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Proposal 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

(Text with EEA relevance)

{SWD(2020) 120 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

EU Member States have been severely affected by the economic crisis resulting from the COVID-19 pandemic. This calls for a need to react quickly in order to provide support to capital markets participants. In the Communication of the Commission of 13 March 2020, entitled ‘Coordinated economic response to the COVID-19 outbreak’¹, the Commission highlighted the importance of ensuring the liquidity of the EU financial sector and countering a threatening recession through actions at all levels. Furthermore, on 27 May 2020, in its Communication entitled ‘Europe’s moment: Repair and Prepare for the Next Generation’², the Commission presented key instruments supporting the recovery plan for Europe, including measures that aim at kick-starting the economy and helping private investment. This Communication also stressed that liquidity and access to finance will be a continued challenge for companies.

The objective of the targeted changes to the prospectus regime as set out in the Prospectus Regulation³ is to enable companies to access new funding in as short time period to help with the economic recovery from the COVID-19 pandemic. In particular, it aims to help companies raise equity so that they can restore sustainable debt-to-equity ratios and become more resilient.

A prospectus is a legally required document presenting information about a company and the securities that such company offers to the public or seeks to admit to trading on a regulated market. This information should be the basis on which investors can decide whether to invest in securities issued by that company. The cost of drawing up a prospectus might act as a deterrent for issuers in financial distress seeking to raise new funds, in particular equity. Due to the situation resulting from the COVID-19 pandemic, it is crucial to ensure that for already listed issuers the prospectus does not act as a barrier to raise capital on public markets.

This proposal therefore aims at simplifying the procedure for issuers to quickly raise capital due to the economic urgency resulting from the COVID-19 pandemic. These amendments to the Prospectus Regulation relate to the creation of a new type of short-form prospectus (the “EU Recovery prospectus”) as well as targeted amendments to release pressure on financial intermediaries (notification of supplements and non-equity issuances by credit institutions).

1.1.1. The EU Recovery prospectus

The objective of the EU Recovery prospectus is to provide listed issuers with simplified disclosure rules that are tailored to their specific needs in a post-crisis environment while

¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup on Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final of 13.03.2020.

² Communication from the Commission to the European Parliament, the European Council, the Council, the European economic and social committee and the committee of the regions Europe's moment: Repair and Prepare for the Next Generation, COM(2020) 456 final of 27.5.2020.

³ 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 (OJ L 168, 30.6.2017, p. 12).

maintaining the prospectus as a relevant tool for informing potential investors. In the current post-crisis situation, it is crucial to reduce regulatory hurdles that might affect recapitalisation of companies and allow issuers to tap into public markets at an early stage in the recovery.

The EU Recovery prospectus aims to focus on essential information and would only be available for secondary issuances of shares. Provided that issuers have shares already admitted to trading on a regulated market or an SME Growth market continuously for at least the last 18 months, the alleviated disclosure is expected to reduce the cost of drawing up a prospectus and to make the document easier to understand. Furthermore, the EU Recovery prospectus should also make more efficient the scrutiny by national competent authorities. To that extent, the proposed EU Recovery prospectus regime intends to shorten prospectus approval to 5 working days to allow issuers to swiftly seize opportunities to raise capital. This new type of prospectus would also benefit from the EU single passport of approved prospectuses for cross-border offers and admissions to trading.

The EU Recovery prospectus aims to be (i) easy to produce for companies that want to raise equity on capital markets, (ii) easy to understand for investors who want to finance them and (iii) easy to scrutinise and approve for national competent authorities.

The EU Recovery prospectus aims at helping recapitalization during the recovery phase. It is therefore conceived as a temporary regime that expires 18 months after the date of application of this Regulation. As part of the Prospectus Regulation review, it should also be assessed whether the EU Recovery prospectus meets its objectives. To help in this assessment, the proposal would require that the ESMA's centralised storage mechanism that collects prospectus data from national competent authorities would also collect data on the EU Recovery prospectus. This marginal adjustment of ESMA's centralised storage mechanism is not expected to require extra resources from ESMA staff. This should also not incur significant additional costs.

1.1.2. Amendments to release pressure on financial intermediaries

Supplements

An issuer is required to publish a supplement to the prospectus for any significant new factors, material mistakes or material inaccuracies relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later. The publication of a supplement triggers a withdrawal right for the investors to be exercised within two working days from the publication of the supplement. As part of their duty to protect investors, financial intermediaries must contact investors to inform them that a supplement was published on the day where the supplement is published. Such a deadline, as well as the broad qualification of "investors", have created difficulties for financial intermediaries.

To deal with these difficulties and free up resources for financial intermediaries, the proposal clarifies the obligations on financial intermediaries as regards supplements. Financial intermediaries should only inform those investors that have purchased and subscribed securities through them of the possibility of the publication of a supplement, provided that the purchase or subscription was agreed upon between the time when the prospectus had been approved and the closing of the offer period or the time when trading on a regulated market had begun, whichever occurs later. Following the publication of a supplement, the financial

intermediary must only contact those investors benefiting from a withdrawal right. The proposal also extends the deadline for financial intermediaries to contact investors to 1 working day from the publication of the supplement. To maintain a high level of investor protection, the period during which a withdrawal right could be exercised by investors is extended from two working days to three working days from the publication of the supplement.

As the targeted amendment on supplements would fix these difficulties and free up resources for financial intermediaries while maintaining a high level of investor protection, such amendments would not be limited in time.

Non-equity securities issued by credit institutions

An offer of non-equity securities issued in a continuous or repeated manner by a credit institution is, under certain conditions, not subject to the obligation of publishing a prospectus if the total consideration is less than EUR 75 million per credit institution over a period of 12 months. Credit institutions have been active in the recovery to support companies that needed financing and are expected to be a fundamental pillar of the recovery. In order to help credit institutions by making it easier for them to have more financing and bring them a breathing space to support their clients in the real economy, the Commission proposes a targeted increase of the threshold from EUR 75 million to EUR 150 million. It aims at supporting the financing of credit institutions in the recovery phase by increasing the prospectus exemption threshold for certain type of offers of securities. As this measure is directly linked to the recovery phase of the Covid-19 pandemic, it should be available for a limited period of time of 18 months.

1.2. Consistency with existing policy provisions in the policy area

While laying down extraordinary measures to soften the impact COVID-19 pandemic, this proposal remains in line with the overarching objectives of the Prospectus Regulation to foster fund raisings through capital markets, ensure investor protection, and drive supervisory convergence throughout the EU. This proposal is also complementary to the reporting obligations laid down in the Transparency Directive⁴, for regulated markets, the Commission Delegated Regulation (EU) 2017/565⁵, for SME Growth markets, and the Market Abuse Regulation⁶ for both trading venues.

⁴ 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 (OJ L 390, 31.12.2004, p. 38).

⁵ Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

⁶ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

1.3. Consistency with other Union policies

This legislative proposal on amendments to the Prospectus Regulation is part of a set of measures to facilitate the economic recovery post-COVID-19 pandemic which also includes a legislative proposal amending MiFID II⁷ and a legislative proposal amending the framework on securitisation, including the Securitisation Regulation⁸ and the Capital Requirements Regulation⁹.

This legislative proposal also aims to complement the objectives of the Capital Markets Union to diversify market-based sources of financing for companies. By making it easier for companies listed in the EU to issue shares, this initiative would contribute to facilitating capital-raising by companies. In this regard, this proposal would be in line with the recommendation of the High Level Forum on the Capital Markets Union¹⁰ published on 10 June 2020 that highlighted the need to alleviate listing rules, also referring to the Prospectus Regulation. As part of the measures to soften the impact of the COVID-19 pandemic on the real economy and financial markets, this initiative also aims at alleviating regulatory costs for listed issuers on both regulated markets and SME Growth markets. In particular, the flexibility given to SME Growth markets issuers capitalises further on the objectives of the recently adopted Regulation (EU) 2019/2115 of the European Parliament and of the Council¹¹, which lays down measures aiming to promote the use of such trading venue. Furthermore, this initiative must be consistent with any additional proposals that the Commission aims to develop in different policy areas to soften the impact of COVID-19 pandemic on capital markets, including the key instruments supporting the recovery presented in the Commission Communication entitled ‘Europe’s moment: Repair and Prepare for the Next Generation’ of 27 May 2020.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

The legal basis of the Prospectus Regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU) which confers to the European institutions the competence to lay down appropriate provisions that have as their objective the establishment and functioning of the single market. Those Regulations can only be amended, including by reducing their scope on a temporary basis, by the Union legislator, in this case on the basis of Article 114 of the Treaty.

⁷ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

⁸ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

⁹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

¹⁰ https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en

¹¹ Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1).

2.2. Subsidiarity

Under Article 4 of TFEU, EU action for completing the internal market has to be appraised in light of the subsidiarity principle set out in Article 5(3) of the Treaty on European Union. According to the principle of subsidiarity, action at EU level should be taken only when the objectives of the proposed action cannot be achieved sufficiently by Member States alone and thus mandate action on an EU level.

Disclosure requirements in case of offers of securities or admission to trading on a regulated market result from the application of the Prospectus Regulation. This European Regulation has direct binding legal force throughout all Member States. They leave almost no flexibility for Member States to adapt the rules to local conditions. The problems arising from those provisions can only be effectively addressed via legislative amendments at the European level¹². The possible alternatives, i.e. non-legislative action at Union level could not sufficiently and effectively achieve the objective set, as they could not amend the provisions of the Regulation.

A harmonised EU prospectus is an essential tool to integrate capital markets throughout the Union. Once a competent national authority approves a prospectus, the issuer can ask for a passport to use this prospectus in another EU Member State. No further approvals or administrative procedures relating to the prospectus would be necessary in this "host" Member State. This passport operates on the assumption that minimum content of the prospectus is harmonised at Union level by the applicable prospectus rules. As the passport is therefore European in nature, any improvements can only be tackled at EU level. The possible alternatives, such as action at Member State level, would create an obstacle to trade and could not sufficiently and effectively achieve the objectives to create the harmonised basis for the "passporting" of prospectuses.

The proposed amendments to the Prospectus Regulation would give a clear signal throughout the Union that the prospectus regime can adapt in exceptional circumstances. Alleviating targeted burdens identified in the Prospectus Regulation as well as making the prospectus more accessible for issuers whose shares are already admitted to trading on a regulated market or on a SME growth market can be conducive to deepening the pan-European capital pools available to such issuers. This involves designing a distinct prospectus regime whose content and format is suitable for both issuers and investors under strict conditions. These objectives cannot be achieved by the Member States alone as it would lead to less level playing field for issuers and investors alike and create regulatory arbitrage and obstacles to cross-border trade. These objectives can be better achieved at the level of the Union.

2.3. Proportionality

This proposal only brings technical amendments to the Prospectus Regulation in order to swiftly address the economic repercussions of the COVID-19 pandemic. The proposed measures to lighten the prospectus requirements respect the principle of proportionality. They are adequate for reaching the objectives and do not go beyond what is necessary and are, for some of the measures, limited in time.

¹² Vodafone case C-58/08: ' Where an act based on Article 95 EC has already removed any obstacle to trade in the area that it harmonises, the Community legislature cannot be denied the possibility of adapting that act to any change in circumstances or development of knowledge having regard to its task of safeguarding the general interests recognised by the Treaty'

Issuers

The proposal alleviates prospectus disclosure requirements for issuers in line with the principle of proportionality. Provided that their shares have already been admitted to trading on a regulated market or SME Growth market continuously for at least the last 18 months, issuers wishing to raise capital will benefit from alleviated disclosure rules in the EU Recovery prospectus. This alleviated disclosure regime would result in a reduction in compliance costs as the EU Recovery prospectus would be much shorter and therefore less expensive to produce. In addition, these issuers would benefit from faster prospectus approvals enabling them to seize funding opportunities more effectively. In order not to go beyond what is necessary, the EU Recovery prospectus will be limited in time and is therefore proposed as a temporary regime that expires 18 months after the date of application of this Regulation.

Investors

The proposed EU Recovery prospectus is also in line with the principle of proportionality with respect to potential investors. The EU Recovery prospectus would be more reader-friendly with its reduced number of pages and its focus on essential information while, at the same time, targeting its use to the specific situation where the issuer has a track record and therefore already information published in the market.

Financial intermediaries

Financial intermediaries would benefit from targeted amendments that would clarify their supplement-related requirements and help them to overcome the difficulties they met to effectively reach investors when a supplement is published while maintaining a high level of investor protection. As the targeted amendments on supplements would fix difficulties, such amendments would not be limited in time.

Credit institutions, that have been active in the recovery to support companies, would also benefit from a targeted alleviation with the proposal to increase the prospectus exemption threshold from EUR 75 million to EUR 150 million for offers of non-equity securities issued in a continuous or repeated manner. As such measure aims at helping credit institutions which are going to be a fundamental pillar of the recovery phase, it would be limited in time to 18 months.

National competent authorities

National competent authorities should also benefit from the proposed simplifications of the EU Recovery prospectus: with less information to disclose and scrutinise in the EU Recovery prospectus, their workload would be reduced and the approval process would be easier.

2.4. Choice of the instrument

The proposed legislative amendments aim in particular at lowering the administrative burden and compliance costs faced by issuers and resulting from the application of the Prospectus Regulation. To this end, the legislative measures will amend the current provisions of the Prospectus Regulation. The legal basis for the Prospectus Regulation is Article 114(1) TFEU. Any amending regulation has therefore the same legal basis.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. Impact assessment

Given the urgency of measures to be taken to help the recovery after the crisis on financial markets and on the real economy resulting from the COVID-19 pandemic, the impact assessment was replaced by a cost-benefit analysis included in the Staff Working Document supporting the Capital Markets Recovery Package.

The simplified disclosure regime of the EU Recovery prospectus aims to significantly reduce compliance costs for issuers and focuses on essential information for investors. It should also reduce the workload of national competent authorities as less information would have to be scrutinized. At the same time, the approval process would be faster. Financial intermediaries would also benefit from the targeted amendments on supplements and the increase of the exemption prospectus threshold for issuances of non-equity securities.

3.2. Fundamental rights

The protection of personal data (Article 8), the freedom to conduct a business (Art. 16) and consumer protection (Art. 38) of the EU Charter of Fundamental Rights are to some extent relevant as regards the provisions laid down in this proposal. Limitations on these rights and freedoms are allowed under Article 52 of the EU Charter of Fundamental Rights. In the case of the prospectus-related legislation, the general interest objective which justifies certain limitations of fundamental rights is the objective of ensuring market integrity. As regards the protection of personal data, the disclosure of certain information in the prospectus is necessary to ensure that investors are able to conduct their due diligence.

4. BUDGETARY IMPLICATIONS

The initiative is not expected to have any impact on the EU budget.

5. OTHER ELEMENTS

5.1. Implementation plans and monitoring, evaluation and reporting arrangements

A monitoring of the impact of the new Regulation will be carried out in cooperation with ESMA and national competent authorities on the basis of the annual reports on prospectuses approved in the Union which ESMA is empowered to produce every year. It would require that the ESMA centralised storage mechanism collecting prospectus data from national competent authorities would also collect data on the EU Recovery prospectus.

The EU Recovery prospectus will be assessed. In particular, key parameters to measure achievement of the stated objectives of the EU Recovery prospectus will be:

- (a) the number of EU Recovery prospectuses approved and an analysis of the evolution of such number;
- (b) the cost of preparing and having an EU Recovery prospectus approved compared to the current costs for a secondary issuance prospectus together with an indication of the overall financial savings achieved.

This list of indicators is non-exhaustive and can be expanded to accommodate the monitoring of additional impacts.

5.2. Detailed explanation of the specific provisions of the proposal

The amendments to the Prospectus Regulation aim at creating the EU Recovery prospectus as a new type of prospectus as well as targeted amendments for financial intermediaries.

Article 1 of this proposal deals with amendments to the Prospectus Regulation.

Article 1(1) of this proposal deals with non-equity securities issued by credit institutions on a continuous or repeated manner (*Article 1(4) of the Prospectus Regulation*).

An offer of non-equity securities issued in a continuous or repeated manner by a credit institution is, under certain conditions, not subject to the obligation of publishing a prospectus if the total consideration is less than EUR 75 million per credit institution calculated over a period of 12 months. In addition, the current regime provides that the securities must not be subordinated, convertible or exchangeable and must not give the right to subscribe for or acquire other types of securities and are not linked to derivative instruments. Credit institutions have been active in the recovery to support companies that needed financing and are expected to be a fundamental pillar of the recovery phase. In order to help credit institutions by making it easier for them to have more financing and bring them a breathing space to support their clients in the real economy, it is proposed a targeted increase of the threshold from EUR 75 million to EUR 150 million. With this targeted amendment, credit institutions would benefit from a narrowly defined alleviation that would help them to offer non-equity securities without publishing a prospectus in the recovery phase after the crisis resulting from the COVID-19 pandemic. As this measure is limited to the recovery phase, it would therefore be available for a limited time period of 18 months.

Articles 1(2) and 1(3) of this proposal deal with technical adjustments on the materiality test (*Article 6 of the Prospectus Regulation*) and summary (*Article 7 of the Prospectus Regulation*) in relation with the EU Recovery prospectus regime set out in Article 1(4) of this proposal.

Article 1(4) of this proposal creates a new regime for the EU Recovery prospectus (*Article 14a of the Prospectus Regulation*).

Scope of the EU Recovery prospectus

According to Article 1(4) of this proposal, the EU Recovery prospectus would be available only to issuers that have shares already admitted on a regulated market or an SME Growth Market for at least 18 months. Issuers should have disclosed the regulated information to the public pursuant to Directive 2004/109/EC, where applicable, Regulation (EU) No 594/2014 and, where applicable, information referred to in Commission Delegated Regulation (EU) 2017/565. The EU Recovery prospectus would not be suitable for initial public offerings where potential issuers have no track record on financial markets. To reduce the debt-to-equity ratio for companies highly indebted due to the COVID-19 pandemic, the short-form prospectus could be used for share issuances only.

Content and approval of the EU Recovery prospectus

According to Article 1(4) of this proposal, the EU Recovery prospectus focuses on essential information. As an exception to Article 6 of the Prospectus Regulation, key items have been identified as elements to be disclosed by issuers and are listed in the new Annex Va to the Prospectus Regulation. The EU Recovery prospectus would be shortened to a maximum of 30 pages. However, as a balancing measure, incorporation by reference of information already available in the market as defined in Article 19 of the Prospectus Regulation would be allowed and that information would not be taken into account in the above mentioned maximum size of 30 pages. A short summary of two pages would also be available.

A fast track approval procedure already exists in the Prospectus Regulation. Based on this, the EU Recovery prospectus would also benefit from such fast track approval of no more than 5 working days.

Articles 1(5), 1(6), and 1(10) of this proposal deal respectively with technical adjustment on the time period for the scrutiny and approval of the prospectus (*Article 20 of the Prospectus Regulation*), storage mechanism (*Article 21 of the Prospectus Regulation*) and the list of items to be disclosed (new *Annex Va of the Prospectus Regulation*) in relation with the EU Recovery prospectus regime set out in Article 1(4) of this proposal.

Under Articles 1(8) and 1(9) of this proposal, the EU Recovery prospectus regime should expire after an 18 months period of application (*Article 47a of the Prospectus Regulation*). The assessment of whether the EU Recovery Prospectus meets the objectives pursued by this Regulation should be part of the review of the Prospectus Regulation (*Article 48 of the Prospectus Regulation*).

Article 1(7) of this proposal deals with supplements (*Article 23 of the Prospectus Regulation*).

Under the current regime, issuers are required to publish a supplement to the prospectus for every significant new factor relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later. The publication of a supplement triggers a withdrawal right for investors to be exercised within two working days from the publication of the supplement. As part of their duty to protect investors, financial intermediaries must contact investors to inform them that a supplement was published on the day when the supplement is published. Such a deadline, as well as the broad qualification of “investors”, have created difficulties for financial intermediaries.

To deal with those difficulties and free up resources for financial intermediaries, the present proposal sets out targeted amendments. The first amendment concerns the scope. It clarifies that financial intermediaries must only contact and inform investors that subscribed and purchased securities through them between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later.

Secondly, the proposal extends the deadline for financial intermediaries to contact investors that subscribed and purchased securities through them and that benefit from a withdrawal right within 1 working day from the publication of the supplement. To maintain a high level of investor protection, the period during which a withdrawal right could be exercised by investors is extended from two working days to three working days from the publication of the supplement.

As the targeted amendments on supplements would fix difficulties and free up resources for financial intermediaries while maintaining a high level of investor protection, such amendments would not be limited in time.

Article 2 of this proposal deals with its entry into force.

Proposal 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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The COVID-19 pandemic is severely affecting people, companies, health systems and the economies of Member States. The Commission, in its Communication to the European Parliament, the European Council, the Council, the European economic and social committee and the Committee of the regions of 27 May 2020 entitled ‘Europe’s moment: Repair and Prepare for the Next Generation’¹³ stressed that liquidity and access to finance will be a continued challenge in the months to come. It is therefore crucial to support the recovery from the severe economic shock caused by the COVID-19 pandemic by introducing targeted amendments to existing pieces of financial legislation. This package of measures is adopted under the label “Capital Markets Recovery Package”.
- (2) Regulation (EU) 2017/1129 of the European Parliament and of the Council¹⁴ lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market in the Union. As part of the measures to help issuers to recover from the economic shock resulting from the COVID-19 pandemic, targeted amendments to the prospectus regime are necessary. Such amendments should enable issuers and

¹³ COM/2020/456 final of 27.5.2020.

¹⁴ 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 (OJ L 168, 30.6.2017, p. 12).

financial intermediaries to reduce costs and free up resources for the recovery phase in the immediate aftermath of the crisis.

- (3) Credit institutions have been active in the recovery to support companies that needed financing and are expected to be a fundamental pillar of the recovery. Regulation (EU) 2017/1129 entitles credit institutions to an exemption from the obligation to publish a prospectus in case of an offer of certain non-equity securities issued in a continuous or repeated manner up to an aggregated amount of EUR 75 million in a 12 month-period. That exemption threshold should be increased for a limited period of time in order to foster fundraising for credit institutions and bring them a breathing space to support their clients in the real economy. As that measure is limited to the recovery phase, it should therefore be available for a limited time period of 18 months.
- (4) In order to swiftly address the severe economic impact of the COVID-19 pandemic, it is important to introduce measures to facilitate investments in the real economy, allow for a rapid recapitalisation of companies in the Union and enable issuers to tap into public markets at an early stage in the recovery process. In order to achieve those objectives, it is appropriate to create a new short-form prospectus ('EU Recovery prospectus') that is easy to produce for issuers, easy to understand for investors who want to finance them and easy to scrutinise and approve for competent authorities.
- (5) Companies that have had shares admitted to trading on a regulated market or traded on an SME Growth market continuously for at least the last 18 months before the offer of shares or admission to trading, should have complied with periodic and ongoing disclosure requirements under Regulation (EU) No 596/2014 of the European Parliament and the Council¹⁵, Directive 2004/109/EC of the European Parliament and of the Council¹⁶ or Commission Delegated Regulation (EU) 2017/565¹⁷. Hence, many of the required content of a prospectus will already be publicly available and investors will be trading on the basis of that information. Therefore, the EU Recovery prospectus should only be used for secondary issuances and should only focus on essential information that investors need to make informed investment decisions.
- (6) In order to be an efficient tool for issuers, the EU Recovery prospectus should be a single document of a limited size, allow for incorporation by reference, and benefit from the passport for pan-European offers of securities to the public or admissions to trading on a regulated market.
- (7) The EU Recovery prospectus should include a short-form summary as a useful source of information for investors, in particular retail investors. That summary should be a

¹⁵ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

¹⁶ 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 (OJ L 390, 31.12.2004, p. 38).

¹⁷ Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

self-contained part of the EU Recovery prospectus and should focus on key information that would enable investors to decide which offers and admissions to trading of securities to study further by reviewing the EU Recovery prospectus as a whole to take their decision.

- (8) In order to collect data that support the assessment of the EU Recovery prospectus regime, the EU Recovery prospectus should be included in the ESMA storage mechanism. To limit the administrative burden for changing that mechanism, the EU Recovery prospectus could use the same data as the ones defined for the secondary issuance prospectus set out in Article 14 of Regulation (EU) 2017/1129, provided that the two types of prospectuses remain clearly differentiated.
- (9) The EU Recovery prospectus should complement the other forms of prospectuses laid down in Regulation (EU) 2017/1129 in view of different types of securities, issuers, offers and admissions. Therefore, unless explicitly stated otherwise, all references to ‘prospectus’ under Regulation (EU) 2017/1129 should be understood as referring to all different forms of prospectuses, including the EU Recovery prospectus laid down in this Regulation.
- (10) Regulation (EU) 2017/1129 requires financial intermediaries to inform investors of the possibility of a supplement and, under certain circumstances, to contact investors on the same day that a supplement is published. The scope of investors to contact as well as the deadline to contact them can raise difficulties. In order to provide relief and free up resources for financial intermediaries while maintaining a high level of investor protection, a more proportionate regime should be laid down. Such regime should specify which investors should be contacted by financial intermediaries when a supplement is published and extend the deadline to contact those investors.
- (11) As the EU Recovery prospectus is limited to the recovery phase, the regime of this prospectus should expire 18 months after the date of application of this Regulation. In order to ensure the continuity of EU Recovery prospectuses, the ones approved before the expiration of the regime should benefit from a grandfathering provision.
- (12) The Commission should, before 21 July 2022, present a report to the European Parliament and the Council on the application of this Regulation, accompanied where appropriate by a legislative proposal. This review should incorporate in its assessment whether the disclosure regime for EU Recovery prospectuses is appropriate to meet the objectives pursued by this Regulation.
- (13) Regulation (EU) 2017/1129 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) 2017/1129

Regulation (EU) 2017/1129 is amended as follows:

- (2) in Article 1(4), the following point (k) is added:
 - “(k) from [date of application of this Regulation] to [18 months from the date of application of this Regulation] non-equity securities issued in a continuous or

repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those 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.”;

(3) in the first subparagraph of Article 6(1), the introductory sentence is replaced by the following:

“1. Without prejudice to Articles 14(2), 14a(2) and 18(1), a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of.”;

(4) in Article 7, the following paragraph 12a is added:

“12a. By way of derogation from paragraphs 3 to 12, EU Recovery prospectus drawn up in accordance with Article 14a shall include a summary in accordance with this paragraph.

The summary of an EU Recovery prospectus shall be drawn up as a short document written in a concise manner and of a maximum length of two sides of A4-sized paper when printed.

The summary shall not contain cross-references to other parts of the prospectus or incorporate information by reference and shall be:

- (a) presented and laid out in a way that is easy to read, using characters of readable size;
- (b) written in a language and a style that facilitate the understanding of the information, in particular, in a language that is clear, non-technical, concise and comprehensible for investors.
- (c) made up of the following four sections:
 - (i) an introduction, containing warning as laid down in paragraph 5 of this Article;
 - (ii) key information on the issuer;
 - (iii) key information on the securities;
 - (iv) key information on the offer of securities to the public or the admission to trading on a regulated market or both.”;

(5) the following Article 14a is added :

“Article 14a
EU Recovery prospectus

1. The following issuers may choose to draw up an EU Recovery prospectus under the simplified regime set out in this Article in case of an offer of shares to the public or an admission to trading of shares on a regulated market:
 - (a) issuers whose shares have been admitted to trading on a regulated market continuously for at least the last 18 months and who issue shares fungible with existing shares which have been previously issued;

- (b) issuers whose shares have been already traded on an SME Growth market continuously for at least the last 18 months, provided that a prospectus has been published for the offer of those shares, and who issue shares fungible with existing shares which have been previously issued.
2. By way of derogation from Article 6(1), and without prejudice to Article 18(1), the EU Recovery prospectus shall contain the relevant reduced information which is necessary to enable investors to understand:
- (a) the prospects of the issuer and the significant changes in the financial position of the issuer that have occurred since the end of the last financial year, if any;
 - (b) the essential information on the shares, the reasons for the issuance and its impact on the overall capital structure of the issuer, and the use of proceeds.

The information contained in the EU Recovery prospectus shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors to make an informed investment decision. The competent authority shall also take into account whether the issuer has disclosed the regulated information to the public pursuant to Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, information referred to in Commission Delegated Regulation (EU) 2017/565.

The EU Recovery prospectus shall be a single document containing the minimum information laid down in Annex Va. It shall have a maximum length of 30 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.

Information incorporated by reference in accordance with Article 19 shall not be taken into account as regards the maximum length of 30 sides of A4-sized paper referred to in the third subparagraph of this paragraph.

Issuers may decide the order in which the information referred to in Annex Va is set out in the EU Recovery prospectus.”;

- (6) in Article 20, the following paragraph 6a is added:

“6a. By way of derogation from paragraphs 2 and 4, the time limits set out in the first subparagraph of paragraph 2 and in paragraph 4 shall be reduced to five working days for an EU Recovery prospectus drawn up in accordance with Article 14a. The issuer shall inform the competent authority at least five working days before the date envisaged for the submission of an application for approval.”;

- (7) in Article 21, the following paragraph 5a is added:

“5a. An EU Recovery prospectus drawn up in accordance with Article 14a shall be classified in the storage mechanism referred to in paragraph 6 of this Article. The data used for the classification of prospectuses drawn up in accordance with Article 14 may be used for the classification of EU Recovery prospectuses drawn up in accordance with Article 14a, provided that the two types of prospectuses are differentiated in that storage mechanism.”;

- (8) Article 23 is amended as follows:

- (a) in paragraph 2, the first subparagraph is replaced by the following:
- “2. Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within three working days after the publication of the supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.”;
- (b) in paragraph 3, the first and second subparagraphs are replaced by the following:
- “3. Where investors purchase or subscribe securities through a financial intermediary, between the time when the prospectus for those securities is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, that financial intermediary shall inform those investors of the possibility of a supplement being published, where and when it would be published and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such case.
- Where the investors referred to in the first subparagraph of this paragraph have the right of withdrawal referred to in paragraph 2, the financial intermediary shall contact those investors within one working day after the publication of the supplement.”;

- (9) the following Article 47a is inserted:

“Article 47a

Time limitation of the EU Recovery prospectus

The regime set out in Article 14a expires on [18 months from the date of application of this Regulation].

EU Recovery Prospectuses drawn up in accordance with Article 14a and approved between [date of application of this Regulation] and [18 months after the date of application of this Regulation] shall continue to be governed in accordance with that Article until the end of their validity or until twelve months have elapsed after [18 months after date of application of this Regulation], whichever occurs first.”

- (10) in Article 48, paragraph 2 is replaced by the following:

- “2. The report shall assess, inter alia, whether the prospectus summary, the disclosure regimes set out in Articles 14, 14a and 15 and the universal registration document referred to in Article 9 remain appropriate in light of their pursued objectives. In particular, the report shall include the following:
- (a) the number of EU Growth prospectuses of persons in each of the four categories referred to in points (a) to (d) of Article 15(1) and an analysis of the evolution of each such number and of the trends in the choice of trading venues by the persons entitled to use the EU Growth prospectus;

- (b) an analysis of whether the EU Growth prospectus strikes a proper balance between investor protection and the reduction of administrative burdens for the persons entitled to use it;
 - (c) the number of EU Recovery prospectuses approved and an analysis of the evolution of such number;
 - (d) the cost of preparing and having an EU Recovery prospectus approved compared to the current costs for a prospectus, together with an indication of the overall financial savings achieved;
 - (e) an analysis of whether the EU Recovery prospectuses strikes a proper balance between investor protection and the reduction of administrative burden for the persons entitled to use it.”;
- (11) the text set out in the Annex to this Regulation is inserted as Annex Va.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President



Brussels, 24.7.2020
COM(2020) 281 final

ANNEX

ANNEX

to the

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

{SWD(2020) 120 final}

ANNEX

“ANNEX Va

MINIMUM INFORMATION TO BE INCLUDED IN THE EU RECOVERY PROSPECTUS

I. Name of the issuer, Member State of incorporation, link to the issuer’s website

The purpose is to identify the company issuing shares, including its legal entity identifier (‘LEI’), its Member State of incorporation and the website where investors can find information on the company’s business operations, the products it makes or the services it provides, the principal markets where it competes, its organisational structure and, where applicable, information incorporated by reference.

II. Responsibility statement

The purpose is to identify the persons responsible for drawing up the EU Recovery prospectus and to include a declaration by them that, to the best of their knowledge, the information contained in the EU Recovery prospectus is in accordance with the facts and that the EU Recovery prospectus makes no omission likely to affect its import.

Where applicable, the statement shall contain information sourced from third parties, including the source(s) of that information, and statements or reports attributed to a person as an expert and the following details of that person:

- (a) name;
- (b) business address;
- (c) qualifications; and
- (d) material interest (if any) in the issuer.

The statement shall indicate the competent authority that has approved the EU Recovery prospectus, specify that such approval is not an endorsement of the issuer and specify that the EU Recovery prospectus has been drawn up in accordance with Article 14a.

III. Risk factors

The purpose is to describe the most material risks that are specific to the issuer and the shares.

IV. Financial statements

Financial statements (annual and half-yearly) are required to be published covering the period of 12 months prior to the approval of the EU Recovery prospectus. Where both annual and half-yearly financial statements have been published, only the annual statements shall be required where they postdate the half-yearly financial statements.

The annual financial statements must be independently audited. The audit report shall be prepared in accordance with Directive [2006/43/EC](#) of the

European Parliament and of the Council¹ and Regulation (EU) No 537/2014 of the European Parliament and of the Council².

Where Directive 2006/43/EC and Regulation (EU) No 537/2014 do not apply, the annual financial statements must be audited or reported on as to whether or not, for the purposes of the EU Recovery prospectus, they give a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the EU Recovery prospectus:

- (a) a prominent statement disclosing which auditing standards have been applied;
- (b) an explanation of any significant departures from International Standards on Auditing;

Where audit reports on the annual financial statements have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers or an emphasis of matter, the reason must be given, and such qualifications, modifications, disclaimers or emphasis of matter must be reproduced in full.

A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, shall also be included, or an appropriate negative statement shall be included.

Where applicable, pro forma information shall also be included.

V. Trend information

The purpose is to include a description of:

- (a) the most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the EU Recovery prospectus;
- (b) information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.

VI. Final offer price and amount of shares, including firm commitment from shareholders above 5 % and names of the underwriters.

The purpose is to set out the specific information on the consideration of the offer of shares and present information on firm commitments from major shareholders to subscribe for more than 5 % of the offer and underwriting agreements.

VII. Where and when to subscribe the shares

¹ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

² Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).

The purpose is to provide the international security identification number ('ISIN') and other essential information about the shares offered to the public and to provide information about where the shares can be subscribed as well as on the time period, including any possible amendments, during which the offer will be open and a description of the application process together with the issue date of new shares.

VIII. Reasons for the offer and use of proceeds

The purpose is to provide information on the reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented in order of priority of such uses.

Where the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, they shall state the amount and sources of other funds needed. Details shall also be given where proceeds are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.

X. Working capital statement

The purpose is to provide information as to whether the working capital is sufficient for the issuer's present requirements or, if not, how the issuer proposes to provide the additional working capital needed.

XI. Conflicts of interest

The purpose is to provide information about any conflicts of interest related to the issuance.

XII. Shareholding after the issuance

The purpose is to provide information about the participation in share capital and voting rights after the capital increase resulting from the offer to the public.”.