

## PORSCHE: A MODEL FOR THE PAN-EUROPEAN RETAIL IPO

The Porsche IPO was the largest European IPO on record by market capitalization and involved the broadest retail offering in Europe to approximately 280 million people in six European countries

### INTRODUCTION

On September 20, 2022, the IPO of Dr. Ing. h.c. F. Porsche AG ("**Porsche**") was officially launched and a securities prospectus approved by the German regulator BaFin, with a price range of EUR 76.50 to EUR 82.50. On September 29, 2022, the IPO priced at the top of the price range, making the Porsche IPO the largest European IPO on record by market capitalization at around EUR 78 billion according to Porsche.<sup>1</sup> The deal is also the third largest European IPO by offer size, with approximately EUR 9.4 billion in preferred shares sold to the public, trumped only by two IPOs from the 1990s in excess of EUR 10 billion. The following table shows an overview over some of the largest European IPOs in history (based on public market sources):

Company	Market capitalization at IPO	Offer Volume (Deal Value)	Country and Sector	Year
<b>Porsche</b>	EUR 78 billion	EUR 9.4 billion	Germany / Automotive	2022
<b>EDF</b>	EUR 60 billion	EUR 7.5 billion	France / Energy	2005
<b>Rosneft</b>	EUR 56 billion	EUR 8.4 billion	Russia / Energy	2006
<b>Enel</b>	EUR 52 billion	EUR 16.5 billion	Italy / Energy	1999
<b>Glencore</b>	EUR 42 billion	EUR 7.1 billion	Switzerland / Mining	2011
<b>Deutsche Telekom</b>	EUR 39 billion	EUR 10.1 billion	Germany / Telecom	1996

The Clifford Chance team led by partner Dr. George Hackett advised the international banking syndicate of 15 banks on the Porsche IPO.

Listing on the Frankfurt Stock Exchange, the Porsche IPO not only made history with one of the largest offer sizes and market capitalizations at IPO in European history, it also involved an unprecedented, simultaneous retail

#### Key issues

- Unlike the US capital markets, European IPOs typically do not extend public offerings to retail investors beyond the issuer's home member state despite regulatory attempts to unify the European capital markets
- The Porsche IPO marks the first truly pan-European IPO involving public offers to retail investors in Germany, France, Italy, Spain, Austria and Switzerland and attracting a significant amount of retail demand in the order book
- A large-scale retail offering in several European countries involves challenges, however, for well-known brand IPOs it can offer significant advantages, allowing employees and customers to invest and increasing press coverage

<sup>1</sup> Porsche Newsroom, <https://newsroom.porsche.com/en/2022/company/porsche-ag-initial-public-offering-p911-frankfurt-stock-exchange-29830.html>

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offering in six European countries (Germany, France, Italy, Spain, Austria and Switzerland). Although most of the shares offered in an IPO are typically purchased by institutional investors in private sales, the Porsche IPO demonstrated a strong demand from European retail investors and showcased the benefits that a pan-European retail offering can provide for the right company.

While retail offerings in the US market commonly address a population of 330 million in US registered IPOs with listings on NASDAQ or the NYSE, retail offerings in Europe are often limited to the population of the home country of the issuer. There have been some successful IPOs involving more than one EU member state, however, large pan-European retail offerings in several European countries are not common. When taken together, the European jurisdictions could rival the US in terms of potential retail investor reach. This client briefing sets out the considerations and potential for future European retail IPOs that could be modelled after the Porsche IPO.

## THE EUROPEAN LEGAL REGIME FOR RETAIL OFFERINGS

In accordance with Regulation (EU) 2017/1129 (the “**Prospectus Regulation**”) any offer of securities to the public in an EU state requires an approved and valid securities prospectus. Article 2(d) of the Prospectus Regulation specifies that an offer of securities to the public means a communication to the public in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for these securities. Or in other words, any retail campaign that either offers or markets shares in an IPO to the public in an European Economic Area (“**EEA**”) state, can only be conducted on the basis of an approved securities prospectus. While there are several exceptions to the requirement to publish and use a securities prospectus to offer shares (such as for example a smaller sized offering), in a typical IPO of a sizeable company a securities prospectus is required both for the public offering and for the subsequent listing of the shares on the regulated markets of an exchange in the EEA.

According to the Prospectus Regulation, it is the capital markets authority in the home member state of the IPO issuer which is responsible for approving the securities prospectus. For Porsche, the German regulator BaFin had the authority to review and approve the prospectus. Under the Prospectus Regulation, an issuer can request that the prospectus approval is “*passport*ed”, *i.e.*, notified, to other European countries which are part of the EEA. In theory, this means that a securities prospectus can also be used for an offer to the public or to admit shares in every other EEA signatory state without requiring a new securities prospectus to be submitted and approved by the local supervisory authority of the other EEA states (although in practice in some jurisdictions drafts of the prospectus are reviewed by the host competent authority in connection with an application for admission to trading in that host EU member state). Although Switzerland is not a member of the EU or EEA, a similar approval regime can allow for the recognition of prospectuses that have been approved by another EU regulator.

While the passporting regime has in principle been set up so that issuers can easily use an approved securities prospectus in another EEA state, in practice

there are some key considerations that limit the use of the passporting system for IPOs, namely:

- the requirement to include a local language summary of the prospectus in the approved securities prospectus in many EEA jurisdictions and to announce certain offering relevant information in the local language;
- the market practice to include tax summaries for the relevant retail offerings in the securities prospectus from a liability management and disclosure perspective;
- specific local law actions in member states with a retail offering that go beyond the requirements in the Prospectus Regulation and which require coordination with legal advisors outside of the IPO issuer's home jurisdiction, thus increasing costs and coordination efforts;
- the requirement to have a bank coordinate the various retail offerings and take retail orders in each of the member states in which a retail offering is made;
- a divergence in practice for some specific requirements (e.g., while Germany only requires 6 business days for a retail offer period, other EEA member states have slightly longer offer periods); and
- variations in the applicable litigation and legal regimes in different EEA countries applying to public offerings of shares to retail investors.

The following table provides a general overview for retail offerings in key EEA countries (which together make up approximately 80% of the GDP of EEA countries):

Country	Population	Included in Porsche IPO	Authority	Local passport requirements <sup>2</sup>	Other notable information
<b>Germany</b>	84 million	Yes, home member state	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Yes, German summary	No additional filing requirements
<b>France</b>	68 million	Yes	Autorité des marchés financiers (AMF)	Yes, French summary	No additional filing requirements
<b>Italy</b>	60 million	Yes	Commissione Nazionale per le Società e la Borsa (Consob)	Yes, Italian summary	No additional filing requirements, but Italian retail offerings are typically conducted using a full Italian language prospectus
<b>Spain</b>	48 million	Yes	Comisión Nacional del Mercado de Valores (CNMV)	Yes, Spanish	No additional filing requirements
<b>Austria</b>	9 million	Yes	Finanzmarktaufsicht (FMA)	Only Austrian tax section	Additional filing in Austria required in connection with the offering and sale of shares

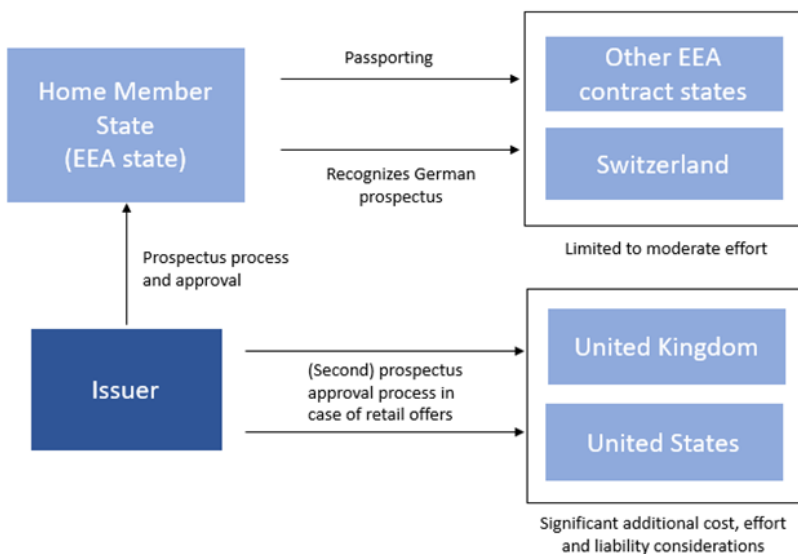
<sup>2</sup> Language requirements and authority as set out in ESMA, Languages accepted for scrutiny of the Prospectus (January 2020), [https://www.esma.europa.eu/sites/default/files/library/esma32-384-5080\\_language\\_document.pdf](https://www.esma.europa.eu/sites/default/files/library/esma32-384-5080_language_document.pdf)

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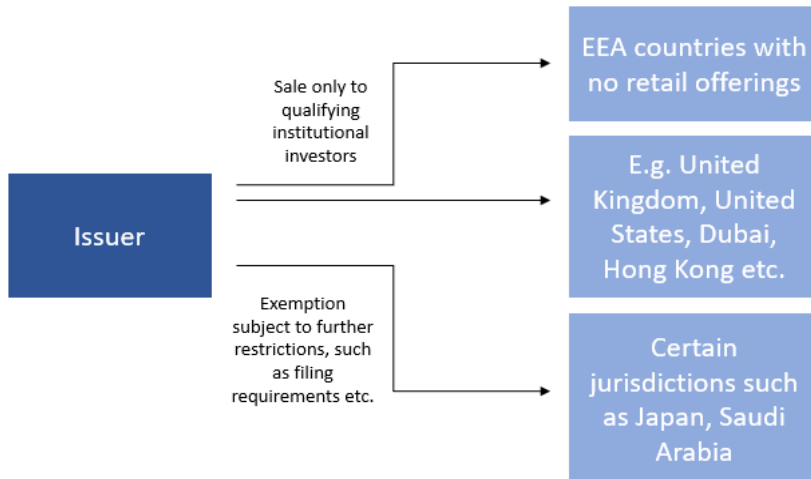
Country	Population	Included in Porsche IPO	Authority	Local passport requirements <sup>2</sup>	Other notable information
Switzerland	8.5 million	Yes	Eidgenössische Finanzmarktaufsicht (FINMA) / SIX Exchange Regulation Ltd (SIX)	Only Swiss tax section	Additional filing required with SIX (although Switzerland is technically not an EU or EEA member, German prospectuses approved by BaFin are automatically deemed approved once filed)
Netherlands	17.5 million	No	Autoriteit Financiële Markten (AFM)	Only Dutch tax section	No additional filing requirements, but additional prospectus liability considerations under Dutch law
Sweden	10.5 million	No	Finansinspektionen	Yes, Swedish summary for share offerings	No additional filings; Nordic retail IPO offerings common
Belgium	11.6 million	No	Financial Services and Markets Authority (FSMA)	Yes, both French and Dutch summaries generally required for retail offerings in all of Belgium	No additional filings
Norway	5.5 million	No	Finanstilsynet	Yes, Norwegian summary	Subscription & application form

Following the withdrawal of the United Kingdom from the European Union, the UK is now outside of the EU/EEA prospectus passporting regime. As a result, a retail offering in the UK by an EU incorporated issuer would require a separate prospectus to be prepared, reviewed and approved by the UK Financial Conduct Authority. Unlike in many EU jurisdictions, in the UK both the issuer and its directors have to take express responsibility for the content of the prospectus through the responsibility statement. In the Porsche IPO, no UK retail offering was conducted

## RETAIL OFFERS | OFFERS TO THE PUBLIC



## PRIVATE PLACEMENTS | SALES TO INSTITUTIONAL INVESTORS ONLY



A further important consideration when forming the banking syndicate for future pan-European IPOs is the designation of a bank to act as a central "retail coordinator" and selecting one or more representative banks to be responsible for conducting the retail offering in each designated jurisdictions with an offering to the public. In some cases, a single bank can also be named as the responsible underwriter for that country and given authority through a power of attorney to sign the underwriting agreement and act on behalf of multiple banks marketing to retail investors in that jurisdiction

## ECONOMIC CONSIDERATIONS FOR RETAIL OFFERINGS IN AN IPO

Initial public offerings of companies which have a strong brand awareness and/or have a cross-European footprint with a loyal customer group are strong candidates for IPOs with a pan-European retail offerings. More recently, a number of larger IPOs in Germany and elsewhere attracted significant retail demand, such as:

- the e-commerce IPO of Auto1 in Germany in 2021;
- the Synlab IPO in 2021, on which Clifford Chance advised as issuer's counsel;
- the Volvo Cars IPO in Sweden in 2021, on which Clifford Chance advised as issuer's counsel;
- the Allegro.eu IPO in Poland in 2020, on which Clifford Chance advised as issuer's counsel;

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- the Siemens Healthineers IPO in Germany in 2018, which included a significant retail campaign and eventually 7.6% of the offer volume was allocated to retail investors,<sup>3</sup> or
- the e-commerce IPO of Zalando in Germany, a well-known online retailer, in 2014.

Overall, strong brand names have the potential to attract significant retail demand as a percentage of the offer size (between 5% and 10% of the eventually allocated orders). As seen in the Porsche IPO, the retail component of all shares placed was 7.7% of the total placement volume of 113,875,000 shares, amounting to over EUR 700 million in volume allocated to retail investors. According to Porsche's press release on September 29, 2022<sup>4</sup>, there was significant demand above the allocated amount. While all orders up to 30 shares were fully allocated orders, orders above such amount were only allocated 23% of their orders, meaning the overall retail demand in the book was substantially higher than the allocated EUR 700 million.

Other significant economic benefits of retail offerings in an IPO include positive public attention and significant interest by the public post-listing. A company may also wish to build further loyalty and promote the ability of employees and customers to purchase shares in the IPO and potentially receive preferential allocations, which would be detailed in the securities prospectus.

### **RETAIL OFFERINGS BY EUROPEAN COMPANIES IN THE UNITED STATES**

Public offerings of shares in the United States can attract significant demand from the US public. As an example, when Ferrari conducted its IPO in 2015, it opted to publicly offer its shares in the United States, rather than in Italy. The approximately USD 900 million IPO of Ferrari was reportedly multiple times oversubscribed and benefited from significant demand from retail investors in the US in excess of USD 1 billion (thus covering more than the offered number of shares). This also allowed it to create a significant marketing campaign and have customers in one of the company's biggest markets participate in the IPO. As a result of the retail offering in the US, Ferrari listed its shares on the New York Stock Exchange in addition to a listing on the Euronext Milan.

A public offering of shares in the United States and a listing in the United States requires a Securities and Exchange Commission approved prospectus. In addition, a listing on, e.g., the NYSE or NASDAQ in the United States subjects a European company to US securities law liability and requirements, including regular reporting, risk management and US disclosure rules. As a result, while a US public offering can attract significant retail demand for a European company, the offering and listing in the US involves considerable initial legal and organizational efforts and ongoing US securities law compliance and reporting following the IPO.

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<sup>3</sup> Siemens Healthineers, <https://www.siemens-healthineers.com/press/releases/pr-20180316010hcn.html>

<sup>4</sup> Porsche Newsroom, <https://newsroom.porsche.com/en/2022/company/porsche-ag-initial-public-offering-p911-frankfurt-stock-exchange-29830.html>.

## **PRIVATE PLACEMENTS IN OTHER JURISDICTIONS**

Typically, large IPOs of European companies involve private sales to institutional investors in many jurisdictions where no public offerings are made, including the United States in particular pursuant to the private placement exemption under Rule 144A. In addition to the United States, private placements based on local securities laws exemptions are often made in other EEA countries, Canada, the UK, in the Middle East (*e.g.*, Dubai, Kuwait, Oman, Qatar, UAE) and in Asia (*e.g.*, Hong Kong, India, Japan or Australia).

For all jurisdictions which are targeted, it is typical to include disclosure in the offering circular used for the private placement that outlines the private placement exemption parameters. In several jurisdictions additional requirements for sales to institutional investors under private placement exemptions exist, for instance:

- Saudi Arabia requires filings with the Saudi regulator in relation to IPO sales to institutional investors which are not state-owned exempt investors;
- Offers and sales to institutional investors in Japan are limited to a total of 49 investors;
- Chinese onshore investors can be included in IPO private placements, but overall the private placement exemption is only available to a small group of investors; and
- Sales to Canadian investors may include post-IPO filings depending on the province in which the sales are made.

## **CONCLUSION**

Most of the demand in IPOs in Europe comes from institutional investors. Many German issuers in the past exclusively relied on private placements to institutional investors to sell the shares in the IPO including, *e.g.*, in the German IPOs of automotive supplier Novem or e-commerce company Bike24 in 2021 (on both of which the Clifford Chance team advised the underwriters). Securities prospectuses are then approved as pure listing prospectuses.

However, for companies that want to leverage related marketing aspects and retail demand benefits, public offerings are increasingly relevant for strengthened demand in the order book, increased brand recognition and for post-listing trading liquidity. Strong and well-known brand names such as Porsche do not only attract significant press coverage for an IPO, they also provide a unique opportunity for customers and employees as well as other members of the public to participate as investors in the public company.

The Porsche IPO is a unique example of a retail IPO simultaneously conducted in six European countries and targeting a population of 280 million, rivaling the public offerings of companies conducted in the US. We believe the Porsche IPO showcases a path for other companies with strong brand recognition and customer loyalty to conduct successful future retail offerings that give significant marketing exposure across Europe in key markets and allow a broad audience of retail investors to participate in an IPO. It remains to be seen if the EU legislator and EU member state regulators will take the opportunity following the Porsche IPO and potential subsequent pan-

# **C L I F F O R D**

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European retail IPOs to further integrate the European capital markets, removing the remaining barriers to cross-European IPO retail offerings.



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