

Basic information	
2009/0132(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Securities: offer to the public and harmonisation of transparency requirements Amending Directive 2003/71/EC 2001/0117(COD) Amending Directive 2004/109/EC 2003/0045(COD)	
Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments	

Key players			
European Parliament	Committee responsible ECON Economic and Monetary Affairs	Rapporteur KLINZ Wolf (ALDE)	Appointed 20/10/2009
	Committee for opinion JURI Legal Affairs	Rapporteur for opinion BODU Sebastian Valentin (PPE)	Appointed 14/12/2009
Council of the European Union	Council configuration Competitiveness (Internal Market, Industry, Research and Space)	Meetings 3035	Date 2010-10-11
European Commission	Commission DG Financial Stability, Financial Services and Capital Markets Union	Commissioner BARNIER Michel	

Key events			
Date	Event	Reference	Summary
23/09/2009	Legislative proposal published	COM(2009)0491 	Summary
07/10/2009	Committee referral announced in Parliament, 1st reading		
23/03/2010	Vote in committee, 1st reading		Summary
26/03/2010	Committee report tabled for plenary, 1st reading	A7-0102/2010	

15/06/2010	Debate in Parliament		
17/06/2010	Decision by Parliament, 1st reading	T7-0227/2010	Summary
17/06/2010	Results of vote in Parliament		
11/10/2010	Act adopted by Council after Parliament's 1st reading		
24/11/2010	Final act signed		
24/11/2010	End of procedure in Parliament		
11/12/2010	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0132(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2003/71/EC 2001/0117(COD) Amending Directive 2004/109/EC 2003/0045(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1 Treaty on the Functioning of the EU TFEU 050
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/01050

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE431.183	11/01/2010	
Amendments tabled in committee		PE439.226	25/02/2010	
Committee opinion	JURI	PE438.405	09/03/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0102/2010	26/03/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0227/2010	17/06/2010	Summary

Council of the EU				
European Commission				
Document type	Reference	Date	Summary	
Draft final act	00029/2010/LEX	24/11/2010		

Legislative proposal		23/09/2009	Summary
Document attached to the procedure		SEC(2009)1222	23/09/2009
Document attached to the procedure		SEC(2009)1223	23/09/2009
Commission response to text adopted in plenary	SP(2010)6136	01/09/2010	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	NL_CHAMBER	COM(2009)0491	17/11/2009	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0257/2010	18/02/2010	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2010/0073
OJ L 327 11.12.2010, p. 0001

[Summary](#)

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.

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 of 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;
- 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.

Securities: offer to the public and harmonisation of transparency requirements

2009/0132(COD) - 17/06/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 464 votes to 41, with 57 abstentions a resolution setting out its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) with a view to the adoption of the proposal for a directive 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. The amendments were the result of a compromise negotiated with the Council. They modify the Commission's proposal as follows:

Scope: the directive will not apply to:

- securities included in an offer where the total consideration of the offer in the European Union is less than EUR 5 000 000, which limit shall be calculated over a period of 12 months;
- non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration of the offer in the European Union is less than EUR 75 000 000, which limit shall be calculated over a period of 12 months, provided that these securities: i) are not subordinated, convertible or exchangeable; ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.

Definitions: the definition of "key information" is added: this relates to essential and appropriately structured information which is to be provided to investors with a view to enable them to understand the nature and the risks of the securities that are being offered to them or admitted to trading on a regulated market and, without prejudice to Article 5(2)(b), to decide which offers of securities to consider further. In light of the offer and securities concerned, the key information shall include the following elements:

- a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;
- a short description of the risk associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;
- general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror;
- details of the admission to trading;
- reasons for the offer and use of proceeds.

The definition of a "company with reduced market capitalisation" is also introduced. It means a company listed on a regulated market and having had an average market capitalisation of less than EUR 100 000 000 on the basis of year-end quotes during the previous three calendar years.

Requirement to publish a prospectus: the requirement to issue a prospectus does not apply to the following categories of offer:

- an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; and/or
- an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer; and/or
- an offer of securities whose denomination per unit amounts to at least EUR 100 000; and/or

- an offer of securities with a total consideration in the European Union of less than EUR 100 000, which limit shall be calculated over a period of 12 months.

Liability: the issuer or the person responsible for drawing up the prospectus should be able to **attach conditions to his or her consent**. The consent, including any conditions attached thereto, shall be given in a written agreement between the parties involved enabling assessment by relevant parties of whether the resale or final placement of securities complies with the agreement. In the event that consent to use the prospectus has been given, the issuer or person responsible for drawing up the initial prospectus should be **liable for the information** stated therein and in case of a base prospectus, for providing and filing final terms and no other prospectus should be required. However, in case the issuer or the person responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus. In that case, the financial intermediary should be liable for the information in the prospectus, including all information incorporated by reference and, in case of a base prospectus, final terms.

Exceptions to the requirement to publish a prospectus: the requirement to publish a prospectus would not apply to

- securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Union legislation;
- dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that the company has its head office or registered office in the European Union and provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

This last derogation would also apply to a company **established outside the European Union** whose securities are admitted to trading either on a regulated market or on a third country market. In the latter case, the exemption shall apply provided that adequate information, including the document referred to above, is available at least in a language customary in the sphere of international finance and that the Commission has adopted an equivalence decision regarding the third country market concerned.

The legal and supervisory framework of a third country may be considered equivalent if they fulfil the following conditions: i) markets in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis; ii) markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable; iii) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and iv) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.

Prospectus: according to the amended text, the prospectus must also include a summary that, in a concise manner and in non-technical language, provides key information in the language in which the prospectus was originally drawn up. 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.

The summary shall be drawn up in a **common format** in order to facilitate comparability of the summaries of similar securities.

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 except when requested by a Member State .

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, or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities. The summary shall contain a clear warning in this respect.

Validity of prospectus, base prospectus and registration document: a prospectus shall be valid for **12 months after its approval**. A registration document, previously filed and approved, shall be valid for a period of up to 12 months.

Publication of prospectus: the prospectus will be considered to be available to the public once it has been published in electronic form on the issuer's website or, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents.

Supplement to the prospectus: according to the amended text, every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, **whichever occurs later**, shall be mentioned in a supplement to the prospectus.

Linguistic regime: where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least EUR 100 000 is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission to trading, as the case may be. Member States may choose to require in their national legislation that a summary be drawn up in their official language(s).

Delegated acts: in order to take account of the technical developments in the financial markets and to specify the requirements laid down in Directive 2003/71/EC, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the

European Union. In particular, delegated acts may be necessary concerning the updating of the limits and definitions and thresholds for reduced market capitalisation and SMEs established in this Directive and Directive 2003/71/EC, and specifying the detailed content and specific form of the summary. The text contains a number of provisions concerning the adoption of delegated acts.

Review: five years after the entry into force of this Directive, the Commission shall assess the application of this Directive, in particular with regard to the application and the effects of the rules, including liability, regarding the summary with key information, the impact of exemption stipulated in Article 4 (1)(e) on the protection of employees and the proportionate disclosure regime referred to in Article 7(2)(e) and (g), as well as the electronic publication of prospectuses according to Article 14 and it shall review Article 2(1)(m)(ii) 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 this provision should be maintained or removed.

The Commission shall, furthermore, 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 this Directive and Directives 2004/109/EC and 2003/6/EC. Following its assessment, the Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals to amend this Directive.