
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 2014/64/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.

Obligation to publish a prospectus

A prospectus shall be drawn up and published for a public offer of securities where the total

consideration of the securities in the Union exceeds EUR 2 500 000 over a period of one year.

Where the total value of the securities offered is between EUR 2 500 000 and EUR 8 000 000, the prospectus may be drawn up in accordance with the [national regulation of the Minister for Finance](#). A prospectus drawn up in accordance with the national regulation cannot be used for offering of securities in other Member States.

Regardless of the total amount of the securities offered, the issuer may, if it so wishes, draw up a prospectus pursuant to [Regulation \(EU\) 2017/1129 of the European Parliament and of the Council \(„Prospectus Regulation”\)](#).

If the volume of securities offered exceeds EUR 8 000 000 over a one-year period, the prospectus has to be drawn up pursuant to the Prospectus Regulation.

The obligation to publish a prospectus does not apply when:

- an offer of securities is addressed solely to qualified investors;
- an offer of securities is addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;
- the securities offered have a denomination per unit that amounts to at least EUR 100 000;
- an offer of securities is for investors to acquire securities for an amount of at least EUR 100 000 per investor, for each separate offer.

The full list of exceptions to the obligation to publish a prospectus is set out in Article 1 (4) of the Prospectus Regulation.

Even if the obligation to publish a prospectus does not stem from the conditions of the offer of securities, such an obligation still applies if the securities are applied to be listed on a regulated market, i.e. for admission to trading on a stock exchange. However, there are certain exceptions which are listed in Article 1 (5) of the Prospectus Regulation.

Scrutiny and approval of the prospectus in Finantsinspektsioon

We advise you to contact Finantsinspektsioon before submitting your application for approval of the prospectus in order to introduce the circumstances of the planned offer or listing of securities (instruments offered, total volume, purpose of the offer and planned time schedule). You may contact us via e-mail prospectus@fi.ee.

In order to apply for the approval of a prospectus, please submit the following documents to Finantsinspektsioon:

- Application document with a respective request signed by the issuer or its authorised representative. The application should also include the contact person that Finantsinspektsioon can contact regarding the prospectus procedure.
- Prospectus (in searchable electronic format).
- Annexes accompanying the prospectus (e.g. financial statements, articles of association).
- A document certifying the payment of the processing fee (the processing fee is EUR 600).
- A cross-reference table indicating the location for each piece of information required under the Prospectus Regulation, or in case not applicable, the reasons for excluding information.

Further requirements for the documents to be submitted are listed in Article 42 of the [Commission Delegated Regulation \(EU\) 2019/980](#).

Please send your application for approval of the prospectus together with the relevant documents to e-mail at info@fi.ee.

Please submit the aforementioned documents in Estonian or English. According to the Securities Market Act, the translation of the prospectus into Estonian shall be prepared and published if the securities are offered in Estonia but the prospectus is not prepared and published in Estonian.

In case the submitted documents do not comply with the requirements set out in the legal acts, and where the prospectus does not contain all the information required for the interests of investors, Finantsinspeksioon shall inform the issuer or the applicant about the changes or supplementary information that is needed. Finantsinspeksioon gives feedback to the issuer or applicant by e-mail within 10 working days after submission of the draft prospectus or submission of an updated version of the prospectus.

If the securities of the issuer have not been offered to the public before or admitted to trading on a regulated market, Finantsinspeksioon is entitled to give the first feedback on the draft prospectus within 20 working days from the submission date. In general, Finantsinspeksioon uses this option of extended time limit.

During the prospectus review, Finantsinspeksioon usually submits several rounds of comments to the issuer or applicant.

When replying to comments submitted by Finantsinspeksioon, please send us the updated documents in two versions, one with “track changes” and the other as “clean” version. Together with the modified version of a prospectus, please also provide us with explanations as to how the Finantsinspeksioon’s comments were addressed in the new prospectus version.

Finantsinspeksioon has the right to refuse to approve a prospectus if the issuer, the offeror or an applicant for admission to trading on a regulated market is unable or unwilling to make the necessary changes or provide additional information within the deadline set by Finantsinspeksioon.

Upon approval of the prospectus, Finantsinspeksioon provides the issuer or applicant with a scanned copy of the respective decision. The original decision document shall be sent to the address indicated by the issuer or applicant.

Where an offer of securities to the public or admission to trading on a regulated market occurs 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 any supplements thereto shall be valid for the offer to the public or the admission to trading in any number of host Member States, provided the competent authority of each host Member State is properly notified. In order to notify the host Member States, the issuer or applicant has to submit a respective request to Finantsinspeksioon. A competent authority of the host Member State may require a translation of the summary of the prospectus into a language accepted by this competent authority of the host Member State.

Where a significant new factor, material mistake or material inaccuracy arises or is noted after the approval and publishing of a prospectus, but before the admission to trading of securities, and relates to the information contained in the prospectus, a supplement shall be submitted for approval to Finantsinspeksioon.

Such a supplement shall be approved in the same way as a prospectus in a maximum of five working days and it shall be published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, where necessary, to take into account the new information included in the supplement. The processing fee for the approval of a supplement is EUR 200.

Publication of the prospectus and advertisement

The prospectus must not be published before Finantsinspektsioon has approved it.

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.

The prospectus has to be published in any of the following ways:

- on the website of the issuer, the offeror or the person asking for admission to trading on a regulated market;
- on the website of the financial intermediary placing or selling the securities, including paying agents;
- on the website of the regulated market where the admission to trading is sought, or where no admission to trading on a regulated market is sought, the website of the operator of the multilateral trading facility.

Finantsinspektsioon publishes on its website all its approved prospectuses. This, however, cannot be interpreted as making a prospectus available to the public by the issuer.

The prospectus shall be published on a dedicated section of the website which is easily accessible when entering the website. It shall be downloadable, printable and in a searchable electronic format that cannot be modified.

Any advertisement relating to an offer shall comply with the general requirements laid down in Article 22 of the Prospectus Regulation and the requirements specified in the [Commission Delegated Regulation \(EU\) 2019/979](#), and with the requirements of the Advertising Act.

If the obligation to publish a prospectus does not apply, the information given to qualified investors or certain groups of investors (including information provided in the meetings), shall be made available to all investors to whom the offer of securities is addressed.

The offers of securities for which no prospectus is required are subject to the general advertising requirements set out in the Advertising Act. This means that advertising must not be misleading, it must contain truthful information and it must be clearly understood that it is advertising.

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

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- [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 Finantsinspektsioon
 - [Questions and Answers of the Prospectus Regulation](#)
 - [Finantsinspektsioon’s publication on the Prospectus Regulation](#).