Prospectus to be published when securities are offered to the public or admitted to trading

2015/0268(COD) - 30/11/2015 - Legislative proposal

PURPOSE: to reform the prospectus rules in order to enhance investor protection and market efficiency while establishing the Capital Markets Union.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: Directive 2003/71/EC of the European Parliament and of the Council laid down harmonised principles and rules on the prospectus to be drawn up, approved and published when securities are offered to the public or admitted to trading on a regulated market.

The Directive, which was revised in 2010 (Directive 2010/73/EU), aimed to make it easier and cheaper for companies to raise capital throughout the Union.

Prospectuses are legally required documents presenting information about a company. This information aims to be the basis on which investors can decide whether to invest in a variety of securities issued by that company. **A harmonised EU prospectus is an essential tool to integrate capital markets throughout the Union.** Once the competent authority of an EEA Member State approves a prospectus, this prospectus can be used to raise capital by means of a public offer or admission to a regulated market in other Member States.

Although the prospectus regime functions well overall, the Commission's evaluation of the Directive in 2015 shows that **certain requirements of the Prospectus Directive might still be improved to alleviate administrative burden for companies** which draw up a prospectus (especially SMEs) and to make the prospectus a more valuable information tool for potential investors.

The reform of the prospectus rules was announced in the Investment Plan for Europe and is an important step to build the Capital Markets Union. It aims particularly to: (i) reduce fragmentation in financial markets; (ii) increase investor protection in capital markets.

The purpose of the revision of the Prospectus Directive is to provide all types of issuers with disclosure rules, which are tailored to their specific needs while making the prospectus a more relevant tool of informing potential investors. The proposed measures aim to:

- **reduce the administrative burden** of drawing up of prospectus for all issuers, in particular for SMEs, frequent issuers of securities and secondary issuances;
- make the prospectus **a more relevant disclosure tool for potential investors,** especially in SMEs; and
- achieve **more convergence** between the EU prospectus and other EU disclosure rules.

In order to do this, the Commission proposes to **transform the Directive into a Regulation** in order to enhance coherence and integration throughout the internal market, while reducing divergent and fragmented rules across the Union, in coherence with the goals of the Capital Markets Union.

IMPACT ASSESSMENT: the impact assessment provides a summary of the different alleviations and investor protection measures chosen as well as their impact on relevant stakeholders and the overall market in which these stakeholders operate. It concludes that the proposed "package" will **result in a reduction in the administrative burden for issuers, will make access to capital markets for SMEs easier and cheaper and improve investor protection** by improving the appropriateness of the disclosure documents and ultimately enlarging choice of prospectus-based securities. This should then translate into further integration of capital markets in the Union in the form of more prospectus-based securities being offered across borders and greater transparency and comparability.

CONTENT: the new proposal for a regulation aims to **modernise the prospectus rules** to facilitate raising money and simplify information for investors. It introduces the following main changes with regard to the current Directive:

Scope of the prospectus obligation (new thresholds): the proposal provides that no prospectus is required under this Regulation for offers of securities with a consideration **below EUR 500 000.** Furthermore, Member States will also be able to set higher thresholds for their domestic markets, and the proposal doubles this threshold from EUR 5 million **to EUR 10 million.**

Definitions: the main change concerns the definition of SME, thereby raising to **EUR 200 million** the EUR 100 million threshold that previously defined "companies with reduced market capitalisation".

Prospectus summary: this should be modelled as much as possible after **the key information document** required under Regulation (EU) No 1286/2014 and is subject to a maximum length of 6 sides of A4- sized paper when printed (characters of readable size must be used). **Liability** attaches to the summary only if it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

The base prospectus: a base prospectus may now be drawn up for **any kind of non-equity securities**, not only for those issued under an offering programme or in a continuous and repeated way by credit institutions. Base prospectuses consisting of several documents (the so-called "tripartite prospectus") are now possible, and the registration document of a base prospectus may take the form of a universal registration document.

The universal registration document: the proposal contains detailed rules on the new "universal registration document", an **optional shelf registration mechanism for "frequent issuers**" admitted to trading on regulated markets or multilateral trading facilities. The competent authority should be able to scrutinise the remaining documents (securities note and summary) within 5 working days, instead of the current 10.

Simplifying secondary issuance for listed firms: issuers whose securities are already listed on a regulated market (this category accounts for around 70% of all prospectuses approved in a given year), or the future SME growth market, should enjoy the benefit of an **alleviated prospectus for their secondary issuances.** The alleviated regime for secondary issuances will apply to offers or admissions concerning securities issued by companies already admitted to trading on a regulated market or an SME growth market for at least 18 months.

Specific disclosure regime for SMEs: the specific regime for SMEs will allow these companies to draw up a distinct prospectus in case of an offer of securities to the public. This kind of prospectus should however not be available to SMEs admitted to trading on regulated markets to avoid creating a two-tier disclosure standard on regulated markets which might undermine investor confidence. In addition, a **new optional "question and answer" format** is expected to help SMEs in drawing up their own prospectus, thus saving considerable legal fees.

Treatment of non-equity securities with a high denomination per unit: the favourable treatment granted by the Prospectus Directive to non-equity securities with a **denomination per unit of EUR 100 000 or above** have led to unintended consequences, creating distortions in the European bond markets and making a significant share of bonds issued by investment-grade companies inaccessible to a wider number of investors. The proposal therefore **removes the incentives to issue debt securities in large denominations** with a view to removing one of the barriers to secondary liquidity on European bond markets. For non-equity securities admitted to trading on a regulated market, the **dual standard of disclosure** (retail / wholesale) is removed. Furthermore, the prospectus exemption for offers of securities with a denomination above EUR 100 000 is removed.

Publication of the prospectus: the prospectus shall be deemed available to the public when **published in electronic form** either on the website of the issuer, the offeror or the person asking for admission (or, if applicable, of the financial intermediaries placing or selling the securities) or on the website of the regulated market where the admission to trading is sought, or of the operator of the multilateral trading facility. The **European Securities and Markets Authority** (ESMA) will develop an online storage mechanism with a search tool that EU investors may use for free.

BUDGETARY IMPLICATIONS: the proposal will have budgetary implications for ESMA **(EUR 3.884 million for the period 2016-2019)** in two respects: (i) ESMA will have to prepare regulatory and implementing technical standards and (ii) it will have to upgrade its existing prospectus register and to transform it into an online storage mechanism with a search tool that the public can use for free to access and compare EU prospectuses from a single location.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.