Durham Research Online

Deposited in DRO:

12 February 2015

Version of attached file:

Published Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Schammo, P. (2011) 'EU prospectus law : new perspectives on regulatory competition in securities markets.', Cambridge: Cambridge University Press.

Further information on publisher's website:

<http://dx.doi.org/10.1017/CBO9780511862700>

Publisher's copyright statement:

© Cambridge University Press 2011

Additional information:

Sample chapter deposited: 'Frontmatter', pp. i-vi, 'Contents', pp. vii-xii, 'Preface and acknowledgements', pp. xiii-xiv, 'List of abbreviations', pp. xv-xv, 'Table of cases', pp. xvi-xvii, 'Table of legislation', pp. xviii-xxviii, 'Introduction', pp. 1-4.

Use policy

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a [link](#) is made to the metadata record in DRO
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

Please consult the [full DRO policy](#) for further details.

EU PROSPECTUS LAW

Pierre Schammo provides a detailed analysis of EU prospectus law (and the 2010 amendments to the Prospectus Directive) and assesses the new rules governing the European Securities and Markets Authority, including the case law on the delegation of powers to regulatory agencies. In a departure from previous work on securities regulation, the focus is on EU decision-making in the securities field. He examines the EU's approach to prospectus disclosure enforcement and its implementation at Member State level, and breaks new ground on regulatory competition in the securities field by providing a 'law in context' analysis of the Prospectus Directive and its negotiations.

DR PIERRE SCHAMMO is a lecturer in law at the University of Manchester. He was previously a research fellow in European financial and corporate law at the British Institute of International and Comparative Law.

INTERNATIONAL CORPORATE LAW AND FINANCIAL MARKET REGULATION

Recent years have seen an upsurge of change and reform in corporate law and financial market regulation internationally as the corporate and institutional investor sector increasingly turns to the international financial markets. This follows large-scale institutional and regulatory reform after a series of international corporate governance and financial disclosure scandals exemplified by the collapse of Enron in the US. There is now a great demand for analysis in this area from the academic, practitioner, regulatory and policy sectors.

The *International Corporate Law and Financial Market Regulation* series will respond to that demand by creating a critical mass of titles which will address the need for information and high quality analysis in this fast developing area.

Series Editors

Professor Eilis Ferran, University of Cambridge

Professor Niamh Moloney, London School of Economics and Political Science

Professor Howell Jackson, Harvard Law School

Editorial Board

Professor Marco Becht, Professor of Finance and Economics at Université Libre de Bruxelles and Executive Director of the European Corporate Governance Institute (ECGI)

Professor Brian Cheffins, S. J. Berwin Professor of Corporate Law at the Faculty of Law, University of Cambridge

Professor Paul Davies, Cassel Professor of Commercial Law at the London School of Economics and Political Science

Professor Luca Enriques, Professor of Business Law in the Faculty of Law at the University of Bologna

Professor Guido Ferrarini, Professor of Law at the University of Genoa and Honorary Professor, Faculty of Law, University College London

Professor Jennifer Hill, Professor of Corporate Law at Sydney Law School

Professor Klaus J. Hopt, Director of the Max Planck Institute of Comparative and International Private Law, Hamburg, Germany

Professor Hideki Kanda, Professor of Law at the University of Tokyo

Professor Colin Mayer, Peter Moores Professor of Management Studies at the Saïd Business School and Director of the Oxford Financial Research Centre

James Palmer, Partner of Herbert Smith, London

Professor Michel Tison, Professor at the Financial Law Institute of the University of Ghent, Belgium

Andrew Whittaker, General Counsel to the Board at the UK Financial Services Authority

Professor Eddy Wymeersch, Chairman of the Committee of European Securities Regulators (CESR); Co-Chair of the CESR-European Central Bank Working Group on Clearing and Settlement, and part-time Professor of Commercial Law, University of Ghent, Belgium

EU PROSPECTUS LAW

New perspectives on regulatory competition
in securities markets

PIERRE SCHAMMO

CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Tokyo, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521517652

© Pierre Schammo 2011

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2011

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Schammo, Pierre, 1976–

EU prospectus law : new perspectives on regulatory competition in securities
markets / Pierre Schammo.

p. cm. – (International corporate law and financial market regulation)
Includes bibliographical references and index.

ISBN 978-0-521-51765-2 (hardback)

1. Securities–European Union countries. 2. Disclosure of information–Law
and legislation–European Union countries. 3. Prospectus writing–Law
and legislation–European Union countries. I. Title.

KJE2247.S386 2011

346.24'0666–dc22

2011008026

ISBN 978-0-521-51765-2 Hardback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party internet websites referred to in
this publication, and does not guarantee that any content on such websites is,
or will remain, accurate or appropriate.

Fir meng Elteren

CONTENTS

<i>Preface and acknowledgements</i>	xiii
<i>List of abbreviations</i>	xv
<i>Table of cases</i>	xvi
<i>Table of legislation</i>	xviii

Introduction 1

PART I Prospectus disclosure in a wider institutional context 5

1	Actors and institutions	7
I	Introduction	7
II	Policy- and rule-making actors	8
A	Level 1 decision-making	9
B	Level 2 decision-making	12
1	Comitology prior to the entry into force of the Lisbon Treaty	12
2	Delegated and implementing acts under the Lisbon Treaty	14
III	Collective securities actors	19
A	CESR	20
1	The nature and organisation of CESR	20
2	Problems with CESR	21
a	The absence of legally binding powers	22
b	Adverse behaviour	23
B	ESMA	28
1	Beginnings: the <i>de Larosi�re</i> proposals	29
2	Establishing ESMA: constitutional limits	30
3	The nature and organisation of ESMA	36
4	Tasks and functions	40

IV	National securities authorities	54
V	Conclusion: evolutionary or revolutionary change?	57
PART II Prospectus disclosure regulation		61
2	Introduction	63
3	(Maximum) harmonisation	69
I	Introduction	69
II	Harmonisation and prospectus disclosure	70
III	Obligation to draw up a prospectus	77
A	Scope and exceptions	78
1	Scope	78
2	Exceptions	86
B	Content, format and validity of the prospectus	90
1	Content	90
a	Factors affecting the disclosure content of a prospectus	90
b	How to deal with increasingly complex disclosure	93
2	Formats	95
a	Prospectus formats	96
b	Summaries	99
c	Formats for correcting or updating prospectus disclosure	102
3	Validity of the prospectus	105
C	Incorporation by reference	106
D	Omission of information	108
1	Main issues	108
2	Grounds for omitting information	108
a	Omission of information under the PD	108
b	Omission of information under the PR	110
c	The use of the rules governing disclosure omissions as a 'short-term fix'	111
E	Language requirements	112
IV	Obligation to seek prior approval with the competent authority of the home Member State	115
V	Obligation to publish a prospectus and comply with the PD's provisions relating to advertisement	119
A	Obligation to publish a prospectus	119
1	Publication arrangements	120

2	Ensuring access to the prospectus and the integrity of the information	122
3	Exemptions from the obligation to publish a prospectus	124
a	Private placements	124
b	Article 4	130
B	Advertisement	134
1	Basic provisions	134
2	Exempt offers: selective disclosure	136
VI	The passport system	137
VII	Conclusion: evolutionary or revolutionary change?	139
4	Equivalence-based regulation	142
I	Introduction	142
II	Equivalence-based regulation and prospectus disclosure	145
III	Third country GAAP	150
A	Assessment of equivalence	152
B	Recognition of equivalence	158
IV	Employee share schemes	160
A	Article 4(1)(e) and employee share schemes	160
B	The equivalence condition of Article 4(1)(e)	163
V	Third country prospectuses	165
A	Prior approval as a means to recognise equivalence	166
B	Limits to prior approval	169
C	Equivalence-based regulation in Member States	172
D	The merits of Article 20 PD: a shadow regime in need of reform?	179
1	Pathology	179
a	Mutual trust and the functioning of the internal market	179
b	Transparency and legal certainty	180
c	Safeguarding the EU's 'unity of action'	181
2	Remedies	182
a	Strategies	182
b	Actors	183
VI	Conclusion	189
PART III	Prospectus disclosure enforcement	191
5	Introduction	193

6	Prospectus disclosure enforcement: strategy and arrangements	200
I	Introduction	200
II	Enforcement and prospectus disclosure	201
III	Administrative enforcement of prospectus disclosure	208
A	Actors	208
B	Instruments of enforcement	212
1	The prospectus approval, an <i>ex ante</i> enforcement instrument	213
2	Limits of a prior approval system	217
3	The merits of a prior approval system	219
a	Prior approval and investors	220
b	Prior approval and issuers	224
C	Powers	225
IV	Prospectus disclosure enforcement and collective securities actors	226
A	CESR	226
1	CESR's tasks	226
a	Coordinated enforcement	227
b	Mediation	229
2	The merits of CESR's Level 3 tasks	230
B	ESMA	232
1	ESMA's tasks	233
2	The merits of ESMA's tasks	234
V	Private enforcement and prospectus liability	240
VI	Conclusion: evolutionary or revolutionary change?	243
7	Enforcement: national implementation	245
I	Introduction	245
II	Administrative enforcement in France and the UK	247
A	Existence of powers	248
1	Power to approve: <i>ex ante</i> enforcement	248
a	Power to approve in France	248
b	Power to approve in the UK	253
2	Power to request information, investigate and sanction	257
3	Power to bring criminal proceedings	262
B	Exercise of powers	263
III	Private enforcement in France and the UK	268
A	Personal scope	268

B	Common vs special statutory regimes	272
IV	Conclusion: lessons for the legal origins literature	275
PART IV Prospectus disclosure and regulatory competition 281		
8	Introduction	283
9	Regulatory competition and EU decision-making	288
I	Introduction	288
II	Regulatory competition as a regulatory problem in the securities markets fields	289
A	Regulatory competition and market integration	289
B	The 'threat of exit' and EU decision-making	292
III	Actor preferences and institutions	299
A	Actor preferences	299
B	Institutions	302
10	Regulatory competition and the prospectus directive: the issuer choice policy dispute	309
I	Introduction	309
II	Introducing the issuer choice policy dispute	311
A	The context	312
B	Policy frames on issuer choice	314
1	The cost frame	314
2	The merit frame	316
III	Unpacking the issuer choice policy dispute: the regulatory problem	318
A	Differing interests and ideas?	319
B	The substantive and institutional dimension of the regulatory problem	321
1	The substantive dimension of the regulatory problem	321
2	The institutional dimension of the regulatory problem	324
IV	Reconstructing the policy outcome	328
A	The distribution of competences between Member States: a <i>status quo</i> decision?	328
B	The distribution of competences between Member States: bargaining or problem-solving?	331
V	The 2010 revisions of the directive	338
VI	Conclusion	340

PART V	Conclusions and suggestions for the future	343
11	Conclusions	345
	<i>Select bibliography</i>	351
	<i>Index</i>	372

PREFACE AND ACKNOWLEDGEMENTS

It is no exaggeration to say that EU securities regulation is one of the fastest growing fields in European law. Once relatively unexceptionable, it has moved to the forefront of internal market regulation. The establishment of a European System of Financial Supervision ('ESFS') testifies to both the EU's efforts and ambitions in this field. For those writing on securities regulation, the pace with which EU securities regulation develops and evolves has become something of a challenge. But it also presents an opportunity to work in a contemporary field and to witness and experience European decision-making and its interactions with national legal systems at first hand.

I finished the manuscript of this book shortly after agreement between Union institutions had been reached on a new ESFS. The fate of the Committee of European Securities Regulators (CESR) was sealed for good and the establishment of a new European Securities and Markets Authority (ESMA) was being awaited with great expectations. The year 2010 also saw a number of noteworthy reforms taking shape in the prospectus field. These reforms also offered new opportunities to map and examine these developments, but also to revisit earlier work on regulatory competition which I had completed as part of my D.Phil. thesis in Oxford and which is reflected in the final part of this book.

In writing this book, I have been fortunate to benefit from the comments and thoughts of many people. I owe a debt of gratitude to those practitioners, EU or national officials who agreed to be interviewed despite sometimes busy working schedules and who willingly shared views and thoughts on securities regulation. I would especially like to thank David Wright who has taught me an endless amount about the EU and how it works, and Hubert Grignon Dumoulin for his insight on financial markets and his invaluable comments on various draft chapters.

In the academic world, I am indebted to Stephen Weatherill, my former D.Phil supervisor in Oxford, for his endless encouragement and support. I am very grateful to Joseph McCahery for all his advice and support, and

to Jeremy Richardson for challenging me to look ‘beyond the law’. Niamh Moloney has given me much helpful advice over the years for which I would like to thank her as well. Thanks are also due to Eilís Ferran, Dora Kostakopoulou, Panos Koutrakos and my colleagues in Manchester.

My final words of gratitude are for the persons that are closest; my family and Ayaka for her patience, love and inspiration to bring this book to completion.

I have attempted to state the law as at 28 February 2011. Any error or mistakes are my responsibility.

Pierre Schammo

March 2011

ABBREVIATIONS

AMF	Autorité des marchés financiers
CARD	Consolidated Admissions and Reporting Directive (2001/34/EC)
CESR	Committee of European Securities Regulators
CJEU	Court of Justice of the European Union
Coreper	Comité des représentants permanents
EEA	European Economic Area
EP	European Parliament
ESA	European Supervisory Authority
ESC	European Securities Committee
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESMAReg	ESMA Regulation (EU No. 1095/2010)
ESRB	European Systemic Risk Board
FESCO	Federation of European Securities Commissions
FSA	Financial Services Authority
FSAP	Financial Services Action Plan
FSA-LR	Listing Rules made by the FSA
FSA-PR	Prospectus Rules made by the FSA
GAAP	Generally Accepted Accounting Principles
ISA	Israel Securities Authority
LPD	Listing Particulars Directive (80/390/EEC) (repealed)
MAD	Market Abuse Directive (2003/06/EC)
MiFID	Markets in Financial Instruments Directive (2004/39/EC)
PAD	Prospectus Amending Directive (2010/73/EU)
PD	Prospectus Directive (2003/71/EC)
POD	Public Offers Directive (89/298/EEC) (repealed)
PR	Prospectus Regulation ((EC) No 809/2004)
RG	Règlement Général of the AMF
TD	Transparency Directive (2004/109/EC)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UKLA	UK Listing Authority

TABLE OF CASES

- Case 9/56 *Meroni v High Authority* [1958] ECR 133 7, 31–6, 188, 204, 236, 237
- Case 26/62 *Van Gend en Loos* [1963] ECR 1 239
- Case 22/70 *Commission v Council* [1971] ECR 263 177, 178
- Case 21/76 *Bier v Mines de potasse d’Alsace* [1976] ECR 1735 240
- Case 98/80 *Romano v Institut national d’assurance maladie-invalidité* [1981] ECR 1241 7, 32, 188
- Case 203/80 *Criminal proceedings against Casati* [1981] ECR 2595 202
- Case 21/87 *Borowitz v Bundesversicherungsanstalt für Angestellte* [1988] ECR 3715 32
- Case 81/87 *R v HM Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc* [1988] ECR 5483 325
- Case 68/88 *Commission v Greece* [1989] ECR 2965 203
- Joined Cases C-6/90 and C-9/90 *Francovich* [1991] ECR I-5357 239
- Case C-102/91 *Knoch v Bundesanstalt für Arbeit* [1992] ECR I-04341 32
- Case C-193/94 *Criminal proceedings against Skanavi and Chryssanthakopoulos* [1996] ECR I-929 203
- Case C-233/94 *Germany v Parliament and Council* [1997] ECR I-2405 73, 74, 291
- Joined cases T-369/94 and T-85/95 *DIR International Film and others* [1998] ECR II-357 35
- Case C-162/97 *Criminal proceedings against Gunnar Nilsson* [1998] ECR I-07477 84
- Case C-212/97 *Centros Ltd v Erhvervs- og Selskabsstyrelsen* [1999] ECR I-1459 325
- Case C-226/97 *Criminal proceedings against Lemmens* [1998] ECR I-3711 202
- Case C-376/98 *Germany v European Parliament and Council* [2000] ECR I-8419 71
- Case C-466/98 *Commission v United Kingdom* [2002] ECR I-09427 182
- Case C-476/98 *Commission v Germany* [2002] ECR I-9855 149, 177
- Case C-164/98 P *DIR International Film and others* [2000] ECR I-447 35, 80
- Case C-52/00 *Commission v France* [2002] ECR I-3827 72, 149
- Case C-154/00 *Commission v Hellenic Republic* [2002] ECR I-03879 72, 149
- Case C-183/00 *Sánchez v Medicina Asturiana SA* [2002] ECR I-3901 72, 149
- Case C-208/00 *Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC)* [2002] ECR I-9919 325
- Case C-345/00 P *Fédération nationale d’agriculture biologique des régions de France* [2001] ECR I-3811 33

- Case C-167/01 *Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd* [2003] ECR I-10155 325
- Case C-491/01 *The Queen v Secretary of State for Health, ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd* [2002] ECR I-11453 71, 147
- Case C-301/02 *P Carmine Salvatore Tralli v European Central Bank* [2005] ECR I-4071 32
- Case C-176/03 *Commission v Council* [2005] ECR I-7879 202, 203
- Case C-210/03 *Swedish Match AB and Swedish Match UK Ltd v Secretary of State for Health* [2004] ECR I-11893 71
- Case C-402/03 *Skov and Bilka* [2006] ECR I-199 72, 149
- Joined Cases C-154/04 and C-155/04 *The Queen, on the application of Alliance for Natural Health and Others v Secretary of State for Health and National Assembly for Wales* [2005] ECR I-6451 71
- Case C-217/04 *United Kingdom v European Parliament and Council* [2006] ECR I-03771 31
- Case C-452/04 *Fidium Finanz AG v Bundesanstalt für Finanzdienstleistungsaufsicht* [2006] ECR I-9521 147
- Case C-492/04 *Lasertec v Finanzamt Emmendingen* [2007] ECR I-3775 147
- Case C-430/05 *Dionik and others* [2007] ECR I-05835 77, 203, 242
- Case C-440/05 *Commission v Council* [2007] ECR I-9097 203
- Case C-210/06 *Cartesio Oktató és Szolgáltató bt* [2008] ECR I-09641 325
- Case C-189/08 *Zuid-Chemie v Mineralenfabriek* [2009] ECR I-06917 240

Opinions of the Court

- Opinion 1/94* [1994] ECR I-5267 146–7, 149, 177
- Opinion 1/03* [2006] ECR I-1145 149, 177

TABLE OF LEGISLATION

Consolidated Version of the Treaty on European Union [2010] OJ C83/1

Art 4(3)	18	Art 5(4)	70
Art 5	202	Art 13(2)	33, 238
Art 5(2)	33, 70, 146	Art 16(3)	10
Art 5(3)	70	Art 16(7)	10

Consolidated Version of the Treaty on the Functioning of the European Union [2010] OJ C83/1

Art 3(2)	149, 177, 178	Art 289(4)	9
Art 4(2)(a)	70, 148	Art 290	9, 14, 15
Art 50	76, 146	Art 290(1)	15, 18
Art 83(1)	203	Art 290(2)	15
Art 83(2)	203	Art 291	9, 14, 17
Art 83(3)	203	Art 291(1)	18, 46
Art 114	76, 146	Art 291(2)	17, 18, 184
Art 216(1)	177	Art 291(3)	17, 18
Art 258	237, 239	Art 293(1)	10, 305
Art 259	237, 239	Art 294	9, 291
Art 263	42	Art 294(7)	10
Art 289(1)	9, 291	Art 294(9)	10, 306
Art 289(3)	14	Art 294(10)	9

Council Directive (EEC) 80/390 coordinating the requirements for the drawing-up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing [1980] OJ L100/1 (repealed)

Art 24 (repealed)	116, 325	Art 24(b) (repealed)	116, 324
Art 24(a) (repealed)	116, 324, 325	Art 24(c) (repealed)	325

Council Directive (EEC) 89/298 of 17 April 1989 coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public [1989] OJ L124/8 (repealed)

Art 2(1)(b) (repealed)	125	Art 20(1) (repealed)	117, 325
Art 2(2)(h) (repealed)	160	Art 20(2) (repealed)	117
Art 11 (repealed)	213, 324	Art 21(1) (repealed)	324, 325
Art 12(1) (repealed)	207	Art 22(1) (repealed)	325
Art 12(2) (repealed)	207		

Directive (EC) 2001/34 of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities [2001] OJ L184/1

Art 8	72	Art 38 (repealed)	116, 324, 325
Art 27 (repealed)	85	Art 39 (repealed)	116, 324
Art 37 (repealed)	116, 325		

Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards [2002] OJ L243/1

Rec (7)	144, 151	Art 3	151
Art 1	76–7		

Directive (EC) 2003/6 of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation [2003] OJ L96/16 164, 247

Directive (EC) 2003/71 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 [2003] OJ L345/64 (as amended)

Rec (1)	74	Rec (21)	76, 101
Rec (4)	76	Rec (23)	97
Rec (5)	80	Rec (29)	106
Rec (10)	75, 76	Rec (30)	76, 215
Rec (12)	84, 337, 338, 340, 341	Rec (33)	135
Rec (14)	116	Rec (34)	102
Rec (15)	73	Rec (35)	76, 112
Rec (16)	75, 76, 126	Rec (36)	148
Rec (18)	76, 95, 108	Rec (37)	208

Art 1(1)	73, 76, 78	Art 4(1)(a)	131
Art 1(2)	86–90	Art 4(1)(b)	131–2, 144
Art 1(2)(b)	87	Art 4(1)(c)	131–2, 144
Art 1(2)(c)	87	Art 4(1)(d)	131, 132
Art 1(2)(d)	87, 111	Art 4(1)(e)	16, 131, 132, 143, 144, 145, 160–5
Art 1(2)(e)	87	Art 4(2)	133–4, 211
Art 1(2)(f)	88	Art 4(2)(a)	133
Art 1(2)(g)	87	Art 4(2)(b)	133
Art 1(2)(h)	88–90, 161	Art 4(2)(c)	133, 134, 144
Art 1(2)(i)	87	Art 4(2)(d)	133, 134, 144
Art 1(2)(j)	88	Art 4(2)(e)	133, 134
Art 1(2)(j)(i)	88	Art 4(2)(f)	133, 134
Art 1(2)(j)(ii)	88	Art 4(2)(g)	133
Art 1(3)	86, 87, 88, 111, 112	Art 4(2)(h)	133, 134
Art 1(4)	16	Art 5	171, 185
Art 2(1)(a)	82–3, 161	Art 5(1)	90, 92–3, 108, 255
Art 2(1)(b)	83–4, 144, 333	Art 5(2)	85, 99–101, 184
Art 2(1)(c)	83–4, 333	Art 5(2)(a)	101
Art 2(1)(d)	79–82	Art 5(2)(b)	101
Art 2(1)(e)	126, 127, 128	Art 5(2)(c)	101
Art 2(1)(h)	69	Art 5(2)(d)	101
Art 2(1)(i)	69	Art 5(3)	96, 97, 251, 252
Art 2(1)(m)	117–19, 328–31, 338–40	Art 5(4)	97–9, 109, 214
Art 2(1)(m)(i)	118, 329	Art 5(4)(a)	97
Art 2(1)(m)(ii)	75, 117–19, 329–30, 338–9	Art 5(4)(b)	97
Art 2(1)(m)(iii)	117, 167	Art 5(5)	93, 100
Art 2(1)(n)	117, 328–9	Art 6(1)	241, 242, 268, 269
Art 2(1)(o)	87	Art 6(2)	72, 241, 243, 268, 272
Art 2(1)(q)	93, 169, 215–16, 217, 218, 224, 249, 255	Art 7	90, 91, 171, 185
Art 2(1)(r)	98, 213	Art 7(1)	16
Art 2(1)(s)	100, 101	Art 7(2)(b)	85, 86
Art 2(4)	216	Art 7(3)	95, 171
Art 3(1)	119, 124, 213	Art 7(4)	90
Art 3(2)	89, 124–30, 136, 210, 211, 242	Art 8	111
Art 3(2)(a)	124	Art 8(1)	104, 108–9
Art 3(2)(b)	75, 124, 125, 128, 161	Art 8(1)(a)	109
Art 3(2)(c)	75, 124, 128	Art 8(1)(b)	109
Art 3(2)(d)	75, 124, 128	Art 8(2)	110, 137
Art 3(2)(e)	89–90, 124	Art 8(2)(a)	109–10
Art 3(3)	119, 213	Art 8(2)(b)	110
Art 4	130–1, 211	Art 8(2)(c)	110
Art 4(1)	131, 136, 211	Art 8(3)	110, 137, 144

Art 8(3a)	112	Art 17	76, 137–9, 168, 205–6, 215, 330
Art 8(4)	110	Art 17(1)	102, 137, 168, 209
Art 9	105–6	Art 18	76, 168, 206, 209
Art 9(1)	105–6, 215	Art 18(1)	137, 138
Art 9(3)	106	Art 18(2)	137
Art 9(4)	103, 106, 139	Art 18(3)	122, 138, 234
Art 11	97, 106–7	Art 18(4)	138, 184, 234
Art 11(1)	101, 106–7	Art 19	168
Art 11(2)	107	Art 19(1)	47–8, 237
Art 12	96, 213	Art 19(2)	114
Art 12(2)	103, 213	Art 19(3)	114
Art 12(3)	96, 213, 252	Art 19(4)	85, 86, 115
Art 13	115	Art 20	144, 145, 150, 166, 170, 172, 173, 176, 179, 180, 182, 186, 188–9, 190
Art 13(1)	110, 169, 209, 210, 213	Art 20(1)	150, 166–8, 169–70, 172, 179, 180, 181, 182, 184, 188, 189
Art 13(2)	214, 234	Art 20(1)(a)	167
Art 13(3)	214	Art 20(1)(b)	167
Art 13(4)	214	Art 20(2)	168, 178
Art 13(5)	184, 209, 234	Art 20(3)	166, 170–1, 172, 176, 178, 183, 184, 185, 186, 188
Art 13(6)	219	Art 21(1)	208, 209, 247
Art 14	120–1, 209	Art 21(1a)	208, 233
Art 14(1)	119–20, 125, 209	Art 21(1b)	208, 233
Art 14(2)	125	Art 21(2)	121, 208, 209, 234, 247
Art 14(2)(a)	120	Art 21(3)	72, 225, 257, 258, 260
Art 14(2)(b)	120	Art 21(3)(a)	218, 225
Art 14(2)(c)	121	Art 21(3)(b)	225
Art 14(2)(d)	121	Art 21(3)(c)	225
Art 14(2)(e)	121	Art 21(3)(d)	225
Art 14(3)	122	Art 21(3)(e)	225
Art 14(4)	122, 209	Art 21(3)(f)	225
Art 14(4)(a)	122	Art 21(3)(g)	225
Art 14(5)	121	Art 21(3)(h)	225
Art 14(6)	123	Art 21(3)(i)	225
Art 14(7)	121	Art 21(4)	225, 234, 257, 260
Art 14(8)	16	Art 21(4)(a)	225
Art 15(2)	135	Art 21(4)(b)	225
Art 15(3)	135	Art 21(4)(d)	225
Art 15(4)	136	Art 22	234, 236
Art 15(5)	136, 137	Art 22(4)	234
Art 15(6)	209, 211, 212, 250	Art 23	115, 210, 234
Art 16	102–5	Art 23(1)	210
Art 16(1)	102–3, 121, 213		
Art 16(2)	104–5		
Art 16(3)	102		

Art 23(2)	180, 210	Art 24c(1)	16
Art 24a	16–17	Art 24c(3)	16
Art 24b	16	Art 25	257
Art 24b(1)	16	Art 25(1)	225–6, 258, 262
Art 24c	16	Art 25(2)	226

Directive (EC) 2004/39 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC [2004] L145/1

Rec (22)	294	Art 24	127
Art 4(1)(14)	78–9, 161	Art 32(7)	73
Art 4(1)(18)	82	Art 63	146
Art 4(20)(a)(ii)	329	Art 71(6)	127
Art 15	146	Annex II	127

Commission Regulation (EC) 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements [2004] OJ L149/1

Rec (2)	90, 91	Art 2(9)(b)	135
Rec (5)	93	Art 3	91, 150, 172, 218, 222
Rec (20)	87	Art 4a	150, 218
Rec (21)	98, 214	Art 4a(1)	91
Rec (22)	91	Art 4a(2)	92
Rec (23)	91	Art 4a(4)	92
Rec (24)	91	Art 4a(5)	92
Rec (25)	99	Art 22	91
Rec (26)	99, 214	Art 22(1)	91, 150, 172, 218, 222
Rec (28)	151	Art 22(2)	99, 111
Rec (30)	106, 108	Art 22(5)(1)	99
Rec (31)	123	Art 22(5)(2)	99, 121
Rec (32)	120	Art 22(7)	104
Rec (33)	121, 122, 135	Art 23	91, 150, 218
Rec (35)	211–12	Art 23(1)	91, 92
Art 1(2)	91	Art 23(2)	91
Art 2(1)	91	Art 23(3)	91, 92
Art 2(9)	135	Art 23(4)	91, 92, 110–11, 130, 162
Art 2(9)(a)	135	Art 25(1)	96

Art 25(2)	96	Art 29(1)(3)	123
Art 25(3)	96	Art 29(1)(4)	123
Art 25(5)	104	Art 29(2)	123–4
Art 26(1)	97	Art 30(1)	120
Art 26(2)	97	Art 30(2)	120
Art 26(3)	97	Art 31(1)	122
Art 26(4)	97, 107	Art 31(2)	122
Art 26(5)	99	Art 31(3)	122
Art 26(6)	99	Art 33	121
Art 26(8)	97	Art 34	135
Art 28(1)	106–7	Art 35(3)	151
Art 28(2)	107	Art 35(4)	151
Art 28(3)	107	Art 35	159
Art 28(4)	106	Art 35(5)	144, 151, 172
Art 28(5)	107	Art 35(5a)	144, 151, 159, 172
Art 29(1)(1)	123	Art 35(5)(b)	144, 158
Art 29(1)(2)	123		

Directive (EC) 2004/109 of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC [2004] L390/38

Art 3(1) 72, 247

Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council [2007] L340/66

Rec (3)	154, 159	Art 4(1)	157
Art 2	153, 154, 158	Art 4(1)(1)	157
Art 3	154	Art 4(1)(2)	157
Art 4	158		

Regulation (EC) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (...) [2008] OJ L79/1

Art 25(1)	35	Art 29(3)	349
-----------	----	-----------	-----

Commission Regulation (EC) No 1289/2008 of 12 December 2008 amending Commission Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements [2008] OJ L340/17

Rec (3)	159	Art 1	151
Rec (10)	155	Art 2	159

Directive (EU) 2010/73 of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market [2010] OJ L327/1

Rec (1)	75	Rec (10)	130, 242
Rec (2)	75	Rec (14)	132, 162
Rec (3)	75	Rec (15)	100
Rec (4)	75	Rec (17)	98
Rec (6)	88	Rec (23)	103
Rec (7)	128	Rec (27)	100
Rec (8)	216, 265, 339	Art 1(22)	101
Rec (9)	75, 86, 128		

Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC [2010] OJ L331/84

Rec (23)	44	Art 5(3)	36
Rec (24)	44	Art 9	51
Rec (29)	46	Art 9(1)	51
Rec (32)	47, 237	Art 9(1)(b)	51
Rec (52)	36	Art 9(2)	51
Art 1(2)	40	Art 9(3)	51
Art 1(3)	40	Art 9(5)	39, 51–2
Art 1(5)	39	Art 10	39, 233
Art 1(5)(d)	298, 346	Art 10(1)	42–4
Art 2(1)	36	Art 10(2)	43
Art 3	38	Art 10(3)	43, 44
Art 4(1)	36	Art 11	43
Art 4(2)	36	Art 11(2)	44
Art 5(1)	36	Art 12	43

Art 13(1)	44	Art 33(1)	53
Art 14(1)	43, 44	Art 33(2)	54, 188
Art 14(2)	44	Art 34(1)	53
Art 15	44, 233	Art 38(1)	48
Art 15(1)	44	Art 38(2)	48, 49
Art 16	39, 45	Art 38(3)	51
Art 16(1)	45	Art 38(4)	51
Art 16(3)	45	Art 38(5)	49, 51
Art 16(4)	45	Art 40(1)	36
Art 17	45, 233	Art 40(1)(a)	36
Art 17(1)	46	Art 40(6)	37
Art 17(2)	46	Art 42	39, 298
Art 17(3)	46	Art 43(5)	349
Art 17(4)	46	Art 44(1)	36, 39
Art 17(6)	46, 233, 238	Art 45(1)	36, 348
Art 17(7)	46	Art 45(2)	37, 348
Art 17(8)	47	Art 45(3)	348
Art 18	233	Art 46	39
Art 18(1)	49	Art 47(1)	37
Art 18(2)	50	Art 47(2)	37, 348
Art 18(3)	49–50	Art 47(3)	37
Art 18(4)	50–1, 238	Art 47(4)	37
Art 18(5)	50	Art 47(5)	37
Art 19	47, 233, 235, 236	Art 47(6)	37, 348
Art 19(1)	47, 48, 237	Art 47(8)	37
Art 19(3)	48, 236	Art 48(1)	36
Art 19(4)	48, 236, 238	Art 48(2)	38
Art 19(5)	48	Art 48(3)	36
Art 20	47	Art 48(5)	38
Art 21	53	Art 49	39
Art 21(1)	53	Art 50	39
Art 21(4)	47	Art 51(1)	37, 348
Art 22	53	Art 51(2)	37, 39
Art 28(1)	53	Art 51(3)	37
Art 28(2)	53	Art 51(4)	348
Art 29(1)	47	Art 52	39
Art 29(2)	47	Art 53(1)	37
Art 30(1)	53	Art 53(2)	37
Art 30(3)	53	Art 53(3)	37
Art 31	53	Art 53(4)	37, 348
Art 32	53	Art 53(5)	37, 348
Art 32(2)	53	Art 53(6)	37

Art 53(7)	37, 349	Art 58(5)	37
Art 54(1)	38	Art 58(8)	37
Art 54(2)	38	Art 60	42, 52
Art 54(4)	38	Art 60(1)	38
Art 56	47	Art 61	38, 52
Art 58(1)	38	Art 61(3)	39
Art 58(3)	37	Art 63	348

*United Kingdom***Financial Services and Markets Act (2000)**

s 2(3)	55	s 87M	260
s 2(3)(e)	319	s 88	256
s 2(3)(f)	57	s 90(1)	272, 273, 274
s 2(3)(g)	57	s 90(2)	273
s 73(1)	55	s 90(4)	273
s 73(1)(d)	319	s 90(5)	273
s 73(1)(e)	57	s 90(7)	273
s 73(1)(f)	57	s 90(11)	273
s 85(1)	254	s 90(12)	272
s 85(2)	254	s 91(1A)	260
s 87A	254	s 97(1)	259
s 87A(2)	255	s 97(2)	259
s 87A(3)	255	s 102B(5)	81
s 87C(4)	258	s 380	260
s 87C(6)	258	s 381	260
s 87C(7)	258	s 397	262
s 87C(8)	259	s 401	263
s 87J(1)(a)	259	s 401(1)	262
s 87J(1)(b)	258	s 402	262–3
s 87J(1)(c)	258	s 402(1)	262
s 87J(1)(d)	258	Sch 1, para. 6(1)	259
s 87K(2)	260	Sch 10, para. 1(1)	273
s 87K(3)	260	Sch 10, para. 1(2)	273
s 87K(4)	260	Sch 10, para. 1(3)	273
s 87L	260	Sch 10, para. 2(1)	274
s 87L(2)	260	Sch 10, para. 2(2)	274
s 87L(2)(b)	260	Sch 10, para. 2(3)	274
s 87L(3)	260	Sch 10, para. 3(2)(a)	274
s 87L(3)(b)	260	Sch 10, para. 3(2)(b)	274
s 87L(4)	260	Sch 10, para. 4(2)(a)	274

Sch 10, para. 4(2)(b) 274
 Sch 10, para. 5 274

Sch 10, para. 6 275
 Sch 10, para. 7 275

FSA Prospectus Rules

PR 2.2.1 R 254
 PR 3.1.10 R 254
 PR 3.1.11 R (2) 254
 PR 4.2 172
 PR 5.5 270
 PR 5.5.3 R (1) 270
 PR 5.5.3 R 2(a) 270, 271
 PR 5.5.3 R(2)(b) 271
 PR 5.5.3 R (2)(b)(i) 270
 PR 5.5.3 R (2)(b)(ii) 270
 PR 5.5.3 R (2)(c) 270, 271
 PR 5.5.3 R(2)(d) 270, 271

PR 5.5.3 R (2)(e) 271
 PR 5.5.3 R (2)(f) 271
 PR 5.5.4 R 271
 PR 5.5.4 R (2)(a) 271
 PR 5.5.4 R (2)(b) 271
 PR 5.5.4 R (2)(c) 271
 PR 5.5.4 R (2)(f) 271
 PR 5.5.5 R 271
 PR 5.5.6 R 271
 PR 5.5.7 R 271
 PR 5.5.8 R 271
 PR 5.5.9 R 271

FSA Listing Rules

LR 8 256
 LR 8.2 256

LR 8.3.1 R 256

FSA Enforcement Guide

EG 2.6 265
 EG 2.7 265
 EG 2.8 265

EG 2.9 265
 EG 3.10 259

France

Règlement Général

Art 212-1 248
 Art 212-9 251
 Art 212-10 252
 Art 212-13 251
 Art 212-13 II. 251
 Art 212-13 III. 251
 Art 212-14 269
 Art 212-15 253
 Art 212-15 I. 253

Art 212-15 II. 253
 Art 212-16 253
 Art 212-20 259
 Art 212-28 249
 Art 212-28 5° 249
 Art 212-28 6° 249
 Art 212-36 173
 Art 213-1 261
 Art 213-2 261

Code Monétaire et Financier

Art L. 412-1	272	Art L. 621-14	260
Art L. 465-1	262	Art L. 621-15 II. c)	261
Art L. 465-2	262, 269	Art L. 621-15 II. d)	261
Art L. 621-1	55, 320	Art L. 621-15 II. e)	261
Art L. 621-8	248	Art L. 621-15 III. c)	261
Art L. 621-8-1	259	Art L. 621-15 V.	261
Art L. 621-8-1 I.	249	Art L. 621-15-1	262
Art L. 621-8-1 II.	261	Art L. 621-18	259, 261
Art L. 621-8-2	261	Art L. 621-20-1	262
Art L. 621-9 I.	259

Introduction

Prospectus regulation is one of the core pillars of European securities regulation. The seeds of the prospectus regime, as we know it today, were sown by the Financial Services Action Plan and the Risk Capital Action Plan which foresaw many other measures that are nowadays pillars of the EU securities and financial markets framework.¹ In 2003, the call to modernise the ‘Directives on prospectuses’² led to the adoption of a single directive, the Prospectus Directive (‘PD’). As a Lamfalussy directive, it was given flesh by implementing legislation and, in time, by soft-law measures. Together, these measures put in place a more comprehensive regime of rules and disclosure requirements that apply to persons who wish to make a public offer or seek admission of securities to trading on a regulated market in the EU.

This book examines the prospectus disclosure regime and the institutional choices that underpin it. The PD was designed to succeed where earlier directives had failed. A new, improved, mutual recognition system – the so-called ‘single passport’ system – was fashioned to facilitate cross-border capital raising. A more aggressive form of ‘maximum harmonisation’ was supposed to bring about uniformity and, thereby, greater consolidation of rule-making competence at EU level. Since 2003, the regime and the institutional framework that governs it have developed. The directive was only recently amended in order to make it more effective and to ensure that the new European Securities and Markets Authority (‘ESMA’) has all the necessary powers to act in the prospectus field. The Lamfalussy framework, which deals with rulemaking, supervision and enforcement, has seen noteworthy changes as well. The Lisbon Treaty

¹ European Commission, ‘Financial services: implementing the framework for financial markets: action plan’ (COM(1999) 232, 11 May 1999) (the ‘FSAP’), http://ec.europa.eu/internal_market/finances/docs/actionplan/index/action_en.pdf; European Commission, ‘Risk capital: a key to job creation in the European Union’ (April 1998) (the ‘RCAP’), http://ec.europa.eu/internal_market/securities/docs/risk_capital/sec98_552_en.pdf.

² ‘FSAP’ 22. See also ‘RCAP’ 23.

replaced the old comitology system, which, *inter alia*, governed decision-making at Lamfalussy Level 2, by new rules on delegated and implementing acts. What is more, the worldwide financial crisis gave, after some initial hesitations, the necessary impetus to a new round of reforms which ultimately led to important institutional changes, including the establishment of a new European System of Financial Supervision ('ESFS'). ESMA replaced the Committee of European Securities Regulators ('CESR') in January 2011. In short, the EU has firmly established itself as the main actor shaping prospectus disclosure regulation while collective securities actors such as ESMA are the main force for bringing about consistency in the application of EU securities legislation.

It is against this background that the book pursues two lines of enquiry, tied together by a common interest in European decision-making in the securities field.³ It first examines the substantive law on prospectus disclosure, including the framework that governs its creation, implementation and enforcement. Often presented as a 'maximum harmonisation' directive, the reality is more complex: first, the scope and boundaries of the maximum harmonisation regime are not necessarily obvious; second, maximum harmonisation is only one facet of a regime which uses a mixture of regulatory techniques, including a form of equivalence-based regulation; third, the lack of an autonomous enforcement apparatus⁴ forces the EU to rely on the enforcement efforts of national actors and on collective securities actors such as ESMA to keep order among competent authorities. Thus, although the EU legislature is the main force shaping the regulatory regime,⁵ Member State competence persists in important areas. One such area is the approval of prospectuses. One of the main messages of this book concerns this approval system. It fulfils, for better or worse, an enforcement function, but curiously, it currently also allows safeguarding decision-making powers elsewhere; for example, in the field of equivalence-based regulation.

The second theme of this book concerns regulatory competition. As a subject of study, its interest has been in sharp decline. Calls in favour of

³ I have gained much insight on EU decision-making from Fritz Scharpf's work on policy-making (e.g., F. Scharpf, *Governing in Europe – Effective and Democratic?* (Oxford University Press, 1999); F. Scharpf, *Games Real Actors Play – Actor-Centered Institutionalism in Policy Research* (Westview Press, Boulder CO, 1997)).

⁴ By 'enforcement', I mean mostly enforcement of EU rules and regulations against issuers and other market actors.

⁵ For a more detailed analysis of the changes to the regulatory landscape in financial markets, see N. Moloney, *EC Securities Regulation* (Oxford University Press, 2008).

regulatory competition as an institutional arrangement in the securities markets field have mostly been silenced. The mainstream literature on securities regulation has mostly moved on, turning for inspiration and insights to new fields of interest such as law and finance, a scholarship that is more empirically grounded, but still controversial in its claims and conclusions.⁶ And yet, the interest in regulatory competition is not exhausted. Indeed, the thesis of this book is that regulatory competition remains a subject of interest in the securities field. But there is a need to conceptualise it differently by engaging in a more meaningful manner with decision-making at European level. In the law and economics literature, which has dominated the study of regulatory competition and securities regulation, decision-making at EU level has mostly been outside the scope of enquiry. It has been treated as a 'black-box' and little time and effort has been invested in describing and examining 'what happens in the box, who acts and how'.⁷ Deterministic assumptions about the behaviour of policy actors at EU level, with no further enquiry into the empirical reality of decision-making at this level, have left the securities literature with little useful insight. Likewise, harmonisation has been treated as an outcome or worse, a *fait accompli*, instead of being seen as a process involving actors with interests and ideas who are meant to find common agreement over sets of rules and arrangements. Law and finance scholarship has also been mostly unconcerned about the mechanics of European decision-making. Wide-scale empirical studies have admittedly shed new light on distinct legal systems and enforcement mechanisms, but here too decision-making at EU level has generally been sidestepped.⁸

Hence, there is a need for a more grounded approach which integrates European decision-making more closely into regulatory competition studies and pays due attention to the behaviour and decision-making of collective securities markets actors.⁹ In short, the question is not whether regulatory competition is 'efficient', but how it affects EU decision-making

⁶ See especially the work by La Porta, Lopez-de-Silanes, Shleifer and Vishny which I will discuss in Chapters 5 and 7.

⁷ I borrow the phrase from C. Radaelli, 'The puzzle of regulatory competition' (2004) 24 *Journal of Public Policy* 1, 19.

⁸ See Chapter 5 for details.

⁹ In developing this perspective, I have, *inter alia*, benefited from Nicolaïdis's work on 'managed mutual recognition'. See e.g., K. Nicolaïdis, 'Regulatory cooperation and managed mutual recognition: elements of a strategic model' in G. Bermann, M. Herdegen and P. Lindseth (eds.), *Transatlantic Regulatory Cooperation – Legal Problems and Political Prospects* (Oxford University Press, 2000) 571.

and EU regulatory output in the prospectus field. The book attempts to work towards answers, sometimes in a descriptive manner, sometimes in a more analytical fashion, but at all times with the aim of gaining useful insights for the literature on securities regulation. In this process, old themes will be revisited (e.g., Hirschman's 'threat of exit' hypothesis)¹⁰ and new themes will emerge, such as the discursive dimension of regulatory competition at EU level. The process of implementation of European rules, which in many respects represents the ultimate test of the effectiveness of EU law, will not be ignored either.

The various themes that the book pursues are developed in five parts and the next eleven chapters. Chapter 1 begins by introducing the different actors that participate in the creation, implementation and enforcement of EU prospectus law, and the formal institutional setting in which they act and interact. It sets the scene for the following parts that deal, in turn, with prospectus disclosure regulation, prospectus disclosure enforcement and regulatory competition. Chapter 2 is an introductory chapter on prospectus disclosure regulation. It discusses the main questions that prospectus disclosure has raised in the literature. Chapters 3 and 4 examine the two main disclosure models under the EU regime: first, an ordinary disclosure model based on 'maximum harmonisation' disclosure items; and second, a more illusive regime based on equivalence provisions. Chapter 5 is the first chapter that deals with enforcement. Its aim is to review the debate on enforcement and to present the issues that require attention. Chapter 6 continues the examination of enforcement by considering the EU's approach to prospectus disclosure enforcement and the arrangements that the EU legislature has adopted. Chapter 7 looks at the application and implementation of these arrangements at national level and, for that purpose, turns to prospectus disclosure enforcement in France and the UK. Chapter 8 introduces the part of the book on regulatory competition. It examines the debate on regulatory competition and its underpinnings. Chapter 9 defines the perspective on regulatory competition which this book seeks to explore. Chapter 10 is the empirical part of this study. In an effort to examine the propositions and suggestions of the previous chapter, it turns to the negotiations of the PD. The book ends with a conclusion in Chapter 11 which summarises earlier findings and makes a set of proposals for the future.

¹⁰ A. Hirschman, *Exit, Voice and Loyalty – Responses to Decline in Firms, Organizations, and States* (Harvard University Press, Cambridge MA, 1970).