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# Prospectus proceedings in Finantsinspektsioon

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## Which instruments can be qualified as securities

The Prospectus Regulation applies in certain conditions to offers of transferable securities as defined in Article 4 (1) (44) of Directive 2014/65/EU of the European Parliament and of the Council (“MiFID II”). Based on MiFID II, it can be concluded that an instrument is a transferable security if it:

1. is freely transferable;
2. is negotiable on the capital markets;
3. is in a standardized format;
4. has similar characteristics to a typical transferable security.

“Transferability” should be understood as a general characteristic of the instrument which can be transferred. This means that the instrument (which can be a right, an obligation or a contract) is technically transferable. Specific or temporary restrictions on the disposal of an instrument may not preclude its transferability. For example, the transferability of securities may be reduced on a contractual basis, such as selling restrictions applicable in a specific country or by a lock-up agreement between the issuer and existing shareholders.

Negotiability on the capital markets should be understood as a general feature of an instrument being capable for trading on the capital markets. The term “capital market” is widely interpreted and does not include only regulated markets, but any environment where the buying and selling interests of securities can be met. It is also of primary importance that securities can, at least in theory, be traded on the capital market (i.e. that they are not subject to general restrictions on their trading and that they are sufficiently standardised).

Securities are standardised if they have certain common features resulting in interchangeability.

Typical transferable securities are set out in an open list in Article 4 (1) (44) of MiFID II. In general, it means that the instrument gives the investor the right to participate in the business of the issuing company (voting rights) and/or to obtain some kind of financial benefit.

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## Obligation to publish a prospectus and the information document

For public offerings of securities, a prospectus must be prepared and published in accordance with Regulation (EU) 2017/1129 of the European Parliament and the Council (the "Prospectus Regulation"), if the total sales price of the securities across all member states exceeds €8,000,000 within a one-year period. The Finantsinspeksioon must approve the mentioned prospectus.

A prospectus does not need to be published if:

- The offering of securities is only to professional investors;
- The offering of securities to fewer than 150 natural or legal persons per member state who are not professional investors. The dissemination of offering information may be available to a maximum of 149 persons per member state. This means the information must be specifically directed to up to 149 persons or technical measures must be implemented to prevent more than 149 persons from accessing the offering information.
- The securities offered have a nominal value of at least €100,000 each;
- The securities are offered to investors who acquire securities for at least €100,000 per investor for each separate offer.

A complete list of exceptions to the obligation to publish a prospectus is provided in Article 1(4) of the Prospectus Regulation.

As of December 4, 2024, additional exceptions to the obligation to publish a prospectus apply in accordance with Regulation (EU) 2024/2809 of the European Parliament and the Council (the "Listing Act"). When using these exceptions, a document that meets the requirements of Annex IX of the Prospectus Regulation must be submitted to Finantsinspeksioon.

The conditions for the exception are as follows:

- If the offer involves less than 30% of the total number of securities already admitted to trading over the last 12 months (Article 1(4)(da)).
- If the offer or admission to trading is not related to a takeover, merger, or division (Article 1(4)(db) and Article 1(5)(ba)).
- If there is no ongoing restructuring or insolvency proceedings concerning the issuer, as defined in Articles 2(da) and 2(db) of the Prospectus Regulation.

### Document Submitted Under Annex IX

If an exemption from preparing a prospectus is applied, a document that meets the requirements of Annex IX of the Prospectus Regulation must be electronically submitted to the Finantsinspeksioon. This document must include:

- Confirmation of compliance with reporting and disclosure requirements;
- Other information required in Annex IX.

The Finantsinspeksioon does not approve or publish the mentioned document. According to the Listing Act, the obligation to disclose the document lies with the issuer, who must ensure its electronic availability to the public.

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# Requirements for the Information Document for the Offering of Securities

As of May 13, 2024, a new regulation by the Minister of Finance came into effect in Estonia, simplifying capital raising for small and medium-sized enterprises (SMEs) in the Baltic region by establishing unified requirements for information documents for smaller public offerings of securities. The new requirements, which came into effect in Estonia, reduce costs for companies by allowing them to prepare a single information document for public offerings in all three Baltic countries. Previously, companies had to prepare separate documents according to the laws of each country. As of July 1, a new regulation in Estonia raised the threshold for the obligation to prepare a securities prospectus from EUR 5 million to EUR 8 million, harmonizing it with Latvia and Lithuania.

For the organization of a securities offering, where the total value of the securities offered within a one-year period is between EUR 1,000,000 and EUR 8,000,000, the issuer must prepare an information document in accordance with the Minister of Finance regulation (Requirements for the Information Document for the Offering of Securities). The information document does not need to be approved by the Finantsinspektsioon and does not need to be submitted to the Finantsinspektsioon. Securities cannot be offered in other member states based on this information document. The issuer may always choose to prepare a prospectus in accordance with the Prospectus Regulation. The Minister of Finance regulation does not apply to:

- Securities and offerings referred to in Article 1(2)–(4) of Regulation (EU) 2017/1129 of the European Parliament and of the Council;
- Offerings of securities for which a key investment information document has been prepared under Article 23 of Regulation (EU) 2020/1503 of the European Parliament and of the Council;
- Offerings of securities for which a prospectus has been voluntarily prepared under Article 4(1) of Regulation (EU) 2017/1129 of the European Parliament and of the Council.

## Applying for Prospectus Approval at the Finantsinspektsioon

We recommend contacting the Finantsinspektsioon before submitting an application for prospectus approval and providing details about the planned offering or listing (offered instruments, volume of the offering, purpose, and schedule). Please use the email address [prospectus@fi.ee](mailto:prospectus@fi.ee) for this purpose.

To apply for prospectus approval, please submit the following documents to the Finantsinspektsioon:

1. An application for approval signed by the issuer or authorized representative, indicating a contact point with whom the Finantsinspektsioon can communicate regarding the prospectus procedure.
2. The prospectus (in electronic form with search capability).
3. Appendices to the prospectus (e.g., financial statements, articles of association).

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4. A document proving the payment of the handling fee (the handling fee is 2000 euros).
  5. A cross-reference table indicating the location of information required by the Prospectus Regulation in the prospectus or justifying its omission.

Detailed requirements for the documents to be submitted are set out in Article 42 of [Commission Delegated Regulation \(EU\) 2019/980](#). Please send the application for prospectus approval and accompanying documents to the email address: [info@fi.ee](mailto:info@fi.ee).

Documents should be submitted to the Finantsinspektsioon in Estonian or English. According to the Securities Market Act, a translation of the prospectus into Estonian must also be published if the prospectus is not in Estonian but the securities are being offered in Estonia.

If the documents submitted in the application do not comply with the legal requirements, including if the prospectus does not contain all necessary information in the opinion of the Finantsinspektsioon with investor interests in mind, the Finantsinspektsioon will provide comments for supplementing or correcting the deficiencies in the prospectus. The Finantsinspektsioon will respond via email to the applicant within 10 working days of the application submission or the submission of an amended version of the prospectus.

If the issuer's securities have not previously been publicly offered or admitted to trading on a regulated market, the Finantsinspektsioon may provide the first feedback on the prospectus registration application within up to 20 working days of the application submission. Usually, the Finantsinspektsioon exercises this right.

During the prospectus procedure, the Finantsinspektsioon typically provides comments and clarifications multiple times.

When responding to the comments from the Finantsinspektsioon, please submit the amended documents electronically in two versions: one with "track changes" and the other as a "clean" version.

Along with the amended prospectus, please submit an explanatory response indicating the part of the prospectus that has been amended in response to each comment.

The Finantsinspektsioon has the right to refuse to approve the prospectus if the issuer, offeror, or applicant for admission to trading on a regulated market cannot or does not wish to make the required changes or provide additional information within the deadline set by the Finantsinspektsioon.

Upon approval of the prospectus, the Finantsinspektsioon will send the applicant a digitally signed decision of the Management Board electronically.

If the securities are to be publicly offered or admitted to trading on a regulated market in one or more member states or in a member state other than the home member state, the prospectus approved by the home member state and its possible appendices are valid on the basis of notification in any number of host member states. To forward the prospectus to other member states, a corresponding request must be submitted to the Finantsinspektsioon, based on which the Finantsinspektsioon can notify the competent authority of each host member state. The competent authority of the host member state has the right to require a translation of the prospectus summary into a language accepted by the competent authority of the host member state.

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If new significant circumstances, material errors, or material inaccuracies related to the information in the prospectus, which may affect the assessment of the securities, arise after the prospectus has been approved but during the offering period or before the start of trading on a regulated market, a supplement to the prospectus must be approved by the Finantsinspeksioon.

The supplement is approved within a maximum of five working days in the same manner as the prospectus and published at least as rigorously as the original prospectus. If necessary, the summary and its translations are also updated to take into account the new information in the supplement. The handling fee for approving a supplement to the prospectus is 1000 euros.

## **Publication of the Prospectus and Offering Advertisement**

The prospectus must not be published before it has been approved by the Finantsinspeksioon. After approval, the issuer, offeror, or applicant for admission to trading on a regulated market must make the prospectus available to the public within a reasonable time before the public offering of the relevant securities or their admission to trading or at the latest when the public offering begins or the securities are admitted to trading.

The prospectus must be published in one of the following ways:

- On the website of the issuer, offeror, or applicant for admission to trading on a regulated market;
- On the website of the financial intermediary involved in the offering or sale of the securities, including the paying agent;
- On the website of the regulated market where admission to trading is sought, or if admission to trading on a regulated market is not sought, on the website of the organizer of a multilateral trading facility.

The Finantsinspeksioon publishes all approved prospectuses and a list of approved prospectuses on its website. However, this does not constitute making the prospectus available to the public.

The prospectus must be published in a section of the website that is easily accessible upon entering the site. It must be possible to download, print, and search the prospectus in an electronic format that cannot be modified.

Advertisements related to the offering must comply with the general requirements set out in Article 22 of the Prospectus Regulation and the detailed requirements specified in [Commission Delegated Regulation \(EU\) 2019/979](#), as well as the requirements set out in the Advertising Act.

If there is no obligation to publish a prospectus under the Prospectus Regulation, the information provided by the issuer or offeror to qualified investors or specified groups of investors, including information disclosed in meetings related to the offering of securities, must be made available to all qualified investors or specified groups of investors to whom the offer is directed.

General advertising requirements from the Advertising Act apply to offerings for which no prospectus is required. This means that the advertisement must not be misleading, must contain truthful information, and must clearly indicate that it is an advertisement.

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## Legal acts and guidelines

- [REGULATION \(EU\) 2017/1129 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL](#) of 14 June 2017, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC
- [COMMISSION DELEGATED REGULATION \(EU\) 2019/980](#) of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004
- [COMMISSION DELEGATED REGULATION \(EU\) 2019/979](#) of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301
- ESMA's „[Guidelines On Risk factors under the Prospectus Regulation](#)” (ESMA31-62-1293) as adopted by Finantsinspeksioon
- [Questions and Answers of the Prospectus Regulation](#)
- [Finantsinspeksioon's publication on the Prospectus Regulation.](#)