

The EC Prospectus Regime:
Directive 2003/71/EC
and Commission Regulation (EC)
No. 809/2004

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Screening process
Explanatory meeting with Croatia and Turkey
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Reasons for the Prospectus Directive (‘PD’)

- To introduce an effective passport for primary market activities
- To remedy the difficulties associated with the two previous Directives related to prospectuses (80/390/EEC and 89/298/EC):
 - Modernisation of the disclosure requirements (the listing particulars Directive was adopted in 1980)
 - Minimum harmonisation (too many national exemptions applied in different ways)
 - Additional host State requirements (full translation; ability to ask for additional information)

Legislative approach

PD establishes framework principles:

- Circumstances where prospectus required
- approval of prospectus
- passport
- language regime
- high level specification of form and contents: status of Annexes

Implementing Regulation specifies technical detail

- Amendment already proposed

Principal Provisions of PD regime

PD requires a prospectus where:

- securities are offered to the public anywhere in the EU
- securities are to trading on a regulated market in the EU

All prospectuses must be approved by relevant competent authority ('CA')

- approved prospectus valid for 12 months, subject to updating
- may be used anywhere in the EU

Principle of home State control

- Determination of home Member State
- single CA responsible for approval of prospectus and updates
- Possibility to transfer approval to another CA

Scope of application

- Broad scope of application:
 - All transferable securities within meaning of ISD / MiFID
 - All offers to the public – not just IPOs – wide definition
 - Not only official listings
- Exclusions from scope (Article 1), e.g.:
 - UCITS
 - Non-equity securities issued by Member States, regional authorities, central banks
 - securities included in an offer where the total value of the offer is less than €2.5 million.
- Member States may apply domestic disclosure requirements in such cases (unless subject to another EC regime)
- Possible to 'opt-in' to Directive regime – benefit of passport

Exemptions 1 (Article 3(2) PD)

- Harmonisation of exemptions from the obligation to produce a prospectus
- Some exemptions restricted to public offers: e.g. no prospectus required for -
 - an offer addressed only to qualified investors
 - an offer addressed to fewer than 100 persons, other than qualified investors, per Member State
 - an offer of securities with a unit value of at least €50,000
 - an offer where the total consideration payable for the securities cannot exceed €100,000

Exemptions 2 (Article 4)

Prospectus not required for an offer of securities, or the admission of securities to trading, e.g. where securities are offered or allotted –

- in the context of a merger or a takeover
- free of charge to existing shareholders
- to employees

These exemptions apply if the issuer makes available sufficient information about the securities and the offer to make the publication of a prospectus unnecessary

An effective single passport

Centre-piece of new regime

- Country of origin approach
- Automatic mutual recognition based on certificate of approval from home CA
- Limited translation requirements: host CA can only require summary in national language
- no additional approval or administrative procedures in host State

FORMAT OF PROSPECTUS

Choice as to format of prospectus: single document or three separate components.

- registration document containing information relating to the issuer;
- securities note containing details of the securities
- summary note conveying essential characteristics and risks associated with the issuer and the securities in non-technical language
- Summary note not required for ‘professional’ securities

Contents of Commission Regulation (EC) No 809/2004

Technical implementing measures making detailed provision in relation to:

- the contents of a prospectus. Different requirements for different classes of securities
- the format of the prospectus;
- requirements relating to the incorporation of information by reference;
- requirements relating to the methods of publication of prospectuses.

CONTENTS OF THE PROSPECTUS

- Annexes contain series of schedules setting out minimum disclosure requirements for different types of securities and issuers.
- Issuers combine the appropriate schedules and building blocks in accordance with the 'road map' in Article 21.
- Combination depends on type of issuer and security concerned.
- CA cannot require that prospectus contain information not specified in applicable Annexes.
- However, issuers free to add supplementary information if they wish to do so.

'Building block' approach:

Combine according to nature of the issuer and the type of issue:

- Specific schedules for equity, debt and derivatives, asset backed securities, closed-end funds, banks etc.
- Building blocks for guarantees, pro forma information, depository receipts, underlying shares
- Adapted regimes for specialist issuers

Calibrated requirements:

- *Wholesale regime:* based on a distinction between low and high level individual denomination of the security
 - Lighter regime for debt and derivative securities with unit value of at least €50,000

Proposed amendment of Regulation

Amendment of Regulation to deal with cases where issuer has a 'complex financial history'

- Limited flexibility for CAs to require historical financial information drawn up by entities other than the issuer
 - CESR advice delivered October 2005
 - March and April 2006 – Transparency exercise and discussion of working document in ESC
 - Formal proposal – May / June 2006
 - Vote in ESC – October 2006

Role of CESR

- Level 3 Guidance published in February 2005
- Ongoing work in 'contact committee'
 - Discussion of operational issues
 - Publication of summary of items agreed at those meetings
- Further advice on amendment to Regulation if required

Directive 2001/34/EC: Official Listing

Consolidates directives on –

- conditions for admission to listing
- listing particulars
- regular reporting for listed securities
- disclosure of major shareholdings
- Partially repealed and superseded by PD and Transparency Directive
- But provisions on conditions for admission to official listing still in force