

# Capital market: prospectus to be published for securities

2001/0117(COD) - 13/04/2015 - Follow-up document

The Commission presented a report on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to 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.

Adopted in November 2003, the Prospectus Directive (PD) was amended in November 2010 by [Directive 2010/73/EU](#) ("PD II", in application from July 2012). It was last amended by [Directive 2014/51/EU](#) (the "Omnibus II" Directive). The PD II includes a review clause requiring the Commission to assess by 1 January 2016 the application of the PD as amended by PD II.

**Delegation of power:** the Prospectus Directive (PD) empowers the Commission to adopt delegated acts for a **period of 4 years from 31 December 2010**. The Commission shall draw up a report in respect of the delegated power at the latest 6 months before the end of the four year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it.

## Exercise of the delegation:

**Article 1(4), Article 2(4), Article 3(4) of the PD:** to date, an adjustment of the thresholds and definitions were not undertaken by the Commission. The definitions and thresholds will be assessed in the course of the review required by the PD II, by 1 January 2016.

**Article 4(1) fifth subparagraph of the PD:** to date, no requests for such assessments were made to specify the criteria for the equivalence of third-country regulatory frameworks. Furthermore, the equivalence assessment can be done directly. All equivalence provisions for third countries will be assessed in the course of the review required by Article 4 PD II, by 1 January 2016.

**Article 5(5) and Article 7(1) of the PD:** the Commission has used these empowerments to adopt the following **three Commission Delegated Regulations**:

- [Commission Delegated Regulation \(EU\) No 486/2012](#) amending Regulation (EC) No 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements.
- [Commission Delegated Regulation \(EU\) No 862/2012](#) amending Regulation (EC) No 809/2004 as regards information on the consent to use of the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors.
- [Commission Delegated Regulation \(EU\) No 759/2013](#) amending Regulation (EC) No 809/2004 as regards the disclosure requirements for convertible and exchangeable debt securities.

**Article 8(4) PD:** this empowerment has not been used because discussions with the European Securities and Markets Authority (ESMA) and National Competent Authorities (NCAs) have not shown the need to further specify details about the omission of information from the prospectus.

**Amendment of the "Omnibus II" Directive:** the "Omnibus II" Directive amended the empowerment contained in Article 11(3), Article 13(7), Article 14(8) and Article 15(7) of the PD. The amended

empowerment confers the power on ESMA to develop draft regulatory technical standards (RTS) to specify:

- the approval of the prospectus and the conditions in accordance with which time limits may be adjusted;
- the provisions relating to the publication of the prospectus;
- the provisions concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and specify certain provisions.

ESMA is to submit these draft regulatory technical standards to the Commission, for adoption, **by 1 July 2015**. The Commission is empowered to adopt the standards in question in accordance with Regulation in accordance with [Regulation \(EU\) No 1095/2010](#). ESMA undertook a public consultation on the draft RTS which closed on 19 December 2014.

**Article 20(3) PD first subparagraph:** to date, the Commission has not used the empowerment to adopt delegated acts establishing general equivalence criteria for third country prospectuses. The issue of general equivalence criteria for third country prospectuses will be assessed in the course of the review required by PD II, by 1 January 2016.