European Parliament

Capital markets recovery package: MiFID and EU recovery prospectus

In July 2020, the European Commission adopted a legislative package on capital markets recovery as part of its overall strategy to tackle the economic impacts of the coronavirus pandemic. The package includes targeted amendments to the Prospectus Regulation and the Markets in Financial Instruments Directive II (MiFID II), aimed at reducing the administrative burdens faced by experienced investors in their business-to-business relationships and at increasing the competitiveness of the EU's commodity derivatives markets. The European Parliament is expected to vote during the February plenary session on the provisional agreements on the two proposals resulting from interinstitutional negotiations.

Background

A prospectus is a legally required document disclosing information to investors about a company and the securities that the company offers to the public or seeks to admit to trading on a regulated market. In 2017, the European Parliament and Council adopted a regulation (the Prospectus Regulation) amending the then existing directive to alleviate administrative burden for companies (especially small and medium-sized enterprises, SMEs) and to make it a better information tool for investors. The regulation was further amended in 2019 to ease issuance on SME growth markets. Together with the Markets in Financial Instruments Regulation (MiFIR), the Markets in Financial Instruments Directive II (MiFID II) was adopted in 2014 to revise the legal framework on investment services set out in MiFID dating back to 2004. It governs the provision of investment services in financial instruments by banks and investment firms; and the operation of traditional stock exchanges and alternative trading venues.

European Commission proposal

On 24 July 2020, the Commission adopted a legislative package on capital markets recovery as part of its overall strategy to tackle the economic impacts of the coronavirus pandemic. The package consists of targeted amendments to the Prospectus Regulation, MiFID II and securitisation rules. The proposed amendments are part of the Capital Markets Union and aim to reduce some of the administrative burdens that experienced investors meet in their business-to-business relationships – while preserving protection for retail investors – and to increase the competitiveness of the EU's commodity derivatives markets.

Targeted amendments to the prospectus regime – EU recovery prospectus

Due to the situation resulting from the coronavirus pandemic, the Commission took the view that it was important to ensure that the prospectus requirements do not act as a barrier to raise capital on public markets. The Commission therefore proposed targeted amendments to the Prospectus Regulation, meant to create a temporary regime (expiring 18 months after the date of application of the regulation) for secondary issuances of shares, which would simplify the procedure for issuers seeking to raise capital quickly during the pandemic. The amendments relate to the exemption threshold (€150 million) and the material information the prospectus must contain. They also include the creation of a new type of short-form prospectus (the 'EU recovery prospectus'), containing reduced information on: (a) the prospects of the issuer and recent significant changes in its financial position, if any; and (b) essential information on the shares, the reasons for the issuance and its impact on the overall capital structure of the firm. The approval procedure would take five working days. The Commission also proposes to simplify the supplements to the prospectus. Lastly, the review of the regulation would include an assessment of whether the EU recovery prospectus meets the objectives pursued by the regulation.

Targeted amendments to certain MiFID II requirements

The targeted amendments to the MiFID II framework proposed in July 2020 refer to a number of requirements that were already identified (during the 2020 MiFID/MiFIR public consultation) as being overly burdensome or hindering the development of European markets. The pandemic crisis made it even

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more crucial to lessen unnecessary burdens and provide opportunities to nascent markets. The Commission therefore proposed to recalibrate requirements to ensure a high level of transparency towards the client, while preserving the highest standards of protection and acceptable compliance costs for European firms. The Commission also proposed to amend the MiFID II rules affecting energy derivatives markets to help in developing euro-denominated energy markets – important for the international role of the euro – and allowing EU companies to cover their risks, while safeguarding the integrity of commodity markets, especially for agricultural products.

European Parliament position

On 19 November 2020, Parliament's Committee on Economic and Monetary Affairs (ECON) voted on the proposal on the **amendments to the prospectus regime**. According to it, the regime would be available not only to issuers but also to offerors of shares admitted to a regulated market or an SME growth market for at least 18 months. The prospectus would have to include the long-term business strategy and objectives of the issuer, as well as the rights attached to the shares. The information contained in the prospectus should enable non-professional investors to take an informed decision. The evaluation report on the regulation should also include the number of EU growth prospectuses approved and an estimate of the actual additional market capitalisation mobilised by such prospectuses, as well as the cost of preparing and having an EU recovery prospectus approved compared to the current costs for existing prospectuses (and associated savings). Lastly, in its minimum information (annex), the prospectus should contain a description of the issuer's policy on dividend distributions, any current restrictions, as well as share repurchases. Parliament adopted its position on the proposal on **targeted amendments to MiFID II requirements** on 25 November 2020. It emphasised that the changes to be introduced should remove unnecessary bureaucracy and provide for temporary exceptions able to ease economic difficulty, whereas complex legislative issues should be left to the planned review of the MIFID II package. To better enhance investor protection, Parliament pointed out that the debt level of retail investors must be taken into account in the suitability assessment of financial instruments, in particular given the rising level of consumer debt due to the Covid-19 pandemic. Parliament also proposed to require Member States to ensure that investment firms can pay jointly for the provision of investment research services, if certain conditions are met. Investment firms providing portfolio management services or holding the accounts of retail clients should inform the client when the initial value of any instrument depreciates by 10 %. Finally, Parliament introduced a review clause binding the Commission to review MiFID II and MiFIR by 31 July 2021.

Final agreement

Parliament and Council reached a provisional agreement on the overall Capital markets recovery package on 10 December 2020. It was endorsed by Coreper, for the Council, on 16 December 2020 and approved by ECON on 14 January 2021. The final compromise on the EU recovery prospectus includes an amendment to the Transparency Directive, which provides Member States with the option to postpone, by one year, the requirement for listed companies to prepare all annual financial reports in a European single electronic reporting format ('ESEF') for financial years beginning on or after 1 January 2020. The amended regulation would expire by 31 December 2022. The agreed changes to the MiFID II regime simplify information requirements, for instance as concerns costs and charges disclosures. In addition, a targeted exemption will allow banks and financial firms to bundle research and execution costs relating to small and mid-cap issuers. The position limit regime for commodity derivatives was also adapted to help European businesses to react to market volatility and to support the emergence and growth of euro-denominated commodity derivatives markets. The changes do not affect agricultural products, in particular products used for human consumption. The agreed amendments for MiFID will enter into application one year after publication in the Official Journal, when Member States have transposed the changes into their national legislation.

First-reading reports: 2020/0155(COD) and 2020/0152(COD); Committee responsible: ECON; Rapporteurs: Ondřej Kovařík (Renew, Czechia) and Markus Ferber (EPP, Germany).