

Securities: offer to the public and harmonisation of transparency requirements

2009/0132(COD) - 24/11/2010 - Final act

PURPOSE: reduce administrative burdens relating to the publication of a prospectus in the case of offers of securities to the public and admission to trading in regulated markets within the Union.

LEGISLATIVE ACT: Directive 2010/73/EU of the European Parliament and of the Council amending 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.

CONTENT: the Council adopted a directive aimed at **simplifying rules on prospectuses for securities and on information about the issuers of transferable securities on financial markets**, whilst at the same time upgrading investor protection. The directive incorporates all amendments voted by the Parliament in first reading on 17 June 2010.

The text, which amends directives 2003/71/EC and 2004/109/EC, is part of a legislative simplification plan agreed by the European Council in March 2007 with the aim of boosting the competitiveness of European companies by reducing administrative burdens that generate costs and inefficiencies.

However, the Commission's review also revealed some deficiencies, and the new directive sets out to improve legal clarity and reduce the burdens imposed on issuers and intermediaries.

In particular, cost savings are expected to be generated by:

- reducing disclosure requirements for companies with reduced market capitalisation;
- the removal of rules leading to double transparency obligations;
- exemption of employee shares schemes from the obligation to publish a prospectus;
- reducing disclosure requirements for raising capital through rights issues;
- excluding detailed information on the financial situation of the guarantor in the case of government guarantee schemes.

It is considered that the **potential savings** to be created by these measures is estimated to be up to **EUR 302 million per year**.

The directive is also aimed at **enhancing the level of investor protection** and ensuring that information provided about the issuers of securities is sufficient so as to allow investors to analyse prospects and risks, particularly in the light of lessons learned during the financial crisis.

The **summary of the prospectus** should be a key source of information for retail investors. It should be a self-contained part of the prospectus and should be short, simple, clear and easy for targeted investors to understand. It should focus on **key information** that investors need in order to be able to decide which offers and admissions of securities to consider further. The format and content of the summary of the

prospectus shall provide, **in conjunction with the prospectus**, appropriate information about essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities. Such key information should convey the essential characteristics of, and risks associated with, the issuer, any guarantor, and the securities offered or admitted to trading on a regulated market.

It should also provide the general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror, and indicate the total estimated expenses, since these could be substantial. It should also inform the investor of any rights attaching to the securities and of the risks associated with an investment in the relevant security. The format of the summary should be determined in a way that allows comparison of the summaries of similar products by ensuring that equivalent information always appears in the same position in the summary.

Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100 000, there shall be no requirement to provide a summary, save where a Member State so requires.

Member States shall ensure that **no civil liability** shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus. The summary shall contain a clear warning to that effect.

A prospectus shall be **valid for 12 months after its approval**.

Review: by 1 January 2016, the Commission shall assess its application, in particular with regard to the application and the effects of the rules, including liability, regarding the summary with key information, the impact of the exemption provided for in the Directive on the protection of employees and the proportionate disclosure regime and the electronic publication of prospectuses and it shall review the Article in relation to the limitation on the determination of the home Member State for issues of non-equity securities with a denomination below EUR 1 000 in order to consider whether that provision should be maintained or revoked.

The Commission shall also assess the need to revise the definition of the term ‘public offer’ and the need to define the terms ‘primary market’ and ‘secondary market’ and, in this respect, shall fully clarify the links between Directive 2003/71/EC and Directives 2003/6/EC and 2004/109/EC. Following its assessment, the Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals to amend Directive 2003/71/EC.

ENTRY INTO FORCE: 31/12/2010.

TRANSPOSITION: 01/07/2012.