

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**
UNDER
THE SECURITIES ACT OF 1933

ERYTECH Pharma S.A.
(Exact name of registrant as specified in its charter)

France
(State or other jurisdiction of
incorporation or organization)

Not applicable
(I.R.S. Employer
Identification No.)

**60 Avenue Rockefeller
69008 Lyon France**
(Address of principal executive offices) (Zip code)

**2020 Stock Option Plan
2020 AGA (Free Share) Plan
2021 Stock Option Plan
2021 AGA (Free Share) Plan
2021 BSA Subscription Plan**
(Full title of the plans)

**ERYTECH Pharma Inc.
One Main Street, Suite 300
Cambridge, Massachusetts 02142
+1 857 706 1585**
(Name and address of agent for service) (Telephone number, including area code, of agent for service)

Copies to:

**Marc A. Recht
Brian F. Leaf
Courtney T. Thorne
Cooley LLP
500 Boylston Street
Boston, Massachusetts 02116
+1 617 937 6000**

**Arnaud Duhamel
Guilhem Richard
Gide Loyrette Nouel A.A.R.P.I.
15 rue de Laborde
75008 Paris France
+33 1 40 75 00 00**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

| | | | |
|-------------------------|-------------------------------------|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/> | Accelerated filer | <input checked="" type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
| Emerging growth company | <input checked="" type="checkbox"/> | | |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the “Securities Act”), and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I of Form S-8 will be delivered to the participant in the plans covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents By Reference.

The following documents, which have been filed with the U.S. Securities and Exchange Commission (the “Commission”) by ERYTECH Pharma S.A. (the “Registrant”), are hereby incorporated by reference into this Registration Statement:

(a) The Registrant’s Annual Report on [Form 20-F](#) (File No. 001-38281) for the fiscal year ended December 31, 2021, filed with the Commission on April 27, 2022;

(b) the Registrant’s Reports on Form 6-K (File No. 001-38281) furnished to the Commission on [January 27, 2022](#) (including Exhibit 99.1 thereto), [February 10, 2022](#) (including Exhibit 99.1 thereto), [April 25, 2022](#) (including Exhibit 99.1 thereto), [April 28, 2022](#) (including Exhibit 99.1 thereto), [May 2, 2022](#) (including Exhibit 99.1 thereto), [May 13, 2022](#) (including Exhibit 99.1 thereto), [May 25, 2022](#) (including Exhibit 99.1 thereto), and [June 28, 2022](#) (including Exhibit 99.1 thereto); and

(c) the descriptions of the Registrant’s American Depositary Shares and Ordinary Shares contained in the Registrant’s Registration Statement on [Form 8-A](#) filed with the Commission on November 7, 2017 (File No. 001-38281) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including any amendment or report filed for the purpose of updating such description.

All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such reports and documents.

Any statement contained in this Registration Statement, in an amendment hereto or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed amendment to this Registration Statement or in any document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Under no circumstances shall any information subsequently furnished on Form 6-K be deemed incorporated herein by reference unless such Form 6-K expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Under French law, provisions of bylaws that limit the liability of directors are prohibited. However, French law allows *sociétés anonymes* to contract for and maintain liability insurance against civil liabilities incurred by any of their directors and officers involved in a third-party action, provided that they acted in good faith and within their capacities as directors or officers of the company. Criminal liability cannot be indemnified under French law, whether directly by the company or through liability insurance.

The Registrant has obtained directors and officers liability insurance for its directors and officers, which includes coverage against liability under the Securities Act. The Registrant has entered into agreements with its directors and executive officers to provide contractual indemnification. With certain exceptions and subject to limitations on indemnification under French law, these agreements provide for indemnification for damages and expenses including, among other things, attorneys' fees, judgments and settlement amounts incurred by any of these individuals in any action or proceeding arising out of his or her actions in that capacity.

These agreements may discourage shareholders from bringing a lawsuit against the Registrant's directors and executive officers for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and executive officers, even though such an action, if successful, might otherwise benefit the Registrant and its shareholders. Furthermore, a shareholder's investment may be adversely affected to the extent the Registrant pays the costs of settlement and damage awards against directors and officers pursuant to these insurance agreements.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant, the Registrant has been advised that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit Number | Description | Incorporated by Reference | | | |
|----------------|--|---------------------------|-------------|---------|--------------------|
| | | Schedule Form | File Number | Exhibit | Filing Date |
| 4.1 | Bylaws (<i>statuts</i>) of the Registrant (English translation) | 20-F | 001-38281 | 1.1 | April 27, 2022 |
| 4.2 | Amended and Restated Deposit Agreement | F-3 | 333-248953 | 4.2 | September 21, 2020 |
| 4.3 | Form of American Depositary Receipt (included in Exhibit 4.2) | F-3 | 333-248953 | 4.2 | September 21, 2020 |
| 5.1+ | Opinion of Gide Loyrette Nouel A.A.R.P.I. | | | | |
| 23.1+ | Consent of KPMG S.A., independent registered public accounting firm. | | | | |
| 23.2+ | Consent of Gide Loyrette Nouel A.A.R.P.I. (included in Exhibit 5.1). | | | | |
| 24.1+ | Power of Attorney (included on the signature page of this Form S-8). | | | | |
| 99.1 | Summary of BSA Plans | F-1 | 333-220867 | 10.12 | October 6, 2017 |
| 99.2 | 2020 Stock Option Plan | 20-F | 001-38281 | 4.27 | March 8, 2021 |
| 99.3 | 2020 Free Share Plan (English translation) | 20-F | 001-38281 | 4.28 | March 8, 2021 |
| 99.4 | 2021 Stock Option Plan | 20-F | 001-38281 | 4.31 | April 27, 2022 |
| 99.5 | 2021 Free Share Plan (English translation) | 20-F | 001-38281 | 4.32 | April 27, 2022 |
| 99.6 | Terms and Conditions of 2021 BSA Subscription Plan | 20-F | 001-38281 | 4.33 | April 27, 2022 |
| 107+ | Filing Fee Table | | | | |

+ Filed herewith.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Cambridge, Massachusetts (USA), on June 30, 2022.

ERYTECH Pharma S.A.

By: /s/ Gil Beyen

Name: Gil Beyen

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Gil Beyen and Eric Soyer, and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the U.S. Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---------------|
| <u>/s/ Gil Beyen</u> Gil Beyen | Chief Executive Officer and Director <i>(Principal Executive Officer)</i> | June 30, 2022 |
| <u>/s/ Eric Soyer</u> Eric Soyer | Chief Financial Officer, Chief Operating Officer and Deputy General Manager <i>(Principal Financial Officer and Principal Accounting Officer)</i> | June 30, 2022 |
| <u>/s/ Jean-Paul Kress</u> Jean-Paul Kress, M.D. | Chairman of the Board of Directors | June 30, 2022 |
| <u>/s/ Sven Andréasson</u> Sven Andréasson | Director | June 30, 2022 |
| <u>/s/ Philippe Archinard</u> Philippe Archinard, Ph.D. | Director | June 30, 2022 |
| <u>/s/ Luc Dochez</u> Luc Dochez, Pharm.D. | Director | June 30, 2022 |
| <u>/s/ Martine Ortin George</u> Martine Ortin George, M.D. | Director | June 30, 2022 |
| <u>Melanie Rolli</u> | Director | |
| <u>/s/ Hilde Windels</u> Hilde Windels | Director | June 30, 2022 |

SIGNATURE OF AUTHORIZED U.S. REPRESENTATIVE

Pursuant to the Securities Act of 1933, as amended, the undersigned, the duly authorized representative in the United States of ERYTECH Pharma S.A., has signed this registration statement on June 30, 2022.

ERYTECH PHARMA, INC.

By: /s/ Gil Beyen

Name: Gil Beyen

Title: President



June 30, 2022

ERYTECH Pharma S.A.
60 avenue Rockefeller
69008 Lyon
France

Re: Registration Statement on Form S-8 of ERYTECH Pharma S.A.

Ladies and Gentlemen:

We are acting as special French counsel for ERYTECH Pharma S.A. (the "Company"), a French *société anonyme*, in connection with the filing of the Registration Statement on Form S-8 (the "Registration Statement") relating to the registration of up to 722,613 ordinary shares of the Company, par value €0.10 per share (the "Shares") pursuant to the Company's 2020 Stock Option Plan, 2020 AGA (Free Share) Plan, 2021 Stock Option Plan, 2021 AGA (Free Share) Plan, and 2021 BSA Subscription Plan (collectively, the "Plans").

In connection with the opinion expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of such opinion. We have assumed the genuineness and authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as copies thereof. In rendering this opinion, as to certain factual matters, we have, with your consent, relied upon oral and written representations of officers of the Company with respect to the accuracy of the factual matters addressed in such representations. Based on the foregoing, and subject to the further limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares that may be issued pursuant to the Plans have been duly authorized by the relevant extraordinary general meetings of the Company's shareholders and, when issued in accordance with the respective Plans and against payment of due consideration therefor (to the extent applicable), will be validly issued, fully paid and non-assessable.

The opinion expressed herein is limited to the laws of France as currently in effect, and we express no opinion as to the effect of the laws of any other jurisdiction. We have assumed that the Company will take no action inconsistent with the Plans and the resolutions authorizing the Company to issue the Shares. We have also assumed that (1) the resolutions authorizing the Company to issue the Shares pursuant to the respective Plans as adopted by the extraordinary shareholders' meeting, the Board of Directors (the "**Board**") and, if applicable, the chief executive officer (*président directeur général*) of the Company have not been or will not be amended or superseded, have been or will be duly passed at duly convened and held meetings and, with respect to the Board, of duly appointed members (2) the resolutions authorizing the Company to issue the Shares pursuant to the respective Plans as adopted by the extraordinary shareholders' meeting, the Board and, if applicable, the chief executive officer (*président directeur général*) of the Company and the applicable award agreements have been or will be in full force and effect on the date of such awards and (3) for any future awards under the Plans, such future awards will be approved by the Board and, if applicable, the chief executive officer (*président directeur général*) of the Company in accordance with applicable law and with the terms of the relevant Plan. We do not undertake or accept any obligation to update this opinion to reflect subsequent changes in French law or factual matters arising after the date of effectiveness of this Registration Statement.

This opinion is subject to any limitation arising from ad hoc mandate (*mandat ad hoc*), conciliation (*conciliation*), accelerated safeguard (*sauvegarde accélérée*), safeguard (*sauvegarde*), judicial reorganisation (*redressement judiciaire*), judicial liquidation (*liquidation judiciaire*) (including a provision that creditors' proofs of debts denominated in foreign currencies would be converted into euros at the rate applicable on the date of the court decision instituting the accelerated safeguard (*sauvegarde accélérée*), the accelerated financial safeguard (*sauvegarde financière accélérée*), the safeguard (*sauvegarde*), the judicial reorganisation (*redressement judiciaire*) and the judicial liquidation (*liquidation judiciaire*) proceedings), insolvency, moratorium and other laws of general application affecting the rights of creditors.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement filed by the Company to effect registration of the Shares to be issued and sold pursuant to each Plan under the Securities Act of 1933, as amended (the "Act"). In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder.

/s/ Arnaud Duhamel
Very truly yours,
Gide Loyrette Nouel A.A.R.P.I.



KPMG SA
51 rue de Saint-Cyr
CS 60409
69338 Lyon Cedex 9
France

Téléphone : +33 (0)4 37 64 76 00
Télécopie : +33 (0)4 37 64 76 09
Site internet : www.kpmg.fr

Erytech Pharma S.A.

Head office: 60, avenue Rockefeller - 69008 - Lyon

Consent of independent Registered Public Accounting Firm

We consent to the use of our report dated April 27, 2022, with respect to the consolidated financial statements of Erytech Pharma S.A., incorporated herein by reference.

Lyon, June 30, 2022

KPMG S.A.

/s/ Stéphane Gabriel Devin

Stéphane Gabriel Devin
Partner

KPMG S.A.,
société française membre du réseau KPMG
constitué de cabinets indépendants adhérents de
KPMG International Limited, une entité de droit anglais.

Société anonyme d'expertise
comptable et de commissariat
aux comptes à directoire et
conseil de surveillance.
Inscrite au Tableau de l'Ordre
à Paris sous le n° 14-30080101
et à la Compagnie Régionale
des Commissaires aux Comptes
de Versailles.

Siège social :
KPMG S.A.
Tour Eqho
2 avenue Gambetta
92066 Paris la Défense Cedex
Capital : 5 497 100 €.
Code APE 6920Z
775 726 417 R.C.S. Nanterre
TVA Union Européenne
FR 77 775 726 417

Calculation of Filing Fee Table

Form S-8
(Form Type)

ERYTECH Pharma S.A.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered

| Security Type | Security Class Title(1) | Fee Calculation Rule | Amount Registered(2) | Proposed Maximum Offering Price Per Unit | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|----------------------------|--|----------------------|------------------------|--|----------------------------------|-------------|----------------------------|
| Equity | Ordinary shares, €0.10 nominal value per share, 2020 Stock Option Plan | Rule 457(h) | 28,000 | \$5.04 ⁽³⁾⁽⁴⁾ | \$141,120 | \$0.0000927 | \$13.09 |
| Equity | Ordinary shares, €0.10 nominal value per share, 2020 AGA (Free Share) Plan | Rule 457(c) and (h) | 40,165 ⁽⁵⁾ | \$1.11 ⁽⁶⁾ | \$44,584 | \$0.0000927 | \$4.14 |
| Equity | Ordinary shares, €0.10 nominal value per share, 2021 Stock Option Plan | Rule 457(h) | 351,150 | \$3.42 ⁽³⁾⁽⁴⁾ | \$1,200,933 | \$0.0000927 | \$111.33 |
| Equity | Ordinary shares, €0.10 nominal value per share, 2021 AGA (Free Share) Plan | Rule 457(c) and (h) | 289,798 ⁽⁵⁾ | \$1.11 ⁽⁶⁾ | \$321,676 | \$0.0000927 | \$29.82 |
| Equity | Ordinary shares, €0.10 nominal value per share, 2021 BSA Subscription Plan | Rule 457(h) | 13,500 | \$4.03 ⁽³⁾⁽⁴⁾ | \$54,405 | \$0.0000927 | \$5.05 |
| Equity | Options and Warrants and Rights to Purchase or Acquire Ordinary Shares | Rule 457(i) | 722,613 | — | — | — | — |
| Total Offering Amounts | | | | | \$1,762,718 | | \$163.43 |
| Total Fees Previously Paid | | | | | | | — |
| Total Fee Offsets | | | | | | | — |
| Net Fee Due | | | | | | | \$163.43 |

(1) These ordinary shares of ERYTECH Pharma S.A. (the “Registrant”), €0.10 nominal value per share (“Ordinary Shares”), may be represented by the Registrant’s American Depositary Shares (“ADSs”), each of which represents one Ordinary Share. The Registrant’s ADSs issuable upon deposit of the Ordinary Shares registered hereby were registered pursuant to a separate registration statement on Form F-6 (File No. 333-201279), as amended.

(2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional Ordinary Shares of the Registrant that become issuable under the Registrant’s 2020 Stock Option Plan, 2020 AGA (Free Share) Plan, 2021 Stock Option Plan, 2021 AGA (Free Share) Plan and 2021 BSA Subscription Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding Ordinary Shares.

(3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act on the basis of the weighted average exercise price per Ordinary Share (rounded up to the nearest cent).

(4) For those options or warrants outstanding under the Registrant's 2020 Stock Option Plan, 2021 Stock Option Plan or 2021 BSA Subscription Plan with an exercise price denominated in euros, such exercise price is expressed in U.S. dollars based on the European Central Bank exchange rate on June 24, 2022 (€1.00=\$1.0524).

(5) Represents Ordinary Shares issuable upon settlement of Attributions Gratuites d'Actions ("free shares" or "AGAs") granted by the Registrant.

(6) Estimated in accordance with Rule 457(c) and Rule 457(h) of the Securities Act solely for purposes of calculating the registration fee, and is based upon the price of \$1.11 per ADS, which was the average of the high and low prices of the Registrant's ADSs as reported on the Nasdaq Global Select Market for June 24, 2022 (rounded up to the nearest cent).