



Communication FSMA_2019_13 of 29/03/2022

Communication on the procedures for the submission and processing of dossiers relating to public offers

Scope:

Dossiers submitted pursuant to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, the Law of 11 July 2018 on public offers of investment instruments and the admission to trading of investment instruments on regulated markets, the Law of 1 April 2007 on takeover bids and its implementing decrees, and Articles 7:193, §2 and 7:145 of the Companies and Associations Code.

Summary/Objectives:

This Communication sets out the procedures for the submission and processing of dossiers relating to public offers.

This Communication sets out the procedures for the submission and processing of dossiers relating to public offers, as well as the applicable language rules.

The dossiers concerned are those that are submitted to the FSMA pursuant to:

1. Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, hereinafter referred to as the “Prospectus Regulation”;
2. The Law of 11 July 2018 on public offers of investment instruments and the admission to trading of investment instruments on regulated markets, hereinafter referred to as the “Prospectus Law”;
3. The Law of 1 April 2007 on takeover bids and its implementing decrees;
4. Article 7:193, §2 of the Companies and Associations Code (issue of subscription rights or convertible bonds by listed companies with cancellation/limitation of preferential subscription rights in favour of one or more specific persons not belonging to their staff);
5. Article 7:145 of the Companies and Associations Code (public proxy solicitation).

Dossiers submitted pursuant to the Prospectus Regulation (point 1. on the list) include prospectuses, supplements and final terms as referred to in the Prospectus Regulation, including (universal) registration documents, securities notes and summaries submitted separately for approval, as well as universal registration documents filed without prior approval.¹

¹ The submission or filing of a universal registration document that also serves as an annual financial report does not replace the mandatory filing of that same document as regulated information through eCorporate.

However, with the exception of Title 5 (language rules), this Communication does not address documents to be published for a prospectus exemption as referred to in Article 1 of the Prospectus Regulation in connection with a takeover by means of a public exchange offer, a merger or a division.

Dossiers submitted pursuant to the Prospectus Law (point 2. on the list) include prospectuses and supplements, but not the information notes referred to in Title III, Chapter II of the Prospectus Law, which should be filed in accordance with the terms set forth in Communication FSMA_2018_11, nor advertising material for offers to the public that are not subject to a prospectus obligation.

In this Communication, dossiers submitted pursuant to Article 20 of the Prospectus Regulation are referred to as “harmonised prospectus dossiers” and dossiers submitted pursuant to Article 8 of the Prospectus Law in conjunction with Article 20 of the Prospectus Regulation as “non-harmonised prospectus dossiers”.

The contents of these dossiers and the time when they should be submitted to the FSMA are governed by applicable laws and regulations and thus not by this communication.

The FSMA requests anyone considering submitting such a dossier to follow the procedures set out in this communication.

1. When submitting or filing a dossier

A dossier requesting a decision by the FSMA regarding a **prospectus**, **advertisement** relating to a (base) prospectus approved by the FSMA, a **special report** or a **proxy solicitation** is to be submitted or filed:

- to: intro.ems@fsma.be², in searchable electronic format via electronic means.

The dossier is deemed to have been submitted or filed at the point when the FSMA has received all the documents together with a covering letter signed by a person authorized to represent the issuer in the transaction in question³ and containing the following items:

- a) a clear description of the identity of the issuer, the offeror or the party soliciting proxies (including the person's nationality);
- b) a clear description of the transaction and of any securities relating thereto;
- c) a clear description of what is being requested from the FSMA (including the legal grounds)⁴;
- d) the name and details of the contact person for communications with the FSMA, to whom it can send all written notifications regarding the dossier via electronic means;
- e) other information that may be required under the applicable legislation and the relevant rules laid down by the FSMA.

Article 42 (2) of the Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 (hereinafter, "Delegated Regulation (EU) 2019/980") contains a list of information to be submitted in searchable electronic format via electronic means⁵.

For harmonized prospectus dossiers, the correctly completed **list** (Annex 1) is to be submitted **as soon as possible** and at the latest simultaneously with the submission for approval of the prospectus. It is therefore important that all necessary steps be taken in time to obtain the necessary codes from the competent authorities (LEI, ISIN, FISN and CFI)⁶.

² For the submission of an acquisition dossier, Article 5 of the Royal Decree on Takeover Bids of 27 April 2007 must be complied with (in hard copy by registered letter or delivered by hand with acknowledgment of receipt to the premises of the FSMA).

³ For the submission of an acquisition dossier, Article 6 of the Royal Decree on Takeover Bids of 27 April 2007 must be complied with.

⁴ Including, as the case may be, a reasoned request to the FSMA to authorize the omission of information from the prospectus, as referred to in Article 18 of the Prospectus Regulation, and/or a request to the FSMA to make a notification as referred to in Article 25-26 of the Prospectus Regulation (passporting).

⁵ This Delegated Regulation, which can be consulted on the FSMA website, applies to harmonized, as well as non-harmonized prospectus dossiers.

⁶ Submitting this list is required only for harmonized prospectus dossiers. The list contains the data that are to be transferred to ESMA in accordance with Article 21 (5), subparagraph 2 of the Prospectus Regulation, as further specified in Chapter III and Annex VII of Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 (hereinafter, "Delegated Regulation (EU) 2019/979"), the text of which is available on the FSMA's website. Additional information on the content to be reported in each field in the list, as well as the format and standards to be used, can be found in the Excel document, as well as in Annex VII of Delegated Regulation (EU) 2019/979. For more information, see <https://www.anna-web.org/> or contact the National Numbering Agency in Belgium, Euronext Brussels (<https://www.anna-web.org/members-db/>).

The filing without prior approval of a universal registration document that also serves as an annual financial report, by an issuer whose securities are admitted to trading on a regulated market, shall in any case be in XHTML format (not only in PDF format).⁷ IFRS consolidated financial statements in those universal registration documents must be marked up (“tagged”) as required by the ESEF Regulation.

A dossier in request of the FSMA’s approval of **advertisements** relating to passported operations⁸ is to be submitted in the following manner:

- by email to: intro.ems.passeport@fsma.be.

Once the dossier has been submitted, it is entrusted to one or more members of the FSMA staff. Their names, telephone numbers and email addresses as well as the unique reference number of the dossier will be emailed to the party who submitted the dossier as soon as possible and no later than by close of business on the second working day following receipt.

2. During the examination of the dossier

Any document that has been modified is to be submitted in full, both in a marked-up and in a clean version:

- by email to the addresses of the staff members concerned, with the subject line indicating the dossier number and the purpose of the message.

For purposes of clarity, the FSMA asks that each new version of a given document carry a version number, as well as the date of the last change, preferably in the upper right-hand corner.

For harmonised as well as non-harmonised prospectus dossiers, Article 43 of Commission Delegated Regulation (EU) 2019/980 must also be complied with.

3. Submission of the dossier to the FSMA

The version of the **prospectus** which is formally **submitted for approval** by the FSMA should be sent:

- by email to the addresses of the staff member(s) concerned, with the subject line indicating the dossier number and the purpose of the message.

For harmonised and non-harmonised prospectus dossiers, Article 44 of Commission Delegated Regulation (EU) 2019/980 must also be complied with.

If not yet done, the correctly completed **list** (Annex 1) is to be submitted along with the prospectus in the case of harmonised prospectus dossiers. The version of the **report or solicitation** for which the approval of the FSMA is being sought should be submitted:

by email to the addresses of the staff member(s) concerned, with the subject line indicating the dossier number and the purpose of the message.

⁷ Pursuant to the Commission Delegated Regulation (EU) 2018/815 of 17 December 2018.

⁸ That is, an operation on the subject of which the supervisory authority of another Member State has addressed a notification letter to the FSMA with regard to European passporting.

4. After the FSMA's decision

No later than by close of business of the day on which the FSMA's decision on a prospectus dossier⁹ is taken, the services will notify the relevant persons of this decision by email in accordance with Article 45 (3) of Commission Delegated Regulation (EU) 2019/980.

Immediately **upon receipt of the email** on the decision to approve the prospectus and for the purpose of complying with the notification obligations to ESMA which apply to harmonised prospectus dossiers, the final version of the **prospectus** in final layout and in printable and searchable electronic PDF format that cannot be modified needs to be submitted in each of the languages in which it will be published:

- by email to def.ems@fsma.be and to the addresses of the staff member(s) concerned, with the subject line indicating the dossier number and the purpose of the message.

The FSMA also requests that a **hyperlink** to the dedicated section of the website mentioned in Article 21 (3) of the Prospectus Regulation be sent together with the PDF version of the prospectus.

An approved universal registration document of an issuer whose securities are admitted to trading on a regulated market and that also serves as an annual financial report shall in any case be in XHTML format (not only in PDF format). IFRS consolidated financial statements in those universal registration documents must be marked up ("tagged") as required by the ESEF Regulation. Approved prospectuses are published by the FSMA on its website¹⁰. **If the prospectus should not be published immediately upon receipt of the definitive version of the prospectus, the FSMA requests that this be mentioned expressly in the email**, indicating the date when the prospectus may be published. The FSMA publishes the approved language version of the prospectus in searchable electronic PDF format (or, for universal registration documents that serve as annual financial report, in its XHTML version).

Immediately upon receipt of the FSMA's official letter of approval and before the launch of the transaction, (i) a PDF version of the approved **prospectus** signed by the persons responsible for the prospectus, in each of the languages in which it will be published; (ii) only for non-harmonized prospectus dossiers, a final version of the **prospectus** in final layout, in printable and searchable electronic PDF format that cannot be modified, in each of the languages in which it will be published; and (iii) also only for non-harmonized prospectus dossiers, a **hyperlink** to the dedicated section of the website, need to be submitted:

- by email to def.ems@fsma.be and to the addresses of the staff member(s) concerned, with, as subject line, the code mentioned in the FSMA's letter of approval and the name of the company.

If the **final terms** for the offer are not mentioned in the base prospectus and are not to be included in a supplement to the base prospectus, they must be submitted to the FSMA as soon as possible, and if possible before the launch of the transaction, in printable and searchable electronic PDF format that cannot be modified, by email to def.ems@fsma.be with, as subject line, the code mentioned in the FSMA's letter of approval, together with the list referred to in [Annex 1](#) and the translations of the

⁹ For harmonized and non-harmonized prospectus dossiers.

¹⁰ In accordance with Article 21 (5) of the Prospectus Regulation.

summary in separate document. The final terms need to be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market in accordance with Article 21 of the Prospectus Regulation.

The **signed report** or **final version of the solicitation** is sent by email to def.ems@fsma.be with, as subject line, the subject mentioned in the FSMA's letter of approval. The signed report needs to be uploaded on eCorporate as well.

5. Language

For **non-harmonised prospectus dossiers**, Article 9 of the Prospectus Law sets out the language requirements for the prospectus and the summary.

For **harmonised prospectus dossiers**, the FSMA accepts the following languages in accordance with Article 27 of the Prospectus Regulation¹¹:

- The prospectus must be drawn up in French, Dutch or English.
- The summary of the prospectus must be drawn up in or translated into French and Dutch. The translation will be the sole responsibility of the issuer, the offeror or the person responsible for drafting the prospectus. As an exception to this rule, (i) the summary can be translated into only one of those languages, provided that no advertisements or other documents or messages relating to the transaction are published in the other national language; and (ii) the summary does not need to be translated if the prospectus relates only to an admission of securities to trading on a regulated market in Belgium.

Compliance with any language laws, where applicable, remains the sole responsibility of the issuer/offeror.

For **documents** to be published for a **prospectus exemption** in connection with a takeover by means of a public exchange offer, a merger or a division, the FSMA accepts, pursuant to Article 5 of Delegated Regulation (EU) 2021/528¹², that the exemption document be drawn up in Dutch, in French or in English.

6. Technical details

Please make sure to observe the following:

- a) each document submitted by email should be saved as a separate file;
- b) it must be possible to read each file in an ordinary Windows environment;
- c) each file should be printable and in a searchable electronic format;

¹¹ By analogy with the language provisions of Article 9 of the Prospectus Law.

¹² Commission Delegated Regulation (EU) 2021/528 of 16 December 2020 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division ("Delegated Regulation EU) 2021/528"). Text available on the website of the FSMA.

- d) the sender is solely responsible for protecting the data (authentication, confidentiality, etc.). If an electronic signature or encryption process is used, the sender should contact the FSMA in order to determine the procedure to be used.

7. Summary table for dossiers submitted in request of a decision by the FSMA regarding a prospectus, a special report or a proxy solicitation

Steps	Type of document	By email to a central address	By email to the staff member(s) concerned
Submission of dossier	All documents + covering letter + list completed with available data (Annex 1) ¹³	yes, to intro.ems@fsma.be	no
		subject line of the email: freely chosen	
During examination of dossier	Modified documents	no	yes (full document, both marked-up and clean versions)
		subject line of the email: dossier number and the subject of the message	
Submission for approval to the FSMA	Version of the prospectus, together with fully completed list (Annex 1) ¹⁴ / report / solicitation to be submitted	no	yes
		subject line of the email: dossier number and the purpose of the message	
After the FSMA's decision	Immediately upon receipt of email on approval decision (only for harmonised prospectus dossiers): final version of the prospectus in final layout and in printable and searchable electronic PDF format (or XHTML format) that cannot be modified (1 PDF per language in each language) + hyperlink to the dedicated section of the website	yes, to def.ems@fsma.be	yes
	Immediately upon receipt of the FSMA's official letter of approval	yes, to def.ems@fsma.be	yes

¹³ List to be submitted for harmonised prospectus dossiers only.

¹⁴ The submission of this list is required only for harmonised prospectus dossiers.

	<p>and before the launch of the transaction:</p> <p>pdf-version of the approved prospectus signed by the persons responsible for the prospectus (1 PDF per language in each language)</p> <p>+ (for non-harmonized prospectus dossiers) final version of the prospectus in final layout and in printable and searchable electronic pdf-format that cannot be modified (1 PDF per language in each language)</p> <p>+ (for non-harmonized prospectus dossiers) hyperlink to the dedicated section of the website</p>	<p>subject line of the email: code mentioned in the FSMA's letter of approval and the name of the company</p>	
	<p>Final Terms, together with completed list (<u>Annex 1</u>) and the translations of the summary in separate documents</p> <p>in printable and searchable electronic pdf-format that cannot be modified (1 PDF per language in each language)</p>	<p>yes, to def.ems@fsma.be</p>	<p>no</p>
	<p>Signed report or final version of the solicitation</p>	<p>yes, to def.ems@fsma.be</p>	<p>no</p>
		<p>subject line of the email: cf. letter of approval</p>	

8. Summary table for dossiers submitted in request of the FSMA's approval of advertisements

Steps	Type of document	By email to a central address	By email to the staff member(s) concerned
Submission of dossier	All documents + covering letter	yes, to intro.ems@fsma.be (in the case of advertisements relating to prospectuses approved by the FSMA) or to intro.ems.passeport@fsma.be (in the case of advertisements relating to passported operations)	yes
		subject line of the email: freely chosen	
During examination of dossier	Modified documents	no	yes
		subject line of the email: dossier number and the purpose of the message	

- [Annex 1. Data to be reported for dossiers submitted to the FSMA pursuant to Article 20 of the Prospectus Regulation](#)