

AMENDMENTS TO THE PROSPECTUS REGULATION PUBLISHED: NEW EU RECOVERY PROSPECTUS

1. INTRODUCTION

On 26 February, [Regulation \(EU\) 2021/337 of the European Parliament and of the Council of 16 February 2021](#), amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries and Directive 2004/109/EC as regards the use of the single electronic reporting format for annual financial reports, to support the recovery from the COVID-19 crisis (the “**Regulation**”) was published in the OJEU.

The Regulation amends (i) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC (the “**Prospectus Regulation**”); and (ii) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (the “**Transparency Directive**”).

The Regulation is one of the regulatory texts adopted in the framework of the Capital Markets Recovery Package, a European Commission initiative launched on 24 July 2020 aimed at facilitating the recovery of capital markets as part of its overall strategy to address the economic impact of the COVID-19 pandemic. In addition to the amendment of the Prospectus Regulation, the Capital Markets Recovery Package includes a proposal to amend the MiFID II Directive and the securitisation framework.

This legal briefing summarises the main new features included in the Regulation.

2. AMENDMENTS TO THE PROSPECTUS REGULATION

A. EU Recovery prospectus

The main new feature of the Regulation is the creation of a new short-form prospectus called the EU Recovery prospectus (“**EURP**”) for the public offer of shares or admission to trading on a regulated market, which is introduced in a new article 14a of the Prospectus Regulation. The EURP is designed as a prospectus which, while addressing the economic and financial issues specifically raised by the COVID-19 pandemic, is also intended to be easy to produce for issuers,

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easy to understand for investors and easy to scrutinise and approve for the competent authorities. The most prominent features of the EURP are as follows:

- **Audience:** the following persons may choose to draw up an EURP under the simplified disclosure regime set out in the new Article 14a of the Prospectus Regulation:
 - (i) issuers whose shares have been admitted to trading on a regulated market continuously for at least the last eighteen (18) months and who issue shares fungible with existing shares which have been previously issued;
 - (ii) issuers whose shares have already been traded on an SME growth market continuously for at least the last eighteen (18) months, and who issue shares fungible with existing shares which have been previously issued; and
 - (iii) offerors of shares admitted to trading on a regulated market or an SME growth market continuously for at least the last eighteen (18) months.
- **Quantitative limit:** a quantitative limit is set for the use of the EURP, as it provides much less information than a simplified prospectus under the simplified disclosure regime for secondary issuances. Therefore, it is understood that it should not be used for highly dilutive issuances of shares that significantly affect the capital structure, prospects and financial situation of the issuer.

In particular, an EURP may only be drawn up where the number of shares to be offered, together with the number of shares already offered through an EURP over a twelve-month period, represents a figure not exceeding 150 % of the number of shares already admitted to trading on a regulated market or an SME growth market, as the case may be, on the date of approval of the EURP.

- **Content:** the EURP should include the reduced information needed for investors to understand:
 - (i) the prospects and financial performance of the issuer and the significant changes in the financial and business position of the issuer that have occurred since the end of the last financial year, if any, as well as its financial and non-financial long-term business strategy and objectives, including, if applicable, a specific reference to the business and financial impact of the COVID-19 pandemic on the issuer and the anticipated future impact in this regard; and
 - (ii) the essential information on the shares, including the rights attached to those shares and any limitations on those rights, the reasons for the issuance and its impact on the issuer, including on the overall capital structure of the issuer, as well as a disclosure of capitalisation and indebtedness, a working capital statement, and the use of proceeds.

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In particular, the Annex to the Regulation introduces a new Annex Va to the Prospectus Regulation, detailing the minimum information to be included in the EURP. Issuers can decide the order in which the information set out in the Annex is presented in the EURP.

- **Information:** the information included in the EURP must be written and presented in an easily analysable, concise and comprehensible form and must enable investors, especially retail investors, to make an informed investment decision, taking into account the regulated information that has already been disclosed to the public.
- **Summary:** the EURP should include a short summary as a useful source of information for investors, in particular retail investors. That summary should be set out at the beginning of the EURP and should focus on key information that would enable investors to decide which offers to the public and admissions to trading of shares to study further.

The summary of the EURP must be no longer than two sides of A4-sized paper, must not include cross-references to other parts of the EURP, must not incorporate information by reference, and must be presented and laid out in a way that is easy to read, using characters of readable size. In addition, the language used should be clear, non-technical, concise and comprehensible for investors.

The following sections should be included in the summary of the EURP:

- (i) an introduction, containing all the relevant warnings and the date of approval of the EURP;
 - (ii) key information on the issuer, including, if applicable, a specific reference of not less than 200 words to the business and financial impact on the issuer of the COVID-19 pandemic;
 - (iii) key information on the shares, including the rights attached to those shares and any limitations on those rights; and
 - (iv) key information on the offer of shares to the public and/or the admission to trading on a regulated market.
- **Maximum length:** the EURP should be drawn up as a single document with a maximum length of thirty (30) A4-sized pages when printed, without taking into account the summary and the information incorporated by reference as regards this maximum length. It should be presented and laid out in a way that is easy to read, using characters of readable size.
 - **Approval deadline:** the deadline for approval by the competent authority is reduced to seven (7) working days. It also provides that the issuer must inform the competent authority at least five (5) working days before the date envisaged for the submission of an application for approval.

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- **Application period:** The EURP regime will expire on 31 December 2022. EURPs that are approved before the expiry of this regime will continue to be governed by it until the end of their period of validity or until twelve months have elapsed since 31 December 2022, whichever occurs first.

B. Non-equity securities issued by credit institutions

The exemption from the obligation to publish a prospectus for offers of non-equity securities issued on a continuous or repeated basis by a credit institution is extended from EUR 75,000,000 to an aggregated amount per credit institution of EUR 150,000,000, calculated over a period of twelve months, provided that these securities (i) are not subordinated, convertible or exchangeable; and (ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.

The application of this exemption threshold will only be available for a limited period of time, until 31 December 2022.

C. Supplements

The Prospectus Regulation requires financial intermediaries to inform investors of the possibility of a supplement being published and, in certain circumstances, to contact investors on the same day that a supplement is published. The deadline by which investors must be contacted, as well as the scope of investors to be contacted, can create difficulties for financial intermediaries.

A more proportionate regime has therefore been introduced until 31 December 2022:

- the supplement must contain a prominent statement concerning the right of withdrawal which, among other matters, clearly indicates to whom the right of withdrawal applies, within what period of time it may be exercised and whom investors wishing to exercise the right of withdrawal should contact;
- financial intermediaries must contact investors purchasing or subscribing securities to inform them of the possibility of a supplement being published no later than the date of the closing of the initial offer period;
- financial intermediaries must contact investors who have a right of withdrawal by the end of the first working day following the day of publication of the supplement; and
- investors can exercise their rights of withdrawal within three working days of the publication of the supplement, a period which may be extended by the issuer or the offeror.

3. AMENDMENTS TO THE TRANSPARENCY DIRECTIVE

The Transparency Directive requires issuers whose securities are admitted to trading on a regulated market situated or operating within a Member State to prepare and disclose their annual financial reports in a single electronic reporting format, starting from financial years beginning on or after 1 January 2020.

Considering that complying with this obligation requires additional human and financial resources, and considering the constraints on issuers' resources due to the COVID-19 pandemic, Article 4(7) of the Transparency Directive has been amended to give Member States the possibility to postpone the application of the requirement to prepare and disclose annual financial reports using the single electronic reporting format by one year. In order to make use of this possibility, the Member State must notify the European Commission of its intention to authorise such a postponement no later than 21 days after the date of publication of the Regulation, and such intention should be duly justified.

4. ENTRY INTO FORCE, APPLICATION AND VALIDITY OF THE REFORM

The Regulation will enter into force on the twentieth day following its publication in the Official Journal of the European Union, i.e. 18 March 2021, and will be binding in its entirety and directly applicable in all Member States from that date.

This Legal Briefing was prepared by Marisa Delgado, Senior Professional Support Lawyer.

The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This document was prepared on 1 March 2021 and Pérez-Llorca does not assume any commitment to update or revise its contents.

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