



Update Capital Markets

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EU Recovery Prospectus - Current status of the legislative process

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With our Update on Capital Market Law No. 037 of July 31, 2020, we had already reported that the European legislator is planning on temporarily making it easier for companies to raise equity capital in order to overcome the effects of the Corona crisis. For this purpose, issuers whose shares have already been admitted to trading on a regulated market for 18 months or are traded on an SME growth market (in Germany, this is only currently the Scale segment of Deutsche Börse in Frankfurt) would be temporarily allowed to only publish a shortened prospectus ("EU Recovery Prospectus") of 30 pages for a share issuance, instead of a comprehensive one. This Update provides you with an overview of the current status of the legislative process.

The EU Parliament dealt with the matter on November 19, 2020 and adopted the following major changes, on the basis of which a short-term entry into force of the planned regulations is conceivable:

- The Recovery Prospectus has to describe the financial and economic developments since the end of the last financial year and the long-term business strategy and long-term objectives (both financial and non-financial) as well as, in particular, include a summary of at least 400 words on the economic and financial consequences of the COVID- Pandemic for the issuer, if any. In addition, the Recovery Prospectus must state whether the issuer has made use of state aid for recovery in this context and which conditions are tied to this.
- Another new feature is that the Recovery Prospectus must contain information on the issuer's capitalization and indebtedness, which must not be older than 90 days at

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the time the Recovery Prospectus is approved. This corresponds to the requirements of a regular securities' prospectus and obviously serves to better inform investors of the issuer's current financial situation.

- The risk factors to be included in the Recovery Prospectus should now be categorized and weighted according to their relevance for the issuer. This also corresponds to the requirements for a regular prospectus. So far, the EU Commission's proposal only stipulated that the main risks should be stated.
- The regulations on the Recovery Prospectus will now apply until December 31, 2022. The period of application intended in the EU Commission's original proposal was 18 months from the entry into force of the law.

In our opinion, the only significant change for issuers in practice is the introduction of the requirement to provide information on capitalization and indebtedness. This is because the provision of these figures can often be complex in practice and therefore time-consuming for the issuer. All other changes, on the other hand, ultimately appear to be manageable and should not make the preparation of a Recovery Prospectus significantly more complex than the proposal of the EU Commission.

The version approved by the EU Parliament will now be presented to the EU Council. Should the EU Council approve the Parliament's version, the regulations will come into force. Should the EU Council suggest further changes, the Parliament must discuss this in a second reading and vote again.

It is planned that the Council will deal with the matter in December. In view of the fact that the Council was initially presented with the original proposal of the EU Commission on July 24, 2020 already and the changes made by the EU Parliament are limited, we believe that a decision by the EU Council in the short-term and therefore a prompt entry into force of the regulations is at least conceivable.

We will keep you informed of the further course of the procedure.

Conclusion

Further legislative process



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