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Security prospectuses *II**

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on the prospectus to be published when securities are offered to the public or admitted to trading (5390/4/2003 – C5-0143/2003 – 2001/0117(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (5930/4/2003 – C5-0143/2003)¹,
 - having regard to its position at first reading² on the Commission proposal to Parliament and the Council (COM(2001) 280)³,
 - having regard to the Commission's amended proposal (COM(2002) 460)⁴,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Economic and Monetary Affairs (A5-0218/2003),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 125 E, 27.5.2003, p. 21.

² OJ C 47 E, 27.2.2003, p. 524.

³ OJ C 240 E, 28.8.2001, p. 272.

⁴ OJ C 20 E, 28.1.2003, p. 122.

Amendment 48
Recital 12a (new)

(12a) Issuance of securities having a similar type and/or class in the case of non-equity securities issued on the basis of an offering program, including warrants and certificates in any form, as well as the case of securities issued in a continuous or repeated manner, should be understood as not only covering identical securities but also securities that belong in general terms to one category. These securities may include different products, such as debt securities, certificates and warrants, or the same product under the same programme, and may have different features notably in terms of seniority, types of underlying, basis on which to determine the redemption amount or coupon payment.

Amendment 49
Recital 14a (new)

(14a) The disclosure requirements of the present Directive do not prevent a Member State or a competent authority or an exchange through its rule book to impose other particular requirements in the context of admission to trading of securities on a regulated market (notably regarding corporate governance). Such requirements may not directly or indirectly restrict the drawing up, the content and the dissemination of a prospectus approved by a competent authority.

Amendment 50
Recital 35

(35) A variety of competent authorities in Member States, having different responsibilities, may create unnecessary costs and overlapping of responsibilities without providing any additional benefit. In each Member State one single competent authority should be designated to approve prospectuses and to assume responsibility for supervising compliance with this Directive. Under strict conditions, a Member State should be allowed to designate more than one competent authority but only one will assume the duties for international cooperation. Such an authority or authorities should be established as an administrative authority and in such a form that their independence from economic actors is guaranteed and conflicts of interest are avoided. The designation of a competent authority for prospectus approval should not exclude cooperation between that authority and other entities, with a view to guaranteeing efficient scrutiny and approval of prospectuses in the interest of issuers, investors, markets participants and markets alike. Any delegation of tasks relating to the obligations provided for in this Directive and in its implementing measures should, except for publication on the Internet of approved prospectuses, end *five years* after the entry into force of this Directive.

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Amendment 51
Article 2, paragraph 1, point (k)

(k) "offering programme" means ***an issuer's plan for*** the issuance of non-equity

(k) "offering programme" means ***a plan which would permit*** the issuance of non-

securities, including warrants in any form, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period,

equity securities, including warrants in any form, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period;

Amendment 52

Article 2, paragraph 1, point (l)

(l) "securities issued in a continuous or repeated manner" means issues on tap **with** at least two separate issues of securities of a similar type and/or class over a period of twelve months,

(l) "securities issued in a continuous or repeated manner" means issues on tap **or** at least two separate issues of securities of a similar type and/or class over a period of twelve months,

Amendment 53/rev.

Article 2, paragraph 1, point (m), point (ii)

(ii) for any issues of non-equity securities whose denomination per unit amounts to at least **EUR 5 000**, and for any issues of non-equity securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer, the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for permission, as the case may be;

(ii) for any issues of non-equity securities whose denomination per unit amounts to at least **EUR 1 000**, and for any issues of non-equity securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer, the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for permission, as the case may be. ***The same regime shall be applicable to non-equity securities in another currency than Euro, provided that the value of such minimum denomination is nearly equivalent to 1 000 Euros;***

Amendment 54
Article 2, paragraph 1, point (qa) (new)

(qa) "base prospectus" means a prospectus containing all relevant information as specified in Articles 5, 7 and 16 in case there is a supplement, concerning the issuer and the securities to be offered to the public or admitted to trading, and, at the choice of the issuer, the final terms of the offering.

Amendment 55
Article 5, paragraph 2, subparagraph 1, point (d)

(d) ***no*** civil liability attaches to ***any person solely on the basis of*** the summary, including any translation thereof, ***unless it*** is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

(d) civil liability attaches to ***those persons who have tabled*** the summary including any translation thereof, ***and applied for its notification, but only if the summary*** is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.

Amendment 56
Article 5, paragraph 4, subparagraph 1, introduction

4. For the following types of securities, the prospectus ***shall*** consist of a base prospectus containing all relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market:

4. For the following types of securities, the prospectus ***can, at the choice of the issuer,*** consist of a base prospectus containing all relevant information concerning the issuer and the securities to be offered to the public or admitted to trading on a regulated market:

Amendment 57
Article 11, paragraph 1

1. Member States shall allow information to be incorporated in the prospectus by reference to one or more previously published documents that have been approved by the competent authority of the

1. Member States shall allow information to be incorporated in the prospectus by reference to one or more previously ***or simultaneously*** published documents that have been approved by the competent

home Member State or filed with it in accordance with this Directive, in particular pursuant to Article 10, or with Titles IV and V of Directive 2001/34/EC. This information shall be the latest available to the issuer. The summary shall not incorporate information by reference.

authority of the home Member State or filed with it in accordance with this Directive, in particular pursuant to Article 10, or with Titles IV and V of Directive 2001/34/EC. This information shall be the latest available to the issuer. The summary shall not incorporate information by reference.

Amendment 58

Article 13, paragraph 2, subparagraph 1

1. This competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be, of its decision regarding the approval of the prospectus within **15 working days** of the submission of the draft prospectus.

1. This competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be, of its decision regarding the approval of the prospectus within **10 working days** of the submission of the draft prospectus.

Amendment 59

Article 13, paragraph 3

3. The time limit referred to in paragraph 2 shall be extended to **30 working days** if the public offer involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public.

3. The time limit referred to in paragraph 2 shall be extended to **20 working days** if the public offer involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public.

Amendment 60

Article 13, paragraph 4, subparagraph 1a (new)

In the case referred to in paragraph 2 the competent authority should notify the issuer if the documents are incomplete within ten working days of the submission of the application.

Amendment 61

Article 13, paragraph 5

5. The competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that competent authority. Furthermore, this transfer shall be notified to the issuer, the offeror or the person asking for admission within **five working days** from the date of the decision taken by the competent authority of the home Member State. The time limit in paragraph 2 shall apply from this date.

5. The competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that competent authority. Furthermore, this transfer shall be notified to the issuer, the offeror or the person asking for admission within **three working days** from the date of the decision taken by the competent authority of the home Member State. The time limit in paragraph 2 shall apply from this date.

Amendment 62

Article 14, paragraph 2, subparagraph 1, point (ca) (new)

(ca) in an electronic form on the website of the regulated market where the admission to trading is sought, or

Amendment 63

Article 14, paragraph 4

4. The competent authority of the home Member State shall publish on its web-site over a period of twelve months, at its choice, all the prospectuses approved, or at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the web-site of the issuer.

4. The competent authority of the home Member State shall publish on its web-site over a period of twelve months, at its choice, all the prospectuses approved, or at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the web-site of the issuer, ***or on the web-site of the regulated market.***

Amendment 64

Article 15, paragraph 3

3. Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate, misleading ***or inconsistent with***

3. Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate, ***or misleading. This***

that contained in the prospectus or that expected to be contained therein.

information shall also be consistent with the information contained in the prospectus, *if already published, or with the information required to be in the prospectus, if the prospectus is published afterwards.*

Amendment 65
Article 16, paragraph 1

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way *in a maximum of seven working days* and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

Amendment 66
Article 18, paragraph 1

1. The competent authority of the home Member State shall, at the request of the issuer or person responsible for drawing up the prospectus and within three working days following that request, provide the competent authority of the host Member States with a certificate of approval attesting that the prospectus has been drawn up in accordance with this

1. The competent authority of the home Member State shall, at the request of the issuer or the person responsible for drawing up the prospectus and within three working days following that request *or, if the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus,* provide the competent authority of the host

Directive and with a copy of said prospectus. If applicable, this notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drafting the prospectus. The same procedure shall be followed for any supplement to the prospectus.

Member States with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Directive and with a copy of said prospectus. If applicable, this notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drafting the prospectus. The same procedure shall be followed for any supplement to the prospectus.

Amendment 67

Article 21, paragraph 2, subparagraph 1

2. Member States may allow their competent authority or authorities to delegate tasks. Except for delegation of the publication on the Internet of approved prospectuses as mentioned in Article 14, any delegation of tasks relating to the obligations provided for in this Directive and in its implementing measures shall **end five years** after the date of entry into force of this Directive. Any delegation of tasks to entities other than the authorities referred to in paragraph 1 shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out.

2. Member States may allow their competent authority or authorities to delegate tasks. Except for delegation of the publication on the Internet of approved prospectuses **and the filing of prospectuses** as mentioned in Article 14, any delegation of tasks relating to the obligations provided for in this Directive and in its implementing measures **shall be reviewed, according to Article 31, five years after the date of entry into force of this Directive and** shall end **eight years** after the date of entry into force of this Directive. Any delegation of tasks to entities other than the authorities referred to in paragraph 1 shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out.

Amendment 68

Article 22, paragraph 2

2. Competent authorities of Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties and making use of their powers. Competent authorities shall render assistance to competent authorities of other

2. Competent authorities of Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties and making use of their powers. Competent authorities shall render assistance to competent authorities of other

Member States. In particular, they shall exchange information and cooperate when an issuer has more than one home competent authority because of its various classes of securities. Where appropriate, the competent authority of the host Member State may request the assistance of the competent authority of the home Member State from the stage at which the case is scrutinised, in particular as regards a new type or rare forms of securities. The competent authority of the home Member State may ask for information from the competent authority of the host Member State on any items specific to the relevant market.

Member States. In particular, they shall exchange information and cooperate when an issuer has more than one home competent authority because of its various classes of securities, ***or where the approval of a prospectus has been transferred to the competent authority of another Member State pursuant to Article 13(5). They shall also closely cooperate when requiring suspension or prohibition of trading for securities traded in various Member States in order to ensure a level playing field between trading venues and protection of investors.*** Where appropriate, the competent authority of the host Member State may request the assistance of the competent authority of the home Member State from the stage at which the case is scrutinised, in particular as regards a new type or rare forms of securities. The competent authority of the home Member State may ask for information from the competent authority of the host Member State on any items specific to the relevant market.

Without prejudice to Article 21, competent authorities of Member States may consult with operators of regulated markets as necessary and, in particular, when deciding to suspend, or to ask a regulated market to suspend or prohibit trading.

