

THE LONG VIEW

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Hopes for a better European prospectus regime



“THE CHANGES PROPOSED BY THE CONSULTATION ARE FAR REACHING”

The EU prospectus regime is designed to harmonise the requirements for the drawing up, approval and distribution of prospectuses when securities are offered to the public or admitted to trading on a regulated market.

On 18 February, the Commission published a consultation on possible reform of the current regime, which has been in place for almost 10 years. The consultation, which closes on 13 May, was released in conjunction with the Commission’s green paper on a possible EU Capital Markets Union (CMU).

The establishment of a CMU is one of the primary aims of the new EU Commission. The idea was raised by the European Parliament in 2014, with the stated aims of improving access to the capital markets for small and medium enterprises (SMEs) and helping reduce the current dependency of borrowers on traditional bank funding.

An effective prospectus regime is considered a key element in contributing to a real and functional CMU.

The changes proposed by the consultation are far reaching and suggest a fundamental overhaul of the current prospectus framework.

The consultation can be split into four key areas. Firstly, is a prospectus actually needed? The consultation seeks to ensure that a pro-

spectus is only mandatory when it is truly necessary – for example, to maintain an appropriate level of consumer and investor protection.

It asks whether current thresholds exempting certain types of offerings from the prospectus requirement should be adjusted.

The reasons for the reassessment of the existing thresholds include the emergence of investment-based crowd funding and the need for SMEs to access capital markets more effectively.

The consultation also welcomes views on whether there should be a general exemption from the requirement to have a prospectus for secondary issuances of a class of securities that follow an initial public offering.

In addition, it considers whether a prospectus should be required in situations where securities are admitted to trading on a multi-lateral trading facility and, if so, whether the proportionate disclosure regime should apply.

Secondly, what should a prospectus contain? The consultation examines the length of prospectuses, which it considers often to be unduly protracted and which, in the case of base prospectuses for structured products, can frequently exceed 1,000 pages.

It looks at whether there should be a maximum length for prospectuses, or for particular sections of prospectuses.

The Commission is concerned that the so-called “proportionate disclosure” regime is too burdensome for smaller entities to use in an effective way. The consultation looks at whether this regime should be amended to make it more effective and extended to apply to other categories of issuers.

Thirdly, how should prospectuses be approved? This looks at whether the processes followed by the relevant national authorities tasked with review and approval of prospectuses should be more streamlined. Currently different processes are applied in different jurisdictions.

It also queries whether better use could be made of a shelf registration document in order to facilitate capital raising.

Importantly, for non-EU issuers, the consultation poses a question relating to a possible equivalence regime. At present, the prospectus regime doesn’t allow for a single equivalence regime for prospectuses drawn up under the legislation of non-EU countries and assessments of equivalence are made by each individual national authority.

It is now proposed that a general equivalence decision could be taken by the Commission in respect of each non-EU country, based on an assessment as to whether the relevant non-EU country’s prospectus regime offers equivalent investor protection to the Directive.

Finally, is there a need for certain terms in the Directive to be better defined? The terms being reviewed include the term “offer of securities to the public”, which is central to the current regime, as well as the terms “primary market” and “secondary market”.

It is hoped the consultation will lead to a more streamlined and efficient prospectus regime, while maintaining a sensible level of investor protection.

The approach that the Commission ultimately takes after the consultation could potentially have a significant impact on capital raising in the EU and the future of any European CMU. ■