



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.07.2003
COM(2003) 432 final

2001/0117 (COD)

OPINION OF THE COMMISSION

pursuant to Article 251 (2), 3rd paragraph, point (c) of the EC Treaty on the European Parliament's amendments to the Council's common position regarding a proposal for a

DIRECTIVE 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**

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250(2) of the EC Treaty

1. HISTORY

Date of transmission of the proposal to the EP and the Council (document COM(2001) 280 final – 2001/0117(COD)) ¹ :	01 June 2001
Date of the opinion of the Economic and Social Committee ² :	17 January 2002
Date of the opinion of the European Parliament, first reading ³ :	14 March 2002
Date of transmission of the amended proposal to the EP and the Council (document COM(2002) 460 final – 2001/0117(COD)) ⁴ :	9 August 2002
Date of adoption of the common position ⁵ :	24 March 2003
Date of the opinion of the European Parliament, second reading ⁶ :	02 July 2003

2. SUBJECT OF THE PROPOSAL

The proposed Directive seeks to ensure that adequate and equivalent disclosure standards are in place in all Member States when securities are made available to all European investors either through an offer to the public or because they are admitted to trading on a regulated market.

Under current EU rules, mutual recognition is granted only to prospectuses that set out the information required in the Listing Particulars Directive (80/390/EEC) and are approved by the competent authorities. The host country authority, in the case of recognition of the prospectus, is authorised to require additional information related to the domestic market. Regulations and practices vary widely between European Member States. As a result EU capital markets have been fragmented and it has rarely proved possible to use the existing prospectuses to raise capital across frontiers within Europe. Additionally there is no European recognition system for securities falling outside the scope of the 80/390/EEC Directive.

To this end, the proposed Directive harmonises requirements for the drawing up, approval and distribution of the prospectus. The entry into force of the Directive will result in the creation of a true European passport for issuers by giving, Community-wide validity to the prospectus approved by the issuer's home competent authority, in order to facilitate the raising of capital for all types of issuer.

The key features of the proposed Directive are the following:

- definition of clear conditions related to the prospectus for offers to the public of securities and for admission to trading on a regulated market;

¹ OJ C 240 E, 28.08.2001 p.272.

² OJ C 80, 03.04.2002 p.52.

³ OJ C47, 27.2.2003, p.511-524

⁴ OJ.C 20 E, 28.01.2003 p.122

⁵ Not yet published in the Official Journal

⁶ Not yet published in the Official Journal

- harmonisation of the essential definitions in order to avoid loopholes and different approaches, thus ensuring a level playing field throughout the EU;
- the introduction of special EU rules for securities with an high minimum denomination (50 000 Euro), which are designed to be traded by professionals;
- an adapted regime aimed at making things easier for small and medium-sized companies, which would not be obliged to draft a prospectus if only a small amount of securities is offered to the public;
- disclosure standards based on international standards (IOSCO) with schedules adapted depending on the nature of the issuer and the type of securities involved, for example: equity securities such as shares, non-equity securities such as bonds, derivatives securities such as covered warrants, securities with a high minimum denomination and mortgage bonds;
- the introduction of new prospectus formats for frequent issuers, notably for offering Euro Medium Term Notes, derivatives securities such as covered warrants, or for mortgage bonds issued on a continuous or repeated basis;
- an effective regime for the "single passport". For companies to issue securities, or admit them to trading, in any EU Member State, they would simply need to notify the authorities in that country of their prospectus and show that it has already been approved by the appropriate authority in another Member State.

The proposed prospectus Directive also follows the approach suggested by the Committee of Wise Men (chaired by Mr. Lamfalussy) in February 2001 and endorsed in a Resolution of the Stockholm European Council in March 2001. This approach is based on differentiating framework principles from implementing measures.

1. THE COMMISSION'S OPINION ON PARLIAMENT'S AMENDMENTS

Summary

The Parliament has amended the Council common position with 21 amendments. The Commission accepts all of the Parliament's amendments, i.e. Amendments 48 to 68. Those amendments accepted as a whole annul the amendments 1 to 47.

Parliament's amendments in second reading

3.1. Amendments accepted by the Commission

All compromise amendments are accepted by the Commission.

Amendment 48, introducing a new Recital 12a, clarifies that offering programmes may include different types of non-equity securities.

Amendment 49, introducing a new Recital 14a, clarifies that national regulators and exchanges may ask for other disclosure requirements in the context of admission to trading on a regulated market, provided that these do not relate to prospectus requirements.

Amendment 50, modifying Recital 35, introduces a five-year review clause concerning the delegation of tasks. The option to delegate tasks from the competent authority to other entities will lapse after eight years. This amendment is linked to amendment 67 below.

Amendment 51, modifying Article 2 (1) (k), clarifies that issues envisaged in an offering programme may not take place during the specified issuing period of one year.

Amendment 52, modifying Article 2 (1) (l), clarifies that securities issued in a continuous and repeated manner includes both issues on tap and frequent separate issues.

Amendment 53, modifying Article 2 (1) (m) (ii), introduces flexibility into the determination of the home competent authority for issues of non-equity securities with individual denomination of at least 1000 Euro. It also clarifies that this threshold is applicable to other denomination expressed in other currencies with a nearly equivalent value.

Amendment 54, modifying Article 2 (1), introduces a new definition for a base prospectus in line with the procedure outlined in Article 5.

Amendment 55, modifying Article 5 (2) (d), clarifies the content of the warning to be contained in the summary, on liability attached to the summary.

Amendment 56, modifying Article 5 (4), clarifies that an issuer should be able to decide to use a base prospectus or a traditional prospectus (composed of a single document or several documents) in the context of an offering programme.

Amendment 57, modifying Article 11 (1), clarifies that incorporation by reference of information in a prospectus shall be possible for documents published at the same moment as the prospectus.

Amendment 58, modifying Article 13 (2) (1), sets the maximum time limit for approving a prospectus to 10 working days.

Amendment 59, modifying Article 13 (3), sets the maximum time limit for approving a prospectus to 20 working days in the context of an initial public offering.

Amendment 60, modifying Article 13 (4), sets the maximum time limit for notifying the incompleteness of a prospectus to 10 working days.

Amendment 61, modifying Article 13 (5), sets the maximum time limit for notifying the transfer of approval of a prospectus to 3 working days.

Amendment 62, modifying Article 14 (2), introduces the option for an issuer to publish its prospectus in an electronic form on the website of the regulated market where the admission to trading is sought.

Amendment 63, modifying Article 14 (4), clarifies that the prospectuses or the list of prospectuses approved by a competent authority may alternatively be published on the website of the regulated market.

Amendment 64, modifying Article 15 (3), clarifies that advertisements put out before the publication of a prospectus should not be inaccurate or misleading.

Amendment 65, modifying Article 16 (1), sets the maximum time limit for approving a supplement to 7 working days.

Amendment 66, modifying Article 18 (1), sets the maximum time limit for notifying the certificate of approval of a prospectus to 1 working day after its approval if the request is submitted together with the draft prospectus.

Amendment 67, modifying Article 21 (2) (1), introduces a five-year review clause concerning the delegation of tasks. The option to delegate tasks from the competent authority to other entities will lapse after eight years.

Amendment 68, modifying Article 22 (2), clarifies the cooperation that is expected in the context of transfer of the approval of a prospectus from one competent authority to another. When deciding suspension or prohibition of trading on a regulated market, competent authorities may first consult operators of the regulated markets.

3.2. Amendments or parts of amendments not accepted by the Commission

None

4. Conclusion

In accordance with Article 250(2) of the Treaty, the Commission amends its proposal accordingly.