

SIMONT | BRAUN

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In February 2021, a new short-form prospectus was introduced in the EU regulatory framework aimed at supporting recovery from the business and financial impact of the COVID-19 crisis (Regulation 2021/337 of 16 February 2021 amending the Prospectus Regulation 2017/1129 of 14 June 2017). Such new form of prospectus, called the '**Recovery Prospectus**', seeks more specifically to facilitate the recapitalisation of listed issuers through the stock exchange.

In the midst of the numerous measures taken in the context of the pandemic, the Recovery Prospectus does not seem to have attracted yet much success in Belgium and more generally in Europe.

THE EU RECOVERY PROSPECTUS

A USEFUL TOOL?

SCOPE OF APPLICATION

The Recovery Prospectus is only available for **secondary issuances** (and admission to trading) **of shares**. Therefore, it cannot be used to launch an IPO or to issue notes or other debt or equity-linked instruments.

The shares already issued by the issuer must be listed for at least **18 months on a regulated market or on an SME growth market** (in Belgium, the sole MTF qualifying as such is Euronext Growth) and the new shares issued must be fully fungible with the existing ones.

In addition – and this is a unique feature – the offered shares may not exceed a maximum threshold of **dilution of 150 %** (computed on the basis of the total amount of listed shares over a 12 month period).

If the above conditions are not met, and no prospectus exemption provided by the regulation is available, two other existing short-form prospectus might be used depending on the specificities of the contemplated offering:

- the simplified prospectus for secondary offerings (article 14 of the Prospectus Regulation) or
- the EU Growth prospectus for certain SME (article 15 of the Prospectus Regulation).

PROSPECTUS FORMAT

The Recovery Prospectus must take the form of a **single document of maximum 30 printed A4 sides, plus a summary of maximum 2 printed A4 sides**. Those limitations in the number of pages seek to alleviate the extent of disclosure and thus to make it easy to produce for issuers and to understand by investors but it may be challenging in view of the number of items to be covered, which are listed in a new Annex V bis to the Prospectus Regulation.

One of the specificities in the information to be provided relates to the potential impact of the COVID-19 pandemic on the present and future activities of the issuer and to the receipt of any state aid support.

DEADLINE FOR APPROVAL

By derogation to the general rule that a prospectus must be approved by the regulator (in Belgium, the FSMA) within 10 working days as of a complete file, the deadline for approval of the Recovery Prospectus is reduced to **7 working days**. However, a pre-notification obligation to the regulator of a least 5 working days prior to the filing is required so that in practice, the procedure may not actually be much faster.

OTHER APPLICABLE RULES

The rules relating to the availability of the prospectus, the use of languages, the duration of its validity and the passporting among EU members are identical to other forms of prospectus. Likewise, the rules relating to the liability of the issuers are not modified.

TEMPORARY REGIME AND FUTURE

The Recovery Prospectus is a temporary measure that will in principle lapse on **31 December 2022**. As a prospectus is valid during twelve months, Recovery Prospectuses which approved by the end of 2022 could continue to benefit from such regime for twelve months and thus up to 31 December 2023 at the latest.



It remains to be seen whether such temporary regime will be extended prior to the end of this year or possibly modified into a permanent one. The lack of success, so far, makes it somewhat uncertain, but with some adjustments (as to the dilution percentage, the maximum length of 32 pages...), it could become a more efficient tool to raise capital and attract (retail) investors.

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