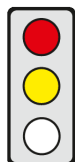


KEY ISSUES

Objective of the Regulation: The Commission wants to lower the administrative burden for issuers and financial intermediaries resulting from the Prospectus Regulation.

Affected parties: Issuers of securities, investors, financial intermediaries, regulated markets, SME growth markets.



Pro: (1) The new rules on supplements for prospectuses in case of inaccuracies usefully lower the burden for financial intermediaries while ensuring investor protection.

Contra: (1) The COVID-19 pandemic cannot serve as a reason for temporary relaxations of prospectus duties: Information asymmetries that exist between issuers and investors do not vanish during such a pandemic.

(2) Investor protection will suffer from the proposed elevation of the threshold for non-equity issuances of banks to 150 million euros. Thresholds are always arbitrary and give rise to distortions of competition as banks that issue below such threshold profit from lower issuance costs.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Proposal COM(2020) 281 of 24 July 2020 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**.

If not mentioned otherwise, page and article numbers refer to the Commission proposal.

Brief Summary

► Context

- "Prospectuses" are documents which issuers of securities regularly have to publish when the securities are offered to the public or admitted to trading. They offer investors information as a basis for their investment decision.
- The Prospectus Regulation [(EU) 2017/1129, see [cepPolicyBrief](#)] lays down the requirements for the "drawing up, approval and distribution" of prospectuses [Recital 2].
- As a reaction to the COVID-19 pandemic, governments in the EU provided credit to distressed companies in the form of guaranteed loans. Increasing debt levels, however, can impair the solvency of companies in the long run. What is more, the pandemic may impair banks' ability to provide financing to the real economy. Thus, the Commission, wants to amend the Prospectus Regulation to
 - make it easier and cheaper for issuers to raise capital to restore their debt-to-equity ratio by introducing a less comprehensive and temporary "EU Recovery prospectus" [p. 5 SWD(2020) 120], and
 - alleviate the duty for banks to publish a prospectus for non-equity issuances.
- The proposal is part of an EU Capital Markets Recovery Package. The package also includes amendments to
 - the Markets in Financial Instruments Directive [MiFID II, 2014/65/EU, see [cepPolicyBrief](#)] to alleviate information requirements for investment firms and help nascent energy derivative markets [see [cepPolicyBrief](#)];
 - the Securitisation Regulation [(EU) 2017/2402, see [cepPolicyBrief](#)] and the Regulation on prudential requirements for banks concerning securitisations [(EU) No 575/2013] entailing measures to facilitate the securitisation of loans [see forthcoming [cepPolicyBrief](#)].

► EU Recovery prospectus

- The existing Prospectus Regulation provides for simplified prospectuses for secondary issuances of securities. Issuers may use these when they issue [Art. 14 Prospectus Regulation]
 - securities that are fungible (i.e. interchangeable) with securities issued by them that have been continuously admitted to trading on a regulated market (traditional exchange) or SME growth market (trading venue specialised on small and medium-sized entities (SMEs) during at least the past 18 months,
 - non-equity securities (e.g. bonds) if they have already issued equity securities that have been continuously admitted to trading on a regulated market or SME growth market during at least the past 18 months.

- An “EU Recovery prospectus”, a new simplified prospectus regime for secondary issuances of equity shares, is created [Art. 1 (5)]. It applies for 18 months from the date of application of the Regulation [Art. 1 (9)].
 - The EU Recovery prospectus applies to issuers that issue new equity shares that are fungible with previously issued shares and where the existing shares of the issuer have been continuously [Art. 1 (5)]
 - admitted to trading on a regulated market during at least the past 18 months,
 - traded on an SME growth market during at least the past 18 months and a prospectus for these shares has been published.
 - The EU Recovery prospectus has a maximum length of 30 pages. Information that is already available in the market can be incorporated by reference without being taken into account as regards the 30 pages limit. [Art. 1 (5)]
 - The EU Recovery prospectus shall only contain the “relevant reduced information”, notably [Art. 1 (5) Annex Va]
 - Information on the prospects of the issuer and on significant changes to its financial position since the last financial year, and
 - essential information on the shares, the reasons of the issuance and the impact on the issuer’s capital structure and the use of proceeds.
 - The EU Recovery prospectus shall be written in an “easily analysable, concise and comprehensible form” [Art. 1 (5)].
 - The competent authority approving the prospectus shall, in particular, consider whether the issuer has already disclosed information under the [Art. 1 (5)]
 - Transparency Directive [2004/109/EC], e.g. financial reports of the issuer, and
 - Market Abuse Regulation [(EU) No 596/2014], e.g. inside information about the issuer.
 - The EU Recovery prospectus shall include a summary with a maximum length of two pages [Art. 1 (4)].
 - The issuer must submit the EU Recovery prospectus to its competent authority for approval. He has to inform the authority about his intention to do so five days prior to the submission. The authority must decide upon the approval of the prospectus within five working days. [Art. 1 (6)]
- **Non-equity securities issued by banks**
- The Prospectus Regulation stipulates that banks issuing non-equity securities – e.g. bonds – to the public are not required to publish a prospectus, if, in particular, [Art. 1 (4) (j) Prospectus Regulation]
 - the securities are issued in a continuous or repeated manner, and
 - the total consideration of the offer is less than 75 million euro over a period of 12 months.
 - For non-equity securities issued by banks, the threshold triggering a duty to publish a prospectus is raised from 75 million euro to 150 million euro. This applies for 18 months from the date of application of the Regulation. [Art. 1 (1)]
- **Prospectus supplements**
- The Prospectus Regulation requires issuers to publish a supplement to a prospectus in case of “any significant new factor, material mistake or material inaccuracy” in a prospectus that [Art. 23 Prospectus Regulation]
 - affects the assessment of the securities and
 - is recognised between the prospectus’ approval date and the closing of the offer period or the trading start.
 As a consequence, investors that have already subscribed for the securities can withdraw their acceptances within two working days after the publication of the supplement [Art. 23 (2) Prospectus Regulation].
 - The period within investors may withdraw from their subscriptions for securities in case issuers published a supplement due to significant new factors, material mistakes or material inaccuracies is extended from two to three working days [Art. 1 (7)].
 - The Prospectus Regulation requires financial intermediaries to inform any investor that has purchased or subscribed securities through them about the publication of a supplement on the same day [Art. 23 (3) Prospectus Regulation].
 - The duty of financial intermediaries to inform investors that purchased or subscribed the securities through them about the publication of a supplement will be restricted to purchases and subscriptions between the prospectus approval date and the closing of the offer period or the trading start. They can do so within one working day after the publication of the supplement. [Art. 1 (7)]

Statement on Subsidiarity by the Commission

The objectives of the amendment to the Prospectus Regulation cannot be achieved by Member States as this would lead to an uneven playing field for issuers and investors, create regulatory arbitrage and hinder cross-border trade.

Legislative Procedure

24.07.2020 Adoption by the Commission

Open Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	Financial Stability, Financial Services and Capital Markets Union
Committees of the European Parliament:	Economic and Monetary Affairs (leading), Rapporteur: Ondřej Kovařík (Renew)
Federal Germany Ministries:	Finance
Committees of the German Bundestag:	Finance
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities

Competence:	Art. 114 TFEU (Internal market)
Type of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic impact assessment

The duty to publish a prospectus aims at reducing asymmetries of information between issuers and investors. It thus enhances market efficiency and improves the confidence of investors who, in general, are the less informed parties. The Prospectus Regulation in force [see [cepPolicyBrief](#)] allows for a simplified prospectus for secondary issuances. This is appropriate as investors already received comprehensive information about the issuer and the security at the time of the primary issuance.

Even though there may be room to discuss whether existing prospectus duties for secondary issuances are appropriate – they may be too expensive and may not fit investors' demand for information –, **the COVID-19 pandemic cannot serve as a reason for temporary relaxations of prospectus duties**: The **information asymmetries that exist between issuers and investors do not simply vanish during such a pandemic**. On the contrary, the pandemic raises serious questions also on the solvability and liquidity of well-established companies and on the viability of their business models.

Relaxing prospectus duties leaves these questions unanswered also regarding companies that have issued shares – and have published prospectuses – in the past. The EU Recovery prospectus may thus only help companies to raise equity more cheaply and quickly in case investors have enough confidence in their viability, irrespective of the amount of information provided. In lack of such confidence, the new short-form prospectus may rather hamper capital issuance and, what is more, is detrimental to investor protection.

Investor protection will also suffer from the proposed elevation of the threshold for non-equity issuances of banks from 75 million euro to 150 million euro, although the risks of lending money to banks have not diminished. Again, it is not understandable, why the COVID-19 pandemic should lower investors' need for information on bank issuers and their non-equity security offerings. Irrespective of the exact level of threshold that triggers a duty to publish a prospectus or not, such **thresholds are always arbitrary and give rise to distortions of competition as banks that issue below such threshold profit from lower issuance costs** than those above the limit. As an alternative, a general duty to publish a prospectus independent from any thresholds would be more appropriate. Such general duty should then provide for reasonable minimum levels of information that do justice to the complexity of the respective offer.

The new rules on supplements for prospectuses in case of inaccuracies have two appropriate effects: They **usefully lower the burden for financial intermediaries** who get more time to inform investors about their withdrawal right **while ensuring investor protection** by granting investors a longer withdrawal period.

Legal assessment

Legislative Competence of the EU

The Regulation is correctly based on the internal market competence (Art. 114 TFEU). Harmonisation of prospectus rules strengthens the free movement of capital and reduces distortions of competition. Harmonisation further reduces barriers to cross-border issuance of securities and lowers the uncertainty for issuers and investors about prospectus rules in other Member States.

Subsidiarity

Unproblematic.

Proportionality with respect to Member States

Unproblematic.

Impact on and compatibility with German Law

The Regulation applies directly in every Member State so that no national transposition measures are necessary.

Conclusion

The COVID-19 pandemic cannot serve as a reason for temporary relaxations of prospectus duties: Information asymmetries that exist between issuers and investors do not vanish during such a pandemic. Investor protection will suffer from the proposed elevation of the threshold for non-equity issuances of banks to 150 million euros. Thresholds are always arbitrary and give rise to distortions of competition as banks that issue below such threshold profit from lower issuance costs. The new rules on supplements for prospectuses in case of inaccuracies usefully lower the burden for financial intermediaries while ensuring investor protection.