THE PROSPECTUS REGIME

An ever-evolving scenario

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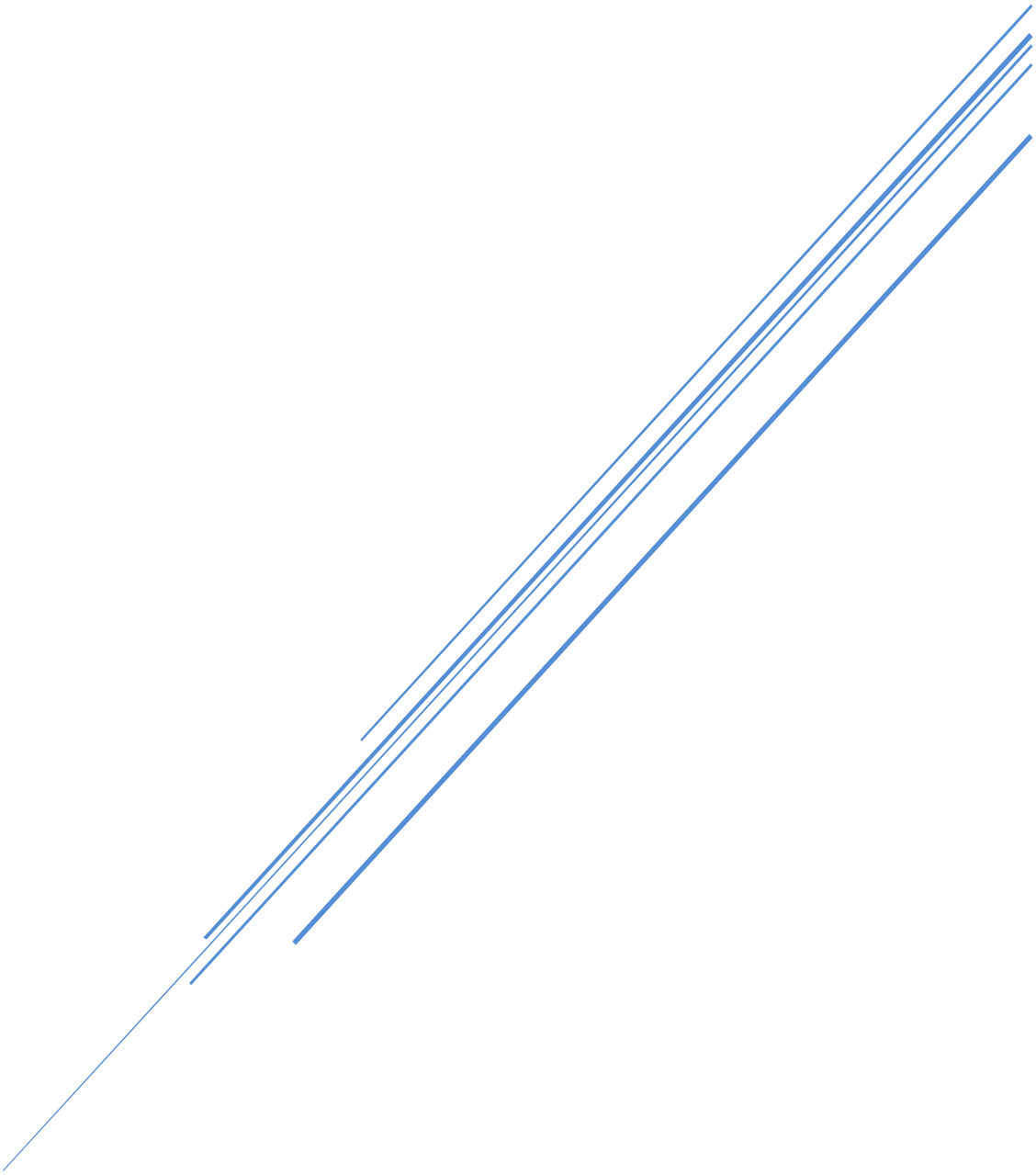

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ABSTRACT

One of the major goals of the European Union concerns the achievement of the Capital Markets Union, and the subsequent promotion of market finance, rather than the more consolidated regime of banking finance: in this new economic environment firms and investors meet directly in capital markets, in order to match their mutual needs, in terms of both supply and demand of funds.

One of the greatest concerns of the EU legislator in this context regards the asymmetry of information between investors and issuers of the securities; therefore, legislation needs to act in order to avoid the weaker part to be damaged by lack of transparency.

The Prospectus arises as the main tool through which it is possible to disclose "key information" for investors and, in this way, guarantee their protection; however, harmonization among the different EU Prospectus' regimes must be implemented, in order to enable cross-border activities to run smoothly throughout the whole Union.

Starting from 2003, the legislator has began this harmonization process through the emanation of the first Prospectus Directive, but the continously evolving economic environment is always asking for improvements in order for it to work properly. A first attempt has taken place in 2010; however, shortcomings still persisted, and therefore, the enhancement process is still ongoing.

In the first section of this paper, we will shortly introduce the original legislation, that is still in place, as then implemented in subsequent years; then, we will go throughout the Commission's task to understand the Prospectus Regime's shortcomings, and come up with new ideas in order to overcome them; finally, we will discuss the new proposed Regulation, that is still object of discussion and revision by the Parliament and the Council.

1. INTRODUCTION

When a firm wants to raise capital through a public offering, it must provide a disclosure document to potential investors, in order to deliver all the information needed to make a conscious decision about their investment in the company: this legal document is called Prospectus.

In EU, the regulation about the Prospectuses has been introduced in 2003, with the Directive 2003/71/EC, applicable from the 1st of July 2005.

The importance given from EU to the regulation of this mandatory disclosure regime relies on several reasons:

- Price formation and market efficiency, since it provides a useful tool for an efficient pricing of the securities, for the signaling of the issuers' reliability to the market, and for economizing the information costs;

- Corporate governance, since it helps the shareholders in taking action and therefore helps them in reducing agency costs[1];
- Investor confidence and investor protection, since the key information given in the document will be a resource for the perception about the investment.

The Prospectus Directive has the fundamental goal to improve the quality of information given to the investors when a company decides to offer its shares to the public to get financial resources. In fact, the Directive establishes some general and equivalent standards of information that must be provided from the companies all over EU to the public.

In the first article of the first chapter of the Directive, the purpose and scope are defined, focusing on the cases in which the Directive should not be applied, that are the situations in which the offer:

- Is directed to qualified investors[2];
- Involves less than 150 non-qualified investors for each EU country;
- Is addressed to investors that buy those financial instruments for at least EUR 100 000 each;
- Covers financial instruments whose nominal value is at least equal to EUR 100 000;
- Has an amount inferior to EUR 100 000.

The second article explains the fundamental definitions of the Directive: it should be applied only to shares and other securities equivalent to shares in companies, bonds and other forms of securities debt, where all these securities must be negotiable[3].

There is not a straightforward definition of the Prospectus, but the Directive states that it should contain all the relevant information about the issuer, the securities offered to the public or admitted to trading on a regulated market and the eventual guarantors, which are: an informed assessment of the assets and liabilities, financial position, profit and losses, prospects of the issuer, and the rights attaching to such securities. Moreover, it has to provide the general information about the offer, focusing on the estimate of the costs for the investor. The issuer is civilly liable of the information provided in the Prospectus, that must correspond to the truth and without omissions.

The Prospectus must contain a summary, which reviews the most important information about risks and characteristics of the issuer, a series of cautions, and various elucidations; the summary must be brief and written in a non-technical language, as we will see in more details in the next sections.

There are some cases in which the information requested is less rigorous ("minimal disclosure regime"), i.e. the cases in which: non-equity securities are offered, the offer is a non-retail[4] one, the issuer is a small or medium enterprise.

Two circumstances cause the obligation of publishing the Prospectus:

[1] Internal costs arising from the conflict of interests between management and shareholders, that will be paid to the agent that is acting on behalf of the principal

[2] A sophisticated or qualified investor is an investor that satisfies specific quantitative requirements, and therefore has a reduced need of protection. These requirements regard the value of her transactions, the size of her portfolio, her professional experience

[3] A security that can be freely bought, sold and transferred

[4] A non-retail offer has a denomination per unit of at least 100.000 € reserved to qualified investors

- the actual promotion of an offer of transferable securities to the public (that can have a specific different meaning under the different national laws);
- the admission of transferable securities to an EEA regulated market.

So, the conditions under which is requested a Prospectus depend both on the communication of the offer to the public but also on the circumstances in which the relevant securities will be listed in the market.

Once approved in the EU country of the issuer (i.e. the country in which the firm has its registered office), the Prospectus must be published and sent to the competent European authority, ESMA[5], and it will remain valid for the successive 12 months. The first control of the national authority is purely formal and it doesn't analyze the economic merit of the issuer. The process is managed from the single countries, but EU has given some guidelines for the deadline of the approval, that is fixed to 10 days from the submission of the draft or to 20 days in case the issuer is making an offer for the first time. These time limits can be extended "on reasonable grounds".

In order to avoid useless legal costs and procedures, the Prospectus Directive provides the "EU passport", which allows the Prospectus to be automatically valid throughout European Union without further controls. A Prospectus with the EU passport shall be provided with a certificate of the competent authority and a translation of the summary in the language of the states in which it will be exported.

In 2010, the Prospectus Directive has been subjected to some changes, with the amending Directive 2010/73/EU, applicable from 1st July 2012.
The main changes brought in the Prospectus Directive are the followings:

- There is no more the need to include information concerning relevant modifications after the approval of the registration document, but it is sufficient to update the informative note or it is enough to add a supplement document;
- There is a major change in the flexibility of the information that can be included or not in the Prospectus. In particular, the Directive divides the information in categories (from A to C) that correspond to different levels of minimum disclosure;
- The summary must contain only the "key information" for a better understanding of the information given to the investors, which must be brief, clear and standardized;
- The Prospectuses can now be sent to the competent national authority in electronic format and they must be published on the website of the issuer or of the distributor;
- The validity of the offer Prospectus is fixed to 12 months from its approval, while the validity of the base Prospectus runs from the day of the deposit;
- There is an increase of the reference thresholds for the exemptions from the obligations to draw up the Prospectus.

[5] ESMA: European Securities and Markets Authority

2. PROSPECTUS ACTIVITY IN 2015

In order to keep under control the effects of the Directives on the Prospectus activities of the different countries, ESMA regularly publishes a Report containing explained data about the phenomenon.

Speaking in general terms, the report shows that the total number of approved Prospectuses decreased from 3931 to 3796 in 2015. The countries in which has been recorded the greatest number of Prospectuses approved are Luxembourg, Ireland and United Kingdom. Accordingly, there has been also a small decrease in the number of supplements with respect to 2014, which passed from 4126 to 4024; comparing the total number of Prospectuses approved from 2006 to 2015, the effects of the Crisis are evident: between 2007 and 2009 the approval of these documents slowed down significantly, and then continued to drop at a slower pace till 2015.

Going now into more details, we can observe that the number of countries that approved most of the non-equity as non-base Prospectuses is a little bit higher than the ones which approved most of the non-equity as non-base Prospectuses. Anyway, considering the total number of Prospectuses, most of the non-equity ones have been approved in the base form. Another analysis can be conducted on the structure of the approved Prospectuses: the form of a single document has been used in the 91% of the documents, followed by the tripartite6 document (5%) and the tripartite Prospectus without a summary (4%). Moreover, the vast majority of these documents (73%) is of the non-equity type. In particular, the 49.8% of the Prospectuses regards debt securities, followed by shares, derivatives and asset backed securities.

With respect to the passporting activity, the 87% of the Prospectuses passported out comes from five countries: Luxembourg, Ireland, France, United Kingdom and Germany. This datum is stable if compared with the analysis conducted in 2014; in the case of the Prospectuses passported in (2611 in total), there is a more equal distribution among the countries.

3. THE CONSULTATION AND THE PEER REVIEW

The Prospectus Directive, as implemented in 2010, has been subjected in 2015 to a review; the need of reviewing the Directive has arisen from the various shortcomings in the actual Prospectus framework, and the consequent obstacles it puts on the achieving of the Capital Markets Union.

How should a Prospectus work? The main point is, a Prospectus should not act as a barrier: since it is the instrument through which firms look for funds in capital markets, a Prospectus which is not straightforward, and does not balance rightly the two contrasting needs of brevity (and clarity) and, on the other hand, exhaustive information, essentially fails in reaching its final objective to protect and inform the investor.

For a more in-depth analysis, we can group the shortcomings in the Prospectus framework in three distinct areas:

[6] A tripartite Prospectus is composed of three documents: the registration document containing the information about the issuer, the securities note that gives information about the securities, and the summary

- Shortcomings about the **process** of drafting and approving the Prospectus: writing a Prospectus is perceived as expensive, complex and time-consuming, especially for Small and Medium Enterprises, and thus it acts as a barrier they are not able to overcome; in the end, they are not able to fund themselves in capital markets. An improved regulatory framework should account for lower costs of drafting and approval, without undermining investor protection;
- Shortcomings about the type of **legal act** used to enable the Prospectus framework: with a Directive, that is characterized by a multitude of opt ins and opt outs, the objective to uniform and harmonize legislation across the Union is not achieved; each Member State has, inside the Prospectus framework, its own exemption thresholds and approval procedures, and this regulatory heterogeneity clashes strongly with the goal of the EU legislator of harmonization.
- The clashes in regulation arisen from the **continuous evolution** of capital markets, with the introduction of Multilateral Trading Facilities, SMEs growth markets, Alternative Investment Funds, and packaged retail and insurance-based investment products.

In order to reshape the Prospectus framework, a Stakeholder Consultation has been launched by the European Commission from 18 February to 13 May 2015; the use of this kind of process enlightens the need of the Commission to involve all actors (Stakeholders) in the review process, to understand the actual situation regarding the application of the Prospectus Directive. The Consultation Document is a key source in order to understand the evolutive process that is involving the Prospectus framework, because it schematizes the approach the Commission will implement.

The Consultation approaches the problem in a tripartite way:

1. First of all, the focus is on the **scope** of the Prospectus framework: when is it needed? When is it necessary? Should exemption thresholds be updated?
2. Then, it addresses the **information** that a Prospectus should contain;
3. Finally, it points out shortcomings and areas of implementation in the Prospectus **approval process** by National Competent Authorities.

We will now examine each point exhaustively, combining the Commission cues with our own thoughts on the most important topics; moreover, our discussion will be enriched by the Peer Review on Prospectus Approval Process Report, where a peer review is an evaluation of the work of individuals and/or organizations[7], by an Assessment Group, composed by people with similar competences (peers) to the ones under assessment[8]. The Peer review was set to assess national practices and methodologies employed by NCAs in their Prospectus approval process.

When is a Prospectus needed?

A Prospectus is ultimately written to inform the investor, and the market as a whole; however, not all investors are equal and are in need of the same amount of data: firms daily deal with retail investors, professional investors and eligible counterparties, where each class has evidently different needs in terms of information disclosure; moreover, securities can be offered to employees (Employees Share schemes), which are evidently already aware of the firm's whereabouts; on the

[7] In this case, National Competent Authorities, responsible for the Prospectus approval process.
[8] Here, the Assessment Group is composed by five people, all of them coming from NCAs.

other hand, issuances can be vastly different: there could be a primary or secondary issuance, and the ever evolving technology could provide firms with new types of securities, better tailored for their or the investors' needs.

A brief parenthesis, for completeness' sake, needs to be opened on the classes of different investors that the MiFID addresses, to guarantee different levels of information disclosure (and thus protection) to different categories. We can distinguish between three categories of clientele:

- **Retail investors**, which are investors who, because of their inexperience and lack of knowledge about the mechanisms that govern capital markets, need to be protected the most by legislation; usually, private investors and SMEs belong to this category.
- **Professional investors**, which are the ones that can benefit from a lower degree of protection, because they are considered to be able to recognize the risks connected to their activity; Institutional Investors, Countries, Public Authorities, Central Banks and big Enterprises (where "big" is considered any firm that satisfies certain criteria) are professional investors.
- **Eligible Counterparties**, as credit institutions, pension funds and mutual funds, which benefit from a minimum level of protection because their activity is strictly interconnected to the reality of capital markets, and it would be unreasonable for them not to know and understand in-depth how they work; in this category, we can find all professional investors that want to be recognized as eligible counterparties by the law

With these premises, the need to determine the actual scope of the Prospectus Directive (or, when a Prospectus is needed or not) had already arisen in 2003, where thresholds were set in order to exempt certain offers to the public from the obligation to publish a Prospectus; the rationale was, and still is, the tradeoff between investor protection (through information disclosure) and the actual burden that any firm can be reasonably charged with. Examples of exemptions are offers addressed to qualified investors, or offers addressed to a restricted number (150) of investors.

An interesting case of exemption is the one concerning **debt securities with high denomination per unit**; in this case, an offer of debt securities that exceeds the threshold of EUR 100,000 does not trigger the Prospectus obligation; the rationale is that such high amounts per units are obviously accessible and aimed only to professional investors, and therefore to actors that do not need full disclosure. However, in this case we can observe a clash between regulation and one of its main goals: to guarantee a **liquid** market. On one hand, we have the incentive for firms to offer debt securities in high denominations, in order to avoid the inconvenience to publish a 4K Prospectus; on the other hand, securities of this kind are not, by definition, liquid, because they do not circulate in an easy way in capital markets.

Another area of improvement is the one concerning **secondary issuances**, where secondary issuances happen when a firm, which had already gone public in the past, is again in need of funding, and thus needs the help of capital markets. It is evident that the firm in question is already known to the market: the Prospectus has already been published and approved when the firm had first gone public. Moreover, when a firm goes public, the disclosure regime (through the Transparency Directive and Market Abuse Directive) is then fully applicable, and periodical information is therefore available for the public.

There should be a proportional disclosure regime for secondary issuances, to alleviate the burden for firms and enable them to access more easily to capital markets whenever they need it; if the already approved Prospectus is still valid, because it is quite up to date (here, an exact timeframe should be set: when is a Prospectus too old to still be valid?), or it concerns the same kind of securities, there should not be the need to inform the investor again on more or less the same topic, or this need should be proportional to the amount of new information required just for the secondary issuance per se.

However, only a Right Issue[9] is today granted an exemption; for any other secondary issuance, a full-blown Prospectus is still required.

Multilateral Trading Facilities ("MTF") are one of the new investment venues born in recent times, and only acknowledged by regulation later; these trading venues are managed by privates, and enable the meeting of demand and supply for securities which are already listed in regulated capital markets; the growing importance of this kind of facilities is connected to the recent introduction of **SMEs growth markets** as a type of MTF aimed to the trading of securities issued by Small and Medium Enterprises; while a Prospectus has already been approved when the firms had first gone public, to enter a MTF no Prospectus is needed, and thus each Member State requires a different level of information disclosure, creating heterogeneity in regulation that does not allow a level playing field for all investors on a cross-border basis; with a review of the Prospectus Directive, and the consequent acknowledgement of MTFs, a greater harmonization could be achieved, with a focus on a proportional disclosure regime tailored around the need of issuers in this particular kind of investment venues.

To conclude, the topic of **Alternative Investment Funds[10]** should be touched by the review, because issuers of this kind of securities could be burdened by as far as three disclosure regimes (the Prospectus Directive, the PRIIPS Regulation, and the AIFM Directive completely aimed to them).

What information should a Prospectus contain?

After the scope of the framework has been set, the next macro area of discussion concerns the information content of the Prospectus, in order to grant different firms with different means and resources some flexibility in the amount of information to publish, and therefore accommodate the needs of all market participants. The **proportional disclosure regime** is the technique introduced in order to lift some of the burden for certain types of investors and securities, for which a lighter Prospectus is required; however, the failure of the regime has triggered the need to better revise the whole area of regulation concerning the Prospectus content, and the linked topic of legal liability.

Prospectuses are long documents, usually dubbed 4K ("Four Kilos") to highlight their incredible bulk; they surely are comprehensive of all kinds of information an investor could possibly need, but ultimately fail in conveying them because of their length, that usually discourage most retail investors from actually read them from the beginning to the end; in other words, a lengthy

[9] As in a Seasoned Equity Offer, in which a firm that has already gone public needs more equity, and consequently offers new shares to existing shareholders, in proportion to the ones already held.

[10] Where for AIF we intend hedge funds, funds of hedge funds, venture capital funds, private equity funds and real estate funds.

Prospectus fails in its main goal to protect and inform investors, and help them in their investment decisions. Length limits should be introduced, if not to the entire document (and/or its supplements), at least to certain sections usually responsible for the excessive bulk[11].

The legislator has provided the Prospectus with a **summary**, which is a part of the Prospectus that should enable investors to compare securities and ultimately decide which one is better suited for their needs; this component of the Prospectus should in some way bypass the problem of length: summaries should be comprehensible, concise and written in a non-technical language, and easily comparable to grant the investors the big picture and therefore enable them to reach an informed final decision. However, as also underlined in the Peer Review, issuers usually struggle with the summary's strict format, and are not always able to deliver all information needed, when a limited length is provided (7% of the whole Prospectus, or 15 pages). For this reason, improvements must be made even in this area, with for example the provision of a format for comparability's sake, and a discussion and revision about the key information every summary needs to have to reach and be useful for retail investors need to be held.

With the introduction of the Regulation regarding **packaged retail and insurance-based investment products[12]**, and the consequent additional obligation to publish not only a summary (as part of the Prospectus), but also a **Key Information Document** ("KID") for securities falling in the scope of both pieces of legislation, there could be an overlap in the information required for disclosure, and thus a heavier burden for issuers and investors, with an ultimately useless duplication of information; moreover, while the KID has a maximum length of 3 pages, the summary is generally longer, and investors interested in this kind of securities generally prefer to inform themselves through the shorter document: in other words, the Prospectus summary becomes useless. Harmonization between the two frameworks (Prospectus Directive and PRIIPS Regulation) should be achieved, in order for them to work in synergy for the issuers' sake: for example, redundant information could be eliminated, or the format of both document could be aligned in order to reduce costs for the issuer, and help investors in comparing this particular kind of securities.

Redundancy of information can be also handled through an improvement of the **"incorporation by reference"** mechanism, where information already disclosed by the firm to comply to both the Market Abuse Directive and Transparency Directive can be included in a Prospectus[13] just by reference, without the need to duplicate information already available to the investor; however, the peer review highlighted some fallacies with the mechanism, such as the lack of limits and guidance by the Directive, and the consequently negative impact on the comprehensibility of the Prospectus.

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[11] For example, the risk factor section needs to be in some way regulated, because it is often too lengthy; a clear definition of risk factors, and the requirement that only material and specific risks are indicated in the section in a comprehensible way, could bypass this problem.

[12] "PRIIPS Regulation", where we define as PRIIP any security which is aimed to a retail investor, and which is by nature risky; here the term "packaged" refers to the structure of this investments, which are not directly bought by the investor, but rather assembled in order for the investment to behave differently to market fluctuations than a classic and direct investment in a simple security. Examples of PRIIPS are asset-backed securities and convertible bonds.

[13] For example, when there is a secondary issuance taking place.

In the previous section, we addressed the phenomenon of Multilateral Trading Facilities, and their growing relevance in the trading of securities issued by Small and Medium Enterprises, up to the point that the status "SMEs growth markets" has been created by the Directive 2014/65/EU ("MiFID II"); in order to incentivize and connect this kind of MTF, an ad hoc Prospectus regime and Prospectus approval process is under consideration, in order to promote SMEs and allow them to further exploit the various advantaged of capital markets, even in the restricted environment of MTFs.

The exaggerate bulk of information provided in Prospectuses is finally addressed in relation to the legal liability regime connected to them; as a matter of fact, the Prospectus Directive leaves to Member States discretion when dealing with Tort law, and professional liability law in particular, up to the point that only the identification of each person that could be held responsible for any information given (issuer, offeror, guarantor, person asking for the admission to trading on a regulated market), and the role each of them plays, is asked for transparency's sake. The rationale of this heterogenous approach is obviously the almost impossible task to harmonize so many civil liability and tort law regimes; however, some kind of common ground should be introduced, as it has already been done by the EU legislation regarding the topic of civil liability for Credit Rating Agencies[14].

How is a Prospectus approved?

The third macro-area under review concerns the process National Competent Authorities (from now on, NCAs) put in place in order to approve a submitted Prospectus, where the main focus should be on a more harmonized approach in handling the approval process. Because of profound differences in procedural administrative law and supervisory practices among Member States, as well as different market structures, variable number of Prospectuses in need to be approved and the seasonality of issuances, the approval process is different from one Member State to another, and thus it does not guarantee a level playing field for firms across the whole European capital markets. On this same topic, even the Four Eyes Principle[15] established by ESMA Good Practice, is applied differently among NCAs: while some of them apply the principle strictly, others use a risk-based approach, with this controlling mechanism strictly taking place only in certain situation, such as when an Initial Public Offering is involved.

Moreover, another point of discussion is the possibility to have a first draft published in order to enable the firm to start collecting investors' reactions, even before the official Prospectus has been approved; this draft could help the issuer in collecting more information about market moods, and at the same time make the whole approval process more flexible and closer to firms' needs. However, the draft comment process as a whole (even without the improvement enabled by the draft's publication) could be harmonized and improved, with for example the provision of a standardized comment sheet template in tabular form to be compiled by NCAs and then by the issuer, in order to help issuers to comply better to regulation in the final Prospectus.

Flexibility could also be achieved through the base Prospectus, whose approval process is generally more flexible than the standard one; in this case, a broadening in the list of securities that only

[14] Credit Rating Agency Regulation 1060/2009, as amended by Regulation 462/2013.

[15] Or Two-Man rule, which in general states that at least two independent people need to approve the same decision, as a controlling mechanism.

require base Prospectuses could achieve the objective; moreover, also the tripartite regime could be exploited for flexibility's sake, if improved.

The revolution brought by Internet and, by extension, the possibility to connect far away geographical areas could be exploited, in order to guarantee both issuers and investors (and third-country actors) an easy access to Prospectuses on a cross-border basis through a unique database; the need to print the Prospectus could be restricted just to those investors formally requiring it in paper form, in order not to discriminate them because to their limited access to Internet and/or inability to navigate the database.

Finally, while some degree of harmonization has been reached across the Union, still an equivalence regime for third countries is lacking; the current process of assessment, based on a case-by-case procedure, does not provide any equivalence between Prospectuses approved by NCAs and Prospectuses approved overseas, and thus a barrier is set between issuances depending on the economic macro-area they take place in that could damage investors and firms both.

4. THE REGULATION UNDER DISCUSSION

Why are we revamping the Prospectus regime?

The aim of the Capital Markets Union is to help businesses tap into more diverse sources of capital from anywhere within the EU, to make markets work more efficiently and to offer investors and savers additional opportunities to put their money to work, in order to enhance growth and to create jobs. The " Proposal for a Regulation for the European Parliament and the Council on the prospectus to be published when securities are offered to the public or admitted to trading " of 30 September 2015 prioritises lowering barriers to accessing capital markets across the Union through a review of the current Prospectus regime.

The main objectives of the Prospectus revamp are:

- making it easier and cheaper for smaller companies to access capital markets;
- simplification and flexibility for all types of issuers, in particular for secondary issuances and frequent issuers which are already known to capital markets;
- improving Prospectuses for investors by introducing a retail investor-friendly "key information"–type summary, catering for the information and protection needs of investors.

The revamped Prospectus regime will ensure that appropriate rules cover the full life-cycle of companies from their beginning as start-ups, until their maturity as frequent issuers on regulated markets.

Under the proposal, each stage of this "funding escalator" will be accompanied by adequate arrangements:

- Entrepreneurs will be exempt from preparing a Prospectus when raising small amounts of capital;

- Once the company has grown and wants to access capital markets, a tailored disclosure regime will help SMEs and companies with a reduced market capitalisation access capital markets without the burden of doing a full Prospectus. The "SME and small cap"-Prospectus is adapted to their size and to the length of their track record and available to private companies and companies trading on Multilateral Trading Facilities (MTFs, including "SME Growth Markets");
- Companies which are returning to capital markets can draw up lighter Prospectuses for secondary issuances. Frequent issuers can benefit from a fast-track approval when choosing to draw up an annual "universal registration document" containing all the relevant information about the issuer. This makes sure that issuers already known to markets do not have to disclose unnecessary or redundant information.

When would companies need a Prospectus?

The Commission's proposal will introduce certain exemptions from current requirements to produce an EU Prospectus: no EU-Prospectus would be required for offers of securities with a total value below EUR 500 000; in this way, the Commission acknowledges that the cost of producing a Prospectus is disproportionate with regard to the envisaged proceeds, where an offer of securities to the public is below EUR 500 000; besides, Member States are given the choice to exempt from the harmonised EU-Prospectus regime for any offer of securities with a total consideration between EUR 500 000 and EUR 10 million, where these are offers for which no passport notification to host Member States is sought (in this case, Member States should notify the Commission and ESMA). In addition to the above threshold, the already existing exemptions will continue to apply.

With respect to issuers, the new Regulation should not be applied to collective investments, Member states, and credit institutions that must comply with specific condition; in particular, the latter should not provide a Prospectus in the case they issue in a continuous and repeated manner non-equity securities[16].

With respect to the nature of the securities, the exemption regards shares issued in substitution for shares of the same class already issued, shares used as dividends for shareholders, and shares offers to employees.

In the case the securities are admitted to trade on a regulated market, the new Regulation should not apply for securities fungible with securities that are already admitted to trading on the same regulated market but if and only if they represent less of 20 % of the number of securities already admitted on the regulated market.

Whether an issuer wants to issue securities on another regulated market, it should not draft a prospectus if these securities have been admitted on the previous market for more than 18 months.

[16] By the word “non-equity securities “, we refer to those not subordinated, convertible and exchangeable and not linked to any derivative instrument (the total amount of securities offered must be in total less than 75.000.000).

What will change for SMEs?

While private equity and business angels typically invest in SMEs at an earlier stage of their development, SMEs can also access public markets to attract a wider range of investors and provide the former with exit opportunities; Prospectuses for SMEs and small caps will only contain information that is material and relevant for smaller sized companies with a shorter track record.

In the past, SMEs have been deterred from offering securities to the public by the paperwork involved and the high costs incurred; now, it should become easier for such companies to fulfil their disclosure obligations, but in a way that investors are still well-informed about the products they are investing in.

In addition, a new optional "Question and Answer" format will help SMEs and small caps to draw up their own Prospectus for shares and bonds, sparing them considerable legal fees; this format should help these companies prepare the Prospectus mostly in-house, as the format will already contain standardised language, and guidance will be available on how to fill in the missing information, which is specific to the company and securities. It is also introduced an optional format for the Prospectus for the SMEs in the form of a Q&A disclosure document, where ESMA will be empowered to develop guidelines helping SMEs in applying it.

Secondary issuances: what kind of Prospectus for issuers already known to the market?

Around 70% of all Prospectuses approved annually are drawn up by companies whose securities are already listed on a regulated market, and which are therefore already subject to ongoing disclosure requirements under the Market Abuse Regulation and the Transparency Directive. Such issuers should have the possibility to prepare a lighter Prospectus in case of subsequent offers to the public or admissions to trading ("secondary issuances") in order to avoid duplicative disclosures, to reduce costs and to make the resulting disclosure more relevant for potential investors.

Directive 2010/73/EU introduced a proportionate disclosure regime for offers of new shares by issuers whose shares of the same class are admitted to trading on a regulated market or a MTF, providing they have not dis-applied the statutory pre-emption rights; however, this optional regime was little used in practice because its scope was very narrow.

The new proposal significantly widens the range of situations where a lighter Prospectus may be prepared by an issuer or an offeror, namely by covering:

1. Issuers whose securities have been admitted to trading on a regulated market or an SME growth market for at least 18 months and who issue additional securities of the same class;
2. Issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market for at least 18 months and who issue non-equity securities;
3. Offerors of a class of securities admitted to trading on a regulated market or an SME growth market for at least 18 months.

Lastly, to reduce the administrative burden on issuers whose securities are already admitted to trading on a regulated market, any subsequent admission of the same securities on the same

regulated market will not require a Prospectus, provided that the newly admitted securities represent less than 20% of the existing securities; where this improvement represents a significant extension of an existing exemption under Directive 2003/71/EC, the scope of which was limited to shares only and subject to a dilution limit of 10% only.

What is a tri-partite Prospectus?

A Prospectus can be drawn up either as a single document ("stand-alone Prospectus") or as separate documents ("tripartite Prospectus"). In the second case, the three documents can be approved separately and at different points in time. This allows the information relating to the issuer in the registration document to be prepared in advance and kept up-to-date "on the shelf" and then completed later by adding a security note and a summary, e.g. when market conditions are favourable for the issuer to raise capital. This provides issuers with increased flexibility because producing a security note and a summary at the time of issue is much less time consuming than the preparation of a full, stand-alone Prospectus.

Regarding the summary, novelties have been introduced for it to achieve its main goal to help investor in comparing securities; it provides key information that investors need in order to understand the nature and the risk of the issuer, the guarantor, and the securities that are being offered or admitted to trading on a regulated market; the content of the summary should be accurate, fair, clear and not misleading, and be composed by the following four sections:

1. An introduction containing warnings;
2. key information on the issuer, the offeror or the person asking for admission;
3. key information on the securities;
4. key information on the offer itself.

More in depth, the issuer should notify the investor of the function of the summary as an introduction to the Prospectus; this means that the final decision reached by the investor should be based on the whole document, where the summary just delivers key information for comparability's sake. Moreover, the summary must refer to the issuer by specifying its principal activities, its domicile, its major shareholder and above all the legislation under which it operates. The issuer must also provide any financial information and a brief description of no more than five of the most material risk factors specific to the issuer contained in the category of highest materiality.
Regarding the securities, key information to be delivered include the type, the currency, the rights attached to it, any dividend pay-out policy and any restriction referred to their transferability.

In order to obtain a proper summary, in both terms of content and format, ESMA's role should be of developing technical standards

Frequent issuers: how can they get fast-track Prospectus approval?

Capital-raising by frequent issuers will be facilitated by introducing an optional fast-track approval mechanism for issuers admitted to trading on regulated markets or MTF, and consists in allowing the issuer to draw up a **universal registration document** every year. In this way, issuers benefit from a quicker approval by the supervisor, whenever they submit a Prospectus for approval; since

the universal registration document (as one of the main parts of the Prospectus) has either already been approved, or is already available for review, the supervisor should be able to scrutinise the remaining documents (securities note and summary) within 5 working days, instead of 10.

The use of such a universal registration document will promote the drawing up of Prospectuses as separate documents ("tripartite Prospectus"), as this will be cost-effective and less burdensome for issuers, and will enable them to quickly react to market moods; moreover, the universal registration document will also serve as a consolidated and well-structured source of information about the issuer: it will supply investors and analysts with the minimum information needed to make an informed judgement on the company's business, financial position, earnings, future prospects, governance and shareholding, regardless of whether an offer to the public or an admission of securities to trading on a regulated market is taking place.

The proposal allows frequent issuers admitted to trading on a regulated market to, under certain conditions, fulfil their ongoing disclosure obligations under the Transparency Directive by integrating their annual and half-yearly financial reports into the universal registration document; this "two in one" approach avoids duplicative requirements, alleviates unnecessary burdens and concentrates the information investors need in one single document, which is updated at least every year.

How is the base Prospectus regime for non-equity securities improved?

A base Prospectus is a kind of Prospectus which is typically used by banks and very large companies for debt securities (so-called "non-equity securities", in particular bonds and derivatives). When submitted for approval to the NCA, it contains all relevant information concerning the issuer and the securities to be offered to the public or to be admitted to trading, except the final terms of the offer (and thus, the final issue price). Once a base Prospectus is approved, the issuer can issue non-equity securities as many times as it wants during the following 12 months, provided that it files the final terms (where the final terms concern information that relates to the security's note) of each offer with the supervisor in advance of the offer.

The base Prospectus is a flexible tool because:

- The final terms are not subject to approval;
- An issuer only needs one approved base Prospectus to proceed with repeated offers of different types of securities within one year, instead of having to draw up a new Prospectus for each new issuance.

In 2014, nearly 40% of all Prospectuses approved in the EU were base Prospectuses.

Overall, the current base Prospectus regime is working well for issuers of non-equity securities; still, the proposal introduces some improvements to ensure that it works even more efficiently in the future:

- First, all types of issuers of non-equity securities can now use a base Prospectus if they wish to do so;

- Second, base Prospectuses can from now on consist of separate documents ("Tripartite base Prospectus"), including a universal registration document for frequent issuers[17] using the fast-track approval process;
- Third, the obligation to draw up a summary of the base Prospectus, if the final terms are not contained therein, is removed, so that only an "issue-specific" summary is required to be produced and annexed to the final terms, when those are filed.

How can information which is already published be used in a Prospectus?

When preparing a Prospectus, issuers can refer to certain information which has been previously or simultaneously published electronically and filed with a supervisor; this practice, known as "incorporation by reference", helps to avoid unnecessary duplication of information in Prospectuses. Compared with the current Prospectus regime, the proposal significantly widens the range of information that an issuer may incorporate by reference in a Prospectus, and places issuers on regulated markets and those on multilateral trading facilities on equal footing in terms of their ability to incorporate information by reference.

Under the new proposal, information that may be incorporated by reference in a Prospectus can come from the following sources:

- Prospectuses, supplements and final terms,
- Documents prepared in the context of takeovers, mergers and divisions;
- Regulated information which needs to be disclosed under the Transparency Directive and the Market Abuse Regulation;
- Annual and interim financial information, audit reports and financial statements, management reports and corporate governance statements, for those issuers outside the scope of the Transparency Directive, or exempted from some of its disclosure requirements;
- Memoranda and articles of association.

To ensure adequate investor protection, such information must be the most recent available to the issuer.

Any confusion regarding referenced topics needs to be avoided, regarding both the accessibility of the information (achieved by a cross-reference list provided with the Prospectus, in case of issuers asking for admission to trading on a regulated market), and the comprehensibility of the Prospectus as a whole; when the Prospectus is in an electronic form, hyperlinks need to be provided to all documents containing information which is incorporated by reference, in order to help the investor in drawing the big picture in the easiest way possible.

How does the new user-friendly summary improve investor protection?

The purpose of the Prospectus summary is to provide the key information relating to the securities and their issuer in a concise and non-technical manner, to help investors in their investment decision; it therefore represents a useful source of information for investors, in particular retail investors, and is essential to promote investor protection.

[17] A frequent issuer is anyone who draws up an universal registration document that should be submitted for approval to the NCA for three consecutive years; however, the status of frequent issuer can be lost if it fails to file the same document for one year

Taking into consideration the view expressed by stakeholders that the summary format introduced by the amending Directive 2010/73/EU has not met its objectives, this proposal now closely models the summary on the consumer-tested key information document (KID) required under the PRIIPS Regulation.

While a summary under the current Prospectus Directive can be 15 pages or even longer, the proposal reduces its size to a maximum length of 6 A4-sized pages to ensure that investors will not be deterred from reading it and to encourage issuers to select the information which is essential for investors; the new summary contains three main sections covering key information on the issuer, the security and the offer/admission respectively. For securities falling under the scope of the PRIIPS Regulation, the issuer can choose to replace the "securities" section of the summary with the content of the KID.

Risk factors: how to refocus on relevant, specific and material risks which investors need to be aware of?

Investors need to make investment decisions in full knowledge of the facts; issuers are therefore required to prominently disclose in the Prospectus any risk factors pertaining to the issuer and its securities. However, Prospectuses are often overloaded with generic risk factors which might obscure the more specific risk factors that investors should be aware of. This market practice serves to protect the issuer or its advisors from legal liability, but it is detrimental to investor protection.

Under the new proposal, only risk factors which are material and specific to the issuer and its securities should be mentioned in a Prospectus; the issuer will be required to allocate risk factors to categories based on the issuer's assessment of the probability of their occurrence and the expected magnitude of their negative impact. This will allow investors to have a better understanding of potential risks when making their investment decision. In addition, only the most important risk factors selected by the issuer will be featured in the summary.

Bond markets: how does this proposal intend to lift barriers to secondary market liquidity?

The favourable treatment granted by the Prospectus Directive to non-equity securities with a denomination per unit of EUR 100 000 or above may have led to unintended consequences: it in fact made a significant share of bonds issued by investment-grade[18] companies inaccessible to a wider range of potential investors.

The threshold of a minimum EUR 100 000 denomination per unit is currently used in the Prospectus Directive to distinguish between wholesale Prospectuses and more detailed retail Prospectuses; as most investment-grade issuers are therefore incentivised to issue non-equity securities in denomination of EUR 100 000 or above to avoid the Prospectus burden, this may lead to less secondary market liquidity, and investors having access to only a smaller and pool of potential investments, limiting portfolio diversification.

The Prospectus exemption of Article 3(2)(d) of Directive 2003/71/EC for offers of securities with denomination above EUR 100 000 is removed; however, issuers offering non-equity securities

[18] Investment-grade companies are the ones graded with BBB or above.

solely to qualified investors or requiring a minimum commitment of EUR 100 000 per investor will still benefit from a Prospectus exemption. For the bond market, we will have a unified Prospectus for retail and wholesale investor that will be defined thought delegated acts by defining information items necessary for retail investor protection.

Where can investors find Prospectuses and related documents?

It is currently not possible to search for Prospectuses in the EU in an efficient and effective manner, as no EU-wide public or private database allows for searches of all approved Prospectuses, and therefore the choice and/or the comparability potential for investors is limited.

To fix this lack of access to Prospectus disclosure, ESMA will provide free and searchable online access to all Prospectuses approved in the EEA[19] through database. Prospectuses and related documents must be available on the websites of the issuers to ensure easy access in all relevant languages; however, the obligation for issuers to provide a free paper copy of the Prospectus to anyone who requests it is maintained.

Do employee share schemes need a Prospectus?

Incentivising employees to hold securities of their own company can have a positive impact on companies' governance and help create long-term value by fostering employees' dedication and sense of ownership, aligning the respective interests of shareholders and employees, and providing the latter with investment opportunities.

The exemption currently provided by the Prospectus Directive for offers of securities to employees does not apply equally to all EU employees; in fact, employees of third country companies that do not have a listing on a regulated market within the EU are disadvantaged, because the exemption is not available to third country issuers that do not have a listing at all or that are listed on a third-country market, unless the Commission adopts an equivalence decision regarding that third-country market. Therefore, the proposal widens the exemption in order to cover the employee shares schemes of third-country companies, irrespective of whether they are listed on a regulated market or not.

What is the role of national supervisors?

Supervisors scrutinise the completeness of the Prospectus according to the minimum disclosure requirements, checking for consistency and comprehensibility of the information given in the Prospectus, and therefore the general compliance of market participants with the Prospectus Regulation, in particular the advertisements for securities offered or admitted to trading under a Prospectus.

[19] European Economic Area

Does the proposal provide for sanctions in case of wrongdoing?

Member states provides for competent authority the power to introduce administrative measures and sanctions on infringements of some Regulation articles. Where the infringements of these articles are subject to criminal sanctions in their national law, member states may decide not to lay down rules for administrative sanctions. In this case, they have to notify ESMA and the Commission the relevant parts of their criminal law.

Competent authorities have the power to impose a minimum level of administrative sanctions and measures. They can make in particular a public statement indicating the natural person or legal entity which is responsible and the nature of the infringement and they have the power to issue an order requiring the responsible to cease the conduct constituting infringement. Furthermore, the Regulation contains some provisions regarding administrative sanctions: considering the maximum pecuniary sanctions, they have to be at least twice the amount of profit gained – or losses avoided – because of the infringement, where it can be determined. This Regulation constitutes also a distinction between legal person and natural person. When the responsible of infringement is a legal person, the maximum administrative pecuniary sanction has to be at least 5.000.000 EUR; for countries, whose currency is not euro, it is the corresponding value in the national currency or the 3% of the total annual turnover – e.g the asset turnover – according to last available financial statements. Instead, when the responsible is a natural person, the maximum pecuniary sanction has to be greater than or equal to 700.000 EUR or the corresponding value in national currency for the member states which have not adopted euro.

When the competent authorities delineate the type and the level of the administrative measures and sanctions, they have to consider both the gravity and the duration of the produced infringement and the degree of liability of the responsible. They can also use as a legal parameter the financial strength of the entity in question – using the total turnover as a reference for a legal person and the annual income and the net assets as a reference for a natural person – and the amount of profit gained or losses avoided by the responsible for the breach or the losses for third parties insofar they can be determined. The resulting intention from this Regulation is the willingness to discourage recidivism, allowing for tightening up of sanctions and measures in case of inappropriate actions to prevent infringement's repetition.

This Regulation not only aims to discourage iterated infringements, but also provides for competent authorities to establish mechanisms to encourage and enable reporting of actual and potential breaches of this Regulation. These mechanisms include at least specific procedures for the receipt of reports of actual and potential infringements, an appropriate protection for employees working under a contract who reports infractions against retaliation, discrimination and other kind of unfair treatment put in place by their employer or third parties and protection of identity and personal data of both legal and natural person who reports offences unless such disclosure is required by national law for further investigations or subsequent judicial proceedings. In order to bring out actual or potential breaches, the Regulation provides for financial incentives to persons who report relevant and new information, provided that it results in the imposition of an administrative or criminal sanction.

Whenever the competent authorities impose an administrative sanction or measure for the violation of this Regulation, they have to publish this decision on their official website, reporting the type and the nature of the infringement and the identity of the responsible. The publication of the identity of the legal entities, or of the identity or personal date of natural entities, could put the stability of financial markets or an ongoing investigation at risk. In this case, member states have to ensure that competent authorities delay the publication about the adoption of sanctions, until the reason for the non-publication ceases to exist. Alternatively, the competent authority can publish such decision on anonymous basis, in a manner which is in conformity with national law. In the case of a sanction or a measure decided to be disclosed on anonymous basis, the publication of relevant data may be postponed for a reasonable period, when it is foreseen that within this period the reason for anonymous publication will cease to exist.

It is also possible that delaying the publication under a certain period of time or publishing the adoption of a sanction on anonymous base is not sufficient to guarantee the stability of the markets and the proportionality between publication and measures deemed of minor nature. In this case, member states have to ensure that competent authorities will not publish the decision.

The official website of the competent authorities keeps track of any publication for at least five years, allowing investors to knowledge about the behavior of the issuer, offeror or person asking for admission on a regulated market. The competent authority of each member state provides ESMA with aggregate information about all the sanctions imposed during the current year. Then, ESMA collects and publics them in an annual report.

Authorities: cooperation and powers

Each Member State designates its administrative authority, which has to be independent from all the market participants; it is responsible for carrying out the duties provided for in this Regulation and ensures that its provisions are applied.

In order to fulfil their duties, competent authorities have supervisory and investigatory powers that are necessary for the exercise of their responsibilities. They exercise their functions and powers directly, in collaboration with other authorities, by delegation to such authorities – but under their responsibility – and by application to competent judicial authorities.

Competent authorities make sure that investors have all informations needed for an informed assessment of the investement, requiring issuers to integrate the prospectus with supplementary information where it is deemed to be necessary and – in the worst case scenario – to deny the approval of prospectus for a maximum number of five years where severe and reapeted violations are committed. They also have the power to suspend and offer to public or an admission to trading on a regulated market where there are reasonable grounds for suspecting that some provisions have been breached or to prohibit them where some violations are found.

In order to exercise their functions and powers, competent authorities can cooperate between themselves and between themselves and ESMA. This option is restricted to information exchange and to investigation, supervision and enforcement activities. What is particularly interesting in this context is possibilily to cooperate in an on-site inspection or investigation at sites other than residences of natural person. The competent authority of the member state within whose jurisdiction the inspection takes place may request assistance from those of the other countries, and, where

requested by on those ESMA may have a coordinating role – provided that it results in cross border effects. Whenever a competent authority receives a request from a competent authority of another member state to carry out an on-site inspection or investigation, the former can execute by itself this task or can engage the one which submitted the request – allowing it to participate – or can leave the latter to conduct this activity.

Not always competent authorities are required to cooperate between themselves: they may refuse to act on a request to cooperate with an investigation, where complying with this request is likely to adversely affect their own investigation.

Delegated acts

The EU Parliament and Council have the power to delegate the EU Commission to adopt non-legislative acts of general application that supplement or amend certain non-essential elements of a legislative act, through the so called delegated acts.

The Commission adopts delegated acts regarding the Prospectus, the base Prospectus, the final terms, and the information which must be included in a Prospectus, in order to avoid their duplication when the Prospectus is composed by separate documents. Moreover, they set out the minimum information that must be contained in the universal registration document and, also, the schedule for the universal registration document of credit institutions; such a schedule ensures that the universal registration document contains all the information on the issuer, allowing for the subsequent offer to the public or admission to trading of equity, debt securities or derivatives.

What about publication?

According to the Regulation, the prospectus is deemed to be available to public only when it is drawn up in electronic form. In particular, the prospectus has to be uploaded on the issuer's website, on the website of the financial intermediaries placing or selling the securities and on those of the regulated market where the admission to trading is sought.

The Prospectus Directive, in addition to these options, provides for publication in accordance with different methods: insertion in one or more newspapers with wide circulation or in a printed form to be made available, free of charge, at the offices of the market on which the securities are admitted to trading. However, the Amending Directive 2010/73/EU requires issuers who have resorted to these latter methods also to publish their prospectus electronically, making useless the publication by insertion or in printed form without matching it with the electronic one. This innovation constitutes a significant step in the harmonization of diverging practices in different member states, further strengthened by the provisions included in the new Regulation which no longer mention the possibility to publish the prospectus in non-electronic formats.

What about the offer price?

The offer price, paired up with the amount of securities offered to the public, is one of the key information the Prospectus needs to provide to the investors. However, there are some cases in which the disclosure of such a key information could be detrimental for the issuer (for example, when there is a serious risk of under-pricing), or contrary to the public interest; in this case, the NCA can authorize the omission of such information, and the issuer just needs to disclose either the maximum price, or the condition in accordance to the price and/or the amount will be determined;

both these information are obviously related to the process through which the issuance price is set by the issuer, with the help of the managing underwriter.

Usually, a price window is set, where a maximum price is set in the investor's interest, and a minimum price in the issuer's; next, after the Book-building process[20] has ended, the managing underwriter has a final price, that falls inside the price window; however, bids placed in the process are not legally binding, so the acceptance of the purchase of securities can be withdrawn for not less than two working day after the final offer price and/or amount of securities will be offered to the public have been filed.

The omission of the price, however, needs not to mislead investors; in particular, the disclosure of the maximum price is aimed to retail investors, while all other information regarding the price are aimed to qualified investors who have the competence to infer the most likely price; in this way, the delicate equilibrium between investor protection and a lighter disclosure burden for the issuer is maintained.

Supplements

A supplement to the Prospectus is needed when any new factor, material mistake or inaccuracy relating the information included in the Prospectus may affect the assessment of the securities which is coming into light, or arises between the time when the Prospectus is approved and the final closing of the offer to the public, or the time when trading on regulated market begins. In case of an offer to the public, investors who have bought the securities before the publication of the supplement have the right - exercisable within two working day after the publication of the supplement - to withdraw their acceptances provided that the new factor, material mistake or inaccuracy comes out before the final closing of the offer.The only difference between the Prospectus Directive and the new Regulation is the time limit laid down for the approval of the supplement: five working days provided for this proposal, seven working days ruled by the directive.

Third countries

A third country issuer [21] who is going to offer securities to the public in the European Union, or to seek admission on one of its regulated markets, will receive approval from the home country competent authority. Furthermore, the third country issuer has to designate a representative established in its home member state, who will be the contact point between the third country issuer and the Union. The third country issuer, together with the representative, is responsible for the Prospectus' draft.

The competent authority of the home member state of a third country issuer can approve a Prospectus drawn up in accordance with the third country issuer's legislation, provided that the information requirements imposed by the European Union legislation are equivalent to those under

- [20] The Book-building process is a widely-used method for setting the initial offering price (for example, in IPO); in the book-building, the Managing Underwriter builds a book of likely (or potential), non-binding orders from institutional investors and uses this information to set the issue price.

[21] An issuer established in a third country

this regulation; for this purpose, the competent authority of the home member state can engage in cooperation agreements with the supervisory authority of the third state concerning the exchange of information.

5. CONCLUSIONS

How is this review of the Prospectus regime different from the review in 2009?

The 2009-2010 review amended the 2003 Directive only in a limited number of areas to provide increased legal clarity and reduce the regulatory burden on EU companies; whilst these changes have been helpful, according to feedback from the public consultation carried out between February and May 2015, the proportionate disclosure regime for SMEs was perceived by many stakeholders as being burdensome and granting few advantages compared to a regular Prospectus; moreover, companies did not want to be perceived as giving a "lower" level of disclosure, and therefore opted for the standard disclosure regime instead; finally, the proportionate disclosure regime for rights issues that was put in place by the 2010 amendment has a very narrow scope, and this has equally affected its use.

The new proposal is the result of a comprehensive review of the Prospectus regime with a view to bringing about real advantages, with a considerable alleviation in the content and a broader scope both for SMEs and secondary issuances.

How does the proposal fit within the Commission's commitment to Better Regulation?

The proposal is part of the Commission's commitment to simplify and make EU laws more effective and efficient. The Prospectus Directive was included in the Regulatory Fitness and Performance programme (REFIT, COM (2014)368), because stakeholders have expressed concerns regarding the high costs of preparing a Prospectus and getting it approved by the competent authority.

REFIT aims to reduce regulatory burdens and simplify existing laws to ensure that the objectives of the legislation or policy can be reached in a more effective and efficient way. The proposal has been prepared in an open, transparent manner, informed by the best available evidence and backed up by involving stakeholders through the consultation, and it relies on an impact assessment which builds on the findings of an evaluation of the last reform of the Prospectus Directive undergone in 2010.

What are the next steps and when will the revamped regime become applicable?

The Prospectus Regulation was transmitted on 30 November 2015 to the European Parliament and the Council for adoption under the co-decision procedure. On 3 June 2016, the Council gave its backing to the Commission's proposal to reform by granting the Council presidency a negotiating mandate for trilogues.

As with any other EU Regulation, its provisions will be legally binding in all EU Member States without transposition into national law as from the day of entry into application. The proposed Regulation, once adopted, will replace Directive 2003/71/EC which will be repealed, along with its corresponding implementing. New implementing measures will be adopted to set out the minimum

information contents of Prospectuses, and the proposed Regulation will enter application only after such implementing measures are adopted.

The proposal contains a "grandfathering clause" for Prospectuses approved in accordance with Directive 2003/71/EC before the date of entry into application of the proposed Regulation. Those Prospectuses will continue to be governed by Directive 2003/71/EC.

Implementation plans and monitoring, evaluation and reporting arrangements

ESMA and competent authorities will be empowered to make an annual report by giving result of the effects of this new Regulation. The revised Prospectus rules will be evaluated five years after they enter into force.

The achievement of the stated objectives will be measured through:

1. Number of Prospectus approved annually under two disclosure rules for the secondary issuances and SMEs and the variation with respect to the estimated values;
2. Number of Prospectus that have benefitted from the universal registration and trough the fast-track approval;
3. The share of retail investors among the investors in non-equity debt issuances.
4. Cost of preparing the Prospectus and approving it;
5. Share of Prospectus that have been passport to other member states.

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