



EUROPEAN COMMISSION

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*Mr Pietro GRASSO
President of the
Senato della Repubblica
Piazza Madama I
IT – 00186 ROMA*

Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion on the proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading {COM(2015) 583 final}.

This proposal was published on 30 November 2015 and forms part of the Capital Markets Union (CMU) project, a broader package of measures designed to foster capital markets in Europe. It entails replacing the existing Prospectus Directive 2003/71/EC¹ with a Regulation, and represents a major upgrade of the EU prospectus regime, building on the feedback gathered from stakeholders, including through a public consultation held between February and May 2015. It is one of the early priorities under the CMU and also forms part of the Regulatory Fitness and Performance Programme (REFIT) operated by the Commission to alleviate administrative burden.

In keeping with the spirit of the CMU Action Plan, the proposal seeks to add flexibility to the prospectus framework and facilitate the raising of equity or debt by companies on pan-European capital markets, whilst maintaining effective investor protection. The proposal develops a flexible set of rules making it easier for all kinds of issuers, in particular small and medium-sized enterprises (SMEs), secondary and frequent issuers, to tap into capital markets, while ensuring that investors continue to receive the disclosure they need to take informed investment decisions.

¹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L 345, 31.12.2003, p. 64.

The new Regulation pursues three main objectives:

- to simplify and bring more flexibility to the process of capital raising through offers of securities to the public and admission to trading of securities on a regulated market; the proposal covers all types of issuers and contains particular alleviations for secondary issuances and frequent issuers who are already known to capital markets;*
- to make it easier and cheaper for SMEs to access capital markets;*
- to improve prospectuses for investors, as they should benefit from (i) the new summary of the prospectus, (ii) new provisions intended to streamline the risk factors presented in the prospectus, (iii) enhanced accessibility thanks to an online EU database entrusted to the European Securities and Market Authority (ESMA), and (iv) rules on publication that concentrate all relevant documents of a given offer or admission in one dedicated section of the issuer's website.*

The Commission welcomes the Senato della Repubblica's broad support for the aims of the proposal and notes its suggestions to limit the number of pages of summaries to four sides A4-sized paper when printed. The Commission is grateful for this opportunity to provide a number of clarifications regarding its proposal in the hope that these will respond adequately to the Senato della Repubblica's observations.

The Commission's impact assessment has shown that the summary in its current form does not provide investors with a useful overview of the key information contained in a prospectus. Supervisory practice has detected that the length limit of "7% of the length of a prospectus or 15 pages, whichever is the longer" provides an unwanted incentive for issuers to extend the length of their prospectus in order to obtain a summary longer than 15 pages. The Commission's proposal to cut the length limit down to a maximum of 6 pages will reduce the maximum length of a summary by at least 60% and should avoid that summaries turn into "mini-prospectuses".

The new summary is now closely modelled on the key information document required under the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPS Regulation²). Next to the section containing warnings, there are three main sections in the summary, covering key information on the issuer, the security and the offer/admission respectively. The Commission believes that it is appropriate to allow for a maximum of two pages for each of the three sections. General headings are introduced for every section, as well as indications on their content, but issuers have latitude to develop brief narratives and select the information which is material.

For securities falling also under the scope of the PRIIPS Regulation, the issuer can replace the "securities" section of the summary with the content of the key information document. The prohibition to incorporate information by reference into the summary, currently set out in Article 11(1) of Directive 2003/71/EC is maintained in order to avoid that the summary becomes a mere collection of hyperlinks and cross-references.

² Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 9.12.2014, p.1.

The Commission has also taken note of the Senato della Repubblica's suggestion to include a risk-indicator system based on colour-coding. The Commission fully shares the Senato della Repubblica's concern for a structured and meaningful display of risk factors and is aware of the problems existing today: currently, many lengthy and often very generic risk factors are included in the prospectus and potential investors do not know how to interpret them. The proposal seeks to refocus the risk factors of a prospectus on those risks which are material and specific and will help investors distinguish the information that is essential for taking an informed investment decision. The proposal seeks to curb the tendency of overloading the prospectus with generic risk factors which obscure the more specific risk factors that investors should be aware of, and only serve to protect the issuer or its advisors from liability. To that aim, the issuer is required to allocate risk factors across two or three categories based on materiality. Furthermore, risk factors will have to be corroborated by the content of the prospectus. A limited number of risk factors selected by the issuer from the category of highest materiality should be included in the summary.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which the Italian government is represented. The Council reached a general approach on the Commission's proposal in June 2016 and the European Parliament is expected to vote its legislative resolution in September 2016.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senato della Repubblica and looks forward to continuing the political dialogue in the future.

Yours faithfully,

Member of the Commission