

BRIEFING ON RISK FACTORS IN THE CONTEXT OF THE PROPOSAL FOR PROSPECTUS REGULATION

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European quoted companies are concerned with new requirements that would be imposed on issuers regarding disclosure of risk factors in prospectuses, in the context of the Prospectus Regulation proposal.

The Commission's proposal for a Prospectus Regulation requires risks factors related to the issuer or the securities offered to « *be allocated across a maximum of three distinct categories which shall differentiate them by their relative materiality based on the issuer's assessment of the probability of their occurrence and the expected magnitude of their negative impact.*»¹ We understand that the Member States are now discussing the opportunity to require the risks factors to be presented in tables, the format and detailed content of such tables being defined by means of delegated acts based on some identified best practices.

Therefore, we would like to emphasize that requiring a prioritization of risks factors would not improve investor protection nor reduce the number of risk factors displayed in prospectuses; instead, it would significantly increase liability for issuers:

- materiality and probability of occurrence are very difficult to assess, given the different characteristics of risks and, as regards materiality, may be subjective: what are the most material risks to certain investors may not be for others. Furthermore, not all the risks can be assessed and quantified in order to be categorized (reputational risk, for instance).
- prioritization of risks factors could expose issuers to an unacceptable level of increased liability, given the potential for misclassification (risks are rapidly changing and evolving while lawsuits are brought with the benefit of hindsight);
- the proposed categorization of risk factors would be unprecedented and not in line with well-established international practices (IOSCO standards in particular), which could be difficult and costly both for companies issuing on different continents (in the USA).

Costs incurred by companies in raising funds and capital on financial markets would significantly rise as a consequence of the increase of issuers' liability, which would be particularly negative for SMEs.

Considering the Commission's plan for a Capital Markets Union and initiatives to alleviate constraints on financing, this issue is of utmost importance for companies, in particular SMEs. Companies strongly support the « Better Regulation » principle that EU policies and laws should achieve their objectives at minimum cost. Our members therefore consider that the adoption of the current provision regarding risk factors would be in contradiction with that principle and would not strike the right balance between the costs they will incur and the benefits for investors.

¹ Article 16 of the Commission's proposal.

We strongly believe that the Prospectus Regulation should allow for risks to be presented in a flexible manner, giving issuers the opportunity to list risks in a way that makes sense for their business. This would also be better understood by investors.

In practice, issuers would tend to group their risk factors by type of risks, which makes it easier to see how different risks interact and what their cumulative effect might be. The practice of grouping risks by category is (industry-related; company-related; business-related; market-related; etc.), from our experience, much more useful for investors. Therefore, we strongly advocate for the adoption of this practice rather than the envisaged prioritization of risk factors.

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We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

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