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

2015/0268(COD) - 05/04/2017 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 517 votes to 109, with 71 abstentions, a legislative resolution on the proposal for a regulation 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.

Parliaments position adopted in first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Purpose, scope and derogations: the Regulation lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.

Parliament noted that this Regulation shall not apply to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months.

The obligation to publish a prospectus shall not apply to: (i) an offer of securities whose denomination per unit amounts to at least EUR 100 000; (ii) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, under certain conditions.

Obligation to publish a prospectus and exemption: securities shall be offered to the public in the Union only after prior publication of a prospectus in accordance with the Regulation. Member States may decide to exempt offers of securities to the public from the obligation to publish a prospectus provided that the total consideration of the offer in the Union does not exceed EUR 8 000 000 calculated over a period of 12 months.

Drawing up of the prospectus: the prospectus shall contain the relevant and necessary information which an investor would reasonably require in relation to an investment in securities in order to be able to make an informed assessment of: (a) the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor; and (b) the rights attaching to such securities.

That information shall be drafted and presented in an easily analysable, succinct and comprehensible form and may vary depending on the nature of the issuer; the type of securities and the circumstances of the issuer.

The prospectus summary: the prospectus shall include a summary (written in a concise manner and of a maximum length of seven sides of A4-sized paper when printed) including the following information:

- information on the issuer (identity and contact details of the issuer, including its legal entity identifier (LEI), key information on the offer of securities to the public and/or the admission to trading on a regulated market;
- a warning that the investor could lose more than the invested capital and the extent of such potential loss;
- where applicable, the comprehension alert if the document is difficult to understand;
- a brief description of the nature and scope of the guarantee;
- a brief description of the most material risk factors specific to the securities contained in the prospectus;
- a brief description of the reasons for the offer or for the admission to trading on a regulated market.

Frequent issuers may choose to draw up a simplified prospectus under the simplified disclosure regime for secondary issuances.

EU Growth prospectus: in order to facilitate access to financing on capital markets for SMEs in the Union, Parliament proposed an EU Growth prospectus which is a simplified prospectus under the proportionate disclosure regime set out in this Article in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market: (i) SMEs; (ii) issuers, other than SMEs, whose securities are traded or are to be traded on an SME growth market, provided that those issuers had an average market capitalisation of less than EUR 500 000 000 on the basis of end-year quotes for the previous three calendar years; (iii) issuers, where the offer of securities to the public is of a total consideration in the Union that does not exceed EUR 20 000 000 calculated over a period of 12 months.

Once approved, an EU Growth prospectus should benefit from the passporting regime under this Regulation and should therefore be valid for any offer of securities to the public across the Union.

Risk factors: Parliament stated that the presentation of risk factors in the summary should consist of a limited selection of specific risks which the issuer considers to be of most relevance to the investor when the investor is making an investment decision. The description of the risk factors in the summary should be of relevance to the specific offer and should be prepared solely for the benefit of investors and not give general statements on investment risk, or limit the liability of the issuer, offeror or any persons acting on their behalf.

Those risk factors shall also include the risks resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities under bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring.

ESMA shall develop guidelines on the assessment of the specificity and materiality of risk factors. In addition, ESMA shall develop guidelines to assist competent authorities in their review of risk factors in a manner that encourages appropriate and focused risk factor disclosure by issuers.