currency remains for a period of 1 year at least 10 % approximately the value of EUR 1 000 000, the Member State shall, within the 12 months following the expiry of that period, adjust its laws, regulations or administrative provisions to comply with paragraph 1.

4. Member States shall require that regulated markets ensure that at any time at least 10% of the subscribed capital represented by the class of shares concerned by the application for admission to trading is held by the public.

5. Where the percentage of shares held by the public is below 10% of the subscribed capital, Member States shall ensure that regulated markets require that a sufficient number of shares is distributed to the public to fulfil the requirement laid down in paragraph 4.

6. Where admission to trading is sought for shares fungible with shares already admitted to trading, regulated markets shall assess, to fulfil the requirement laid down in paragraph 4, whether a sufficient number of shares has been distributed to the public in relation to all the shares issued and not only in relation to the shares fungible with shares already admitted to trading.

7. The Commission is empowered to adopt delegated acts in accordance with Article 89 to amend this Directive by modifying the thresholds referred to in paragraphs 1 and 3 or in paragraphs 4 and 5 or in

both, when the applicable thresholds impede the liquidity on public markets taking into account the financial developments.

(i) Article 89 Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 2(3), Article 2(4), ~~second subparagraph of~~ Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an indeterminate period of time~~ from 2 July 2014.~~

3. The delegation of power referred to in Article 2(3), Article 2(4), ~~second subparagraph of~~ Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4) Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 2(3), Article 2(4), ~~second subparagraph of~~ Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) or Article 79(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.