

Capital market: prospectus to be published for securities

2001/0117(COD) - 24/03/2003 - Council position

The common position follows closely the Commission's amended proposal. At the same time it includes a large number of amendments (41 in total) proposed by the European Parliament to the original Commission proposal to the extent they were included in the amended Commission proposal. The majority of the changes contained in the common position in comparison with the amended Commission proposal are of a predominantly technical drafting nature and have been made in order to enhance legal certainty or to make the text clearer, while others modify the Commission proposal in a more substantial manner, e.g. the change in the definition of the home Member State, definition of the powers of the competent authority, language regime, etc. Concerning the definition of the home Member State, this has been amended in comparison with the amended Commission proposal. The common position follows the approach of the amended Commission proposal with separate treatment for equity and small denomination non-equity securities on the one hand and large denomination non-equity securities aimed at the professional market on the other, but strikes a different balance between the two categories. In the common position the balance is struck in a way that permits issuers of higher denomination bonds and certain derivative instruments to choose as the home Member State either the Member State where it has its registered office or the Member State where the securities in question are to be admitted to trading or are offered to the public for the first time. The limit for higher denomination bonds is set at 5 000 euro per unit. For EU issuers of all other securities the home Member State is defined as the Member State where the issuer has its registered office. This solution balances the need to preserve the principle of home Member State control against the need to take into account the fact that some competent authorities may have developed a particular expertise and experience in certain complex securities and therefore may be the best placed to approve certain prospectuses. As regards the competent authorities, the Council has decided that in each Member State one single competent authority should be designated to approve prospectuses and to assume responsibility for supervising compliance with this Directive. Under strict conditions, a Member State should be allowed to designate more than one competent authority but only one will assume the duties for international cooperation. Such an authority or authorities should be established as an administrative authority and in such a form that their independence from economic actors is guaranteed and conflicts of interest are avoided. The designation of a competent authority for prospectus approval should not exclude cooperation between that authority and other entities, with a view to guaranteeing efficient scrutiny and approval of prospectuses in the interest of issuers, investors, markets participants and markets alike. Any delegation of tasks relating to the obligations provided for in this Directive and in its implementing measures should, except for publication on the Internet of approved prospectuses, end five years after the entry into force of this Directive. Offers to the public of securities or the admission of securities to trading on a regulated market generally trigger the obligation to draw up a prospectus to ensure that the public is properly informed.