

Securities: offer to the public and harmonisation of transparency requirements

2009/0132(COD) - 23/09/2009 - Legislative proposal

PURPOSE: to amend Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: the European Council agreed, at its meeting on 8 and 9 March 2007, that administrative burdens on companies should be reduced by 25% by the year 2012 in order to enhance the competitiveness of companies in the Community.

[Directive 2003/71/EC](#) of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC has been identified by the Commission as one piece of legislation that contains a number obligations for companies, some of which seem burdensome. Those obligations need to be reviewed in order to reduce the burdens weighing on companies within the Community to the necessary minimum without compromising the protection of investors and the proper functioning of the securities markets in the Community.

In order to further enhance investor protection and thus respond effectively to the current financial crisis, the summary of the prospectus should be improved in terms of simplicity and readability. This exercise will be consistent with the approach to be adopted following the Commission's Communication on Packaged Retail Investment Products, which aims for horizontal requirements on pre-contractual disclosures and selling practices for a wide range of retail investment product types ([COM\(2009\)0204](#)).

This exercise is linked to the [European Economic Recovery Plan](#) and the financial services reform announced in the Communication of 4 March for the Spring European Council "Driving European Recovery" (see [COM\(2009\)0114](#)).

IMPACT ASSESSMENT: policy options were considered for the following topics:

- divergent definitions of qualified investors in the Prospectus Directive and professional clients in [Directive 2004/39/EC on markets in financial instruments](#) (MiFID);
- restriction of the choice of home Member State for the issuers of non-equity securities below EUR 1 000;
- clarification of the requirements in the Directive in case of subsequent placements of securities through financial intermediaries (retail cascade);
- regime for Employees Shares Schemes in the Directive;
- functioning of the summary of the prospectus;
- burdensome disclosure requirements in case of rights issues of listed companies, offers of non-equity securities issued by credit institutions above the threshold mentioned in the Directive, and offers of securities of issuers with reduced market capitalization;
- lack of harmonized liability rules;
- burdensome disclosure regime for government guarantee schemes;
- duplication of disclosure requirements;
- requirements in the Directive relating to the printed form of the prospectus;
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clarification of the obligation to supplement a prospectus and the exercise of the right of withdrawal provided by the Directive;

- requirements in the Directive relating to the translation of the summary of the prospectus.

Each policy option was assessed against the **following criteria**: investor protection, consumer confidence, efficiency, clarity and legal certainty, and reduction of disproportionate and administrative burdens. In view of the conclusions reached in the impact assessment, the European Commission considers appropriate to present a proposal amending the Prospectus Directive in order to address the following issues: (i) retail cascade; (ii) definition of qualified investor/professional client; (iii) exercise of the right of withdrawal; (iv) lack of harmonised rules on liability; (v) summary of the prospectus; (vi) employee shares schemes; (vii) duplication of transparency obligations; (viii) choice of home Member State for the issuers of non-equity securities; (ix) rights issues; (x) small quoted companies and small credit institutions; (xi) government guarantee schemes.

The impact assessment shows that the preferred options will have positive impacts for investors, companies raising capital, financial intermediaries, employees and SMEs. The identifiable reduction of administrative burdens from the preferred options amounts to approximately **EUR 302 million on an annual basis**.

CONTENT: the overarching goal of the current proposal is to simplify and improve the application of the Prospectus Directive, increasing its efficiency and enhancing the EU's international competitiveness, bearing in mind the importance of enhancing the level of investor protection envisaged in the Directive and ensuring that the information provided is sufficient and adequate to cover the needs of retail investors, particularly in the context of the financial market turbulence that started in 2007.

The main elements of the proposed directive are as follows:

Calculation methods of maximum offering amounts: the way limits of maximum offering amounts are calculated in the Directive may lead to varying interpretations in the different Member States. Therefore, for reasons of certainty and efficiency, it should be clarified that the total consideration of the offers mentioned in the Directive should be computed on a Community wide basis and not on a country-by-country basis. Moreover, as the limits set out in the Directive may eventually become outdated, in order to take account of the technical developments in the financial markets and to ensure uniform application of the Directive, the Commission shall be empowered to adopt implementing measures in relation to these limits. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny.

Retail cascade: it is proposed to amend the Prospectus Directive in order to clarify that intermediaries should not be obliged to produce a new prospectus for each subsequent offer as long as they have the possibility to use the initial prospectus of the issuer (with the condition that such a prospectus is valid in accordance with the Directive).

Definition of qualified investor/professional client: the definition of qualified investor should be modified to encompass the persons that are considered professional clients under MiFID.

Exercise of the right of withdrawal: the time frame for the exercise of the right of withdrawal in the Prospectus Directive should be harmonised in all EU Member States; nevertheless issuers should have the possibility to expand the time frame voluntarily.

Lack of harmonised rules on liability: the harmonisation of the liability standards is a goal that exceeds the Prospectus Directive. It is proposed to keep the status quo as regards this issue.

Summary of the prospectus: the content of the summary of the prospectus should be standardised following the approach adopted by the European Commission in its Communication on Packaged Retail Investment Products.

Employee shares schemes: the exemption for employee shares schemes in the Prospectus Directive should be extended to employees of companies listed in markets other than EU regulated markets and non-listed companies.

Duplication of transparency obligations: the disclosure requirements in the Prospectus Directive should be abolished.

Choice of home Member State for the issuers of non-equity securities: issuers of non-equity should be entitled to choose a home Member State regardless of the denomination per unit of the offer. The threshold of EUR 1000 should be deleted from the Prospectus Directive.

Rights issues: it is proposed to introduce the principle of a reduced disclosure regime for prospectuses for rights issues in the Directive; this regime should be supplemented through implementing measures, i.e. a modification in the implementing regulation.

Small quoted companies and small credit institutions: the raise of capital of small quoted companies and small credit institutions should be subject to "proportionate" disclosure requirements. Article 5 of the Prospectus Directive should reflect this principle and the European Commission should be empowered to put in place implementing legislation specifying the disclosure requirements in this regard.

Government Guarantee Schemes: the Prospectus Directive should clarify that issuers of securities guaranteed by a Member State are not obliged to include in the prospectus information about the State guarantor (though it should contain information about the guarantee).

BUDGETARY IMPLICATION: the proposal has no implication for the Community budget.