

# **GUIDANCE ON THE PROSPECTUS SCRUTINY AND APPROVAL PROCESS**

## 1 INTRODUCTION AND THE PURPOSE OF GUIDANCE

As part of its supervisory work, the Czech National Bank approves a prospectus for the purposes of an offer of securities to the public or the admission of securities to trading on a regulated market, or a part or specific variants thereof (a base prospectus for several security issues, an EU Growth prospectus, etc. – also referred to collectively as the “**prospectus**”), in order to provide potential investors with all the information they need to make an informed assessment of the security offered and its issuer.

On 21 July 2019, **Regulation (EU) 2017/1129 of the European Parliament and of the Council**, which defines a single regulatory framework for prospectuses at the level of EU law, took effect in its entire scope. The regulation ensures uniform EU-wide application of provisions directly imposing obligations on persons participating in offers of securities to the public and the admission of securities to trading on a regulated market. The procedure for the approval of the prospectus and the prospectus content requirements are further specified in **Commission Delegated Regulation (EU) 2019/980** and **Commission Delegated Regulation (EU) 2019/979** and also in Act No. 256/2004 Coll., on Capital Market Undertakings, as amended.

In accordance with the requirements set out in Article 20(7) of Regulation 2017/1129, the Czech National Bank is issuing these guidelines regarding the scrutiny and approval process for prospectuses to facilitate efficient and timely approval of prospectuses. The purpose of the guidelines is to provide issuers, offerors and persons applying for admission to trading on a regulated market (“**applicants**”) with information about the process of approval of a prospectus by the Czech National Bank, not to give a comprehensive overview of the legislation thereon and the obligations arising from it. In this regard, the Czech National Bank refers to the legal regulations and methodological documents listed at the end of these guidelines.

## 2 SUBMITTING A PROSPECTUS APPROVAL APPLICATION

Prospectuses are approved in administrative proceedings conducted under Act No. 500/2004 Coll., the Administrative Procedure Code, as amended, taking into account the specificities (especially time limits) set out in Regulation 2017/1129.

Application can be submitted in paper or electronic form. For practical reasons, an application in electronic form submitted via a data box is preferred.

Where the applicant decides to submit an application **in paper form**, the application must bear the signatures of persons authorised to act on behalf of the applicant.

Address for submitting an application in paper form: **Czech National Bank, Na Příkopě 28, 115 03 Prague 1**

An application submitted **in electronic form** is acceptable provided that it is:

- sent from the data box of the applicant or a nominee thereof to the data box of the Czech National Bank (ID: [8tgajej](#))
- sent via electronic mail to [podatelna@cnb.cz](mailto:podatelna@cnb.cz) and signed with the recognised electronic signature (advanced electronic signature based on a qualified certificate for electronic signatures or a qualified electronic signature) of the applicant or a nominee thereof in case of natural persons or a person (or persons) authorised to act on behalf of the applicant or a nominee thereof in case of legal persons.

It should be noted that, regardless of the chosen form of the application, the applicant is **always obliged to submit the draft of the prospectus in electronic form** in searchable format<sup>1</sup> and provide a contact point for subsequent electronic communication.

The Czech National Bank will acknowledge receipt of the application and inform applicant about the reference number of the application and the contact point for submitting inquiries regarding the application on the second working day following submission of the application at the latest.

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<sup>1</sup> A requirement set out in Article 42(1) of Regulation 2019/980.

### 3 ADMINISTRATIVE FEE FOR SUBMITTING AN APPLICATION

Items 66(9) (a), (b), (c), (r), (s), (t) and (u) of the list of administrative fees contained in the Annex to Act No. 634/2004 Coll., on Administrative Fees, as amended, stipulate the following fees for submitting an application:

- CZK **15,000** for an application for approval of a prospectus including a base prospectus;
- CZK **10,000** for an application for approval of an EU Growth prospectus, a simplified prospectus for secondary issuances, a registration document including an universal registration document;
- CZK **5,000** for an application for approval of a supplement to a prospectus, a request for omission of information from a prospectus and application for approval of a securities note and summary of a prospectus.

The fee is payable upon receipt of the application. To speed up the prospectus approval process, the Czech National Bank recommends that applicants should pay the administrative fee upon filing the application and give information regarding the payment in the application (or enclose a payment receipt).

The administrative fee can be paid either in cash at the Czech National Bank's cash offices or direct to the Czech National Bank's account (**107-69193891/0710**). The applicant's company identification number should be used as the variable symbol. The fee cannot be paid by attaching stamps.

### 4 CONTENT OF THE APPLICATION

The prospectus approval application should contain the following information/attachments:

- The application itself, clearly identifying the applicant and the subject matter of the application
- Contact details for subsequent electronic communication
- A power of attorney where the application is filed by a nominee
- Information (or a receipt) on the payment of the administrative fee if already paid
- A draft prospectus in searchable MS Word format enabling insertion of comments and revisions (Article 42(1) of Regulation 2019/980)
- All information incorporated by reference into the prospectus pursuant to Article 19(3) of Regulation 2017/1129, unless such information has already been filed with the Czech National Bank in searchable electronic format or approved by the Czech National Bank
- A list of cross references or annotations of the relevant items set out in the Annexes to Regulation 2019/980, indicated in the margin of the draft prospectus, together with a document that identifies items not incorporated into the draft prospectus (see below)
- Where appropriate, a justified request where omission of information from the prospectus is requested pursuant to Article 18 of Regulation 2017/1129
- Where appropriate, a request that the Czech National Bank make a notification pursuant to Article 25(1) or Article 26(2) of Regulation 2017/1129 (including, where appropriate, a translation of an appendix pursuant to Article 26(4) of Regulation 2017/1129)
- In the case of an issuer whose securities are admitted to trading on a European regulated market, a written confirmation of the issuer stating that all regulated information has been published and filed with the Czech National Bank in accordance with the law over the period since admission to trading on the regulated market or over the last 18 months, whichever is the shorter, where the issuer is seeking the status of frequent issuer pursuant to Article 9(11) of Regulation 2017/1129.

## 4.1 LIST OF CROSS REFERENCES

In order to comply with the requirement set out in Article 24(5) and (6) (or Article 25(6) and (7)) of Regulation 2019/980 and in the interests of efficient and timely prospectus approval, the Czech National Bank recommends that, at its own choice, applicant always submits either a list of cross references including identification of any items that have not been included in the draft prospectus due to the nature or type of issuer, securities, offer or admission to trading or (where the order of the information is the same as that presented in the Annexes to Regulation 2019/980) at least annotations of the relevant items in the margin of the draft prospectus together with a document that identifies any items that have not been included in the draft prospectus. The list of cross references shall be drawn up in the same language as the language of the draft prospectus submitted for approval. The final draft of the prospectus shall not be annotated in the margin.

In the case of the EU Growth prospectus, the list of cross references is not required.

## 4.2 CROSS-BORDER OFFERS

The applicant may request that a prospectus notification be sent to the competent authority of another Member State. Where the request is submitted together with the prospectus approval application, it shall be dealt with by the Czech National Bank within one working day following the approval of the prospectus. Where the request is submitted separately, the Czech National Bank shall deal with it within one working day following receipt thereof.

The Czech National Bank shall notify the relevant competent authority of the host Member State and the applicant with a certificate of approval attesting that the prospectus has been drawn up in accordance with Regulation 2017/1129 and with an electronic copy of that prospectus.

The prospectus shall comply with the language regime of the host Member State.

## 4.3 LANGUAGE OF THE PROSPECTUS

Pursuant to Article 27 of Regulation 2017/1129, Czech shall be regarded as the language accepted by the Czech National Bank where the prospectus is drawn up *only* for the purposes of *an offer to the public* in the Czech Republic where the issuer has no securities admitted to trading on a European regulated market. In other cases, English shall be deemed a language accepted by the Czech National bank in addition to Czech.

## 5 TIME LIMITS FOR A NOTIFICATION OF A DECISION REGARDING AN APPLICATION<sup>2</sup>

- The standard time limit for a notification of a decision concerning the approval of a prospectus is **10 working days** following the submission of the first draft prospectus or any subsequent revised draft prospectus;
- Where an application for the approval of a prospectus for the purposes of an offer of securities to the public is filed by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public, the time limit is **20 working days** from the submission of the first draft prospectus and **10 working days** from the submission of any subsequent revised draft prospectus;
- Where an application for the approval of an EU Recovery prospectus is filed by an issuer, the time limit is **7 working days** (provided that an issuer informs the Czech National Bank at least 5 working days before the date envisaged for the submission of an application for approval), which is applied also in case of every other revised draft of an EU Recovery prospectus;

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<sup>2</sup> A notification or an announcement of a decision here means the issuing of the decision pursuant to Article 71(2) of the Administrative Procedure Code.

- Where a frequent issuer applies for the approval of a prospectus consisting of separate documents (provided that the frequent issuer complies with the obligation to notify the Czech National Bank **5 working days** before the planned submission of the application), a time limit of **5 working days** from the submission of the first draft prospectus or any subsequent revised draft prospectus is applicable;
- The time limit for approval of a supplement to the prospectus is **5 working days** from the submission of the first draft of a supplement or any subsequent revised draft.

## 6 CHANGES TO A DRAFT PROSPECTUS DURING THE PROSPECTUS APPROVAL PROCESS

Each version of a draft prospectus submitted shall highlight changes made to the preceding draft. The changed version shall also be accompanied by an unmarked document and an explanation of how outstanding issues have been addressed. Where changes to the draft are self-explanatory or clearly address the outstanding issues, no further explanation is necessary.

Where the applicant is unable or unwilling to make the necessary changes or provide additional information, the Czech National Bank is entitled to reject approval of the prospectus and discontinue the proceedings.

## 7 CONTACT PERSONS FOR THE PURPOSES OF THE SCRUTINY AND APPROVAL PROCESS

The following employees of the Securities Issues Unit of the Securities and Regulated Markets Division of the Licensing and Enforcement Department are the contact persons for any enquiries regarding application for approval of prospectus:

<i>Jiřina Kalivodová</i>	<i>tel.: +420 224 412 729 / +420 736 524 123</i>	<i>e-mail: <a href="mailto:jirina.kalivodova@cnb.cz">jirina.kalivodova@cnb.cz</a></i>
<i>Karolina Hůzlová</i>	<i>tel.: +420 224 412 168 / +420 704 960 188</i>	<i>e-mail: <a href="mailto:karolina.huzlova@cnb.cz">karolina.huzlova@cnb.cz</a></i>
<i>Tomáš Pařízek</i>	<i>tel.: +420 224 413 979 / +420 704 960 190</i>	<i>e-mail: <a href="mailto:tomas.parizek@cnb.cz">tomas.parizek@cnb.cz</a></i>
<i>Jana Růzhová</i>	<i>tel.: +420 224 413 295 / +420 704 960 169</i>	<i>e-mail: <a href="mailto:jana.ruzhova@cnb.cz">jana.ruzhova@cnb.cz</a></i>
<i>Tomáš Zeman</i>	<i>tel.: +420 224 412 467 / +420 704 960 187</i>	<i>e-mail: <a href="mailto:tomas.zeman@cnb.cz">tomas.zeman@cnb.cz</a></i>

These employees can also be contacted with requests for a consultation or preliminary review of a draft prospectus before submitting an official application for approval of a prospectus. In such case, communication is informal via e-mail and takes the form of comments or revisions directly in the text of the draft prospectus, depending on the time available and outside the regime (time limits) stipulated by the relevant legal rules.

## 8 LEGISLATION AND METHODOLOGICAL DOCUMENTS

- [Regulation \(EU\) 2017/1129](#) – 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 (as amended by Regulation (EU) 2019/2115) as amended by [Regulation \(EU\) 2021/337](#) of the European Parliament and of the Council of 16 February 2021 amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries and Directive 2004/109/EC as regards the use of the single electronic reporting format for annual financial reports, to support the recovery from the COVID-19 crisis
- [Regulation \(EU\) 2019/979](#) – 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

- [Regulation \(EU\) 2019/980](#) – 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
- [Guidelines on disclosure requirements under the Prospectus Regulation](#)
- [ESMA Guidelines on Alternative Performance Measures](#)
- [ESMA Questions and Answers: Prospectuses](#) (updated version of 8 April 2019) – to the extent applicable with regard to Regulation (EU) 2017/1129
- [ESMA Questions and Answers on the Prospectus Regulation](#)
- [ESMA update of the CESR Recommendations](#)