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*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (COM(2009)0491 – C7-0170/2009 – 2009/0132(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Wolf Klinz

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
(COM(2009)0491 – C7-0170/2009 – 2009/0132(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0491),
 - having regard to Article 251(2) and Articles 44 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0170/2009),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
 - having regard to Article 294(3) and Articles 50 and 114 of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank¹,
 - having regard to the opinion of the European Economic and Social Committee²,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0102/2010),
1. Adopts the position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

¹ OJ C19, 26.1.2010, p. 1.

² Opinion of 18.2.2010 (not yet published in the OJ).

Amendment 1

Proposal for a directive – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Following the conclusions of the report of the High Level Group on Financial Supervision in the EU (the de Larosière group), the Commission put forward concrete legislative proposals on 23 September 2009 in order to establish a European System of Financial Supervisors (ESFS) comprising a network of national financial supervisors working in tandem with new European Supervisory Authorities. Moreover, the newly created European Securities and Markets Authority (ESMA) is to replace the Committee of European Securities Regulators (CESR).

Amendment 2

Proposal for a directive – amending act Recital 6

Text proposed by the Commission

Amendment

(6) For the purposes of private placements of securities, investment firms and credit institutions should be entitled to treat as qualified investors those natural or legal persons that are considered to be or that they treat as professional clients, or that are recognized eligible counterparties in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments *amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC*. An alignment of the relevant provisions of Directives 2003/71/EC and 2004/39/EC in

(6) For the purposes of private placements of securities, investment firms and credit institutions should be entitled to treat as qualified investors those natural or legal persons that are considered to be or that they treat as professional clients, or that are recognized eligible counterparties in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. An alignment of the relevant provisions of Directives 2003/71/EC and 2004/39/EC in this sense would reduce complexity and costs for investment firms in the event of private placements because the firms would be able to define the persons to whom the

this sense would reduce complexity and costs for investment firms in the event of private placements because the firms would be able to define the persons to whom the placement is to be addressed relying on their own list of professional clients and eligible counterparties. Therefore, the definition of qualified investors in Directive 2003/71/EC should be widened to include those persons.

placement is to be addressed relying on their own list of professional clients and eligible counterparties. ***The issuer should be able to rely on the list of professional clients and eligible counterparties that has been drawn up in accordance with Annex II of Directive 2004/39/EC.*** Therefore, the definition of qualified investors in Directive 2003/71/EC should be widened to include those persons ***and no separate register should be maintained.***

Justification

It should be clear that the issuer is not in the position to check the correctness of a classification as a professional client or eligible counterparty. It should hence not incur liability for any misclassification.

Amendment 3

Proposal for a directive – amending act Recital 7

Text proposed by the Commission

Amendment

(7) In order to increase the efficiency and flexibility of the issuance of debt in the Community, the limitation on the determination of the home Member State for issues of non-equity securities with a denomination below EUR 1.000 should be removed. The mechanism for the determination of the home and the host Member States in Directive 2004/109/EC should also be amended accordingly.

deleted

Justification

The removal of the €1000 threshold from which issuers of non-equity securities can choose their competent authority is likely to weaken investor protection, particularly the protection of retail investors, by enhancing the possibility for the issuer to engage in regulatory arbitration to the detriment of the closest authority.

Amendment 4

Proposal for a directive – amending act
Recital 8

Text proposed by the Commission

(8) A valid prospectus, drawn up by the issuer or the offeror and available to the public at the time of the final placement of securities through financial intermediaries or in any subsequent resale of securities, provides sufficient information for investors to make informed investment decisions. Therefore, financial intermediaries placing or subsequently reselling the securities should be entitled to rely upon the initial prospectus published by the issuer or the offeror as long as this is valid and duly supplemented in accordance with *Article 9 and Article 16* of Directive 2003/71/EC and the issuer or the offeror responsible for drawing up such prospectus consents to its use. ***In this case*** no other prospectus should be required. However, *in case* the issuer or the offeror responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus.

Amendment

(8) A valid prospectus, drawn up by the issuer or the offeror and available to the public at the time of the final placement of securities through financial intermediaries or in any subsequent resale of securities, provides sufficient information for investors to make informed investment decisions. Therefore, financial intermediaries placing or subsequently reselling the securities should be entitled to rely upon the initial prospectus published by the issuer or the offeror as long as this is valid and duly supplemented in accordance with *Articles 9 and 16* of Directive 2003/71/EC and the issuer or the offeror responsible for drawing up such prospectus ***and any other entity which, pursuant to national law, is liable for the accuracy of a specific part of the content of such prospectus*** consents to its use. ***The issuer or the offeror should be able to attach conditions to his or her consent. In the event that consent to use the prospectus has been given, the issuer or the offeror responsible for drawing up the initial prospectus should be liable for the information stated therein and*** no other prospectus should be required. ***Where, notwithstanding such consent, the final terms of the prospectus have to be updated with specific information relating to a resale, the financial intermediary making use of the prospectus should be liable for such additional information.*** However, *where* the issuer or the offeror responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus. ***Where the financial intermediary chooses to use the initial prospectus without consent, the intermediary should be liable for the information stated in the initial***

prospectus.

Justification

It should be explicit that the intermediary makes itself liable in case he does not respect the conditions attached to the consent of the issuer or offeror.

Amendment 5

**Proposal for a directive – amending act
Recital 8 a (new)**

Text proposed by the Commission

Amendment

(8a) In order to allow for the efficient application of Directive 2003/71/EC, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market¹ (the Transparency Directive) and Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)² (the Market Abuse Directive) and to clarify underlying problems of differentiation and overlaps, the Commission should put forward a definition of 'primary market', 'secondary market' and 'public offer'.

¹ OJ L 390, 31.12.2004, p. 38.

² OJ L 96, 12.4.2003, p. 16.

Amendment 6

**Proposal for a directive – amending act
Recital 8 b (new)**

Text proposed by the Commission

Amendment

(8b) Liability regimes in the Member States are significantly different due to national competence in civil law. In order to identify and monitor the arrangements

in the Member States, the ESMA shall establish a comparative table of Member States' regimes.

Amendment 7

Proposal for a directive – amending act Recital 10

Text proposed by the Commission

(10) The summary of the prospectus *is* a key source of information for retail investors. It should be short, simple and easy for targeted investors to understand. It should focus on ***the key information*** that investors need in order to be able to ***make informed investment decisions. Its content should not be restricted to any predetermined number of words. The format and content of the summary should be determined in a way that ensures comparability with other investment products that are similar to the investment proposal described in the prospectus. Therefore, Member States should attach*** civil liability on the basis of the ***summary not only if*** it is misleading, inaccurate or inconsistent, when read together with the ***other*** parts of the prospectus, ***but also if it does not provide key information enabling investors to take informed investment decisions and to compare the securities with other investment products.***

Amendment

(10) The summary of the prospectus ***should be replaced by a key information document, which will be*** a key source of information for retail investors. It should be short, simple, ***clear*** and easy for targeted investors to understand. It should focus on ***essential*** elements that investors need in order to be able to ***decide which offers of securities to consider further. It should be concise and should present the information in a specified order to allow harmonisation to the highest extent possible and to facilitate comparability. The ESMA should provide advice to the Commission on the potential for the PRIPs initiative to be developed further in the context of the forthcoming review of Directive 2004/39/EC and on the delegated acts regarding the definition of the format and content of the key information document mentioned in this Directive. Both the Commission and the ESMA should ensure a maximum alignment in the delegated acts with the outcome of the PRIPs initiative without creating burdensome duplication in regulation. Member States should ensure that no*** civil liability ***attaches to any person solely*** on the basis of the ***key information document, including any translation thereof, unless*** it is misleading, inaccurate or inconsistent with the ***relevant*** parts of the prospectus. ***Key investor information should contain a clear warning in this respect.***

Amendment 8

Proposal for a directive – amending act Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) The PRIP initiative will clarify how to ensure adequate investor protection and comparability with other investment products at a pre-contractual stage. The distribution aspect is of paramount importance when ensuring retail investor protection. Directives 2003/71/EC and 2004/109/EC should be amended by a horizontal measure in this respect in due course.

Amendment 9

Proposal for a directive – amending act Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) The key information document should replace the summary of the prospectus for the purposes of the notification process. The final terms should complement the key information document where those terms are not known at the time of drawing up the key information document. The information contained in the final terms should be given in the same format as the key information document of the base prospectus.

Justification

As the key information document will replace the summary also in the notification procedure, the information that is unavailable when drawing up the KID should be given in the final terms. The final terms should hence have the same structure as the KID in order to harmonise the documents.

Amendment 10

**Proposal for a directive – amending act
Recital 11**

Text proposed by the Commission

(11) In order **to improve the efficiency of cross border right issues and** to adequately take into account the size of issuers, notably credit institutions issuing the securities mentioned in Article 1(2)(j) of Directive 2003/71/EC at or above the limit laid down in that Article and companies with reduced market *capitalization*, a proportionate disclosure regime should be introduced **for rights issues and** for offers of shares of issuers with reduced market capitalization and offers of non-equity securities referred to in Article 1(2)(j) of Directive 2003/71/EC issued by credit institutions at or above the limit laid down in that Article.

Amendment

(11) In order to adequately take into account the size of issuers, notably credit institutions issuing the securities mentioned in Article 1(2)(j) of Directive 2003/71/EC at or above the limit laid down in that Article and companies with reduced market *capitalisation*, a proportionate disclosure regime should be introduced for offers of shares of **SMEs referred to in Article 2(1)(f) of Directive 2003/71/EC and of** issuers with reduced market capitalization and offers of non-equity securities referred to in Article 1(2)(j) of Directive 2003/71/EC issued by credit institutions at or above the limit laid down in that Article.

Justification

Actions that weaken transparency and the protection of shareholders and savers should be avoided. Pre-emptive subscription rights are in effect tradable securities so capital increases with pre-emptive subscription rights are therefore full public offers and the same level of information is thus required to ensure investor protection.

Amendment 11

**Proposal for a directive – amending act
Recital 11 a (new)**

Text proposed by the Commission

Amendment

(11a) The proportionate disclosure regime should take account of the special needs of SMEs to the highest extent possible. The delegated acts elaborating the model for a light regime for SMEs should also consider the role of small and medium-sized issuers.

Amendment 12

**Proposal for a directive – amending act
Recital 11 b (new)**

Text proposed by the Commission

Amendment

(11b) Taking into consideration the different national markets, the threshold to be set up in accordance with Articles 24, 24a and 24b regarding reduced market capitalisation should not lead to the adoption of different thresholds across the Union.

Amendment 13

**Proposal for a directive – amending act
Recital 13**

Text proposed by the Commission

Amendment

(13) As the prospectus can be updated by way of supplements according to Directive 2003/71/EC, there is no risk that it may become outdated. ***Therefore***, given the time and costs of drafting and approving a prospectus, the validity period of ***12 months of the prospectus***, base prospectus and registration document should be extended to 24 months provided ***they are*** properly supplemented.

(13) As the prospectus can be updated by way of supplements according to Directive 2003/71/EC, there is no risk that it may become outdated. ***The 12-month validity period for the prospectus should remain unchanged. However***, given the time and costs of drafting and approving a prospectus, the ***12-month*** validity period of the base prospectus and registration document should be extended to 24 ***months*** provided ***they are*** properly supplemented.

Amendment 14

**Proposal for a directive – amending act
Recital 13 a (new)**

Text proposed by the Commission

Amendment

(13a) In order to improve legal certainty, the validity of a prospectus should commence on its approval, which can be easily verified by the competent authority.

Amendment 15

Proposal for a directive – amending act Recital 15

Text proposed by the Commission

(15) In order to clarify whether the requirement to publish a supplement to the prospectus ends with the start of trading of the securities on a regulated market irrespective of whether the offering period has closed, the obligation to supplement a prospectus should be terminated at the final closing of the offering period or the time when trading of such securities on a regulated market begins, whichever occurs earlier.

Amendment

(15) In order to clarify whether the requirement to publish a supplement to the prospectus ends with the start of trading of the securities on a regulated market irrespective of whether the offering period has closed, the obligation to supplement a prospectus should be terminated at the final closing of the offering period or the time when trading of such securities on a regulated market begins, whichever occurs earlier. ***The requirement to supplement the prospectus should cease once the transparency obligations laid down in Directives 2004/109/EC and 2003/6/EC apply.***

Amendment 16

Proposal for a directive – amending act Recital 16

Text proposed by the Commission

(16) When the prospectus is supplemented, *harmonization* at Community level of the time frame for the exercise by investors of the right of withdrawal of their previous acceptances would provide certainty to issuers making cross border offers of securities. To provide flexibility to issuers from Member States with traditionally longer time frame in this regard, the issuer, the offeror or the person asking for the admission to trading on a regulated market should be able to extend voluntarily the term for the exercise of that right.

Amendment

(16) When the prospectus is supplemented, *harmonisation* at Community level of the time frame for the exercise by investors of the right of withdrawal of their previous acceptances would provide certainty to issuers making cross border offers of securities. To provide flexibility to issuers from Member States with traditionally longer time frame in this regard, the issuer, the offeror or the person asking for the admission to trading on a regulated market should be able to extend voluntarily the term for the exercise of that right. ***To improve legal certainty the supplement to the prospectus should specify when the right of withdrawal ends.***

Amendment 17

Proposal for a directive – amending act Recital 18

Text proposed by the Commission

(18) *The measures necessary for the implementation of this Directive should be adopted in accordance with* Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Amendment

(18) *In accordance with Article 291 of the Treaty on the Functioning of the European Union, rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of its implementing powers shall be laid down in advance by a Regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new Regulation, the provisions of* Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission *continue to apply, with the exception of the regulatory procedure with scrutiny.*

Amendment 18

Proposal for a directive – amending act Recital 19

Text proposed by the Commission

(19) *In particular*, in order to take account of the technical developments in the financial markets and to ensure uniform application of Directive 2003/71/EC, the Commission should be empowered to adopt *implementing measures to update* the limits established in *that Directive. Since those measures are of general scope and are designed to amend non-essential elements of* Directive 2003/71/EC *by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of* Decision 1999/468/EC.

Amendment

(19) In order to take account of the technical developments in the financial markets and to ensure uniform application of Directive 2003/71/EC, the Commission should be empowered to adopt *delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union concerning the updating of* the limits established in Directive 2003/71/EC, *and specifying the detailed content and specific form of the key information document, following the outcome of the PRIPs initiative aligning to the maximum extent possible the content and form of the key information*

document for securities with that outcome, preventing the duplication of documents and potential confusion for investors as well as minimising the costs incurred.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 1 – point a – point i

Directive 2003/71/EC

Article 1 – paragraph 2 – point h

Text proposed by the Commission

(h) securities included in an offer where the total consideration of the offer in the Community is less than **EUR 2 500 000**, which limit shall be calculated over a period of 12 months;

Amendment

(h) securities included in an offer where the total consideration of the offer in the Community is less than **EUR 5 000 000**, which limit shall be calculated over a period of 12 months;

Justification

The current threshold for an exemption is from 2003. Due to market developments and the need to bridge a funding gap for small and medium sized enterprises, raising the amount seems sensible.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 1 – point a – point ii

Directive 2003/71/EC

Article 1 – paragraph 2 – point j – introductory part

Text proposed by the Commission

(j) non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration of the offer in the Community is less than **EUR 50 000 000**, which limit shall be calculated over a period of 12 months, provided that these securities:

Amendment

(j) non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration of the offer in the Community is less than **EUR 100 000 000**, which limit shall be calculated over a period of 12 months, provided that these securities:

Amendment 21

Proposal for a directive – amending act

Article 1 – point 1 – point b

Directive 2003/71/EC

Article 1 – paragraph 4

Text proposed by the Commission

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall **adopt implementing** measures concerning the adjustment of the limits referred to in points (h) and (j) of Article 1(2). **Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.**

Amendment

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall **lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b,** measures concerning the adjustment of the limits referred to in points (h) and (j) of Article 1(2).

Amendment 22

Proposal for a directive – amending act

Article 1 – point 2 – point a – point i

Directive 2003/71/EC

Article 2 – paragraph 1 – point e – point i

Text proposed by the Commission

(i) *Persons* or entities that are considered to be or treated on request as professional clients in accordance with Annex II to Directive 2004/39/EC, or recognised as eligible counterparties in accordance with Article 24 of Directive 2004/39/EC.

Amendment

(i) *persons* or entities that are considered to be or treated on request as professional clients in accordance with Annex II to Directive 2004/39/EC, or recognised as eligible counterparties in accordance with Article 24 of Directive 2004/39/EC **unless they have requested that they be treated as non-professional clients. Investment firms and credit institutions shall communicate their classification to their clients and, on request, to the issuer.**

Justification

This is a clarification of the wording and aligns the text with Annex II of the MiFID and gives

legal certainty to the issuer.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 2 – point a – subpoint ii

Directive 2003/71/EC

Article 2 – paragraph 1 – point e – points ii and iii

Text proposed by the Commission

(ii) **Points (ii) and (iii)** are deleted.

Amendment

(ii) **Points (ii) to (v)** are deleted.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 2 – point a a (new)

Directive 2003/71/EC

Article 2 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(aa) The following point is inserted:

"(fa) 'company with reduced market capitalisation' means a company listed on a regulated market and having had an average market capitalisation of less than EUR 100 000 000 on the basis of year-end quotes during the previous three calendar years."

Amendment 25

Proposal for a directive – amending act

Article 1 – point 2 a (new)

Directive 2003/71/EC

Article 2 – paragraphs 2 and 3

Text proposed by the Commission

Amendment

2a. In Article 2, paragraphs 2 and 3 are deleted.

Justification

Amendment to Article 2, part 1(e) of the prospectus directive, coherent with alignment with MIFID.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 2 – point b a (new)

Directive 2003/71/EC

Article 2 – paragraph 4

Text proposed by the Commission

Amendment

(ba) Article 2(4) is replaced by the following:

"4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, the definitions referred to in paragraph 1, including adjustment of the figures used for the definition of SMEs, taking into account Community legislation and recommendations as well as economic developments [...]."

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 27

Proposal for a directive – amending act

Article 1 – point 3 – point -a (new)

Directive 2003/71/EC

Article 3 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(-a) In paragraph 2, point (b) is replaced by the following:

"(b) an offer of securities addressed to fewer than 250 natural or legal persons

per Member State, other than qualified investors; and/or"

Amendment 28

Proposal for a directive – amending act

Article 1 – point 3 – point a a (new)

Directive 2003/71/EC

Article 3 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(aa) In paragraph 2, the following point is added:

"(ea) an offer of securities of an issuer or an intermediary acting on behalf of the issuer after publication of a prospectus relating to securities of that issuer, which are already admitted to trading on a regulated market."

Justification

To avoid uncertainties regarding liabilities and to prevent restrictions to the distribution via retail cascade, an exemption should be introduced from the obligation to produce a prospectus for a public offer of securities, as long as a prospectus relating to the securities in question is already published. The existing prospectus would not be 'used' by anyone else, but provide an exemption by its existence. Investors are sufficiently protected by the Market Abuse and Transparency Directive.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 3 – point b

Directive 2003/71/EC

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

Member States shall not require another prospectus in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 9 and the issuer or the person responsible for drawing up such

Member States shall not require another prospectus in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 9 and the issuer or the person responsible for drawing up such

prospectus consents to its use.

prospectus ***and, if applicable, any other entity which, pursuant to national law, is liable for the accuracy of a specific part of the content of such prospectus,*** consents to its use. ***Where, notwithstanding such consent, it is necessary that the final terms of the prospectus are updated with specific information relating to a resale, the financial intermediary making use of the prospectus shall be liable for that additional information.***

Justification

The text added reflects the fact that in any resale, some additional conditions will apply, such as a new price or a new acceptance period. Therefore, the text clarifies that the financial intermediary is liable for providing such additional information.

Amendment 30

Proposal for a directive – amending act

Article 1 – point 3 – point b a (new)

Directive 2003/71/EC

Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(ba) The following paragraph is added:

"3a. In order to take account of technical developments on financial markets, including inflation, the Commission shall adopt, by means of delegated acts in accordance with Articles 24a, 24b and 24c, measures concerning the thresholds in Article 3(2)(c) to (e)."

Justification

The EUR 50.000 threshold does not adequately reflect the amount that distinguishes a retail consumer from a professional investor. In fact, the obligation to provide a prospectus seems deliberately being avoided by certain issuers, resulting in numerous serious incidents that have occurred in several Member States. In order to prevent dilution of this threshold over time, a periodic review should be included.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 3 a (new)

Directive 2003/71/EC

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

3a. In Article 4(1), point (a) is replaced by the following:

"(a) shares, or shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares, issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;"

Justification

The definition of shares used in Article 4 should be aligned with the definition found in Article 4.1.18 of the MiFID Directive (2004/39/EC). There is a need for clarification of the exemptions under Article (4) in order to prevent discrimination among issuers by given preference to certain corporate structures instead of others.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 3 b (new)

Directive 2003/71/EC

Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

3b. In Article 4(1), point (b) is replaced by the following:

"(c) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Union legislation;"

Justification

Same rationale applying to mergers.

Amendment 33

Proposal for a directive – amending act

Article 1 – point 3 c (new)

Directive 2003/71/EC

Article 4 – paragraph 1 – point d

Text proposed by the Commission

Amendment

3c. In Article 4(1), point (d) is replaced by the following:

"(d) shares, or shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares, offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;"

Justification

The definition of shares used in Article 4 of the Prospectus Directive should be aligned with the definition of shares in Article 4.1.18 of the MiFID Directive (2004/39/EC). There is a need for clarification of the exemptions under Article (4) in order to prevent discrimination among issuers by given preference to certain corporate structures instead of others.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 4 a (new)

Directive 2003/71/EC

Article 4 – paragraph 2 – point a

Text proposed by the Commission

Amendment

4a. In Article 4(2), point (a) is replaced by

the following:

"(a) shares, or shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares, representing, over a period of 12 months, less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market;"

Justification

The definition of shares used in Article 4 of the Prospectus Directive should be aligned with the definition of shares in Article 4.1.18 of the MiFID Directive (2004/39/EC). There is a need for clarification of the exemptions under Article (4) in order to prevent discrimination among issuers by given preference to certain corporate structures instead of others.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 4 b (new)

Directive 2003/71/EC

Article 4 – paragraph 2 – point b

Text proposed by the Commission

Amendment

4b. In Article 4(2), point (b) is replaced by the following:

"(b) shares, or shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares, issued in substitution for shares of the same class already admitted to trading on the same regulated market, if the issuing of such shares does not involve any increase in the issued capital;"

Justification

The definition of shares used in Article 4 of the Prospectus Directive should be aligned with the definition of shares in Article 4.1.18 of the MiFID Directive (2004/39/EC). There is a need for clarification of the exemptions under Article (4) in order to prevent discrimination among issuers by given preference to certain corporate structures instead of others.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 4 c (new)

Directive 2003/71/EC

Article 4 – paragraph 2 – point e

Text proposed by the Commission

Amendment

4c. In Article 4(2), point (e) is replaced by the following:

"(e) shares, or shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares, offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;"

Justification

The definition of shares used in Article 4 of the Prospectus Directive should be aligned with the definition of shares in Article 4.1.18 of the MiFID Directive (2004/39/EC). There is a need for clarification of the exemptions under Article (4) in order to prevent discrimination among issuers by given preference to certain corporate structures instead of others.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 4 d (new)

Directive 2003/71/EC

Article 4 – paragraph 2 – point g

Text proposed by the Commission

Amendment

4d. In Article 4(2), point (g) is replaced by the following:

"(g) shares, or shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market;"

Justification

The definition of shares used in Article 4 of the Prospectus Directive should be aligned with the definition of shares in Article 4.1.18 of the MiFID Directive (2004/39/EC). There is a need for clarification of the exemptions under Article (4) in order to prevent discrimination among issuers by given preference to certain corporate structures instead of others.

Amendment 38

Proposal for a directive – amending act

Article 1 – point 4 e (new)

Directive 2003/71/EC

Article 4 – paragraph 2 – point h – point v

Text proposed by the Commission

Amendment

The substitution of 'summary' by 'key information document' applies through the whole text

4e. In Article 4(2), point (h)(v) is replaced by the following:

"(v) that the person seeking the admission of a security to trading on a regulated market under this exemption makes a *key information document* available to the public in a language accepted by the competent authority of the Member State of the regulated market where admission is sought;"

Amendment 39

Proposal for a directive – amending act

Article 1 – point 4 f (new)

Directive 2003/71/EC

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

4f. Article 4(3) is replaced by the following:

"3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning paragraphs 1(b), 1(c), 2(c) and 2(d), notably in relation to the meaning of equivalence. [...]"

(The wording in bold is unchanged text from the act being amended.)

Amendment 40

Proposal for a directive – amending act

Article 1 – point 5

Directive 2003/71/EC

Article 5 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. **It** shall also include a **summary**. The **summary** shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up. The format and content of the **summary** of the prospectus shall provide **key information** in order to **enable investors to take informed investment decisions and to compare the**

2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. **The prospectus** shall also include a **key information document**. The **key information document** shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities. **It shall be in a common format and** in the language in which the prospectus was originally drawn up. The format and content of the **key information document** of the prospectus

securities with other investment products.

shall provide, *in conjunction with the prospectus, appropriate information about the essential elements of the securities concerned* in order to *aid* investors *when considering whether to invest in such securities.*

The key information document shall include information on the following essential elements in respect of the securities concerned:

– essential information on the issuer including the assets, liabilities and financial position and, if applicable, the guarantor, and the securities to be offered to the public or to be admitted to trading on a regulated market;

– a short description of the risks associated with and essential characteristics of the investment in the relevant security if and to the extent it may be useful for the investor;

– details of the offer and admission to trading;

– the reasons for the offer and prospective use of proceeds, where appropriate;

– any rights attaching to the securities; and

– the general terms and associated costs.

The *summary* shall also contain a warning that:

The *key information document* shall also contain a warning that:

Amendment 41

Proposal for a directive – amending act

Article 1 – point 5 a (new)

Directive 2003/71/EC

Article 5 – paragraph 3

Text proposed by the Commission

Amendment

5a. Article 5(3) is replaced by the following:

"[...] The issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market."

Justification

The possibility to use a tripartite document should be extended to the base prospectus. This is made clearer if we delete the reference "subject to paragraph 4" at the beginning of Article 5 (3).

Amendment 42

Proposal for a directive – amending act

Article 1 – point 5 b (new)

Directive 2003/71/EC

Article 5 – paragraph 5

Text proposed by the Commission

Amendment

5b. Article 5(5) is replaced by the following:

"5. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall *lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures* concerning the format of the prospectus or base prospectus and supplements. [...]"

(The wording in bold is unchanged text from the act being amended.)

Amendment 43

Proposal for a directive – amending act

Article 1 – point 5 c (new)

Directive 2003/71/EC

Article 5 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5c. In Article 5 the following paragraph is added:

"5a. In order to achieve the objectives of this Directive, the Commission shall also lay down, by means of delegated acts in accordance with the Articles 24, 24a and 24b, measures to establish:

(a) the detailed content and specific form of the key information document referred to in paragraph 2 and 3; and

(b) the detailed content and specific form of the key information document in regard to:

(i) structured securities and base prospectuses,

(ii) shares, and

(iii) bonds.

Those delegated acts shall be adopted by ...*.

*** OJ please insert date: 18 months after entry into force of this Directive."**

Amendment 44

Proposal for a directive – amending act

Article 1 – point 6

Directive 2003/71/EC

Article 6 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the **summary**, including any translation thereof, unless it is misleading, inaccurate or inconsistent,

However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the **key information document**, including any translation thereof, unless it is misleading, inaccurate

when read together with the other parts of the prospectus, **and it does not provide key information enabling investors to take informed investment decisions and to compare the securities with other investment products.**

or inconsistent, when read together with the other parts of the prospectus. **Key investor information shall contain a clear warning in this respect.**

Amendment 45

Proposal for a directive – amending act

Article 1 – point 6 a (new)

Directive 2003/71/EC

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

6a. Article 7(1) is replaced by the following:

"1. Detailed delegated acts regarding the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents, shall be adopted by the Commission in accordance with Articles 24, 24a and 24b. [...]"

(The wording in bold is unchanged text from the act being amended.)

Amendment 46

Proposal for a directive – amending act

Article 1 – point 7 a (new)

Directive 2003/71/EC

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

7a. Article 7(3) is replaced by the following:

"3. The delegated acts referred to in paragraph 1 shall be based on the standards in the field of financial and non-financial information set out by international securities commission

organisations, and in particular by IOSCO and on the indicative Annexes to this Directive."

(The wording in bold is unchanged text from the act being amended)

Amendment 47

Proposal for a directive – amending act

Article 1 – point 8

Directive 2003/71/EC

Article 8 – paragraph 3a

Text proposed by the Commission

8. In Article 8, the following **paragraph 3a** is inserted after paragraph 3:

"3a. If securities are guaranteed by a Member State, an issuer, an offeror or a person asking for the admission to trading on a regulated market, when drawing up a prospectus in accordance with Article 1.3, shall be entitled to omit information about such guarantors."

Amendment

8. In Article 8, the following **paragraphs** are inserted after paragraph 3:

"3a. If securities are guaranteed by a Member State, an issuer, an offeror or a person asking for the admission to trading on a regulated market, when drawing up a prospectus in accordance with Article 1.3, shall be entitled to omit information about such guarantors.

3b. There shall be no requirement for the prospectus or any supplements thereto to contain information about central bank lending or other liquidity facilities provided to a particular credit institution by an ESCB central bank."

Justification

The lending and liquidity facilities of central banks need to be kept confidential in order to safeguard the stability and functioning of financial markets. This amendment makes the exemption of central banks explicit.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 8 a (new)

Directive 2003/71/EC

Article 8 – paragraph 4

Text proposed by the Commission

Amendment

8a. Article 8(4) is replaced by the following:

"4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning paragraph 2. [...]"

(The wording in bold is unchanged text from the act being amended.)

Amendment 49

Proposal for a directive – amending act

Article 1 – point 9 – point a

Directive 2003/71/EC

Article 9 – paragraphs 1 and 2

Text proposed by the Commission

Amendment

1. A prospectus shall be valid for **24 months** after its publication for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any supplements required pursuant to Article 16.

2. In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to **24 months**.

1. A prospectus shall be valid for **12 months** after its publication for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any supplements required pursuant to Article 16.

2. In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to **12 months**.

Justification

The validity period of 12 months should be maintained. Extending the validity period to 24 months increases the risk that the prospectus becomes outdated, as not all information can be adjusted through a supplement. In addition, extension of the validity period significantly increases the number of supplements, which negatively affects investors' understanding and the readability of the prospectus.

Amendment 50

Proposal for a directive – amending act
Article 1 – point 9 – point b
Directive 2003/71/EC
Article 9 – paragraph 4

Text proposed by the Commission

4. A registration document, as referred to in Article 5(3), previously filed and approved, shall be valid for a period of up to **24 months** provided that it has been supplemented in accordance with Article 16. The registration document, supplemented if necessary in accordance with Article 16, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus.

Amendment

4. A registration document, as referred to in Article 5(3), previously filed and approved, shall be valid for a period of up to **12 months** provided that it has been supplemented in accordance with Article 16. The registration document, supplemented if necessary in accordance with Article 16, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus.

Justification

The validity period of 12 months should be maintained. Extending the validity period to 24 months increases the risk that the prospectus becomes outdated, as not all information can be adjusted through a supplement. In addition, extension of the validity period significantly increases the number of supplements, which negatively affects investors' understanding and the readability of the prospectus.

Amendment 51

Proposal for a directive – amending act
Article 1 – point 11 a (new)
Directive 2003/71/EC
Article 11 – paragraph 3

Text proposed by the Commission

Amendment

11a. Article 11(3) is replaced by the following:

"3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the information to be incorporated by reference. [...]"

(The wording in bold is unchanged text from the act being amended.)

Amendment 52

Proposal for a directive – amending act

Article 1 – point 12

Directive 2003/71/EC

Article 12 – paragraph 2

Text proposed by the Commission

2. In this case, the registration document shall be supplemented in accordance with Article 16. The securities and **summary notes** shall be subject to a separate approval.

Amendment

2. In this case, the registration document shall be supplemented in accordance with Article 16. The securities **note** and **key information document** shall be subject to a separate approval.

Amendment 53

Proposal for a directive – amending act

Article 1 – point 12 a (new)

Directive 2003/71/EC

Article 13 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

12a. In Article 13(4), the second subparagraph is replaced by the following:

"In the case referred to in paragraph 2 the competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market if the documents are incomplete or supplementary information is needed within 10 working days of the submission of the application."

Amendment 54

Proposal for a directive – amending act

Article 1 – point 12 b (new)

Directive 2003/71/EC

Article 13 – paragraph 7

Text proposed by the Commission

Amendment

12b. Article 13(7) is replaced by the following:

"7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the conditions in accordance with which time limits may be adjusted. [...]"

(The wording in bold is unchanged text from the act being amended.)

Amendment 55

Proposal for a directive – amending act

Article 1 – point 12 c (new)

Directive 2003/71/EC

Article 14 – paragraph 2 – point c

Text proposed by the Commission

Amendment

12c. In Article 14(2), point (c) is replaced by the following:

"(c) in electronic form on the issuer's website or, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or"

Justification

The issuer's website should be upgraded as a very accessible publication channel. So far, this option could not be used in practice, as it was linked to the simultaneous publication on the websites of all involved financial intermediaries and agents, which technically and logistically was not achievable.

Amendment 56

Proposal for a directive – amending act

Article 1 – point 13 a (new)

Directive 2003/71/EC

Article 14 – paragraph 8

Text proposed by the Commission

Amendment

13a. Article 14(8) is replaced by the following:

"7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning paragraphs 1, 2, 3 and 4. [...]"

(The wording in bold is unchanged text from the act being amended.)

Amendment 57

Proposal for a directive – amending act

Article 1 – point 13 b (new)

Directive 2003/71/EC

Article 15 – paragraph 7

Text proposed by the Commission

Amendment

13b. Article 15(7) is replaced by the following:

"7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the

**subscription, and concerning paragraph
4. [...]"**

(The wording in bold is unchanged text from the act being amended.)

Amendment 58

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/71/EC

Article 16

Text proposed by the Commission

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs earlier, shall be mentioned in a supplement to the prospectus. Such a supplement shall be **approved in the same way in a maximum of seven working days** and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The **summary**, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

2. Investors who have already agreed to purchase or subscribe for the securities

Amendment

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs earlier, shall be mentioned in a supplement to the prospectus. ***In the event that the admission to trading on a regulated market takes place before the final closing of the public offering, the date of the admission shall terminate the obligation to supplement the prospectus, and the information obligations laid down by Directives 2004/109/EC and 2003/6/EC shall apply from hereon.*** Such a supplement shall ***immediately be submitted to the competent authority and shall be published in accordance with at least the same arrangements as were applied when the original prospectus was published. The key information document*** and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

2. ***For offers to the public***, investors who have already agreed to purchase or

before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances. This period may be extended by the issuer, the offeror or the person asking for the admission to trading on a regulated market.

subscribe for the securities before the supplement *or the information in accordance with Chapter III of Directive 2004/109/EC or Article 6 of Directive 2003/6/EC* is published shall have the right, exercisable within two working days after the publication of the supplement *or of the information in accordance with Chapter III of Directive 2004/109/EC or Article 6 of Directive 2003/6/EC*, to withdraw their acceptances *provided that the new factor, material mistake or inaccuracy referred to in paragraph 1 arose before the final closing of the public offering and settlement or delivery has not yet taken place*. This period may be extended by the issuer, the offeror or the person asking for the admission to trading on a regulated market. *The duration of the right of withdrawal shall be specified in the supplement.*

Amendment 59

Proposal for a directive – amending act

Article 1 – point 15 a (new)

Directive 2003/71/EC

Article 20 – paragraph 3

Text proposed by the Commission

Amendment

15a. Article 20(3) is replaced by the following:

"3. In order to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures to establish general equivalence criteria, based on the requirements laid down in Articles 5 and 7. [...]

On the basis of the criteria referred to in the first subparagraph, the Commission may, in accordance with Articles 24, 24a and 24b, declare that a third country ensures the equivalence of prospectus

drawn up in that country with this Directive by reason of its national law, or of practices or procedures based on international standards set by international organisations, including the IOSCO disclosure standards."

(The wording in bold is unchanged text from the act being amended.)

Amendment 60

Proposal for a directive – amending act

Article 1 – point 15 b (new)

Directive 2003/71/EC

Article 24 – paragraph 1

Text proposed by the Commission

Amendment

This amendment applies to the whole text

15b. Article 24(1) is replaced by the following:

"1. The Commission shall be assisted by the European Securities and Markets Authority (hereinafter referred to as 'the Authority')."

(The wording in bold is unchanged text from the act being amended.)

Amendment 61

Proposal for a directive – amending act

Article 1 – point 15 c

Directive 2003/71/EC

Article 24 – paragraph 2a

Text proposed by the Commission

Amendment

15c. Article 24(2a) is replaced by the following:

"2a. The power to adopt the delegated acts referred to in Article 1(3a), Article 2(4), Article 4(3), Article 5(5), Article 5(5a), Article 7(1), Article 7(3), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) and Article 20(3) shall

be conferred on the Commission for an indeterminate period of time.

2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 24a and 24b."

Amendment 62

Proposal for a directive – amending act

Article 1 – point 15 d (new)

Directive 2003/71/EC

Article 24 – paragraph 3

Text proposed by the Commission

Amendment

15d. Article 24(3) is deleted.

Amendment 63

Proposal for a directive – amending act

Article 1 – point 15 e (new)

Directive 2003/71/EC

Article 24 a (new)

Text proposed by the Commission

Amendment

15e. The following article is inserted after Article 24:

"Article 24a

Revocation of the delegation

1. The delegation of power referred to in Article 1(3a), Article 2(4), Article 4(3), Article 5(5) and (5a), Article 7(1) and (3), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) and Article 20(3) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced

an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Justification

The Legislator should not be obliged to explain itself for any decision to revoke delegation powers.

Amendment 64

Proposal for a directive – amending act

Article 1 – point 15 f (new)

Directive 2003/71/EC

Article 24 b (new)

Text proposed by the Commission

Amendment

15f. The following article is inserted after Article 24a:

"Article 24b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If on the expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force at the date stated therein.

3. If the European Parliament or the

Council objects to a delegated act, it shall not enter into force."

Justification

It should be the decision of the legislator to give reasons or not for an objection to a delegated act. In order not to over-burden the control mechanism, the legislator should not be obliged to state reasons for a rejection of a measure.

Amendment 65

Proposal for a directive – amending act

Article 2 – point 1 a (new)

Directive 2004/109/EC

Article 2 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

1a. The third subparagraph of Article 2(3) is replaced by the following:

"The measures referred to in points (a) and (b) of the second subparagraph [...] shall be laid down by means of delegated acts in accordance with Articles 27, 27a and 27b."

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 66

Proposal for a directive – amending act

Article 2 – point 1 b (new)

Directive 2004/109/EC

Article 5 – paragraph 6 – paragraphs 3 and 4

Text proposed by the Commission

Amendment

1b. The third and fourth subparagraphs of Article 5(6) are replaced by the following:

"The measures referred to in point (a) shall be adopted in accordance with the regulatory procedure referred to in Article 27(2). The measures referred to

in points (b) and (c) [...] shall be laid down by means of delegated acts in accordance with Articles 27, 27a and 27b.

Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1 by means of a delegated act in accordance with Articles 27, 27a and 27b."

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 67

Proposal for a directive – amending act

Article 2 – point 1 c (new)

Directive 2004/109/EC

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

1c. In Article 8, the following paragraph is added:

"3a. There shall be no requirement for the information provided in accordance with Articles 4, 5 and 6 to contain information about central bank lending or other liquidity facilities provided to a particular credit institution by an ESCB central bank."

Justification

The lending and liquidity facilities of central banks need to be kept confidential in order to safeguard the stability and functioning of financial markets. This amendment makes the exemption of central banks explicit.

Amendment 68

Proposal for a directive – amending act

Article 2 – point 1 d (new)

Directive 2004/109/EC

Article 9 – paragraph 7 –subparagraphs 1 and 2

Text proposed by the Commission

Amendment

1d. Article 9(7) shall be replaced by the following:

"7. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2, 4 and 5. [...]."

The Commission shall also specify the maximum length of the 'short settlement cycle' referred to in paragraph 4 of this Article, as well as the appropriate control mechanisms by the competent authority of the home Member State by means of delegated acts in accordance with Articles 27, 27a and 27b."

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 69

Proposal for a directive – amending act

Article 2 – point 1 e (new)

Directive 2004/109/EC

Article 11 – paragraph 1

Text proposed by the Commission

Amendment

1e. Article 11(1) is replaced by the following:

"1. Article 9 and Article 10(c) shall not apply to shares provided to or by the members of the ESCB in carrying out their functions as monetary authorities, including shares provided to or by members of the ESCB under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system or in the context of other central bank"

lending or liquidity facilities."

Justification

The lending and liquidity facilities of central banks need to be kept confidential in order to safeguard the stability and functioning of financial markets. This amendment makes the exemption of central banks explicit.

Amendment 70

Proposal for a directive – amending act

Article 2 – point 1 f (new)

Directive 2004/109/EC

Article 12 – paragraph 8

Text proposed by the Commission

Amendment

If Article 12(8) is replaced by the following:

"8. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures:

(a) to establish a standard form to be used throughout the Community when notifying the required information to the issuer under paragraph 1 or when filing information under Article 19(3);

(b) to determine a calendar of ‘trading days’ for all Member States;

(c) to establish in which cases the shareholder, or the natural person or legal entity referred to in Article 10, or both, shall effect the necessary notification to the issuer;

(d) to clarify the circumstances under which the shareholder, or the natural person or legal entity referred to in Article 10, should have learned of the acquisition or disposal;

(e) to clarify the conditions of

independence to be complied with by management companies and their parent undertakings or by investment firms and their parent undertakings to benefit from the exemptions in paragraphs 4 and 5.

[...]."

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 71

Proposal for a directive – amending act

Article 2 – point 1 g (new)

Directive 2004/109/EC

Article 13 – paragraph 2

Text proposed by the Commission

Amendment

1g. Article 13(2) is replaced by the following:

"2. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. It shall in particular determine:

(a) the types of financial instruments referred to in paragraph 1 and their aggregation;

(b) the nature of the formal agreement referred to in paragraph 1;

(c) the contents of the notification to be made, establishing a standard form to be used throughout the Community for that purpose;

(d) the notification period;

(e) to whom the notification is to be made.

[...]."

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 72

Proposal for a directive – amending act

Article 2 – point 1 h (new)

Directive 2004/109/EC

Article 14 – paragraph 2

Text proposed by the Commission

Amendment

1h. Article 14(2) is replaced by the following:

"2. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. [...]"

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 73

Proposal for a directive – amending act

Article 2 – point 1 i (new)

Directive 2004/109/EC

Article 17 – paragraph 4

Text proposed by the Commission

Amendment

1i. Article 17(4) is replaced by the following:

"4. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraph 1, 2 and 3. It

shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c). [...]"

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 74

Proposal for a directive – amending act

Article 2 – point 1 j (new)

Directive 2004/109/EC

Article 18 – paragraph 5

Text proposed by the Commission

Amendment

1j. Article 18(5) is replaced by the following:

"5. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraph 1 to 4. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c). [...]"

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 75

Proposal for a directive – amending act

Article 2 – point 1 k (new)

Directive 2004/109/EC

Article 19 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

1k. In Article 19(4), the first subparagraph is replaced by the following:

"4. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to ensure the uniform application of paragraphs 1, 2 and 3 [...]."

(The wording in bold is unchanged text from the act being amended.)

Amendment 76

Proposal for a directive – amending act

Article 2 – point 1 l (new)

Directive 2004/109/EC

Article 19 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

1l. In Article 19(4), The third subparagraph is deleted.

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 77

Proposal for a directive – amending act

Article 2 – point 1 m (new)

Directive 2004/109/EC

Article 21 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

1m. In Article 21(4), the first subparagraph is replaced by the following:

"4. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical

developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraph 1, 2 and 3 [...]."

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 78

Proposal for a directive – amending act

Article 2 – paragraph 1 n (new)

Directive 2004/109/EC

Article 21 – paragraph 4 – last subparagraph

Text proposed by the Commission

Amendment

In. In Article 21(4), the third subparagraph is deleted.

(The wording in bold is unchanged text from the act being amended.)

Amendment 79

Proposal for a directive – amending act

Article 2 – point 1 o (new)

Directive 2004/109/EC

Article 23 – paragraph 4

Text proposed by the Commission

Amendment

1o. Article 23(4) is replaced by the following:

"4. In order to ensure the uniform application of paragraph 1, the Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures:

(i) setting up a mechanism ensuring the establishment of equivalence of information required under this Directive, including financial statements and information, including financial

statements, required under the law, regulations or administrative provisions of a third country;

(ii) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.

In the context of point (ii) of the first subparagraph, the Commission shall *lay down, by means of delegated acts* in accordance with *Articles 27, 27a and 27b*, measures concerning the assessment of standards relevant to the issuers of more than one country. [...]

The Commission shall, in accordance with *Articles 27, 27a and 27b*, take the necessary decisions on the equivalence of accounting standards which are used by third country issuers under the conditions set out in Article 30(3) at the latest five years following the date referred to in Article 31. If the Commission decides that the accounting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.

In the context of the *third* subparagraph, the Commission shall also *lay down, by means of delegated acts* in accordance with *Articles 27, 27a and 27b*, measures aimed at establishing general equivalence criteria regarding accounting standards relevant to issuers of more than one country. [...]"

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 80

Proposal for a directive – amending act

Article 2 – point 1 p (new)

Directive 2004/109/EC

Article 23 – paragraph 5

Text proposed by the Commission

Amendment

1p. Article 23(5) is replaced by the following:

"5. In order to ensure uniform application of paragraph 2, the Commission may *lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b*, measures defining the type of information disclosed in a third country that is of importance to the public in the Community. [...]"

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 81

Proposal for a directive – amending act

Article 2 – point 1 q(new)

Directive 2004/109/EC

Article 23 – paragraph 7 – second subparagraph

Text proposed by the Commission

Amendment

1q. In Article 23(7), the second subparagraph is replaced by the following:

"The Commission shall also *lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b*, measures aimed at establishing general equivalence criteria for the purpose of the first subparagraph. [...]"

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 82

Proposal for a directive – amending act

Article 2 – point 1 r (new)

Directive 2004/109/EC

Article 27 – paragraph 1

Text proposed by the Commission

Amendment

1r. Article 27(1) is replaced by the following:

"1. The Commission shall be assisted by the European Securities and Markets Authority."

(The wording in bold is unchanged text from the act being amended.)

Amendment 83

Proposal for a directive – amending act

Article 2 – point 1 s (new)

Directive 2004/109/EC

Article 27 – paragraph 2a

Text proposed by the Commission

Amendment

1s. Article 27(2a) is replaced by the following:

"2a. The power to adopt delegated acts referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8) Article 13(2) Article 14(2), Article 17(4) Article 18(5), Article 19(4) Article 21(4), Article 23(4), Article 23(5) and Article 23(7) shall be conferred on the Commission for an indeterminate period of time.

2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27a and 27b."

Amendment 84

Proposal for a directive – amending act

Article 2 – paragraph 1 t (new)

Directive 2004/109/EC

Article 27 – paragraph 3

Text proposed by the Commission

Amendment

1t. Article 27(3) is deleted.

(The sign [...] shows where text has been deleted.)

Amendment 85

Proposal for a directive – amending act

Article 2 – point 1 u (new)

Directive 2004/109/EC

Article 27 a (new)

Text proposed by the Commission

Amendment

1u. The following article is inserted after Article 27:

"Article 27a

Revocation of the delegation

1. The delegation of power referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8) Article 13(2) Article 14(2), Article 17(4) Article 18(5), Article 19(4) Article 21(4), Article 23(4), Article 23(5) and Article 23(7) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the

validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Justification

The Legislator should not be obliged to explain itself for any decision to revoke delegation powers.

Amendment 86

Proposal for a directive – amending act

Article 2 – point 1 v (new)

Directive 2004/109/EC

Article 27 b (new)

Text proposed by the Commission

Amendment

1v. The following article is inserted after Article 27a:

"Article 27b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on the expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force at the date state therein.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force."

Justification

It should be the decision of the legislator to give reasons or not for an objection to a delegated act. In order not to over-burden the control mechanism, the legislator should not be obliged to state reasons for a rejection of a measure.

Amendment 87

**Proposal for a directive – amending act
Article 3 a (new)**

Text proposed by the Commission

Amendment

Article 3a

Review

Five years after the entry into force of this Directive, the Commission shall assess the application of this Directive, in particular with regard to the application and effects of the rules regarding the key information document. The Commission shall, furthermore, develop definitions of the terms 'public offer', 'primary market' and 'secondary market' and, in this respect, shall fully clarify the links between this Directive and Directives 2004/109/EC and 2003/6/EC. Following its assessment, the Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals to amend this Directive.

EXPLANATORY STATEMENT

A. Short Background

Directive 2003/71/EC, the Prospectus Directive, regulates the public offer of securities and their admission to a regulated market in the Community. The prospectus functions as a passport, allowing access to all markets of the EU, after registration and authorisation in the home Member State only notification to the host Member State is necessary.

The review of the Prospectus Directive was foreseen in Article 31 that introduced a five year review clause. In line with the principle of better regulation and cutting bureaucracy, the Commission proposal focuses on eliminating legal uncertainties, lowering unjustifiable high costs and burdens to the industry while keeping the same level of investor protection.

B. Your rapporteur's position

Your rapporteur welcomes the review of the European Commission and the underlying work for this review.

Your rapporteur agrees with the majority of simplifications and clarifications undertaken by the Commission.

Notably he agrees with the *clarification of thresholds*, the *possibility to choose the home Member State* in the case of non-equity securities, the *simplification of the regime for employee share schemes*, the *simplification of over-burdensome disclosure requirement for government guarantees*, the *alignment with the transparency directive* and the *removal of uncertainty regarding the host Member State notification*.

On the following points, your rapporteur has some remarks and suggests improving the current Commission drafting

Retails cascade

The liability in the case of a subsequent resale of a security needs to be clarified. For the subsequent resale of securities via financial intermediaries the Commission proposes that the initial prospectus may be used as long as it is up to date and the issuer has consented to its use.

Your rapporteur is furthermore of the opinion that in case a financial intermediary uses the initial prospectus without consent or if he has drawn up a new prospectus, the intermediary should be liable for the prospectus.

Alignment of qualified investor

Your rapporteur agrees with the Commission proposal to align the prospectus directive with the definition in the Markets in Financial Instruments Directive (MiFID) , but he suggests to go further and to delete the separate register as it has shown very little value in practice.

Rights issue

The Commission introduces simplified publication requirements for rights issues. Your rapporteur is of the opinion that we should fully exempt rights issues from the obligation to publish a prospectus as information is available to already existing shareholders.

Validity of prospectus

The validity period is extended to 24 months both for prospectuses and base prospectuses. Your rapporteur wants to increase the validity for base prospectuses to 36 months.

Supplement the prospectus

The obligation to keep the prospectus up to date ends either with the closing of the public offer or the admission to trading on a regulated market, whichever occurs earlier. Furthermore, the right of withdrawal in the case of a supplement to the prospectus is harmonised to two working days with the possibility for the issuer to extend this period. Your rapporteur agrees with the Commission proposal but he introduces a further clarification that the existing prospectus may be used in the case of the final offer to the public closing before the same security is admitted to trading on a regulated market.

Civil liability regimes

Your rapporteur asks the new European Supervisory Authority to compile a comparative table exhibiting the differences in national liability regimes. As we discuss liability, the real life differences in national civil law that have an essential impact are disregarded.

Primary versus Secondary markets

Your rapporteur is of the opinion that the underlying problem of a definition of primary and secondary markets needs to urgently be addressed. For this purpose, he has introduced a review clause that includes further work on defining primary markets, secondary markets and the term public offer in order to account better for unsolved problem and to find solutions to this lack of clarity.

Key investor document

The concept introduced by the Commission in the Packaged Retail Investment Products (PRIPs)¹ initiative on providing key information to retail investors for all retail investment products, which was introduced in the Key information document (KID) in the UCITs Directive² is an important idea.

The Commission introduces increased requirements to the prospect summary in this Directive. The summary is to give key information in order to allow the investor to compare the security with other products and make an informed investment decision. The Commission also extends the liability regime to the provision of such key information.

Your rapporteur is of the opinion that instead of introducing some key information elements in the summary, the summary should be replaced by a key information document. The detailed content and format shall be determined at level two, but shall incorporate to a large part the information in the current summary note. Advice by the new European Securities and Markets Authority on the level two measures should duly consider the developments in the PRIPs debate. The concept of comparability across investment products is best dealt with during the course of the PRIPs initiative as a horizontal measure and this should hence be addressed in such a manner in due course.

¹ Commission Communication from 29 April 2009

² Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

Delegating and Implementing Acts

Due to the Lisbon Treaty coming into force, the possibility for the legislator to delegate the power to adopt non-legislative acts to the Commission to supplement or amend certain non-essential elements of the legislative acts is introduced.

However Article 291 will require the adoption of a Regulation to enter into force.

Consequently, the provisions concerned with the implementing acts will remain in comitology and the alignment is postponed to a further revision of the directives.

ESMA

In light of the recent Commission proposal, following the recommendations of the De Larosière group, to establish a European System of Financial Supervisors (ESFS) consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities, your rapporteur supports the new integrated supervisory framework and therefore already introduced the European Securities and Markets Authority (ESMA) as a replacement of the Committee of European Securities Regulators (CESR)

9.3.2010

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a European Parliament and Council directive amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

(COM(2009)0491 – C7-0170/2009 – 2009/0132(COD))

Rapporteur: Sebastian Valentin Bodu

SHORT JUSTIFICATION

BACKGROUND TO THE PROPOSAL

The main aim of the Action Programme to reduce administrative burdens of existing regulation in the European Union, launched in 2007 by the Commission, was to provide better regulation as part of the 'Growth and Jobs' strategy.

Furthermore, in 2007 the Council adopted a target to reduce administrative burdens by 25 % by 2012 in order to enhance the competitiveness of various companies in the Community.

Even though the general assessment of the overall effect of the directive, carried out five years after its entry into force, has been positive, a number of legal uncertainties and unjustified burdensome requirements have been identified. These increase costs and create inefficiencies, thereby hampering the process of raising funds from the securities markets for companies and financial intermediaries in the EU. Taking into account the need to improve investor protection, the summary of the prospectus should be simplified in order to respond effectively to the current financial crisis.

This Commission proposal is the result of an ongoing dialogue and consultation with the major stakeholders and with market participants and consumers. It is built upon the analysis contained in the reports published by the Committee of European Securities Regulators and by the European Securities Markets Expert Group. It also takes into consideration the findings of a study conducted by the Centre for Strategy & Evaluation Services and of a public online

consultation.

SUBSTANCE OF THE PROPOSAL

The overall aim of this proposal is to simplify and improve the implementation of the directive, given the importance of improving the level of investor protection provided for in the directive and ensuring that the information given is adequate and sufficient to meet the needs of investors to cope with turbulence on the financial markets. It is expected and intended that this simplification should also implicitly result in significant benefits such as:

- reducing the disclosure requirements for companies with reduced market capitalisation, which will generate overall savings of €173 million every two years;
- abolishing the rules which entail double transparency obligations, thereby eliminating unnecessary costs to companies to the tune of €30 million;
- exempting Employee Shares Schemes from the obligation to publish the prospectus, which will save some €18 million;
- reducing disclosure requirements for raising capital through rights issues, which will save almost €80 million;
- in addition to all these figures, some €800 000 will be saved by excluding detailed information on the financial situation of the guarantor in case of government guarantee schemes.

All these savings have been estimated at €302 million per year.

In September 2008, the High Level Group of Independent Stakeholders on Administrative Burdens advised the European Commission to consider abolishing:

1. the obligation to deliver a paper copy of the prospectus;
2. the obligation to provide the translation of the summary in case of cross-border offers.

The abolition of the first obligation would have a negative impact on consumer confidence because it would create discrimination between investors depending on whether they have internet access or not, although it would reduce the administrative burden for the person obliged to hand the prospectus to the investor.

With regard to the abolition of the obligation to translate the summary of the prospectus, even though this would save on translation costs, this too would be detrimental for investor protection because it is vital that investors receive at least the summary of the prospectus in a language they can understand.

LEGAL BASIS

The proposal is based on Articles 44 and 95 of the EC Treaty (currently Articles 50 and 114 of the TFEU).

The proposal complies with the principles of subsidiarity and proportionality, as set out in Article 5 of the TFEU.

RECOMMENDATIONS

As a personal observation, I would say that the amendment policy concerns issues of great importance with regard to prospectuses and transparency; any comments on matters of minor importance are therefore not consistent with the aim of the proposal.

I have reviewed the proposed amendments and considered the texts of the two directives as amended. I have concluded that the views expressed and solutions identified reflect the current key requirements of stakeholders in the EU capital markets.

Several amendments might be made to the Commission proposal to amend Directive 71/2003/EC concerning the prospectus, to eliminate some minor flaws. As regards Directive 109/2004/EC concerning transparency, no comments or amendments are as yet required.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/71/EC

Article 16 – paragraph 2

Text proposed by the Commission

2. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances. This period may be extended by the issuer, the offeror or the person asking for the admission to trading on a regulated market.

Amendment

2. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances. This period may be extended by the issuer, the offeror or the person asking for the admission to trading on a regulated market, ***but shall not exceed 10 working days from the date of publication of the supplement.***

Justification

The right to extend the period was apparently designed for the benefit of issuers. It should not, however, be detrimental to subscribers, and this deadline should therefore be established for both parties.

PROCEDURE

Title	Securities to be offered to the public and harmonisation of transparency requirements (amendment of Directives 2003/71/EC and 2004/109/EC)
References	COM(2009)0491 – C7-0170/2009 – 2009/0132(COD)
Committee responsible	ECON
Opinion by Date announced in plenary	JURI 7.10.2009
Rapporteur Date appointed	Sebastian Valentin Bodu 14.12.2009
Date adopted	8.3.2010
Result of final vote	+: 19 -: 0 0: 0
Members present for the final vote	Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Marielle Gallo, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sergio Gaetano Cofferati, Kurt Lechner, Eva Lichtenberger, Toine Manders, József Szájer

PROCEDURE

Title	Securities to be offered to the public and harmonisation of transparency requirements (amendment of Directives 2003/71/EC and 2004/109/EC)		
References	COM(2009)0491 – C7-0170/2009 – 2009/0132(COD)		
Date submitted to Parliament	23.9.2009		
Committee responsible Date announced in plenary	ECON 7.10.2009		
Committee(s) asked for opinion(s) Date announced in plenary	JURI 7.10.2009		
Rapporteur(s) Date appointed	Wolf Klinz 20.10.2009		
Discussed in committee	2.12.2009	27.1.2010	17.3.2010
Date adopted	23.3.2010		
Result of final vote	+: -: 0:	39 6 0	
Members present for the final vote	Burkhard Balz, Godfrey Bloom, Sharon Bowles, Udo Bullmann, Pascal Canfin, Nikolaos Chountis, George Sabin Cutas, Rachida Dati, Leonardo Domenici, Diogo Feio, Markus Ferber, Elisa Ferreira, Vicky Ford, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Enikő Györi, Liem Hoang Ngoc, Gunnar Hökmark, Othmar Karas, Wolf Klinz, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Hans-Peter Martin, Arlene McCarthy, Ivari Padar, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Ivo Strejček, Kay Swinburne, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool		
Substitute(s) present for the final vote	Sophie Auconie, Pervenche Berès, Herbert Dorfmann, Sari Essayah, Ashley Fox, Robert Goebbels, Jan Kozłowski, Philippe Lamberts		