PROSPECTUS AND MARKET ABUSE RULES

Proposal COM(2022) 762 of 7 December 2022 for a **Regulation** amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 **to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises**.

cep**PolicyBrief** No. 9/2023

SHORT VERSION [Go to Long Version]

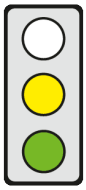
Context | Objective | Interested Parties

Context: According to the Commission, existing prospectus rules are overly bureaucratic and therefore make it difficult for small and medium-sized companies in particular to access the public markets. In addition, requirements under the Market Abuse Regulation are overly burdensome for issuers that are already listed, and lack the necessary legal clarity.

Objective: Revising the Prospectus and Market Abuse Regulation aims to increase the attractiveness of public markets in the EU and lower the requirements for issuers. At the same time, investor protection and market integrity are to be preserved.

Interested parties: Issuers, trading venues and investors.

Brief Assessment



Pro

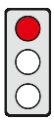
- Giving the prospectus a standardised format, and presenting information in a fixed order, makes it easier for investors to grasp the relevant details and compare the prospectuses of different issuers.
- Removing the obligation to immediately publish intermediate steps in a protracted process, reduces existing legal uncertainties for issuers and may protect investors from making hasty decisions.
- Adjustments to the rules on market soundings will reduce legal uncertainties and lower the regulatory burden for market participants involved in these soundings.

Contra

- Exempting offers below €12 million from the obligation to publish a prospectus suggests that investor protection matters less for these offers than for offers above this threshold. This proposal is unconvincing. Investments in lower-volume offerings are not per se less risky.
- While page limitations on prospectuses may reduce the cost of producing a prospectus, they create additional liability risks for issuers.

Prospectus exemption for securities offerings (€ 12 million threshold) [Long Version C.1.1.2]

Commission proposal: In future, the prospectus obligation will no longer apply to public offerings of securities with a total consideration in the EU of less than €12 million calculated over a 12-month period.



cep-Assessment: Generally exempting offers below €12 million from the obligation to publish a prospectus suggests that investor protection matters less for these offers than for offers above this threshold. This proposal is unconvincing. Investments in lower-volume offerings are not per se less risky and fixed thresholds also cause distortions of competition. Instead of thresholds, all offers should be subject to prospectus requirements which should then be linked to the complexity and risks of the respective issue.

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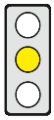
Standardised and streamlined prospectuses [Long Version C.1.1.4]

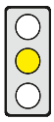
Commission proposal: In future, the information in a prospectus must be presented in a standardised format and a fixed order. Prospectuses for initial public offerings of shares in companies must not exceed 300 A4 pages.



cep-Assessment: Giving the prospectus a standardised format and presenting information in a fixed order makes it easier for investors to grasp the relevant details and compare the prospectuses of different issuers. While page limitations may reduce the cost of producing a prospectus, they create additional liability risks for issuers. In addition, they could jeopardise investor protection if they result in essential information having to be left out.

EU Follow-on prospectus [Long Version C.1.1.5]

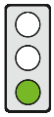
Commission proposal: The current simplified prospectus format for secondary issuances is to be replaced by an "EU Follow-on prospectus", modelled on the "Recovery prospectus" created during the Corona pandemic. It can be used by issuers whose securities have been admitted to a regulated market or an SME growth market for at least the last 18 months. The maximum length of an EU Follow-on prospectus relating to shares is 50 A4 pages.



cep-Assessment: A simplified prospectus format for secondary issuances is appropriate because investors will have already provided comprehensive information for the primary issuance, so full prospectuses are unnecessary. However, modelling the EU Follow-up prospectus on the "Recovery prospectus" is questionable because the Commission thereby assumes, regardless of the market situation, that the investor's need for information has decreased. This puts investor confidence in the issuances at risk.

Intermediate steps in a protracted process [Long Version C.1.2.2]

Commission proposal: Issuers of financial instruments currently have to disclose inside information to the public without delay. In future, this obligation will no longer apply to intermediate steps in a protracted process (e.g. the initiation of a company takeover). Issuers will only have to publish the information relating to the event that is intended to complete the process. The ban on engaging in insider dealing will continue to be triggered by intermediate steps that qualify as inside information.



cep-Assessment: Releasing issuers, in future, from the obligation to immediately publish intermediate steps in a protracted process, is appropriate. It reduces existing legal uncertainties for issuers in this respect and may protect investors from making hasty decisions based on unreliable information. Maintaining the ban on engaging in insider dealing during intermediate steps may prevent possible abuse.

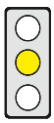
Market soundings [Long Version C.1.2.3]

Commission proposal: The disclosure of inside information during a market sounding does not constitute unlawful disclosure of inside information if certain conditions are met. In future, market participants who do not (fully) meet the requirements will not have full protection against the accusation of unlawful disclosure. At the same time, however, there will be no "presumption" that inside information has been unlawfully disclosed.

cep-Assessment: No automatic presumption that inside information has been unlawfully disclosed during a market sounding, if market participants fail to meet certain requirements, may limit existing legal uncertainties and is appropriate in this sense. It also reduces the regulatory burden for all those market participants involved in a market sounding without substantially weakening the integrity of the markets.

Insider lists [Long Version C.1.2.4]

Commission proposal: In future, issuers will not have to draw up "full insider lists" but may limit their insider lists to those persons who, due to the nature of their function or position within the issuer, have regular access to inside information ("permanent insider list"). However, Member States may require issuers whose securities have been admitted to trading on a regulated market for at least the last five years to continue to draw up "full insider lists".



cep-Assessment: The planed change from a full insider list to a permanent insider list is appropriate because if no insider dealing takes place, preparing the list is ultimately unnecessary. If insider dealing does take place, the less extensive list of permanent insiders will be sufficient because the supervisory authorities already have sufficient supervisory powers under the Market Abuse Regulation. The ability of Member States to unilaterally make the insider list requirements stricter should be rejected. This runs counter to the goal of creating a Capital Markets Union.