

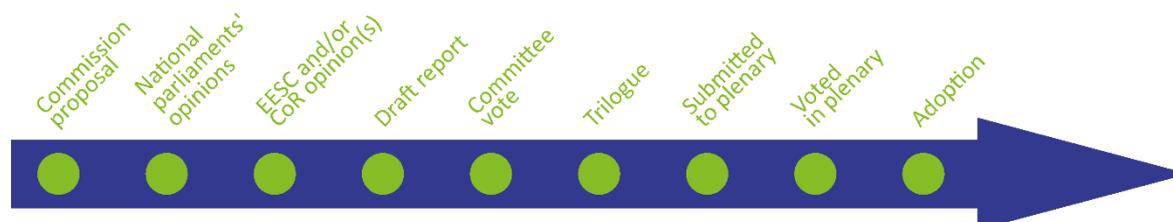
# Prospectuses for investors – Simplifying equity-raising during the pandemic

## OVERVIEW

A prospectus is a legally required document presenting information about a company and the securities that it offers to the public or seeks to admit to trading on a regulated market. The relevant EU legislation consists of a directive, adopted in 2003, amended in 2010, and finally replaced by a regulation in 2017. Drawing up a prospectus entails time and costs, which in the current economic context may deter issuers in distress from seeking to raise new funds, in particular equity. To remedy this, the Commission proposed to amend Regulation (EU) 2017/1129. These amendments aim at creating a temporary (18 month) regime for a short-form prospectus and to simplify the procedure for issuers (so that they can rapidly raise capital), as well as to release pressure on financial intermediaries. The Commission proposal was reviewed by the co-legislators who, among other things, increased the range of those who can benefit from the regime, added elements that must appear in the recovery prospectus and increased the minimum information in the prospectus. They further amended Directive 2004/109/EC (the 'Transparency Directive'), thus providing Member States with the option to postpone, by one year, the requirement for listed companies.

### Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2017/1129 as regards the EU recovery prospectus and targeted adjustments for financial intermediaries to help the recovery from the Covid-19 pandemic

<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	COM(2020) 281 final
<i>Rapporteur:</i>	Ondřej Kovařík (Renew, Czechia)	24.7.2020
<i>Shadow rapporteurs:</i>	Sirpa Pietikäinen (EPP, Finland) Alfred Sant (S&D, Malta) Jörg Meuthen (ID, Germany) Ernest Urtasun (Greens/EFA, Spain) Eugen Jurzyca (ECR, Slovakia) José Gusmão (The Left, Portugal)	2020/0155(COD)  Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Procedure completed.</i>	Regulation (EU) 2021/337 <a href="#">OJ L 68, 26.2.2021, pp. 1–13</a>	



## Introduction

A prospectus is a legally required document presenting information about a company and the securities that the company offers to the public or seeks to admit to trading on a regulated market. This information should be the basis on which investors can decide whether to invest in securities issued by that company.

Drawing up a prospectus entails costs, which may deter issuers in financial distress seeking to raise new funds – in particular equity. Due to the situation resulting from the Covid-19 pandemic, it is crucial to ensure that the prospectus requirements do not act as a barrier to raise capital on public markets – at least for already listed issuers.

This Commission proposal therefore aims at creating a temporary regime (it would expire 18 months after the date of application of the regulation) that would simplify the procedure for issuers to raise capital quickly during the Covid-19 pandemic.

The amendments to the Prospectus Regulation relate to the creation of a new type of short-form prospectus (the 'EU recovery prospectus'), as well as targeted amendments to release pressure on financial intermediaries (notification of supplements and non-equity issuances by credit institutions).

The EU recovery prospectus aims at a focus on essential information and would only be available for secondary issuances of shares. Provided that issuers have shares already admitted for trading on a regulated market or a small and medium-sized enterprise (SME) growth market, continuously for at least the last 18 months, the alleviated disclosure could be expected to reduce the cost of drawing up a prospectus and to make the document easier to understand. Furthermore, the EU recovery prospectus would also make scrutiny by national competent authorities more efficient. To that extent, the proposed EU recovery prospectus regime intends to shorten prospectus approval to five working days, to allow issuers to take advantage of opportunities to raise capital. This new type of prospectus would also benefit from the EU single passport of approved prospectuses for cross-border offers and admissions to trading.

## Existing situation

The EU first introduced rules on prospectuses in 2003, with [Directive 2003/71/EC](#). Under previous EU rules, regulations and practices regarding prospectuses varied widely between European Member States. As a result, EU capital markets were fragmented and it has rarely proved possible to use the existing prospectuses to raise capital across frontiers within Europe.

The Prospectus Directive harmonised requirements for the drawing up, approval and distribution of the prospectus. It defined clear conditions for the prospectus with regard to offers of securities to the public and admission to trading on a regulated market. In addition, to avoid loopholes and different approaches, it harmonised the essential definitions, thus ensuring a level playing field throughout the EU. Recognising their particular situation, the directive provided an adapted regime for SMEs, under which such companies would not be obliged to draft a prospectus if they were offering only a small amount of securities to the public. Furthermore, it established disclosure standards based on international standards set by the International Organization of Securities Commissions ([IOSCO](#)), with schedules adapted depending on the nature of the issuer and the type of securities involved. Lastly, it created an effective 'single passport' regime, under which companies could issue securities, or admit them to trading, in any EU Member State, simply by notifying the authorities in that Member State of their prospectus, and by showing that the appropriate authority in another Member State has already approved it.

These rules underwent a revision in 2010, with the adoption of amending [Directive 2010/73/EU](#). The directive aimed to reduce administrative burdens relating to the publication of a prospectus in the case of offers of securities to the public and admission to trading in regulated markets within the

EU. Furthermore, in the context of the global financial crisis, it also aimed at increasing investor protection and ensuring that information provided about the issuer of securities is sufficient, to allow investors to analyse prospects and risks. The main areas where the 2010 directive amended the 2003 directive were (i) the application of the directive; (ii) the obligation to publish a prospectus; and (iii) the form and content of the prospectus itself (including the minimum information requirements and the prospectus summary).

Finally, in 2015, [a further proposal to amend](#) the prospectus was adopted to enhance investor protection and improve market efficiency by simplifying the administrative burdens relating to the publication of a prospectus for the issuing and offering of securities. This regulation, which replaced the directive, amended among other things, its purpose, scope, and exemptions; provided that the prospectus should contain a clear and accurate seven-page summary; established a simplified disclosure regime for frequent issuers; created a European online prospectus database, operated free of charge by the European Securities and Markets Authority (ESMA); and created an 'EU growth prospectus' to encourage the use of capital market financing by SMEs. Lastly, for third-country issuers, the regulation provided that, under specific conditions, the national competent authority of the third-country issuer may approve a prospectus drawn up in accordance with the national laws of the third-country issuer.

## Parliament's starting position

Given that the present proposed amendments to the Prospectus Regulation are specific to the Covid-19 pandemic, the European Parliament has not taken any prior position.

## Preparation of the proposal

In the European Commission communication of 13 March 2020, entitled '[Coordinated economic response to the Covid-19 outbreak](#)', the Commission highlighted the importance of ensuring the liquidity of the EU financial sector and countering a threatened recession through action at all levels. Furthermore, on 27 May 2020, in its communication entitled '[Europe's moment: Repair and prepare for the next generation](#)', the Commission presented key instruments supporting the recovery plan for Europe, including measures that aim at kick-starting the economy and helping private investment. This communication also stressed that liquidity and access to finance will be a continued challenge for companies.

Nevertheless, in a significant departure from previous practice, the Commission did not draft an impact assessment, but provided a cost-benefit analysis instead, which is included in the staff working document supporting the capital markets recovery package. The Commission justified its choice, noting that measures had to be taken urgently to help the recovery, after the crisis on financial markets and on the real economy resulting from the Covid-19 pandemic.

## The changes the proposal would bring

The [amendment](#) to Article 1(4) of the regulation (dealing with the offers of securities for which the obligation to publish a prospectus does not apply), would add a point (k) increasing the threshold of securities offered that is exempted from the obligation, from €75 million to €150 million, for the 18-month period during which the regulation is in force.

Amendments to Article 6(1), on the necessary material information a prospectus must contain and Article 7 (summary) of the Prospectus Regulation would deal with technical adjustments on the materiality test (Article 6) and the summary (Article 7).

Article 14a of the regulation would introduce the new – temporary – prospectus: the 'EU recovery prospectus'. According to this article, the EU recovery prospectus would be available only to issuers that have shares already admitted on a regulated market or an SME growth market for at least 18 months. The EU recovery prospectus would be a single document, of at most 30 pages

(in A4 format), which would contain reduced information necessary for investors to understand: (a) the prospects of the issuer and the significant changes in the financial position of the issuer that have occurred since the end of the last financial year, if any; and (b) the essential information on the shares, the reasons for the issuance and its impact on the overall capital structure of the issuer, and the use of proceeds.

The amendment would require that information is written and presented in an easily analysable, concise and comprehensible form and enables investors to make an informed investment decision.

According to the amendment to Article 20, the approval procedure for the recovery prospectus would take five working days.

Amendment to Article 21 (publication of the prospectus) would introduce technical adjustments on the storage mechanism that is kept by ESMA.

Amendments to Article 23<sup>1</sup> simplify the supplements to the prospectus: financial intermediaries would only have to contact and inform investors who subscribed and purchased securities through them, between the moment the prospectus is approved and the closing of the offer period, or the time when trading on a regulated market begins. In addition, the amendments would extend the deadline for financial intermediaries to contact investors who subscribed and purchased securities through them and that benefit from a withdrawal right within one working day from the publication of the supplement – from two, to three working days from the publication of the supplement.

According to (new) Article 47a, the EU recovery prospectus regime would expire after 18 months of application. Lastly, an amendment to Article 48 would require that the assessment of whether the EU recovery prospectus meets the objectives pursued by this regulation be part of the review of the Prospectus Regulation.

## Advisory committees

At the time of drafting, neither of the advisory committees had published an opinion on the Commission proposal.

## National parliaments

The deadline for the submission of reasoned opinions on the grounds of subsidiarity was 27 October 2020. The proposal was [examined](#) by 14 national chambers in 13 Member States. On 13 October 2020, the Joint Committee for EU Affairs of the Spanish Parliament adopted a resolution regarding the compliance of the initiatives COM(2020) 280 final and COM(2020) 281 final with the principle of subsidiarity. This resolution stated that both proposals are in accordance with the principle of subsidiarity.

## Stakeholder views<sup>2</sup>

At the time of drafting, neither ESMA nor the European Central Bank (ECB) have published an opinion on the Commission proposal.

## Legislative process

### European Parliament position

The Economic and Monetary Affairs (ECON) committee appointed Ondřej Kovařík (Renew, Czechia), as rapporteur. The committee adopted its report on 19 November 2020.

According to it, the amended regulation would expire by 31 December 2022. Apart from issuers, the regime would be available 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 make an informed decision. The right to withdraw would be exercisable within three working days of the publication of the supplement.

The evaluation report of the regulation should, in addition, 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, the minimum information in the prospectus (annex) should contain a description of the issuer's policy on dividend distributions, any current restrictions, as well as share repurchases.

## Council position

The Council published its [negotiating mandate](#) on 16 October 2020.

In Article 14a, the Council would expand the minimum information to be included in the EU recovery prospectus, compared to the Commission proposal, to ensure better investor protection. The Council would also introduce a cap on its use to avoid highly dilutive issuances, while ensuring that it may be used as a basis for meaningful capital increases: the EU recovery prospectus should thus be limited to offers equivalent to less than 90% of outstanding capital, expressed as the ratio between the number of shares offered and the total number of shares before the issuance.

In the context of Covid-19, the Council would also propose to amend [Directive 2004/109/EC](#) (the 'Transparency Directive'), to provide 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 Council justifies this proposal by noting that such an amendment may free up companies' resources for more urgent needs.

## Trilogue agreement

The co-legislators came to a provisional [agreement](#) on 15 December 2020.

In addition to the aforementioned amendments proposed by the European Parliament, the final compromise includes the amendment Council proposed to Directive 2004/109/EC (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.

Parliament approved the text of the agreement at first-reading during its 11 February 2021 plenary session. Subsequently, the text was adopted by the Council on 15 February and the final act was published in the [Official Journal of the EU](#) on 26 February. It entered into force on 18 March 2021.

## EP SUPPORTING ANALYSIS

Delivorias A., [Prospectuses for investors](#), EPRS, European Parliament, April 2017.

## OTHER SOURCES

[EU recovery prospectus and targeted adjustments for financial intermediaries to help the recovery from the COVID-19 pandemic](#), European Parliament, Legislative Observatory (OEIL).

## ENDNOTES

- <sup>1</sup> According to Article 23 of the regulation: 'Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay.'
- <sup>2</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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