

EU Recovery Prospectus: temporary fast-track to boost listed companies' COVID-19 recovery



In addressing the severe economic impact of the COVID-19 pandemic, the European legislator amended the existing Prospectus Regulation and introduced the new EU Recovery Prospectus. In essence, the EU Recovery Prospectus entails a fast-track approval of a short-form prospectus that is available for secondary issuances of shares.

The EU Recovery Prospectus should be easy to produce for issuers, easy to understand for investors and easy to scrutinise for competent authorities. This light regime aims at facilitating rapid recapitalisation, thus providing companies economic resilience during the emerging recovery phase of the COVID-19 crisis. As the costs of drawing up a standard prospectus might act as a deterrent for issuers in financial distress seeking to raise new funds, the EU Recovery Prospectus is a welcome initiative to allow certain listed companies to swiftly seize opportunities in mitigating the financial impact of COVID-19 and to boost their recovery.

The key elements of the EU Recovery Prospectus are highlighted below.

A temporary tool

Regulation (EU) 2021/337 of 16 February 2021 (the EU Recovery Prospectus Regulation or ERP Regulation) entered into force on 18 March 2021. The ERP Regulation provides targeted adjustments to the existing Prospectus Regulation and introduces a temporary EU Recovery Prospectus regime. As part of the Capital Markets Recovery Package, the new regime revolves around a simplified prospectus which should make it easier for companies to raise equity capital in order to recover from the economic shock COVID-19 has (and still) caused. Because the measure is specific to the COVID-19 crisis, it will – for the time being – remain in force for a limited period only, which shall expire on 31 December 2022.

A “short-form” prospectus

The EU Recovery Prospectus is essentially a short-form prospectus. Compared to a customary prospectus (which is a very lengthy document consisting of hundreds of pages), the EU Recovery Prospectus may not exceed 30 sides of A4-sized paper. It should only contain the information that is essential for investors to make informed investment decisions and must be written in an easily analysable, concise and comprehensible form. Incorporation by reference of information disclosed to the market is allowed and does not count in the maximum 30 sides requirement.

Annex Va to the Prospectus Regulation outlines the minimum essential information to be included in the EU recovery Prospectus which must, among other, contain:

- a description of the material risks that are specific to the issuer and the relevant shares to be issued;
- the financial statements (annual and half-yearly) published over the period of 12 months prior to the approval of the EU Recovery Prospectus;
- a statement of capitalisation and indebtedness no older than 90 days;
- information on the most important trends relevant to the issuer's business for the ongoing financial year and on the issuer's short and long-term financial and non-financial business strategy and objective, including, if applicable, a specific reference of not less than 400 words to the business and financial impact of the COVID-19 pandemic on the issuer, as well as the anticipated future impact; and
- a statement with information as to whether the issuer has benefited from state aid in whatever form in the context of the recovery.

Finally, a summary should be included that is limited to a maximum of 2 sides of A4-sized paper (in addition to the 30 sides limit for the EU Recovery Prospectus itself).

Who can benefit from the EU Recovery Prospectus?

The EU Recovery Prospectus is available for secondary issuances of shares. More specifically, it can only be used for share issuances:

- by issuers whose shares have been admitted to trading on a regulated market continuously for at least the last 18 months;
- by issuers whose shares have already been 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
- by offerors of shares admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months.

Additionally, the issued shares should be fungible with previously issued shares, meaning – for example – that it is not possible to issue new classes of shares.

The use of an EU Recovery Prospectus is only allowed if 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) no more than 150% of the number of shares already admitted to trading on the date of approval of the EU Recovery Prospectus.

Fast-track approval

The competent authority has a limited period of seven working days to review the EU Recovery

Prospectus, provided that the issuer has informed the competent authority of the future filing at least five working days before the date of filing.

Targeted adjustments to the Prospectus Regulation

Besides the new regime, the ERP Regulation also provides for some (temporary) targeted adjustments to the existing Prospectus Regulation, which mainly aim to relieve pressure on financial intermediaries. For example, the amendments lighten the obligation of financial intermediaries to inform investors of the possibility of a prospectus supplement being published.

In addition, the amendments provide that (i) for non-equity securities (e.g. bonds) issued by credit institutions, the threshold triggering a duty to publish a prospectus is temporarily raised from 75 million euro to 150 million euro, and (ii) the investors' withdrawal right following publication of a supplement is extended from two to three business days.