



# **The review of the Prospectus Directive as a priority of the European Commission for building a Capital Markets Union. March 2015.**

On 18 February 2015, the European Commission (hereinafter "EC") published a consultation document (Green Paper) on its project to create a Capital Markets Union (hereinafter "CMU") for all 28 Member States of the European Union (hereinafter "EU"). In order to develop the CMU, the EC proposes a set of short-term measures, mainly the simultaneous publication of two specific public consultations: one on the review of the Prospectus Directive, and another one on a European framework for high-quality securitisation, with the aims of encouraging the financial market integration within the EU, diversifying the sources of funding and facilitating access to capital.

The aim of the public consultation on the review of the Prospectus Directive is that the prospectus, as a requirement for companies seeking funding to make public offerings or to request admission to trading on a regulated market, does not constitute a barrier for companies to access capital markets. To that end, it is necessary to have a "level playing field" that enables firms to access capital markets at reasonable costs while keeping an appropriate level of protection for investors across the EU. In order to reduce the administrative burden, this consultation reviews the obligation to publish a prospectus, the information a prospectus should contain and the possibility of simplifying the information and the authorisation procedure.

The Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) was amended in 2010 in order to increase investor protection (higher quality of public information and more comparability throughout the summary of the prospectus) and to reduce the administrative burden for specific issuers (SMEs and small caps). However, the current legal framework has some shortcomings, in some cases due to discretion and to different enforcement of the rules across Member States. The review of the Directive should reflect the market evolution, the new regulations introduced by MiFID II, multilateral trading facilities (MTFs), "SME Growth Markets" and organised trading systems (OTS), as well as the Regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs) regulating Key Information Documents (KIDs).

## **1. Review of the obligation to publish a prospectus.**

In order to increase the number of offers exempted from the prospectus requirement, it is necessary to review the EUR 5,000,000 threshold under which Member States have discretion to require prospectuses to be published in specific offers, taking into account the new ways of collecting funds such as crowdfunding. Furthermore, it is also necessary to increase the number of "secondary issuances" of securities (offers made after other offers of the same class admitted to trading on a regulated market) exempted from the prospectus requirement, for example in the case where a prospectus was approved for the same class of shares within a certain time frame. Additionally, the consultation proposes the exemption of prospectus for certain types of closed-ended alternative investment funds (AIFs) subject to the obligation to draw up a KID (under the PRIIPs Regulation) and for offers made by companies established outside the EU to its employees in the EU.

MTFs should also be included within the scope of the Prospectus Directive, as has been the case in MiFID II and MAR (Market Abuse Regulation). It is also necessary to strike a balance between the exemption from the prospectus requirement for issuers of debt securities with a high denomination per unit (EUR 100,000) and liquidity on the debt markets.

## **2. Information a prospectus should contain and possibility of simplifying the information included in prospectuses.**

Some issuers (SMEs and companies with reduced market capitalisation) can publish simplified prospectuses with

lighter information, but this regime has not been widely used in practice so far. "SME Growth Markets" might also benefit from this simplified prospectus regime. To this end, the definition of company with reduced capitalisation should be aligned with the definition of SME.

A more flexible "incorporation by reference" mechanism would facilitate the procedure of drawing up a prospectus and could potentially be extended to other types of regulated information. The consultation considers, on the one hand, assessing the need for supplements to the prospectus for the disclosure of inside information and, on the other hand, reassessing the objectives of the prospectus summary and addressing possible overlaps with the key information document required under the PRIIPs Regulation. It also proposes to consider imposing a length limit to prospectuses of excessive length, as well as the need to further harmonise and to define more precisely liability and sanctions for prospectus issuance.

### **3. Approval process of prospectuses.**

The consultation proposes to further streamline the approval process of prospectuses by national competent authorities, ensuring as a starting point a level playing field in all Member States. This process should also be more transparent and flexible, allowing the issuer to carry out certain marketing activities starting from the submission of the first draft, and it is desirable that the same authority approving the prospectus for admission also handles the decision of admission to trading. Furthermore, the document proposes to extend the use of the base prospectus facility (whose approval procedure is more flexible than that of the standard prospectus), and views are sought on the separate approval of the registration document, the securities note and the prospectus summary ("tripartite regime").

It also reviews the determination of the home Member State for issues of non-equity securities, as well as the adoption of an all-electronic system for the filing and publication of prospectuses. The Transparency Directive revised in 2013 created a web portal, operated by ESMA, to serve as a European electronic access point to regulated information of listed issuers, which will be interconnected with the officially appointed mechanisms of each Member State. Lastly, the document suggests the adoption of a general equivalence regime for third-country prospectuses.

Relevant links:

[European Commission's consultation document on the review of the Prospectus Directive](#)

[Consultation document on the European Commission's Green Paper for building a Capital Markets Union in the EU](#)