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Subject: 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
- Confirmation of the final compromise text with a view to agreement

2020/0155 (COD)

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 and Directive 2004/109/EC as regards the use of the single electronic reporting format for annual financial reports, 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, healthcare 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’¹ 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”.

¹ COM/2020/456 final of 27.5.2020.

(2) Regulation (EU) 2017/1129 of the European Parliament and of the Council² 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 financial intermediaries to reduce costs and free up resources for the recovery phase in the immediate aftermath of the crisis. The amendments should remain in line with the overarching objectives of Regulation (EU) 2017/1129 to foster fund raising through capital markets, ensure a high level of consumer and investor protection, drive supervisory convergence throughout the Member States, and ensure the proper functioning of the internal market. The amendments should also specifically take full account of the extent to which the crisis has affected issuers' present situation and their future prospects.

(2a) The COVID-19 crisis makes Union companies, in particular SMEs and start-ups, more fragile and vulnerable. Where appropriate in order to facilitate and diversify funding sources for Union companies, with a particular focus on SMEs, including start-ups and mid-caps, the removal of unjustified barriers and red tape can help to promote their ability to access equity markets, as well as to access more diverse, longer-term and more competitive investment opportunities for retail and large investors. In that regard, this Regulation should also aim to make it easier for potential investors to learn about investment opportunities in companies, since they often have difficulty evaluating young and small firms with a short business record, a situation which leads to fewer innovative openings, especially by young entrepreneurs.

² 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).

(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 or admission to trading on a regulated market 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 this measure is limited to the recovery phase, it should therefore be available for a limited time, ending on 31 December 2022.

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, while also addressing the economic and financial issues specifically raised by the COVID-19 pandemic, is easy to produce for issuers, easy to understand for investors, particularly retail investors, who want to finance them and easy to scrutinise and approve for competent authorities. It should be noted that the EU Recovery prospectus should be seen primarily as a facilitator of re-capitalisation, with careful monitoring by national competent authorities to ensure that the investor information requirements are met. Importantly, the amendments to Regulation (EU) 2017/1129 contained herein should not be used to replace the scheduled review and possible revision of Regulation (EU) 2017/1129, which would need to be accompanied by a full impact assessment.

In that regard, it would not be appropriate to add additional elements to the disclosure regimes that are not already required under Regulation (EU) 2017/1129 and Commission Delegated Regulation (EU) 2019/980³.

Such elements should only be introduced in the case of a regulatory proposal from the Commission on the basis of its review of Regulation (EU) 2017/1129, as provided for in Article 48 of that Regulation.

It is important to align retail investor information and key information documents across different financial products and laws, and to ensure full investment choice and comparability in the Union. In addition, consumer and retail investor protection should be considered in the foreseen review of Regulation (EU) 2017/1129 to ensure harmonised, simple, and easy-to-understand information documents for all retail investors.

Information on environmental, social and governance (ESG) matters by companies have become increasingly relevant for investors in order to measure the sustainability impact of their investments and to integrate sustainability considerations in their investment decisions and risk management. Companies, as a result, face increasing pressure to respond to demands from both investors and credit institutions on those matters and are required to comply with multiple standards for ESG disclosures, which are often fragmented and inconsistent. Therefore, for the purpose of improving companies' disclosure of sustainability-related information and harmonising the requirements for such disclosure within Regulation (EU) 2017/1129, while also taking into account other Union financial services law, the Commission should, in the context of the review due by 21 July 2022, assess whether it is appropriate to integrate sustainability related information in Regulation (EU) 2017/1129 and assess whether it is appropriate to make a legislative proposal in order to ensure coherence with sustainability objectives and comparability of sustainability-related information across Union financial services law.

³ Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).

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 Council⁴, Directive 2004/109/EC of the European Parliament and of the Council⁵ or, for issuers on SME Growth markets, under Commission Delegated Regulation (EU) 2017/565⁶. Hence, much 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 of shares. The EU recovery prospectus facilitates equity funding and thereby allows companies to rapidly recapitalise. The EU recovery prospectus should not enable issuers to move from an SME Growth market to a regulated market.

Further, the EU Recovery Prospectus should only focus on essential information that investors need to make informed investment decisions. Nevertheless, if applicable, issuers or offerors should address how the COVID-19 pandemic has affected the issuers' business activities as well as the pandemic's future anticipated impact on the issuers' business activities, if any.

(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 shares to the public or admissions to trading on a regulated market.

⁴ 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).

⁵ 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).

⁶ 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).

(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 set out at the beginning of the EU Recovery prospectus and should focus on key information that would enable investors to decide which offers and admissions to trading of shares to study further and thereafter to review the EU Recovery prospectus as a whole in order to take their decision. The key information should include information covering specifically the economic and business impact, if any, of COVID-19 pandemic, as well as the anticipated future impact, if any. The EU Recovery prospectus should ensure retail investor protection by adhering to the relevant provisions of Regulation (EU) 2017/1129, while avoiding excessive administrative burden. In that regard, it is essential that the summary does not diminish investor protection nor give a misleading impression to the investor. Issuers or offerors should therefore ensure high levels of diligence in the drafting of the summary.

(7a) Since the EU Recovery prospectus would provide significantly less information than a simplified prospectus under the simplified disclosure regime for secondary issuances, it should not be possible for issuers to use it for highly dilutive issuances of shares with a significant impact on the issuer's capital structure, prospects and financial situation. The use of the EU Recovery prospectus should therefore be limited to offers comprising no more than 150% of outstanding capital, expressed as the ratio between the number of shares offered and the total number of shares before the issuance.

(8) In order to collect data that supports 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 that 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.

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 deadline by which investors must be contacted, as well as the scope of investors to contact can raise difficulties for financial intermediaries. 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. In particular, it should be clarified that financial intermediaries should contact investors who purchase or subscribe securities at the latest at the closing of the initial offer period. The initial offer period should be understood as referring to the time period during which securities are offered to the public by the issuer or the offeror as prescribed in the prospectus and exclude subsequent periods during which securities are resold on the market without a prospectus. The initial offer period should encompass both primary or secondary issuances of securities. Such a regime should specify which investors should be contacted by financial intermediaries when a supplement is published and should extend the deadline to contact those investors. Irrespective of the new regime, the existing provisions in the Prospectus Regulation which ensure that the same information is provided to all investors by requiring a publication of the supplement on a publicly available website should continue to apply.

As the EU Recovery prospectus is limited to the recovery phase, the regime of this prospectus should expire by 31 December 2022. In order to ensure the continuity of EU Recovery prospectuses, those EU Recovery prospectuses that have been 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. The assessment should include the question whether the EU Recovery prospectus strikes a proper balance between investor protection and the reduction of administrative burden.

(12a) Directive 2004/109/EC of the European Parliament and of the Council⁷ 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. That single electronic reporting format has been specified in Commission Delegated Regulation (EU) 2019/815⁸. Considering that the preparation of annual financial reports using the single electronic reporting format requires the allocation of additional human and financial resources, in particular during the first year of preparation, and considering the issuers' resources constraints due to the COVID-19 pandemic, Member States should be allowed to postpone the application of the requirement to prepare and disclose annual financial reports using that format by one year. To exercise that option, Member States should notify the Commission of their duly motivated intention for such postponement.

(13) Regulation (EU) 2017/1129 should therefore be amended accordingly,

⁷ OJ L 390, 31.12.2004, p. 38–57

⁸ OJ L 143, 29.5.2019, p. 1–792

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) 2017/1129

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

in Article 1(4), the following point (k) is added:

“(k) from [date of application of this Regulation] to **31 December 2022** 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.”;

(1a) in Article 1(5), the following point (k) is added:

“(k) from [date of application of this Regulation] to 31 December 2022 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.”;

(2) 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:”;

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

“12a. By way of derogation from paragraphs 3 to 12 of this Article, an 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 all of the information referred to in paragraph 5 of this Article, including warnings and the date of approval of the prospectus;

(ii) key information on the issuer, including 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 any limitations on and procedures for the exercise of the rights attached to the shares;

(iv) key information on the offer of shares to the public or the admission to trading on a regulated market or both.”;

(4) the following Article 14a is added :

“Article 14a
EU Recovery prospectus

1. The following persons 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 already 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.

(ba) offerors of shares admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months

Issuers may only draw up an EU Recovery prospectus provided that the number of shares intended to be offered represents, together with the number of shares already offered via an EU Recovery prospectus over a period of 12 months, less than 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 EU Recovery prospectus; the period of 12 months shall begin on the date of approval.

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 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 a specific reference of not less than 400 words to the business and financial impact of the COVID-19 pandemic on the issuer and the anticipated future impact of the same;

(b) 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, disclosure of capitalisation and indebtedness, a working capital statement, 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, especially retail investors, to make an informed investment decision, taking the regulated information that has already been disclosed 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, as well as the summary, 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.”;

(5) 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 seven~~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.”;

(6) 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.”;

(7) Article 23 is amended as follows:

(a) the following paragraph 2a is added:

“2a. By way of derogation from paragraph 2, from [date of application of this Regulation] to 31 December 2022, 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.

The supplement shall contain a prominent statement concerning the right of withdrawal, which clearly states:

- (a) that a right of withdrawal is only granted to those investors who had already agreed to purchase or subscribe for the securities before the supplement was published and where the securities had not yet been delivered to the investors at the time when the significant new factor, material mistake or material inaccuracy arose or was noted;
- (b) the period in which investors can exercise their right of withdrawal; and
- (c) whom investors may contact should they wish to exercise the right of withdrawal.”

(b) the following paragraph 3a is added:

“3a. By way of derogation from paragraph 3, from [date of application of this Regulation] to 31 December 2022, 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 initial offer period, 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 2a, the financial intermediary shall contact those investors within the working day following the one on which the supplement has been published.

Where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the possibility of a supplement being published and where it would be published and that in such case, they could have a right to withdraw the acceptance.”.

(b) in paragraph 3, the first and second subparagraphs are replaced by the following:

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 initial offer period, 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 the working day following the one on which the supplement has been published.

(8) the following Article 47a is inserted:

“Article 47a
Time limitation of the EU Recovery prospectus

The regime set out in Article 14a expires on 31 December 2022.

EU Recovery Prospectuses drawn up in accordance with Article 14a and approved between [date of application of this Regulation] and 31 December 2022 shall continue to be governed in accordance with that Article until the end of their validity or until twelve months have elapsed after 31 December 2022, whichever occurs first.

(9) 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, as well as an estimate of the actual additional market capitalisation mobilised by such prospectuses [at the point of issue] in order to gather experience about the EU Recovery prospectus for post-evaluation;

- (d) the cost of preparing and having an EU Recovery prospectus approved compared to the current costs for preparation and approval of a standard prospectus, a secondary issuance prospectus and an EU Growth prospectus, together with an indication of the overall financial savings achieved and of which costs could be further reduced, and the total costs of complying with this Regulation for issuers, offerors and financial intermediaries together with the calculation of those costs as a percentage of operational costs;
- (e) an analysis of whether the EU Recovery prospectuses strike the right balance between investor protection and the reduction of administrative burden for the persons entitled to use it and of the accessibility of essential information for investments;
- (f) an analysis of whether it would be appropriate to extend the duration of the EU Recovery prospectus regime including whether the dilution threshold as referred to in Article 14a(1), second subparagraph, beyond which an EU Recovery prospectus may not be used, is appropriate;
- (g) an analysis of whether the measures laid down in Articles 23(2a) and 23(3a) achieved the objective of providing additional clarity and flexibility to both financial intermediaries and investors and whether it would be appropriate to make such measures permanent.”;
- (10) the text set out in the Annex to this Regulation is inserted as Annex Va.

Article 1a
Amendment to Directive 2004/109/EC

In Article 4(7) the first subparagraph is replaced by the following:

“7. For financial years beginning on or after 1 January 2020, all annual financial reports shall be prepared in a single electronic reporting format provided that a cost-benefit analysis has been undertaken by the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁹). However, Member States may allow issuers to apply this requirement for financial years beginning on or after 1 January 2021, provided that Member States notify the Commission of their duly motivated intention to allow such delay by [DD-MM-YYYY].”

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

⁹ OJ L 331, 15.12.2010, p. 84

2020/0155(COD)

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

“ANNEX Va

MINIMUM INFORMATION TO BE INCLUDED IN THE EU RECOVERY PROSPECTUS

I. Summary

The EU Recovery prospectus shall include a summary drawn up in accordance with Article 7(12a).

II. Name of the issuer, country of incorporation, link to the issuer’s website

The purpose is to identify the company issuing shares, including its legal entity identifier (‘LEI’), its legal and commercial name, its country 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 major shareholders, the composition of its administrative, management and supervisory bodies and of its senior management and, where applicable, information incorporated by reference (with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus).

III. Responsibility statement and Information on the Competent Authority

1. 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.

2. Statement on the Competent Authority

The statement shall indicate the competent authority that has approved, in accordance with this Regulation, the EU Recovery prospectus, specify that such approval is not an endorsement of the issuer or of the quality of the shares to which this prospectus relates, and that the competent authority only approved the EU Recovery prospectus as meeting the standards of completeness, comprehensibility and consistency imposed by this Regulation and specify that the EU Recovery prospectus has been drawn up in accordance with Article 14a.

IV. Risk factors

A description of the material risk factors that are specific to the issuer and that may affect the issuer's ability to fulfil its obligations under the shares, and a description of the material risk factors that are specific to the shares- being offered to the public and/or admitted to trading on a regulated market, in a limited number of categories, in a section headed 'Risk Factors'.

In each category the most material risk factors, in the assessment undertaken by the issuer, offeror or person asking for admission to trading on a regulated market, taking into account the negative impact on the issuer as well as the shares being offered to the public and/or admitted to trading on a regulated market; and, the probability of their occurrence, shall be set out first. The risk factors shall be corroborated by the content of the EU Recovery prospectus.

V. Financial statements

The EU Recovery prospectus shall include the financial statements (annual and half-yearly) over the 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 Council¹⁰ and Regulation (EU) No 537/2014 of the European Parliament and of the Council¹¹.

¹⁰ 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).

¹¹ 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).

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

Va Dividend policy

A description of the issuer's policy on dividend distributions and any current restrictions thereon, as well as share repurchases.

VI. 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;
- (c) information on the issuer's short and long-term financial and non-financial business strategy and objectives, including in the context of the COVID-19 crisis, if applicable.

If there is no significant change in either of the trends in point (a) or (b) of this section, a statement to that effect is required.

VII. Terms and conditions of the offer, firm commitments and intentions to subscribe and key features of the underwriting and placement agreements.

The purpose is to set out the offer price, the number of shares offered, the amount of the issue/offer, the conditions to which the offer is subject, the procedure for the exercise of any right of pre-emption.

To the extent known to the issuer, present information on whether major shareholders or members of the issuer's management, supervisory or administrative bodies intend to subscribe in the offer, or whether any person intends to subscribe for more than 5 % of the offer.

Present any firm commitments to subscribe for more than 5 % of the offer and all material features of the underwriting and placement agreements (name and address of entities agreeing to underwrite or place the issue on a firm commitment basis or under 'best efforts' arrangements, quotas).

VIII. Essential information on the shares and on their subscription

The purpose is to provide the following essential information about the shares offered to the public or admitted to trading on a regulated market:

- (a) the international security identification number ('ISIN');
- (b) the rights attached to the shares, the procedure for the exercise of those rights and any limitations of those rights;
- (c) 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.

IX. 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, it shall state the amount and sources of other funds needed. Details shall also be given with regard to the use of the proceeds, including 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.

VIIIa - Receipt of state aid support

The purpose is to provide a statement with information as to whether the issuer has benefited from state aid in whatever form in the context of the recovery as well as the purpose of the aid, type of instrument and amount of the aid received and conditions attached to it, if any.

The statement whether the issuer received state aid shall contain a declaration that this information is provided solely under the responsibility of the persons referred to in Article 11(1) and that the competent authority approving the prospectus has not independently verified the issuer's statement on state aid and that no responsibility attaches to the competent authority in that respect.

X. Working capital statement

Statement by the issuer that, in its opinion 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. Capitalisation and indebtedness

A statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. The term ‘indebtedness’ also includes indirect and contingent indebtedness.

In the case of material changes in the capitalisation and indebtedness position of the issuer within the 90 day period, additional information shall be given through the presentation of a narrative description of such changes or through the updating of those figures.

XI. Conflicts of interest

The purpose is to provide information about any interests related to the issuance, including conflicts of interest, and detailing the persons involved and the nature of the interests.

XII. Dilution and Shareholding after the issuance

The purpose is to present a comparison of participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the assumptions that existing shareholders either do not subscribe for the new shares, or do take up their entitlement.

XIV. Documents available

A statement that for the term of the prospectus the following documents, where applicable, can be inspected:

- (a) the up to date memorandum and articles of association of the issuer;
- (b) all reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the EU Recovery prospectus.

An indication of the website on which the documents may be inspected."
