



EUROPEAN COMMISSION'S CONSULTATION DOCUMENT 'REVIEW OF THE PROSPECTUS DIRECTIVE'

Eumedion's online response dated 6 May 2015

Questions and answers

(1) Is the principle, whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public, still valid? In principle, should a prospectus be necessary for:

- admission to trading on a regulated market
- an offer of securities to the public?

Yes, a requirement to issue a prospectus in both cases is a key requirement for investors to take informed investment decisions.

Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public). If yes, please give details.

No.

(2) In order to better understand the costs implied by the prospectus regime for issuers:

a) Please estimate the cost of producing the following prospectus

- equity prospectus
- non-equity prospectus
- base prospectus
- initial public offer (IPO) prospectus

b) What is the share, in per cent, of the following in the total costs of a prospectus:

- Issuer's internal costs: *[enter figure]%*
- Audit costs: *[enter figure]%*
- Legal fees: *[enter figure]%*
- Competent authorities' fees: *[enter figure]%*
- Other costs (please specify which): *[enter figure]%*

What fraction of the costs indicated above would be incurred by an issuer anyway, when offering

securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law?

<No response>

(3) Bearing in mind that the prospectus, once approved by the home competent authority, enables an issuer to raise financing across all EU capital markets simultaneously, are the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority are outweighed by the benefit of the passport attached to it?

<No response>

(4) The exemption thresholds in Articles 1(2)(h) and (j), 3(2)(b), (c) and (d), respectively, were initially designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers. Should these thresholds be adjusted again so that a larger number of offers can be carried out without a prospectus? If yes, to which levels? Please provide reasoning for your answer.

a) the EUR 5 000 000 threshold of Article 1(2)(h):

- Yes, from EUR 5 000 000 to EUR [enter monetary figure]

X No

- Don't know/no opinion

Textbox: [Anything that negatively affects the credibility of the financial markets, affects investors in those markets. In that sense, protection of the retail investor is very important and alleviation of the prospectus burden for smaller issuers and smaller offers increases the risk of financial scandals]

b) the EUR 75 000 000 threshold of Article 1(2)(j):

- Yes, from EUR 75 000 000 to EUR [enter monetary figure]

x No

- Don't know/no opinion

Textbox: [We see no reason to change this threshold; we refer to our answer to question 4a.]

c) the 150 persons threshold of Article 3(2)(b)

- Yes, from 150 persons to [enter figure] persons

X No;

- Don't know/no opinion

Textbox: [We refer to our answer to question 4a]

d) the EUR 100 000 threshold of Article 3(2)(c) & (d)

- **Yes, from EUR 100 000 to EUR [enter monetary figure]**

X No

Don't know/no opinion

Textbox: [We refer to our answer to question 4a]

(5) Would more harmonisation be beneficial in areas currently left to Member States discretion, such as the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000?

X Yes

No

Other areas:

Don't know/no opinion

Textbox: [In a general sense, harmonisation of prospectus requirements throughout the European Union is very welcome and necessary from an investor perspective]

(6) Do you see a need for including a wider range of securities in the scope of the Directive than transferable securities as defined in Article 2(1)(a)? Please state your reasons.

Yes

X No

Don't know/no opinion

Textbox: [We are comfortable with the existing exemption for money market instruments.]

(7) Can you identify any other area where the scope of the Directive should be revised and if so how? Could other types of offers and admissions to trading be carried out without a prospectus without reducing consumer protection?

Yes [text box]

No

Other areas:

X Don't know/no opinion

Textbox: [Judgments regarding consumer protection fall outside the scope of Eumedion.]

(8) Do you agree that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary

issuances of the same securities, providing relevant information updates are made available by the issuer?

Yes

No

Don't know/no opinion

Textbox: [For subsequent secondary issuances, the most recent financial statements can be incorporated by reference. Only material – financial and non-financial – events after the latest balance sheet date should be added and mentioned in the prospectus]

(9) How should Article 4(2)(a) be amended in order to achieve this objective ? Please state your reasons.

The 10% threshold should be raised to [enter figure]%

The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued

No amendment

Don't know/no opinion

Textbox: [The prospectus not only informs new shareholders, it also provides decision critical information for existing shareholders. Issuance of equity dilutes the ownership of existing shareholders. Institutional investors are known to scrutinize proposals from management to issue shares. Without a prospectus, shareholders need to depend on investor relation presentations that cannot be trusted to have sufficient rigor that is justified for a decision to issue new capital. Besides this, when secondary issuances exceed 10% of the then issued capital, it is likely that retail investors become involved – not only professional, institutional investors – so the higher protection requirement kicks in]

(10) If the exemption for secondary issuances were to be made conditional to a fullblown prospectus having been approved within a certain period of time, which timeframe would be appropriate?

[0] years

There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)

Don't know/no opinion

Textbox: [The amount of years is highly dependent on what an exempted prospectus looks like. If the exemption is limited to incorporating the most recent annual report and annual accounts by reference instead of duplicating such information, the exemption could be lifted to no timeframe. For example, pro forma information should always be present.]

(11) Do you think that a prospectus should be required when securities are admitted to trading on an MTF? Please state your reasons.

Yes, on all MTFs

Yes, but only on those MTFs registered as SME growth markets

No

Don't know/no opinion

Textbox: [If securities are offered to the general public, i.e. including retail investors, and significant amounts are issued, a prospectus should always be required.]

(12) Were the scope of the Directive extended to the admission of securities to trading on MTFs, do you think that the proportionate disclosure regime (either amended or unamended) should apply? Please state your reasons.

Yes, the amended regime should apply to all MTFs

Yes, the unamended regime should apply to all MTFs

Yes, the amended regime should apply but not to those MTFs registered as SME growth markets

Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets

Yes, the amended regime should apply but only to those MTFs registered as SME growth markets

Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets

No

Don't know/no opinion

Textbox: [There should be a level playing field in disclosure requirements for all MTFs. Within MTFs, the value of the equity of the company should be leading in choosing a prospectus regime (possibly in combination with the value of the balance sheet total), not the type of MTF they are issued on.

'Trading venue neutrality' should become a leading principle under the Prospectus Directive. Investors should receive the same level of information on a certain type of securities traded on an MTF as in the case those securities were traded on a regulated market. Trading venue neutrality between an MTF and a regulated market would also help to close the regulatory gap between these types of trading venues.]

(13) Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF)⁴ and European venture capital funds (EuVECA) of the closed-ended type and marketed to non-professional investors, be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document? Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds.

Yes, such an exemption would not affect investor/consumer protection in a significant way

X No, such an exemption would affect investor/consumer protection

Don't know/no opinion

Textbox: [*We see no reason to exempt these funds if they meet the current and future criteria for issuing a prospectus (reference is made to our answer to question 4) and if these funds would also like to attract retail investors. Besides this, if these specific types of funds were to be exempted, the question could be asked why other – closed end and alternative investment – funds would still be subject to the prospectus obligation. In other words, from an investor protection point of view, prospectus information is in case of for example an ELTIF of the same importance as it is for a regular AIF offered to retail investors]*

(14) Is there a need to extend the scope of the exemption provided to employee shares schemes in Article 4(1)(e) to non-EU, private companies ? Please explain and provide supporting evidence.

Yes

xNo

Don't know/no opinion

Textbox: [*Issuing more than 10% of existing equity to employees seems excessive. A prospectus is not only issued for the new shareholders, it also contains critical information for the existing shareholders. Moreover, an employee share scheme can also be used as an anti-takeover mechanism. We are therefore not in favour of this exemption at all, and therefore also not in favour of extending the exemption to even more companies]*

(15) Do you consider that the system of exemptions granted to issuers of debt securities above a denomination per unit of EUR 100 000 under the Prospectus and Transparency Directives may be detrimental to liquidity in corporate bond markets? If so, what targeted changes could be made to address this without reducing investor protection?

Yes

xNo

Don't know/no opinion

Textbox: [*No, it is our impression that most corporate bonds are issued with a prospectus, i.e. the exemption is not used/applicable. Besides this, bond market liquidity is driven by other factors than denomination per unit: most importantly the willingness of dealers to maintain inventory and take positions for their own risk]*

If you have answered yes, do you think that:

(a) the EUR100 000 threshold should be lowered?

- **Yes, to EUR [enter monetary figure]**

- **No**

- **Don't know/no opinion**

- **Textbox:** [justification]

(b) some or all of the favourable treatments granted to the above issuers should be removed?

- **Yes, please indicate to what extent :** []

- **No**

Don't know/no opinion

- **Textbox:** [*The nominal value of a single security exemption seems to serve consumer interest, not institutional investor interests. We are not in the position to judge consumer protection. Insofar the nominal value exemption actually erodes the prospectus requirements for bonds held by institutional investors, it should be abandoned altogether as the nominal value of a single security is not really a decision critical variable for the investment decision for institutional investors.]*

(c) the EUR 100 000 threshold should be removed altogether and the current exemptions should be granted to all debt issuers, regardless of the denomination per unit of their debt securities?

- **Yes**

No

- **Don't know/no opinion**

- **Textbox:** [*For institutional investors there should be no exemptions based on the nominal value of a single security.]*

(16) In your view, has the proportionate disclosure regime (Article 7(2)(e) and (g)) met its original purpose to improve efficiency and to take account of the size of issuers? If not, why?

Yes

No

Don't know/no opinion

Textbox: [*We do not have sufficient information to judge this]*

(17) Is the proportionate disclosure regime used in practice, and if not what are the reasons? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues

- **Yes**

- **No**

Don't know/no opinion

- **Textbox:** [*We do not have statistics available to answer this question.]*

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation

- Yes

- No

Don't know/no opinion

- Textbox: [*We do not have statistics available to answer this question.*]

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

- Yes

- No

Don't know/no opinion

- Textbox: [*We do not have statistics available to answer this question.*]

(18) Should the proportionate disclosure regime be modified to improve its efficiency, and how?

Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues

Textbox: [No. The proportionate disclosure regime is only available for issues where the statutory preferential subscription rights are not excluded. This is probably one of the main reasons why the proportionate disclosure regime probably is not widely used in practice by issuers. As pre-emption rights are one of the fundamental rights for shareholders, we would not be in favour of dropping this condition for using the proportionate disclosure regime.]

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation

Textbox: [No. In the Netherlands, IPOs are more popular amongst the larger sized companies – this is a more general problem]

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

Textbox: [No. We are not aware of specific problems for credit institutions]

(19) If the proportionate disclosure regime were to be extended, to whom should it be extended?

To types of issuers or issues not yet covered? Please specify: [text box]

X To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive? Please specify: [*the proportionate disclosure regime already applies to offers of shares by*

companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility (Article 7(2)(g) of the Directive]

Other. Please specify: [text box]

Don't know/no opinion

Textbox: [justification]

(20) Should the definition of "company with reduced market capitalisation" (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000?

Yes

X No

Don't know/no opinion

Textbox: [We refer to our answer to question 21]

(21) Would you support the creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market, in order to facilitate their access to capital market financing?

Yes

X No, the higher risk profile of SMEs and companies with reduced market capitalisation justifies disclosure standards that are as high as for issuers listed on regulated markets.

Don't know/no opinion

Textbox: [The investment community cannot afford and cannot be expected to take a less informed decision to invest in a small company. It would be against the fiduciary duty of most investors. If a company wants to raise capital from the wider investor community, and the implied market cap of the equity or amount of debt raised is substantial, it is paramount that the investor community is provided with all relevant information, whether it is small or not. In general the information needs of investors are not dependent on whether a company is small or large. However in practice we are convinced that smaller companies tend to be less complex, which results in a less burdensome production of a prospectus.]

(22) Please describe the minimum elements needed of the simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market.

Textbox: [The information needs of the investor community are independent of a company's size. There should be no difference in requirements. If a company wants the benefits of raising capital among many investors, it should serve its investors with all decision critical information, irrespective of the company's size. See our answer to question 21 as well.]

(23) Should the provision of Article 11 (incorporation by reference) be recalibrated in order to achieve more flexibility? If yes, please indicate how this could be achieved (in particular, indicate which documents should be allowed to be incorporated by reference)?

Yes

No

Don't know/no opinion

Textbox: *[In general, substantial duplication of information is against the interest of investors as such practice tends to result in information overload. However, adding 'flexibility' may not be the right approach. If a company once has issued a full prospectus, and has filed a recent annual report and annual accounts, the issuer could be required to forego on substantial repetition of content from the annual accounts by including such information by reference. If the referenced information in the annual accounts to some extent does not satisfy the information requirements of the prospectus, the issuer should still refer to the audited financial report and only include the missing or altered information in the prospectus. Such practice results in a less lengthy prospectus that is easier and cheaper to produce and has a higher information value for investors.*

Please note that 'including information by reference' should be implemented in a way that the information is durably accessible by clicking on a hyperlink in the prospectus.]

(24) (a) Should documents which were already published/filed under the Transparency Directive no longer need to be subject to incorporation by reference in the prospectus (i.e. neither a substantial repetition of substance nor a reference to the document would need to be included in the prospectus as it would be assumed that potential investors have anyhow access and thus knowledge of the content of these documents)? Please provide reasons.

Yes

No

Don't know/No opinion

Textbox *[We agree that any substantial repetition of content is not in the interest of both investors and issuers. Still, incorporating such documents by reference is not burdensome, it does not result in substantial repetition of content and still results in a complete pack of information, without needing to refer to an older prospectus to judge the equity issuance at hand.]*

(b) Do you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive?

Yes

No

Don't know/No opinion

Textbox *[As already stated in our answer to question 23, substantial duplication of information is against the interest of investors as such practice tends to result in information overload. If a company once has issued a full prospectus, and has filed a recent annual report, the issuer should be required to forego on*

substantial repetition of content from the annual accounts by including such information by reference. If the referenced information in the annual accounts to some extent does not satisfy the information requirements of the prospectus, the issuer should still refer to the audited financial report and only include the missing or altered information in the prospectus. Such practice results in a less lengthy prospectus that is easier and cheaper to produce and has a higher information value for investors.]

(25) Article 6(1) Market Abuse Directive obliges issuers of financial instruments to inform the public as soon as possible of inside information which directly concerns the said issuers; the inside information has to be made public by the issuer in a manner which enables fast access and complete, correct and timely assessment of the information by the public. Could this obligation substitute the requirement in the Prospectus Directive to publish a supplement according to Article 17 without jeopardising investor protection in order to streamline the disclosure requirements between Market Abuse Directive and Prospectus Directive?

Yes

No

Don't know/No opinion

Textbox [Any new matter liable to influence the assessment of the investment, arising after the publication of the prospectus but before the closing of the offer or the start of trading on a regulated market, should be properly evaluated by investors and should currently be part of a supplement. As this description is in line with the definition of price-sensitive information that should be disclosed pursuant the Market Abuse Directive. The Market Abuse Directive obligation would suffice in so far this Directive is already applicable to the issuer (e.g. secondary offers, but maybe not an IPO)]

(26) Do you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive?

Yes

No

Don't know/No opinion

Textbox [justification]

(27) Is there a need to reassess the rules regarding the summary of the prospectus?

(Please provide suggestions in each of the fields you find relevant)

a) Yes, regarding the concept of key information and its usefulness for retail investors

b) Yes, regarding the comparability of the summaries of similar securities

c) Yes, regarding the interaction with final terms in base prospectuses

d) No.

e) Don't know/no opinion

Textbox: [In our answers we have cautioned against duplication of information. Here we would like to highlight that we do not necessarily regard a summary as an undesired form of duplication, since a summary helps direct attention to the key matters in the prospectus. We believe, therefore, that greater

emphasis should be placed on the drawing up of a readable, comprehensive summary – as this is the piece that is most read. We would be in favour of a requirement of listing/mentioning every element of materiality – in line with increased emphasis on materiality in financial statements; to avoid ‘burying’ of vital information in the deeper sections of the prospectus. So a concise and true and fair description of the company profile, the market size and market position, profitability and recent profitability development, leverage, governance, the principal risk factors and the main litigation issues should be included in the summary. Management should use professional judgement in determining where and in what order information is presented in the summary.]

(28) For those securities falling under the scope of both the packaged retail and insurance-based investment products (PRIIPS) Regulation, how should the overlap of information required to be disclosed in the key investor document (KID) and in the prospectus summary, be addressed?

a) By providing that information already featured in the KID need not be duplicated in the prospectus summary. Please indicate which redundant information would be concerned : [textbox]

b) By eliminating the prospectus summary for those securities.

X c) By aligning the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation, in order to minimise costs and promote comparability of products

d) Other: [textbox]

e) Don't know/no opinion

Textbox: [Option c combines the guarantee of a summary in all cases and at the same time limits the overlap between the PRIIPS Regulation and the Prospectus Directive]

(29) Would you support introducing a maximum length to the prospectus? If so, how should such a limit be defined?

Yes, it should be defined by a maximum number of pages and the maximum should be [figure] pages

Yes, it should be defined using other criteria, for instance: [textbox]

X No

Don't know/no opinion

Textbox: [A page count limit may have unintended consequences for font size, spacing, page size, and may ultimately result in providing a ‘valid’ excuse to not disclose relevant information because there was a restriction on page count. The need to adequately inform investors should always prevail over any perceived advantages of introducing a maximum length of the prospectus. Maybe a more principle based approach is possible that limits the disclosure of excessive information of dubious relevance.]

(30) Alternatively, are there specific sections of the prospectus which could be made subject to rules limiting excessive lengths? How should such limitations be spelled out?

Textbox: [Maybe a more principle based approach is possible that limits the disclosure of excessive

information of dubious relevance e.g. by stating that the prospectus should only contain material and company-specific information, e.g. by only mentioning the key risks in stead of mentioning all possible risks.]

(31) Do you believe the liability and sanctions regimes the Directive provides for are adequate? If not, how could they be improved?

- the overall civil liability regime of Article 6

X Yes

No

No opinion

- the specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)

Yes

X No

No opinion

[Given the importance of the summary for investors (reference is made to our answer to question 27), the full-fledged civil liability regime of Article 6 should also apply to the summary]

- the sanctions regime of Article 25

Yes

X No

No opinion

[We prefer more harmonisation of the sanctions regime, so investors can rely on a pan-European punishment regime. The recently introduced sanctioning regime in the amended Transparency Directive and MIFID II would be a good step forward]

(32) Have you identified problems relating to multi-jurisdiction (cross-border) liability with regards to the Directive? If yes, please give details.

X Yes

No

Don't know/no opinion

Textbox: More harmonisation could be achieved. For investors who suffered damages as a result of improperly prepared prospectuses the establishment of an EU harmonised framework for collective redress would be an important step forward]

(33) Are you aware of material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses that are submitted to them for approval? Please provide examples/evidence.

xYes

No

Don't know/no opinion

Textbox: [It would be rather naive to think that there would be full consistency in the assessments by each national competent authority. As investors we only see the end product and have no insight in the actual rigor applied by the NCAs. The current structure does not maximise investor trust as, depending on the investor, a particular country may be unduly perceived as maybe not having sufficient rigor in executing this task.]

(34) Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs? If yes, please specify in which regard.

Yes

No

X Don't know/no opinion

Textbox: [It is not visible to us whether there is significant scope for further streamlining.]

(35) Should the scrutiny and approval procedure be made more transparent to the public? If yes, please indicate how this should be achieved.

Yes

X No

Don't know/no opinion

Textbox: [There is a risk of information overload.]

(36) Would it be conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, under the premise that no legally binding purchase or subscription would take place until the prospectus is approved? If yes, please provide details on how this could be achieved.

Yes

X No

Don't know/no opinion

Textbox: [*We are strongly against such practice. Our participants have warned us that some debt issues already are marketed by investment banks before the prospectus is shared. This forces investors to either participate without analysis, or to forego on the transaction altogether as investment banks tend to punish hesitant investors by not giving any allocation at all if they wait for the prospectus and then decide to invest. Getting no allocation on a new issue can be a major source of immediate risk for investors that are mandated to follow a corporate bond index.*

Therefore it is the exact opposite what the market needs: there should be a formal ban on any bookbuilding in a number of days following the publication of the prospectus. Such ban on bookbuilding would allow investors to actually take diligent time to analyse the prospectus. The time it takes for a company to decide and prepare for a debt issuance, including the writing of the prospectus, takes several weeks to months. The current practice is that especially on the day where the market is strong, investors often hardly have any time to analyse. The current practise of effectively disallowing investors to make their analysis before committing to a transaction does not contribute to financial stability and to informed investment decisions.]

(37) What should be the involvement of NCAs in relation to prospectuses? Should NCAs:

- x a) review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)**
- b) review only a sample of prospectuses ex ante (risk-based approach)**
- c) review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)**
- d) review only a sample of prospectuses ex post (risk-based approach)**
- e) Other**
- f) Don't know/no opinion**

Please describe the possible consequences of your favoured approach, in particular in terms of market efficiency and invest protection.

Textbox: [*The review helps investors to base their investment decisions on an accurate document. Reviewing a prospectus after the transaction does not contribute to this.]*

(38) Should the decision to admit securities to trading on a regulated market (including, where applicable, to the official listing as currently provided under the Listing Directive), be more closely aligned with the approval of the prospectus and the right to passport? Please explain your reasoning, and the benefits (if any) this could bring to issuers.

X Yes

No

Don't know/no opinion

Textbox: [*We would expect this already to be the case.]*

(39) (a) Is the EU passporting mechanism of prospectuses functioning in an efficient way? What improvements could be made?

Yes

No

on't know/no opinion

Textbox: [We do not have specific information on this]

(b) Could the notification procedure set out in Article 18, between NCAs of home and host Member States be simplified (e.g. limited to the issuer merely stipulating in which Member States the offer should be valid, without any involvement from NCAs), without compromising investor protection?

Yes

No

Don't know/no opinion

Textbox: [We do not have the impression that there is uniform, high level quality of supervision by the NCAs. Some of our participants have the experience that the level of quality differs per NCA: some NCAs are too rigorous in its supervision regime, while others are too loose.]

(40) Please indicate if you would support the following changes or clarifications to the base prospectus facility. Please explain your reasoning and provide supporting arguments:

(40) Please indicate if you would support the following changes or clarifications to the base prospectus facility. Please explain your reasoning and provide supporting arguments:

	I support	I do not support	Justify
a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed	[•]	[•]	[textbox]
b) The validity of the base prospectus should be extended beyond one year	[•] Please indicate the appropriate validity length: [•]	[•]	[textbox]
c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA	[•]	[•]	[textbox]
d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs	[•]	[•]	[textbox]
e) The base prospectus facility should remain unchanged	[•]	[•]	[textbox]
f) Other (please specify)	[textbox]		

A: no support; justification: issues have different objectives, e.g. to finance a merger or acquisition, to safeguard or conserve the capital position, to attract new investors, etc. Investors would like to scrutinise proposals from management to issue shares or other financial instruments.

B: no support; justification: if the period would be extended to more than one year, investors would have to work with numerous supplements in that period. This would impair the readability, understandability and comprehensibility of the documents.

C: support; justification: this is – as far as we know – already common practice and works well. We are, for example, in favour of timely publication of the registration document in advance of the formal launch of an IPO. This would allow investors to give good feedback to the company during road shows before the price range is determined. The securities note can then be published later.

D: no support; justification: we do not have the impression that there is uniform, high level quality of supervision by the NCAs. Some of our participants have the experience that the level of quality differs per NCA: some NCAs are too rigorous in its supervision regime, while others are too loose.

E: support; justification: we refer to our answers to a) and b).

(41) How is the "tripartite regime" (Articles 5 (3) and 12) used in practice and how could it be improved to offer more flexibility to issuers?

Textbox: [Reference is made to our answer to question 40 sub c]

Question:

(42) Should the dual regime for the determination of the home Member State for nonequity securities featured in Article 2(1)(m)(ii) be amended? If so, how?

X a) No, status quo should be maintained.

b) Yes, issuers should be allowed to choose their home Member State even for non-equity securities with a denomination per unit below EUR 1 000.

c) Yes, the freedom to choose the home Member State for non-equity securities with a denomination per unit above EUR 1 000 (and for certain non-equity hybrid securities) should be revoked.

Textbox: [Insofar there is evidence that this choice seems to be influenced by getting a more favourable environment for getting a prospectus approved, the options to choose a home Member State should be limited. If there is continued divergence in enforcement among member states, the EC should over time consider to create a single European authority that takes over these responsibilities from the NCAs.]

(43) Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed (deletion of Article 14(2)(a) and (b), while retaining Article 14(7), i.e. a paper version could still be obtained upon request and free of charge)?

X Yes

No

Don't know/no opinion

Textbox: [A paper option is fine, which should be obtained on request and free of charge. With regard to debt securities: the issuer should not only publish the prospectus via a pdf on its website, but it should be forced to publish the bond documentation on its website as long as the bond is outstanding. Currently, most issuers debt do not provide the documentation for outstanding debt on their website. Ideally, there is a single European database in which all equity and bond documentation (including amendments) is filed.]

(44) Should a single, integrated EU filing system for all prospectuses produced in the EU be created? Please give your views on the main benefits (added value for issuers and investors) and drawbacks (costs)?

X Yes

No

Don't know/no opinion

Textbox: [*Every Member State has its own NCA with possibly its own database. Each database has a different interface and search options. Most investors invest beyond the borders of a single country and now are expected to familiarise themselves with each different database. Besides, it is much costlier to maintain a separate database in each member state. The increased usage and importance of such a single database justifies striving for a higher quality user experience.*]

(45) What should be the essential features of such a filing system to ensure its success?

Textbox: [*Some characteristics that would help make such database a success are: free access for users, continuous improvement, issuers publish prospectuses here first before anywhere else, working hyperlinks to referenced documents, referenced documents are filed in the database as well, user friendly interface (easy search, easy filter, email alerts, follow list per user).*]

(46) Would you support the creation of an equivalence regime in the Union for third country prospectus regimes? Please describe on which essential principles it should be based.

X Yes

No

Don't know/no opinion

Textbox: [*If the European Commission judges such third country regime and the enforcement of the regime to be of sufficient high quality, we would have no objections. Essential principles are: 1) equivalent prospectus information requirements, 2) rigorous and independent supervisory authority, 3) adequate supervisory powers (including enforcement powers) and 4) supervisory cooperation.*]

(47) Assuming the prospectus regime of a third country is declared equivalent to the EU regime, how should a prospectus prepared by a third country issuer in accordance with its legislation be handled by the competent authority of the Home Member State defined in Article 2(1)(m)(iii)?

X a) Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18

b) Such a prospectus should be approved by the Home Member State under Article 13

c) Don't know/no opinion

Textbox: [*If the European Commission has declared the third country regime equivalent to the EU regime we see no need for further delay of listing the securities in the EU; it would make the EU capital market more attractive and more liquid*]

Final questions:

(48) Is there a need for the following terms to be (better) defined, and if so, how:

a) "offer of securities to the public"

Yes

No

Don't know/no opinion

Textbox: [*We have not experienced any problems with this definition*]

b) "primary market" and "secondary market"?

Yes

No

Don't know/no opinion

Textbox: [*We have not experienced any problems with this definition*]

(49) Are there other areas or concepts in the Directive that would benefit from further clarification?

No, legal certainty is ensured

Yes, the following should be clarified: [*The prospectus should provide differentiated transparency on the fees agreed on with the underwriters, the advisers and trading venues, including the appropriate criteria and the maximum amounts for the variable components of the fees*]

Don't know/no opinion

Textbox: [-]

(50) Can you identify any modification to the Directive, apart from those addressed above, which could add flexibility to the prospectus framework and facilitate the raising of equity or debt by companies on capital markets, whilst maintaining effective investor protection? Please explain your reasoning and provide supporting arguments.

Yes

No

Don't know/no opinion

Textbox: [-]

(51) Can you identify any incoherence in the current Directive's provisions which may cause the prospectus framework to insufficiently protect investors? Please explain your reasoning and provide supporting arguments.

Yes

No

Don't know/no opinion

Textbox: [-]