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EBF response to Consultation Document on the Review of the Prospectus Directive

Key points

- The disclosure regime in the European Union is framed by sets of rules which are not harmonised and are the source of significant burdens and inefficiencies. The Capital Markets Union (CMU) should therefore establish a seamless disclosure regime that avoids unnecessary burden for issuers while maintaining a high level of investor protection. It will have to deal with the existence of 28 securities regulators which are coordinated by the ESMA but it seems unlikely that ESMA will be developed to become a “European SEC”. And the CMU will have to deal with the reality of 24 official languages in the EU.
- Additionally a greater degree of harmonisation in applicable insolvency and tax laws for prospectus would be a positive step.

EBF position / response

(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?

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.

EBF members believe that in principle a prospectus is still necessary for admission to trading on a regulated market (RM) and an offer of securities to the public. For an offer of securities to the public the prospectus is an important element in the decision making process and for ensuring investor protection.



Some EBF members think that in cases of admission to trading on a RM, prospectus contents should be less demanding. Companies that are already listed on regulated markets provide regular information and are more transparent.

The prospectus' content requirements should be strictly limited to the essential characteristics of, and risks associated with, the securities.

Other EBF members think that different types of prospectus for admission to trading and public offer increase the burden and the costs for issuers, who are responsible for the prospectus.

(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] 25-40%
- Audit costs: [enter figure] 15-40%
- Legal fees: [enter figure] 20-30%
- Competent authorities' fees: [enter figure] 2-15%
- Other costs (please specify which): [enter figure] 3-15%

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?

The prospectus related costs can only be roughly estimated for a variety of reasons. Firstly, they vary greatly depending on the kind of securities, offer structure and complexity of the respective issuer. Also, the kinds of costs are incurred by different parties (though typically borne by the issuer); also a significant share thereof represents internal costs of the issuer. As the costs incurred by the issuer are usually not transparent for financial institutions acting as underwriters, only a rough estimate is possible.

a) We estimate the costs for different kinds of equity prospectuses as follows:

- equity prospectus (rights issue, non-proportionate):
EUR 2 to 4 m
(it should be noted that transactions related to "blue chip" companies being the top company of international groups primarily in the financial sector are rather complex).
- Non-equity (standalone) prospectus:
EUR 160,000 to 1,600,000



- Base prospectus:
EUR 120,000 to 600,000 (incl. programme establishments and updates)
- initial public offer (IPO) prospectus:
EUR 1.8 to 2.5 m
- mere listing prospectus of an already listed issuer:
EUR 800.000 to 1 m

A standard base prospectus covering structured products prepared by external legal counsel incurs legal fees of approximately EUR 40,000 to EUR 50,000, depending on the range of securities and on the jurisdictions it covers.

(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 outweighed by the benefit of the passport attached to it?

After the implementation of the Prospectus Directive there are hardly any national prospectus regimes left, therefore a comparison between EU prospectuses vs. non-EU prospectuses is hard to make.

That said, it should be emphasised that in practice a prospectus in conformity with EU rules in itself does not enable the issuer to sell across all EU capital markets simultaneously. Rather, there are still additional requirements to be fulfilled to actually effect the passporting, notably the translation of the summary, requirements regarding publication, as well as additional requirements imposed by the host Member State's NCA (such as local law tax disclosure or specific regulatory compliance statements) as well as separate local law requirements for the sale to retail investors. These additional requirements also lead to additional costs and cause detrimental effects for issuers active in more than one EU market.

Some requirements for a prospectus under the Prospectus Directive like the presentation of historical financial information covering the last two financial years seem to be excessive in light of the significant overlapping with the information required by the Transparency Directive.

(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]



- No
- Don't know/no opinion

EBF members believe that the threshold should not be adjusted.¹

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

- Yes, from EUR 75 000 000 to EUR [enter monetary figure]
- No
- Don't know/no opinion

No

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

- Yes, from 150 persons to [enter figure] persons
- No;
- Don't know/no opinion

Yes, from 150 persons to 200 persons

Furthermore, the exemption should refer to the actual number of purchasers rather than to the number of addressees of investors. Otherwise such exemption would be of little help in the course of any regular marketing activity.

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

- Yes, from EUR 100 000 to EUR [enter monetary figure]
- No
- Don't know/no opinion

EBF members support a reduction in the threshold from EUR 100 000 to EUR 50 000. The decrease of the above thresholds would provide a better balance between the cost of capital increase from companies (especially for SMEs) and protection of retail investors.

(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?

Yes

No

Other areas:

Don't know/no opinion

¹ ABI, the Italian Banking Association, does not support this position, and believes that an increased threshold of 10.000.000/15.000.000 would facilitate equity offerings of SMEs.



EBF members are strongly in favour of a level playing field in Europe. Gold plating by individual Member States should be avoided. The more harmonisation the better for the European market as a whole.

(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

No

Don't know/no opinion

The EBF does not see the need for including a wider range of securities in scope.

The EBF also believes all securities should be legislated with a harmonised European law to avoid differences in the way markets operate. If we are supposed to have a unique European market all the instruments negotiated in this market should be subject to the same laws and regulations

(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:

Don't know/no opinion

The Prospectus Regime must strike a balance between investor protection and administrative burden on the issuers. The current requirement of a prospectus should in any case not be extended to other types of offers or admissions to trading.

In particular, non-public offerings listed on an unregulated market only (e.g. the open market segments should not be considered becoming subject to any prospectus requirement.

(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



EBF members think that imposing such a requirement for subsequent secondary issuances of the same securities should be considered excessive for issuers with no further benefit for the investor. However the proposed change for subsequent secondary issues would make it possible to draw a clear line between initial public offers as opposed to secondary market transactions.

Since 2003 the existing PD also covers any subsequent public offer. This has led to legal uncertainties notably because of definition problems by drawing the line between subsequent public offers which trigger a prospectus on the one hand and secondary markets activities such as regular trading transactions which do not require a prospectus on the other hand. For this very reason quite similar problems have arisen e.g. in connection with investment advice services related to securities after their first public offer.

Therefore, it would be desirable to return to a clear language and unambiguous previous scope in this regard; (i.e. the obligation to draw up a prospectus should be established in case of a first/initial public offer). This should be set as a general rule. In any case this concept should be implemented in all cases where subsequent public offers of listed securities are concerned. In this respect the issuer is subject to the ongoing reporting requirements under the Transparency Directive as well as obliged to disclose to the public any inside information directly concerning that issuer according to the Market Abuse Directive and respective Market Abuse Regulation.

Given that these ongoing disclosure requirements are designed to ensure that the information necessary to make an informed investment decision is disclosed to the public on an ongoing basis, members see no need for a new prospectus. The initial prospectus plus the subsequent publications under the Transparency Directive as well as the Market Abuse Directive and Market Abuse Regulation provide the full picture of the securities offered or to be admitted as required under Article 5 PD.

If subsequent public offers outside of regulated markets should still be covered by future legislation as well, we consider it particularly important to define exactly in the Directive what is meant by subsequent public offers of the same securities as opposed to any other transaction, investment advice or other activity related to such securities which do not require a further prospectus. It seems to be appropriate that securities with the same security code (ISIN) are considered to be "same securities". Furthermore, it should be clarified that (i) no additional prospectus is required in case of a public offering of securities provided that a Prospectus Directive compliant prospectus has already been approved and that (ii) any offering of securities to the public started on the basis of a valid base prospectus may be continued for one year after the validity of the base prospectus has expired if supplemented with updated information.

(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

The EBF does not have an opinion on the threshold.

EBF members have suggested that for cases of admission to trading of securities that have not been issued as a result of public offerings and that will be fungible with other shares that are already admitted to trading, a simplified prospectus format should be created for admission to trading, based mainly on the description of the transaction / reasons that led to the issuance of new shares and changes to shareholders' structure. The threshold should be increased to 100% and in that case it may be appropriate to file pro forma accounts to reflect the new situation.

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

[] 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

Investors may make a well informed investment decision based on an (updated) prospectus combined with ongoing disclosure requirements set out inter alia by the Market Abuse Directive, the Transparency Directive as well as any security related information contained in the KID. Thus, a timeframe in relation to the prospectus used for the initial public offering should not be stipulated in the revised Prospectus Directive.

Only in the case of a tap issue, the Prospectus should be updated on a yearly basis (and only in relation to Financial Information).

(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

EBF members are of the opinion that any obligation to prepare a prospectus in the context of a listing should be strictly limited to the admission to trading on a regulated market of a stock exchange. There is no "admission" of financial instruments to trading on a MTF as such. According to Article 18(2) MiFID II, MTFs determine on their own the financial instruments that can be traded under their systems. That way they very much facilitate the access to capital markets for issuers. The general obligation to publish a prospectus if an MTF decides to trade



a financial instrument on its systems would therefore burden issuers of financial instruments disproportionately and would negatively affect their market accessibility.

The obligation to publish a prospectus for MTFs will disproportionately burden companies which seek listing in such an environment based on the merits of the ease of admission and reduced costs. The increased risk profile of non-regulated markets is well understood by investors and should be expressly disclaimed within their admission documents. It provides an alternative option for smaller companies and a prospectus requirement will reduce the attractiveness of MTFs as an option for admission to trading with reduced costs and requirements.

(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

EBF members believe that there should be no requirement to publish a prospectus for trading on an MTF.

(13) Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF) 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

No, such an exemption would affect investor/consumer protection

Don't know/no opinion



(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

No

Don't know/no opinion

The EBF believes that, for investor protection reasons, there should be no exemption.

(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

No

Don't know/no opinion

No, at least not as regards wholesale markets. There is a trade-off, between customer protection and market liquidity. The system of exemptions granted to issuers of debt securities above a certain denomination per unit should be maintained.

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

(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

(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



(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

No, the proportionate disclosure regime met its original purpose only in parts. It did not lead to remarkable mitigation. The main problem is the lacking harmonisation of the different disclosure regimes of the Prospectus, Transparency and Market Abuse Directives (Please see synchronisation of disclosure regimes cf. question 19).

(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

The Amending Directive 2010/73/EU in force since 2012 introduced the proportionate disclosure regime with the aim to reduce the administrative burden and costs for companies seeking to raise capital. However, the proportionate disclosure regime is hardly used in practice. The reason for that is that the proportionate disclosure regime's disadvantages are not compensated by its advantages. For example: the proportionate disclosure regime for rights issues does not appear to result in significant cost savings while it results in significant placement restrictions. Hence, it does not appear attractive to issuers, also as it may result in less transaction security.

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

- Yes

- No

- Don't know/no opinion

Yes.

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



Yes. This exemption is used in some Member States.

(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

It should include also cases where the rights issues are followed by a public offer.

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

Some EBF members think that in order to be more effective the information requirements should be further reduced.

Other EBF members are of the opinion that the current regime with its thresholds gives more than enough possibilities for SMEs, and that modification of this regime is not necessary. Further reduction of the information requirements would be undesirable as it would adversely affect investor protection. It should be considered that SMEs have a higher risk profile for investors, and mitigation of these requirements could therefore be viewed critically. Instead even additional protective measures could be considered.

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

(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:

To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive? Please specify:

Other. Please specify: [text box]

Don't know/no opinion

As stated in question 17, the proportionate disclosure regime has not brought what was expected. Therefore we opt for a different approach. Instead of the proportionate disclosure regime the different rules concerning the different disclosure regimes according to the Prospectus Directive, the Market Abuse Regime (Ad-hoc-publicity) and the Transparency Directive should be harmonised and a disclosure regime should be developed where all these elements seamlessly tie into one another without duplication or overlaps.

(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

No

Don't know/no opinion

No.

(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

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

Yes, some EBF members believe that this will enable these companies to have the opportunity to have access to capital markets financing. The higher risk profile of such companies can be communicated to investors through the Prospectus disclosures and risk factors. Information disclosures which seem to affect SMEs such as conflicts of interest and related party transactions can remain at the existing prospectus disclosure level.

EBF members are also of the opinion that additional protection of liability could be afforded to banks for bringing SMEs to market.

(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.

A simplified prospectus for SMEs and companies with reduced market capitalisation could be created if points 11, 21.2.1, 21.2.2, 21.2.3 and 21.2.5 were not included in the Annex XXV of Commission Regulation (EC) No 809/2004.

(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

The EBF believes that it should be possible to incorporate by reference in the prospectus any information that has been published and filed with or approved by the NCA, irrespective of whether it has been filed by virtue of a legal obligation or voluntarily. We cannot concur with ESMA's extremely rigid interpretation of both the Prospectus Directive and the Transparency Directive.



We believe that this also runs counter to the intention of Article 11 and Recital 29 of Directive 2003/71/EC as laid down in Level 1.

Equally, repeating information in the prospectus that has already been published and filed does not support investor protection because it does not enhance transparency. Rather, incorporation by reference allows investors to access all the relevant information and base their decision on it.

Furthermore, it should be clarified that final terms (under a base prospectus) may also be incorporated by reference. This would allow the issuer to continue the related public offering even after the validity of the original base prospectus has expired.

Last but not least, it would be helpful to clarify that translation of documents which have been approved by or filed with the competent authority of the home Member State may also be used for incorporation by reference purposes. It should, for example be possible to incorporate by reference the information contained in an (certified) English translation of a registration document, which has been drawn up and approved in French.

(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

No. From our perspective, the question of whether documents published/filed under the Transparency Directive should at least be subject to incorporation by reference needs to be answered based on a thorough general assessment of the overall concept regarding issuer related information as required by the different relevant directives. At any rate, the incorporation by reference should be an option an issuer may use.

The incorporation by reference could even facilitate the obligation to supplement an existing prospectus, if the issuer has to comply with the disclosure regimes of the Transparency and the Market Abuse Directive.

(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



Yes. The prospectuses duplicate too much information within the document. Concerning streamlining the different disclosure requirements of the Prospectus Directive and the Transparency Directive, it might be a possibility to distinguish issuer related and security related information. The aim would be to create a coherent set of issuer related information necessary for the admission to trading/public offer requirements and the ongoing information requirements under the Transparency Directive on the one hand, and all the security related information with security conditions and possibly further information on the other hand.

It would also be possible to streamline the financial statements of group entities.

Further, there should be no need to supplement a prospectus if the relevant information has already been published/filed under MAD/MAR.

(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

As a basic premise EBF members believe that more reliance can be placed on regulated information disclosed under the Market Abuse Directive and the Transparency Directive. Removing the possibility to incorporate by reference would mean that issuers and lead managers are subject to greater liability. Additionally, it should be considered to allow the incorporation by reference of specified future information. This would limit the need for so many base prospectus supplements to be produced to incorporate interim financial information, and by so doing improve market efficiency and reduce costs.

(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

The EBF has not identified any specific measures, however we appreciate the Commission's intention to streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive while taking into account the different concepts underlying these directives.



(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

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

The EBF approves the Commission's assessment that the summary regime has not fully achieved its objectives of being short, simple, clear and easy to understand for investors. The accumulation of disclosure requirements stemming from the Prospectus Directive and the PRIIPs regulation will lead to the duplication of information and we see a need for reassessment in this respect (option (a) above).

EBF members believe that the summary regime has not proved very useful or been of particular assistance to retail investors and recommend removing it.

Moreover with the introduction of the PRIIPS regulation, additional information in the form of a KID will have to be provided for those products falling within this regime. This duplication could manifest as a source of overload to investors and in the end obviate the effect initially intended of having investors read such information.

In case this approach is not adopted and it is deemed that a summary should continue to be required, we strongly recommend that the summary should be strictly limited to the essential characteristics of, and risks associated with, the issuer.

Further, should the summary not be abolished, we see a need to reassess the rules regarding the summary of the prospectus in respect of the interaction with the final terms in the base prospectus necessary (option (c) above). In our opinion, using final terms should be more flexible. It should be up to the issuer if he wants to use a "Tick-box" system or issues full terms and conditions. This would facilitate the preparation of the prospectus and facilitate the checking that the terms and conditions in the final terms (in the "Tick-Boxes") do not differ from what has to be sent to the clearing systems. It could just be copied.

(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:



b) By eliminating the prospectus summary for those securities.

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:

e) Don't know/no opinion

EBF believes option a) is not practical, given that the information provided in the respective documents is not identical.

In Q27 EBF members expressed their opinion that a summary should be eliminated in all cases irrespective of whether a KID is required. It should also be noted that the purpose of the KID is to allow retail investors to compare investment products. The investment decision of investors should remain to be based on the information contained in the prospectus and we therefore do not believe that the two concepts should be joined in this regard.

Other EBF members support option c) as a good suggestion for alignment of European Regulation.

(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]

No

Don't know/no opinion

The EBF considers the tendency towards lengthier prospectuses a real issue. The structure of prospectus and the obligation to include specific information might lead to investors being overwhelmed and therefore not reading prospectuses. This is not in line with the aim to achieve a high level of investor protection. However, the length of the prospectus depends on the type of issuer, and the issuer's economic situation, as well as on the type and characteristics of the securities to be issued. We therefore consider, that the use of qualitative criteria in order to enhance analysability and comprehensibility of prospectuses would be more appropriate than a limitation of the number of pages. Introducing a maximum length to the prospectus would jeopardise investor protection either by limiting the information and explanations contained in a prospectus or by forcing issuers to provide rather condensed and complex information.



One part of the prospectus that has consistently become lengthier is the risk factors section. Issuers in an attempt to cover all possible risk factors end up with a lengthy section. However a limitation on the length can affect the wording which can become more abstract and condensed or more complicated. A mutually agreed acceptable wording for standard risk facts can act in favour of both investors as well as the issuers.

The revision of the Prospectus Directive should be used to optimise the minimum information to be included in a prospectus. Due to the significant overlapping with the Transparency Directive, the Market Abuse Directive and the PRIIPs Regulation, issuer and product related information as well as (parts of) the summary can be considered redundant.

(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?

There should not be a limit on the prospectus length. (Please see response to Q29)

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

	Yes	No	No opinion
the overall civil liability regime of Article 6		X	
the specific civil liability regime for prospectus summaries of Article 5(2)(d) 20 and Article 6(2)		X	
the sanctions regime of Article 25		X	

The Prospectus Directive as currently in force leaves the specific manifestation of the liability and sanctions regime to the Member States. For the sake of both clarity to market participants (including investors) about the different regimes in place, and a level playing field among issuers the EBF would highly appreciate a common framework to address administrative, criminal, civil and governmental liability.

Such common framework does not necessarily require a full harmonisation of existing liability and sanctions regimes.

We are well aware that any prospectus related administrative, criminal, civil and governmental liability is deeply embedded in the legal system of each Member State and closely interacts with other liability and sanctions regime, e.g. advisory liability, misselling etc., a full harmonisation would imply a disproportionate interference with the national system. On the other hand divergent sanction regimes across Member States may generate distortive markets. Therefore, in order to achieve a level playing field among issuers we need further harmonisation of all legal sanctions by way of minimum harmonisation which sets forth principle rules. It should be clarified that any liability attached to this prospectus follows the laws of the EU Member state under which the securities are issued.



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

Yes

No

Don't know/no opinion

Yes: since there are no uniform liability rules for prospectuses, uncertainties regarding liability in individual EU member states form entrance barriers to such markets. Therefore, we recommend a further harmonisation of the liability framework applicable throughout Europe and refer to our answer in question 31.

(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.

Yes

No

Don't know/no opinion

The way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses is still subject to material differences. This has in particular been supported in ESMA's "Prospectus Directive: Peer Review Report on good practices in the approval process" (ESMA/2012/300 – the "Peer Review"), published in 2012.

While some competent authorities take a rather formalistic approach, other competent authorities, in consideration of the investor protection objective of the Prospectus Directive, take a more pragmatic and practical approach.

We are of the opinion that a pragmatic and practical approach by the national competent authorities when assessing the completeness, consistency and comprehensibility of prospectuses is important. Furthermore, the six good practices described in the Peer Review must be considered as being crucial from an issuer's, but also from an investor's perspective.

(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

Don't know/no opinion

Yes. As set out under Question 33, the EBF thinks that that a pragmatic and practical approach by the national competent authorities is most important in order to balance the investor protection objective of the Prospectus Directive and the issuer's needs for flexibility.



Prospectus approval processes take a lot of time and are extremely costly. It would be extremely helpful, if national competent authorities (NCAs) could return clear comments in writing to the issuer of the prospectus as part of the approval process to make the entire process more efficient.

It would also avoid non-approval if the NCAs could refer in their comments to the relevant provisions of prospectus law that they believe have not been complied with, and could provide the reasons for their decision. This would also help to find solutions for problem areas more quickly and streamline the prospectus review process.

A minimum basic set of criteria should be applied uniformly by all the NCAs. These criteria may, for instance, state a maximum divergence on NCA's admission costs, require NCA's comments in writing, and establish maximum periods to manage the process steps and requirements for online availability.

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

Yes

No

Don't know/no opinion

EBF members do not think that there is a benefit in making the scrutiny and approval procedure more transparent to the public, in particular not in consideration of investor protection.

The EBF considers the cooperation between the issuer and the authority responsible for the admission more important. In this respect more transparency would be very useful (see response to Q34). More transparency towards the public regarding the approval process however, does not create any added value. By contrast, it would rather distract the public's attention from the final prospectus and may create uncertainties with regard to deviations between earlier drafts and the final version.

(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

No

Don't know/no opinion

The EBF would like to point out that – based on the existing Prospectus Directive –marketing activities by the issuer are already permitted even though the prospectus is not yet approved; confer to that effect Art 15 (2) of the PD “Advertisements shall state that a prospectus has been *or will be published* and indicate where investors are or will be able to obtain it.”



This should be retained, provided that there does not exist a subscription possibility for investors and an appropriate disclaimer has been provided for. This is already a current practice in EU member states. Potential investors are informed about a future public offering. For the actual public offering however an approved prospectus is absolutely mandatory.

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

- 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 investor protection.

EBF members are in favour of an ex ante review of prospectus (i.e. before the offer or the admission to trading takes place – option a) or b). This approach would preserve the investor's and issuer's protection. The revision should be done ex-ante to ensure the documentation is correct.

Other EBF members prefer a risk-based approach as set out under b). This would be particularly desirable for frequent issuers that are already listed. They could simply file prospectus instead of requiring an approval of each and every prospectus, similar to the streamlined process for WKSIs (well-known seasoned issuers) in the US. The review of a sample of prospectuses (in relation to a product classification) would allow for market efficiency while ensuring a high level of investor protection. In any case with such an approach it is crucial for the issuer to have the right to initiate an approval process in relation to a specific prospectus and to have it approved.

Regarding the concept set out under d) (review of "a sample of prospectuses ex post"), it would be important to clarify that in a scenario where a prospectus is ex post reviewed and not approved by the competent authority, any ongoing offerings under this prospectus must be stopped without undue delay (ex nunc), but that any prior transactions remain valid and legally binding. It should be clarified that any liability attached to this prospectus follows the laws of the EU Member state under which the securities are issued.

(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.



Yes

No

Don't know/no opinion

It is understood that the dual role of national competent authorities (with respect to regulatory approvals) and of stock exchanges (with respect to listings) is of benefit to the extent that the review performed by each party serves a different purpose. Whilst regulators ensure compliance with the directive, it is felt that the stock exchange review performs a more qualitative test.

However, EBF members note that the large differences between listing requirements at national level are not consistent with the principles of the CMU and the harmonisation of listing rules would be a positive step in this regard.

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

Yes

No

Don't know/no opinion

The EBF considers the passporting mechanism of prospectuses as basically functioning in an efficient way. Nevertheless, some improvements in terms of consistency would be useful. For example it should be clarified that competent authorities (of the host Member State) in line with Art. 17 para. 1 of the Prospectus Directive shall have no right to put into question the certificate of approval or the approved prospectus nor to stipulate any additional approval or administrative procedures to the offering itself. Any such additional requirements related to the offering of securities in the relevant host Member States, e.g. the requirement to file a prior notification, in practice jeopardises the efficiency of a single passport.

The EBF would like to prohibit gold-plating of the prospectus regime, as this has caused problems within various jurisdictions.

(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



Yes, the notification procedure between national competent authorities of home and host Member States as set out in Article 18 should be simplified.

One possible concept might be that an issuer simply indicates vis-a-vis the competent authority of its home Member States in which other EU Member State the securities shall be publicly offered, without any involvement of the competent authorities of the host Member States. To implement such simplification, we propose to establish an integrated EU filing system / central information storage supervised by ESMA. Any prospectus related information, e.g. the prospectus itself, the certificate of approval and any effected passporting will have to be reported by the national competent authority to ESMA and fed into the database (either by the national competent authority, ESMA or the relevant issuer).

Such central information storage, similar to the US EDGAR database, would not only be helpful for investors, but would enable the relevant (host) Member States to monitor any passporting of (base) prospectuses into their jurisdictions and to access any related information. ESMA should for these purposes also clarify that any such filing of a passporting request by an issuer and of the related documents constitutes a notification to the relevant host Member States within the meaning of Art. 18 of the Prospectus Directive.

(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	Yes		The use of the base prospectus facility should be allowed for all types of issuers and issues since there doesn't seem to be any investor protection reason for the limitations of Article 5(4)(a) and (b)
b) The validity of the base prospectus should be extended beyond one year		X	
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	Yes		
d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible	Yes		



for its components to be approved by different NCAs			
e) The base prospectus facility should remain unchanged	Yes		We don't see any need to change the base prospectus facility other than described in this response to the Consultation paper
f) Other (please specify)	There are concerns on the current disclosure regime of risk factor sections in a base prospectus. By their nature, such sections must be written in general language and general terms at the time when the base prospectus is drawn up. Therefore, they sometimes do not serve its purpose sufficiently in the course of a later issue. In order to address the particular risk of an instrument more specifically more flexibility should be granted by allowing drawing up specific risk factors later on in the final terms. This would also be to the clear advantage of investors. However, issuers should not be allowed to include new risk factors in final terms but to specify the existing ones in the course of a concrete issue under a base prospectus.		

The current regime of the Prospectus Directive stipulates a single time limit for the base prospectus (and any registration document) of 12 months after its approval for offers to the public or admissions to trading on a regulated market, provided that the (base) prospectus is completed by any supplements required pursuant to Article 16 of the Prospectus Directive. Since the offer of securities under such base prospectus requires a valid prospectus it cannot be offered any more once the prospectus has expired.

In practice, this leads to the situation where securities issued under a base prospectus shortly after its approval date can be offered to the public over a long period of time (almost one year) while securities issued shortly before the expiration of a base prospectus may only be offered for a short period of time.

This is why we are of the strong opinion that a revised Prospectus Directive should allow that any offers of securities started on the basis of a valid base prospectus may be continued (at least for a certain period of time) even if the period of validity of such base prospectus lapses after the initial offer. This would allow issuers to continue the related public offering even after the validity of the original base prospectus has expired.

Taking as a basis the expiration period for a base prospectus under the current Prospectus Directive (12 months) and allowing for a continued offer of securities thereunder for another



12 months, this would result in an overall timeframe for the offer of securities of 24 months at a maximum.

Following this approach, investor protection in our view would not be negatively affected, since any prospectus will still have to be supplemented and /or (depending on the future concept of the Prospective Directive) any information necessary under the Transparency Directive and the Market Abuse Directive will still have to be provided by the issuer.

(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?

EBF members support the concept of a flexible tripartite regime, and recommend clarifying that also a base prospectus may be prepared as a tripartite document - even if the registration document and the securities note were approved by different national competent authorities.

According to the interpretation of the current text of the Prospectus Directive by the European Commission and ESMA, only stand-alone prospectuses can be prepared on the basis of a tripartite prospectus. ESMA in December 2013 formed its view that the overall prospectus regime does not provide for the necessary legal framework for the possibility of a tripartite prospectus. Thus, issuers engaged in multiple issuance programmes using the base prospectus, which practically are the most frequent issuers of securities, have no possibility to make use of the tripartite format.

The position taken by ESMA and the European Commission does, in our view, clearly contradict the explicit intention of the European Parliament to extend the possibility to use a tripartite document to the base prospectus.

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

- 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.

EBF considers it to be a clear benefit that issuers have the freedom to choose the most experienced competent authority amongst the Member States, where the securities are to be offered.

Furthermore there is no obvious reason to determine the denomination threshold per unit of EUR 1,000, especially not with a view to investor protection. Issuers should be allowed to



choose their home Member State even for non-equity securities with a denomination per unit below EUR 1,000.

(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)?

Yes

No

Don't know/no opinion

Yes. Art 14 (2) (a) should in any case be removed as it appears not to be used in practice anyway.

The options to publish a prospectus in a printed form and by insertion in a newspaper are hardly used in practice and have lost their practical relevance. Hence EBF is of the opinion that both options should be removed in the revision of the Prospectus Directive since investor protection is still achieved by providing a paper version upon request and free of charge.

(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)?

Yes

No

Don't know/no opinion

Some EBF members support the idea of a comprehensive all-electronic system, which would operate as a unique entry point for issuers and investors. Such central information storage would enhance investor protection by simplifying investor's access to information on issuers and securities on one hand and foster transparency and comparability regarding the prospectus and the approval as well as the passporting process on the other hand. Each respective national regulator should still be responsible for the actual approval process. The system should only act as a storage and procedure mechanism where there is a unified procedure for filing with the relevant regulator. This procedure will ensure integration of processes and procedures while maintaining the national regulator's authority.

Although there is general support for the creation of a single database, some EBF members support such a system only for publication purposes, not for approval processes because a common repository may facilitate the incorporation by reference for example in relation to some types of risks. They believe that there are important advantages to maintain national regulators as entities responsible for prospectus approval, namely:

- National regulators tend to be more informed on the country situation and the specificities of the national issuers, so the prospectus tends to contain more relevant and complete information which assures increased investor protection;



- The prospectus may continue to be filed in the national language;
- The use of domestic legal advice may translate into lower costs for issuers.

However other EBF members believe that such a new filing system would rather create further costs than be clearly beneficial for retail or institutional investors. According to the existing PD investors must be provided with prospectuses both via publication pursuant Art. 14 PD and by filing with the NCA in all markets which are addressed by a public offer.

Furthermore, from the issuer's perspective such an integrated EU filing system would neither facilitate filings nor prospectus approvals because issuers would still have to contact their NCA directly in the course of the approval of the prospectus as long as national authorities (and not the filing system or ESMA) acted as competent authority for the approval of the prospectus.

However, if such an additional database were to be implemented it should be set up at the lowest possible cost. For this purpose, both the existing OAM and the forthcoming EEAP infrastructure (see ESMA Draft RTS on European Electronic Access Point (EEAP), 19 December 2014, ESMA/2014/1566) should be used, rather than creating a new single PD system. Therefore, prospectus documentation should simply be considered as regulated information according to the Transparency Directive.

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

Easy and safe access and harmonised for all countries. Controlled access to issuers and underwriters responsible for drawing up the prospectus and easy and streamlined procedures for the filling and communication with the relevant authorities.

(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.

Yes

No

Don't know/no opinion

The EBF supports the creation of an equivalence regime in the Union for third country prospectus regimes, provided that the relevant third country prospectus regime considers the European prospectus regime as being equivalent to their relevant standards and requirements. It should provide equal information with the information that an EU issuer is obliged to provide.

(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)?

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

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.

(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

Yes, the term "offer of securities to the public" needs a uniform definition across the Union. This definition should include the investor's actual ability to order or subscribe for the offered securities. This would be consistent with the long-standing practice for example in Germany and we believe it's a useful clarification.

"Offer of securities to the public means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to deliver a legally binding declaration to purchase or subscribe to these securities."

b) "Primary market" and "secondary market"?

Yes

No

Don't know/no opinion

Yes.

Although a common understanding of the terms "offer of securities to the public", "primary market" and "secondary market" may facilitate cross border offerings, the varying concepts of distributions / offers of securities as well as of "primary market" and "secondary market" across EU Member States will make it difficult to agree upon a stricter 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: []

Don't know/no opinion



1. Supplements to prospectuses

We think that the revision of the Prospectus Directive should be used to introduce the possibility to modify existing pay-offs in or add additional pay-offs to an approved base prospectus by way of a supplement. Frequent issuers of securities would be allowed to reflect product innovations and changing investors' demands to the product range covered by a base prospectus, e.g. by a minimum repayment or a cap to the pay-off.

Under the current wording of Art 16 (1) of the Prospectus Directive "every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities [...] shall be mentioned in a supplement to the prospectus."

Some national competent authorities take the view that additional pay-offs may not be added and existing pay-offs may not be modified using a supplement since these changes do not represent "significant new factor, material mistake or inaccuracy relating to the information included in the prospectus".

In our view, the possibility to amend an existing prospectus by way of a supplement would reduce inefficiencies and costs for issuers while investor protection is fully maintained since each supplement is to be approved by the competent authority.

In other respect, the EBF does not see the need to supplement an existing prospectus, if the public is already informed due to the fulfilment of the requirements of the Transparency and Market Abuse Directive.

2. Issuer related Information

Following our conceptual understanding that, due to the significant overlapping with the Transparency Directive, any issuer related information published in accordance with the Transparency Directive will not have to be repeated in the prospectus, we take the view that a supplement to the prospectus will not be necessary in case of an ad-hoc publication in accordance with Article 6(1) of the Market Abuse Directive (cf. our response to Question 25 above).

3. Investor's right to withdrawal

We are of the strong opinion that the revision of the Prospectus Directive should be used to clarify that investors shall only have the right to withdraw their acceptances "provided that the information contained in the supplement is detrimental to their assessment of the issuer and the securities". The current wording of Art 16 (2) of the Prospectus Directive is in our view too strict as it does not limit the investor's right to withdrawal to cases where the information detrimentally affects the assessment of the issuer and the securities.



Despite that investor's right to withdrawal is hardly used, investors could (mis-)use events positively affecting the issuer's and the securities' assessment, to withdraw for reasons completely unrelated to the information constituting the object of the supplement like results which are better than expected by the markets (e.g. as published in quarterly financial reports).

4. Profit estimates – waive of requirement

We are of the opinion that it should be considered in the context of the revision of the Prospectus Directive to waive the requirement for a report prepared by independent accountants or auditors for a profit estimate, stating that in the opinion of the independent accountants or auditors the estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit estimate is consistent with the accounting policies of the issuer (cf. item 8.2. of Annex XI of the Prospectus Regulation (Minimum Disclosure Requirements for the Banks Registration Document (schedule))).

The added value of such report is, however, in our view usually rather limited (for investors) and we consider a confirmation given by the issuer (being responsible for drawing-up the prospectus) for these purposes as being generally sufficient. This holds particularly true since profit estimates are by nature more certain than profit forecasts. Consequently, we consider the requirement for a report prepared by independent accountants or auditors for a profit estimate as being excessive on the issuers, while not enhancing the investor protection level sought.

(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

(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

Further to our responses and conceptual considerations, EBF members have identified the following issues in the current Prospectus Directive's provisions which we think may cause the prospectus framework to insufficiently protect investors:



1. Limitation on content of final terms / repetitions

In accordance with Article 26 para. 5 of the Prospectus Regulation, the issuer, the offeror or the person asking for admission to trading on a regulated market may only include any of the additional information in the final terms which are set out in cf. Annex XXI of the Prospectus Regulation.

We would appreciate if, in the course of the revision of the Prospectus Directive, it would be considered to allow that information contained in the base prospectus may be repeated in the final terms or that further information may be given in the final terms. This would enable issuers to, in particular, properly address peculiarities in national market standards and (retail) investors' expectations.

2. Categorisation and Terms and Conditions

Furthermore, we would appreciate if it would be clarified in the context of the revision of the Prospectus Directive that – notwithstanding the categories set out in Annex XX of the Prospectus Regulation, which determine the degree of flexibility by which the information can be given in the base prospectus or the final terms (cf. Article 2a of the Prospectus Regulation) – issuers may decide to fully reproduce the relevant terms and conditions in the final terms.

