

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

2015/0268(COD) - 14/06/2017 - Final act

PURPOSE: to enhance investor protection and improve market efficiency by simplifying the administrative burdens relating to the publication of a prospectus for the issuing and offering of securities.

LEGISLATIVE ACT: Regulation (EU) 2017/1129 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 on a regulated market, and repealing Directive 2003/71/EC.

CONTENT: 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.

Prospectuses present information about a company that enables investors to decide whether to purchase securities issued or offered by that company. Divergent approaches would result in fragmentation of the internal market.

The new rules replace Directive 2003/71/EC, and aim to ensure the protection of investors and market efficiency, whilst strengthening the internal market for capital.

Purpose, scope and exemptions: the Regulation states that no prospectus will be required for capital raisings and crowd funding projects up to EUR 1 million, expressed as the total consideration of the offer in the Union over a period of 12 months.

Furthermore, the obligation to publish a prospectus shall not apply to an offer of securities addressed solely to qualified investors or an offer of securities whose denomination per unit amounts to at least EUR 100 000.

The threshold beyond which a prospectus is mandatory is increased to EUR 8 million in capital raised, calculated over a period of 12 months.

Drawing up of the prospectus: a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of: (i) the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor; (ii) the rights attaching to the securities; and (iii) the reasons for the issuance and its impact on the issuer.

The prospectus should include a clear and accurate summary (7 pages) providing, apart from information about issuer:

- a warning that the investor could lose all or part of the invested capital and, where the investors liability is not limited to the amount of the investment, and the extent of such potential loss;
- where applicable, a comprehension alert as defined in the text;
- a brief description of the nature and scope of the guarantee, the most material risk factors specific to the issuer contained in the prospectus, and the reasons for the offer.

Frequent issuers may draw up a simplified prospectus under the simplified disclosure regime for secondary issuances. The time limit for approval in such cases is reduced to five working days.

Paper prospectuses will no longer be required, unless a potential investor requests one.

Once approved, the prospectus shall be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market.

A European online prospectus database will be operated free of charge by the European Securities and Markets Authority.

The EU growth prospectus: in order to encourage the use of capital market financing by SMEs, the Regulation establishes a specific proportionate EU Growth prospectus regime which is standardized and simplified for:

- SMEs;
- issuers whose securities are traded on an SME growth market, provided that those issuers had an average market capitalisation of less than EUR 500 million on the basis of end-year quotes for the previous three calendar years; and
- issuers where the offer of securities to the public is of a total consideration in the Union that does not exceed EUR 20 million calculated over a period of 12 months.

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

Issuers established in third countries: the competent authority of the home Member State of a third country issuer may approve a prospectus drawn up in accordance with the national laws of the third country issuer, provided that:

- the information requirements imposed by those third country laws are equivalent to the requirements under this Regulation; and
- the competent authority of the home Member State has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer.

Review: before 21 July 2022 the Commission shall present a report on the application of the Regulation, accompanied where appropriate by a legislative proposal.

ENTRY INTO FORCE: 20.7.2017.

APPLICATION: from 21.7.2019 (with the exception of certain provisions that apply from 20.7.2017 and from 21.7.2018).

DELEGATED ACTS: the Commission may adopt delegated acts in order to supplement non-essential elements of the Directive. The power to adopt such acts is conferred on the Commission for an indeterminate period from 20 July 2017. The European Parliament or the Council have the right to object to a delegated act within three months (which may be extended by three months) from the date of notification of the act.