Consultation on the Review of the Prospectus Directive

18/02-2015 – 13/05/2015

- Feedback statement on the public online consultation –

I. Synopsis of the responses[1]

1. Exemption thresholds

Concerning the EUR 5 000 000 threshold of Article 1(2)(h), the majority of respondents believe that the exemption threshold should remain unchanged because it already strikes an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers, or because there is no indication that an adjustment is necessary. According to them, reducing barriers to access capital markets can be better achieved by means other than raising the EUR 5 000 000 threshold. Besides, the diversity of national capital markets across EU, including in terms of the typical size of offers to the public, represents a challenge to setting a one-size-fits-all exemption threshold: In many Member States with small financial markets, if the EUR 5 000 000 threshold were to be increased, a considerable number of offers of securities might fall outside the scope of the Prospectus Directive and this might affect investor protection if these Member States did not have in place national disclosure regimes. Many respondents also stress that the benefits that an upward adjustment of the threshold would provide to issuers would not outweigh the negative effects for retail investors (prospectus burden for smaller issuers and smaller offers increases the risk of financial scandals). Lastly, many contend that the problem is not the EUR 5 000 000 threshold in itself, but the lack of harmonisation throughout the EU and the flexibility given to the Member States to require a prospectus for offers below that threshold.

A minority group of respondents (essentially trade associations and some market operators) supports raising the threshold to considerations **between EUR 7 500 000 and EUR 50 000 000**, with EUR **10 000 000** most frequently cited as appropriate. Their main argument is the disproportion of the costs to prepare a prospectus as a percentage of the size of the offering, for offerings of small size. Below EUR 10 000 000 or EUR 20 000 000, a significant percentage of the total proceeds of the offering are used to pay transaction costs as opposed to growing the business. The time and costs involved in preparing a prospectus are prohibitive

[1] Please note that when referring to the "majority" or "most respondents" when analysing the "stakeholder views", reference is made only to the respondents from each category of stakeholders. It should be noted that, in most of the questions of the consultation, only half of the respondents expressed a view on the respective questions. Therefore, these "largest numbers" are far from being an absolute majority of respondents.

for small companies precluding them from seeking capital from the public and leaving no alternative but to seek funding from banks or private equity funds. A relatively modest increase in the threshold would give these companies greater flexibility. Some highlight the fact that if more and larger offerings/issues can be made without a prospectus being required, the need for other forms of investor protection (such as the suitability test, minimum financial commitment per retail investor) will become more important to ensure that investors are adequately protected. National legislation could provide investors with such protection.

Concerning the 150 persons threshold of Article 3(2)(b), more than half of respondents is in favour of the status quo. According to some respondents, 150 persons is already a large, in view of the underlying concept of "restricted circle of non-qualified investors", and increasing the threshold would seem arbitrary. Less than half of respondents is in favour of raising the threshold to a higher number of persons, with 300 or 500 persons being the most frequently cited thresholds. As the current threshold may limit many issuers willing to conduct private placements, an increase to 300 people is perceived as helpful while being modest enough not to undermine the characteristics of a private placement. A higher threshold of **300 to 500 persons** could also benefit the development of crowdfunding as the number of investors on some of the most popular platforms in the EU can range from 50 to 400 persons. Among supporters of a higher threshold, some highlight that the appropriateness of the current "150 persons" threshold differs according to the type of securities concerned. As an example, it may be perceived as sufficient for an equity offering as the number of investors concerned is generally less than 150 when the transaction is not intended to be an offer to the public. The situation is quite different when it comes to the distribution of structured products (other than to the public) which generally concerns a much larger number of investors.

Concerning the ability of Member States to extend the Prospectus Directive requirement to offers of a consideration below EUR 5 000 000 (subject to the threshold of Article 3(2)(e)), a clear majority of respondents support the introduction of harmonisation in those areas currently left to Member States' discretion, and would support removing the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000. The view often expressed is that instead of seeking to raise the EUR 5 000 000 threshold higher, there would be greater merits in ensuring harmonisation below it. The existing divergences are seen as an impediment to cross-border financing and to the development of crowdfunding in the EU. They are considered to be contrary to the Capital Markets Union objectives. Ensuring maximum harmonisation of the prospectus regime is a prerequisite for further development of the Capital Markets Union. Removing the current ability of Member States to require a prospectus below EUR 5 000 000 will ensure a consistent application of the exemption across all Member States, and will allow issuers from each jurisdiction to operate on a level playing field.

Conversely, a minority of respondents is of the view that Member States should retain the ability to adjust the exemption threshold of the Directive to local circumstances. Market sizes vary between Member States and consideration must be given to proportionality concerns, and hence the minimum harmonisation level of the Directive should be maintained. Member State discretion below the EUR 5 000 000 threshold is a recognition that retail markets are essentially national markets with their own characteristics. Member States should be left with

the flexibility to deal with the protection of retail investors for offers below EUR 5 000 000 as they are best placed to find the correct balance between investor protection and market access nationally, and such offers are never made on a pan-EU basis.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: Most competent authorities are in favour of keeping the thresholds of Article 1(2)(h) (EUR 5 000 000) and Article 3(2)(b) (150 persons) unchanged. This option is claimed to be the most favourable since there are divergent markets in different Member States and the current threshold strikes an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers.

Concerning the 150 persons threshold of Article 3(2)(b), some competent authorities note that this threshold is difficult to monitor in practice, particularly, in the debt capital markets space. It is impractical as it is hard to prove that the offer was addressed to fewer than 150 persons. For that reason, issuers rely more on the ability to use the exemptions set out in Article 3(2)(c) and (d) due to the difficulty in determining whether or not the threshold of 150 persons has been exceeded.

Most competent authorities consider that Member States should retain the ability to adjust the exemption threshold of the Directive to local circumstances. Market sizes vary between Member States and consideration must be given to proportionality concerns, and hence the minimum harmonisation level of the Directive should be maintained. Member State discretion below the EUR 5 000 000 threshold is a recognition that retail markets are essentially national markets with their own characteristics. Member States should be left with the flexibility to deal with the protection of retail investors for offers below EUR 5 000 000 as they are best placed to find the correct balance between investor protection and market access nationally, and such offers are never made on a pan-EU basis. ESMA considers that *"[the] flexibility to treat smaller offers in a more tailored manner at the national level benefits both issuers and investors alike".*

Crowdfunding organisations: A majority of crowdfunding organisations consider that the EUR 5 000 000 threshold of Article 1(2)(h) should remain unchanged. There is a very strong support for this threshold within crowdfunding professionals, as it is consider to be well-calibrated for crowdfunding due to the fact that the size of the offers on these platforms is usually between EUR 50 000 and EUR 1 500 000.

A number of crowdfunding organisations favoured repealing considerably increasing the "150 persons" exemption. A higher threshold of 300 to 500 people could benefit the development of crowdfunding as the number of investors on some of the most popular platforms usually ranges from 50 to 400 persons.

Almost all contributors recognize the importance of harmonisation of the prospectus requirement for offers of securities below EUR 5 000 000 according Article 1(2)(h). A strong emphasis was made on the existing divergences across Member States which constitute an impediment to cross-border financing, and are contrary to the Capital Markets Union objectives. This is especially true for crowdfunding as the diversity of domestic regulations is a barrier to the development of crowdfunding equity and non-equity within Europe, as platforms and SMEs are obliged to consider each Member State as a domestic market in respect of the Prospectus requirements and to carry out a case-by-case analysis to expand their activity to issuers based in another host country. The key point to harmonize and unleash the potential of crowdfunding in the European Union is that all countries adopt the same prospectus requirement.

Non-governmental organisations[2]: Most of respondents supported raising the threshold to considerations, with EUR 10 000 000 as most frequently cited as appropriate. A relatively modest increase in the threshold would give greater flexibility.

Stock exchanges: A majority of stock exchanges were in favour of raising the EUR 5 000 000 million threshold to EUR 10 000 000 and the 150 persons threshold up to 300 persons. Opinions on whether Member States discretion should be reduced were divergent. Some contributors highlighted that more harmonisation would promote cross border SME listings. Conversely, some stock exchanges argued that discretionary powers of Member States should be kept as flexibility is desired.

Investors' associations: A majority of investors' associations (including FSUG) consider that an adjustment of the thresholds is not necessary. Their approach is that the benefits that an upward adjustment of the threshold would provide to issuers would not outweigh the negative effects for retail investors. Some respondents warn against raising the threshold further as it could negatively affect the credibility of financial markets as alleviation of the prospectus burden for smaller issuers and smaller offers increases the risk of financial scandals.

As regards to harmonisation, a majority of respondents support the introduction of harmonisation in those areas currently left to Member States' discretion as the existing divergences are seen as an impediment to cross-border financing, and are contrary to the Capital Markets Union objectives.

Consultancies and law firms: A vast majority of respondents supports raising the thresholds up to EUR 10 000 000 and 250 persons respectively. This would remove the prospectus requirement for many more SMEs without being of detriment to investors on a macro level across the EU. Some stakeholders also support option 3 (reducing Member State discretion) claiming that a common approach should be applied across the EU to operate on a level playing field.

Companies, SMEs, micro-enterprises, sole traders: The respondents' views are divided: some express the view that the threshold should remain unchanged because it already strikes an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers, or because there is no indication that an adjustment is necessary and some are in favour of raising the thresholds. Between those in favour of raising the thresholds, a majority supports the introduction of harmonisation in those areas currently left to Member States' discretion. They consider that removing the current ability of Member States to require a prospectus below EUR 5 000 000 would ensure a consistent application of the exemption across all EU Member States, and would allow issuers from each jurisdiction to operate on a level playing field.

According to one contributor, competent authorities should not be allowed to introduce gold platting provisions or additional disclosure requirements for the offering of securities or admission to regulated markets. The divergent national provisions, such as domestic regulations to require a (simplified) prospectus for offers of securities below the EUR 5 000 000 threshold, have had a negative effect on the access to capital for companies in general and SMEs in particular.

Financial industry: the opinions are divergent between the first three options. However, there is a large support for raising the thresholds considerably, from 150 persons to 500 or even 1000 persons and from EUR 5 000 000 to EUR 10 000 000, EUR 50 000 000 or even more (option 2). Opinions are also split regarding reducing MS discretion (option 3).

As some competent authorities, most industry associations note that the 150 persons' threshold is difficult to monitor in practice, particularly, in the debt capital markets space. It is impractical as it is hard

[2] This interest group includes different stakeholders associations ranging from employee representation to public accountants representation.

to prove that the offer was addressed to fewer than 150 persons. For that reason, issuers rely more on the ability to use the exemptions set out in Article 3(2)(c) and (d) due to the difficulty in policing whether or not the threshold of 150 persons has been exceeded.

2. Exemption for "secondary issuances" under certain conditions

A very large majority of respondents agreed 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. The rationale is that respondents do not see a need for full-blown prospectus for secondary issuances of securities listed on a regulated market, if the Market Abuse Regulation and the Transparency Directive information are published and important information is thus easily accessible to potential investors. Some are of the opinion that no listing prospectus should be required at all for secondary issuances, and for public offers a lighter proportionate disclosure regime should be available. However, many respondents do not want to lift requirements to disclose the relevant information on the transaction, its impact on the issuer and the relevant risk factors; also the requirement to incorporate a reference to recent announcements made by the issuer to the market should be retained in their view. Existing, more flexible regimes in Member States as France and third countries such as the United States, Canada and Australia are mentioned as best practice example by respondents, allowing issuers/offerors to prepare better for upcoming issuances and so to gain access to markets faster when they see the need for it.

Overall, a majority of respondents was in favour of altering Article 4(2)(a) Prospectus Directive to broaden the exemption: the option preferred by respondents was that the exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued, alternatively respondents argued for raising the threshold of 10% to 20% (fewer supported 25%). Respondents also raised the issue that in a capital increase, the issuer should have to provide information about the use of proceeds and the expense of the offering as this information cannot be obtained by potential investors from other sources. On the question whether an exemption for secondary issuances were to be made conditional to a full-blown prospectus having been approved within a certain period of time, most respondents do not think such a requirement is necessary. Those respondents who are in favour suggested time frames from one to five years; on average to 2.5 years.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: All contributors agree that the obligation to draw up a prospectus should be mitigated or lifted for "secondary issuances" of the same securities. A majority of them is in favour of modifying Article 4(2)(a) of the Prospectus Directive by raising the threshold of 10% to 20%, some even mentioned 50%. Several contributors' mention that the regime for secondary issuances should be simplified taking into account the Market Abuse Regulation and the Transparency Directive.

Crowdfunding organisations: This issue was hardly addressed by crowdfunding organisations.

Non-governmental organisations: Almost all contributors favour the introduction of a lighter regime for subsequent secondary issuances. Only one respondent do not favour as such regime may be used as a vehicle to benefit intentionally from reduced prospectus requirements.

The most favoured option to amend Article 4(2)(a) of the Prospectus Directive is that the exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued.

Stock exchanges: Most stock exchange operators agree on the creation of a lighter regime for secondary issuances. In order to amend Article 4(2)(a) of the Prospectus Directive, many favour the option to raise the dilution threshold from 10% to 20% or even up to 33% to provide listed companies with more flexibility. The most elaborated proposals are as follows:

- Some argued that in a capital increase, the issuer should have to provide information about the use of proceeds and the expense of the offering as this information cannot be obtained by potential investors from other sources or specific information about the offer, the essential characteristics of the securities, and the major risks associated with the investment.
- Canada is mentioned as a good practice example. The Toronto Stock Exchange does impose certain rules relating to the listing of securities issued without a prospectus (i.e. by private placement) for example, relating to market price discounts and the requirement to obtain shareholder approval if the aggregate number of shares to be listed is greater than 25% of the shares outstanding (the "25% anti-dilution limit"); however, no prospectus or prospectus exemption is required. In certain Member States, the 25% anti-dilution limit is likely not required because company law restricts the number of shares that can be allotted without shareholder approval and grants pre-emption rights.
- Several contributors mention the need to streamline the Prospectus Directive in this respect, with the Market Abuse Regulation and the Transparency Directive.
- One respondent encourages ESMA to work with the International Organization of Securities Commissions (IOSCO) to further promote such approach internationally, especially with the US authorities, where many issuers also chose to offer their securities as part of their further issues.

Investors' associations: This issue was hardly addressed by investors' associations.

- One contributor believes that it is not necessary to publish a new prospectus for secondary issuances which take place within 3 years after the Initial Public offering (IPO) and do not involve more than 10% of the shares that have already been issued. However, in any case, relevant information updates should be made available and if any (positive or negative) material changes have taken place that might have an impact on the (retail) investor’s investment decision or meet the standard of price-sensitive information, a new prospectus should nevertheless be published and approved ex ante. A proportionate disclosure regime might be applied to this new prospectus and incorporation by reference should be facilitated.

Consultancies and law firms: A large majority of respondents support the proposal to mitigate or lift the obligation to draw up a prospectus for secondary issuances. Amongst those in favour of amending Article 4(2)(a) there is almost no support for raising the threshold.

- A number of contributors mentioned the US Well-known Seasoned Issuer (WKSI) system as a good practice for a lighter regime, but highlighting that no mandatory annual registration document should be introduced in the EU.
- Prospectus Directive should further strengthen the concept of incorporation of already published information by reference and adopt an EU-wide electronic filing system for such information (similar to the EDGAR filing system in the US). This should make prospectuses shorter, easier to understand and less repetitive.
- Provided that an issuer has complied with its ongoing filing/disclosure obligations under the Prospectus Directive/Transparency Directive, shareholders should have sufficient publicly available information on the issuer for a secondary issuance without the need for a full prospectus. A shorter prospectus, perhaps with risk factors and working capital may suffice.

Companies, SMEs, micro-enterprises, sole traders: Most of respondents agree that 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. One respondent mentions Canada as a good practice example for the creation of a lighter regime. In Canada, the review period for a short form prospectus is generally three working days and an offering can generally be completed in approximately three weeks.

There is however a very small minority of respondents against creating an exemption/ a lighter regime.

Financial industry: A large majority of industry associations favours the creation of a lighter regime for secondary issuances. Many contributors do not see the need for a full-blown prospectus for secondary issuances of securities listed on a regulated market, if the same information is already published according to the Market Abuse Regulation and Transparency Directive. Some consider that a prospectus should not be required at all for such secondary issuances. Alternatively, some contributors also support raising the dilution threshold up to 20% to broaden the exemption.

3. Scope extension to admission to trading to MTFs

A large majority of respondents opposes the extension of the requirement to draw up a prospectus for the admission to trading on MTFs. They consider that the current system works well and has been proved to be a success precisely because the prospectus is not required on MTFs and MTFs operators require a disclosure document that seems to strike the right balance between information disclosure and administrative burden. This incentivises firms to seek capital on domestic markets without necessarily going cross-border. In their view, imposing the prospectus requirements would deprive issuers of an alternative avenue of financing.

However, a noteworthy minority of respondents advocate for the extension of prospectus to MTFs, as this would enhance the protection of investors willing to enter in these markets, so granting a level playing field to issuers as well. However, most of the supporters of the scope extension would prefer a proportionate disclosure regime on MTFs, while the opponents do not engage in this distinction and refuse both the full blown prospectus and the proportionate disclosure regime.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: the views of regulators and authorities are divided, while some authorities would be in favour of extending the scope to MTFs (as there are no specific grounds to exempt them and not to have a harmonised disclosure), other authorities retain that MTFs should be left free to regulate their own disclosure regime. If the scope had to be expanded to MTFs as well, the respondent unanimously would prefer a proportionate disclosure regime

Crowdfunding organisations: only one stakeholder addresses this issue and expresses a clear opposition against the option to extend the scope of application to MTFs.

Non-governmental organisations: except one stakeholder that welcomes the proposal to extend the prospectus requirement to MTFs, all the other praise the current regime.

Stock exchanges: the vast majority of stakeholders opposes the extension of prospectus requirement for a variety of reasons. In fact, this would run against the very logic of MTFs to provide an alternative to regulated markets, the disclosure required by the MTFs operators proved to work effectively while the companies accessing MTFs generally seek capital from local investors.

Investors' associations: the unanimity of investors' associations agrees with the proposal to extend the scope of prospectus to the admission to trading on MTFs as the retail investors that intend to invest on MTFs should have access to the same information disclosed in the regulated markets. If the scope was to be extended, however, they would not support the availability of a proportionate disclosure regime, as the disclosure threshold should not depend on the kind of market, but on the type of issuer.

Consultancies and law firms: consultancies present differentiated positions, with a slight majority of entities against the enlargement of the scope to MTFs, mainly because perceived as an option the increases the administrative burden and reduces the choice for small issuers.

Companies, SMEs, micro-enterprises, sole traders: views are quite differentiated. Some relevant stakeholders of the asset management market favour the prospectus extension to MTFs in order to grant a level playing field and avoid market segmentation (allegedly introduced by the MTFs). However, the majority opposes the proposal as this would create barriers to entry the market, reduce markets' liquidity and reduce choice for operators. If the scope had to be expanded to MTFs as well, the nature of the favoured disclosure regime is not determined clearly: some operators welcome the introduction of a MTFs' proportionate disclosure regime, while others oppose any regulated disclosure regime.

Financial industry: the extension of the prospectus to MTF is generally opposed by industry's associations, according to which the MTFs' success lays widely on the exemption from EU rules on prospectus. Furthermore, it would dilute too much the difference between regu-

lated markets and MTFs and may drain away issuers and investors. However, a few respondents are in favour, retaining that investors should enjoy the same type of information regardless the trading venue. If the scope had to be expanded to MTFs as well, a slight majority would prefer a revamped proportionate disclosure regime focused only on the truly relevant information.

4. Extension of prospectus's exemption to AIFs and EES

Only a few respondents touch upon this issue; as a matter of fact entire interest groups do not express a specific view. The extension of the prospectus exemption to EES earns a wide support, as European employees are perceived to be disadvantaged vis-à-vis their third countries colleagues and deprived of an additional compensation that, furthermore, would incentivise them to increase their engagement in their companies. Finally, employees are considered to be much more aware than the average investor of the internal dynamics of their company, which justifies a different disclosure regime. Nevertheless, a minority of respondents challenge this view.

On the exemption for AIFs, the positions are more nuanced. There is a slight support for granting an extension, but considering the small amount of replies the results are not conclusive.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: the extension of the prospectus exemption to EES is supported by an overwhelming majority of respondents. The exemption for AIFs proves to be more contentious. A slight majority of respondents favours the extension as the relevant legislative texts feature more tailored made requirements without trading off the needed investor protection. On the other hand, other authorities believe that such an exemption might jeopardise the investor protection standard granted by the prospectus.

Crowdfunding organisations: This issue is hardly addressed by crowdfunding organisations.

Non-governmental organisations: the respondents are widely supportive of extending the exemption to ESS, but do not express any position of the AIFs' exemption.

Stock exchanges: all of the few respondents support the extension of the exemption to EES, while the extension to AIFs earns less support (one respondent contends that also EuVECA and ELTIF should draw up prospectuses).

Investors' associations: the unanimity of investors' associations opposes the proposal to exempt from the prospectus the offers to the public of AIFS (considering the high risk attached to the closed-end funds) and of EES (they are doubtful that employees actually dispose of the necessary expertise to decide on the investment).

Consultancies and law firms: the proposal is generally welcome by consultancies as a tool to establish a level playing field among employees and as a remedy to a discrimination perceived not to have justifiable reasons.

Companies, SMEs, micro-enterprises, sole traders: only a few respondents reply on this issue. A majority of respondents favours extending the exemptions, however two oppose them based on consumers' protection grounds. On the extension for ESS opinions are generally positive, but one respondent suggests the application of the reciprocity rule.

Financial industry: the majority of respondents support the extension to both the shares of closed-ended AIFs and ESS. An exemption in this regard would not affect investors' protection (the relevant AIFs information is already disclosed via other pieces of legislation) or consumer's protection (employees do not find themselves in the same position of the other investors as they are insiders, moreover they are put at disadvantage by the current *rule vis-à-vis* foreign employees, particularly in the case of global companies where the discrimination would be more evident).

5. Treatment of issuers of debt securities with a high denomination per unit

About two-thirds of respondents who expressed a view on the issue considered that the favourable treatment for high denomination bonds is **detrimental to liquidity** on the corporate bond secondary market. According to them, it leads to reduced participation of retail and high-net-worth investors in the bond market. It has resulted in excluding retail investors from participating in a significant part of the market, thus depriving the market from participants who could otherwise be significant providers of liquidity. In particular, the high threshold denies retail investors the opportunity to invest in vanilla debt securities issued by established, investment-grade companies that might otherwise be suitable for them. Fund managers highlighted also that the minimum denomination acts as a significant impediment when allocating a limited amount of newly issued bonds across a range of funds

Those disagreeing with any detrimental effect of the EUR 100,000 threshold argued that the high denomination per unit plays **an insignificant role** in the lack of liquidity of corporate bonds: a multitude of other parameters explain it, including the “buy and hold" strategy of most investors and the decreasing participation of market makers whose role is critical to support liquidity and the overall functioning of the secondary market. They also highlight that in practice institutional investors who do trade in these debt securities will generally **trade in large amounts** (most will transact in transactions of EUR 2,000,000 or above), so that the EUR 100,000 denomination is of no importance to them. The main purpose of the EUR 100 000 threshold is to create **a practical distinction between retail and institutional investors**. It is designed to **keep retail investors out of these markets**, otherwise the volatility of the bonds especially the lower grade ones would increase litigation costs for underwriters and issuers.

The public consultation tested three possible policy actions with a view to mitigating the effects of the EUR 100 000 threshold[3].

a) Lowering the EUR 100 000 threshold

[3] Note that for each policy option, respondents were given the choice between Yes, No and No Opinion, and that they were not obliged to support just one option out of the three.

The issue of a possible change to the EUR 100,000 threshold of Article 3(2)(d) was raised in two different parts of the consultation (Questions 4.d and 15.a). The feedback from respondents to these two questions displays some incoherence and therefore an analysis of responses does not provide a clear picture. Under Question 15.a, a clear majority of respondents favoured lowering the 100,000 threshold. Yet, it is worth noting that half of the respondents who supported this option were individuals. Conversely, under Question 4.d, a clear majority of respondents expressed a preference for leaving the EUR 100,000 threshold unchanged. This includes all Member States and national competent authorities, as well as investors' associations. None of the individuals who answered Question 4d) answered Question 15a).

Respondents who favour the status quo argued that lowering the EUR 100,000 threshold (e.g. back to EUR 50,000 as under Directive 2010/73/EU) would likely create detriment to investor protection and would be unlikely to bring about any notable improvement of the liquidity of the secondary bond market. They consider the EUR 100,000 threshold to be a proper and well-calibrated divider between the institutional and retail bond market, as it helps to ensure that complex debt securities such as asset-backed securities and hybrid debt securities such as 'contingent convertibles' are not easily accessible to retail investors. If the threshold were to be lowered, investor protection would be affected as there are individual investors who can afford to make investments of more than EUR 50,000 in a single transaction. A general feedback is that this exemption is one that offers the best legal certainty to debt securities issuers as there is no uncertainty on its scope of application. The prevailing view among that group is that EUR 100,000 already strikes an appropriate balance between investor protection and administrative burden on issuer and market liquidity, and should therefore not lowered nor deleted.

Those respondents who favour **lowering** the threshold back to its **EUR 50,000** level pre-Directive 2010/73/EC highlight that the EUR 100,000 denomination has proved harmful to liquidity in secondary markets and makes certain deals more difficult to allocate among investors (for example mid-sized funds and private banking clients) due to the high denomination. Most importantly, it results in large groups of investors being effectively excluded from participating in certain debt issues. A reduction will encourage investment from a broader base of investors, and hence increase liquidity. It will encourage investors to join the market and provide savers an option to join the investment market at a lower level of financial exposure. They mention that EUR 50,000 would facilitate the marketing of debt products to high net worth individuals, who are closer to the institutional investors than to the basic retail investors: they mostly invest through portfolio managers and a prospectus is not of much use to them. Advocates of this move are mainly stakeholders from the asset management and banking sectors. There is no significant support from public authorities.

<u>b) Removing some or all of the favourable treatments granted to the issuers of high denomination non-equity securities</u>

This option is supported essentially by individual investors (who do not however provide any rationale) while banks and banking associations make up most of the group of respondents who oppose it.

Opponents provide several rationales for not removing the favourable treatment of high-denomination bonds. The wholesale exemption allows bank to offer securities throughout the EU, without the burdens of a prospectus. Removing it would increase the regulatory burden for a significant proportion of issuers who currently issue those securities. It would therefore

increase costs for them and be counter to the aims of the Capital Markets Union initiative. It may result in a reduction of issuance levels, with some large issuers choosing to access capital markets in the EU and third countries. This would significantly decrease liquidity in European capital markets. Also, institutional investors do not need the increased levels of disclosure currently required for securities with a denomination below EUR 100 000 (indeed they may find it unhelpful to have prospectuses cluttered with information they do not require). Were the favourable treatment to be removed, market efficiency would suffer while no benefit for investor protection would be achieved.

Incidentally, some highlight that the EUR 100 000 exemption is one that offers the best legal certainty to debt securities issuers are there is no uncertainties on its scope of application. It is widely used by issuers and allows for reduced costs and administrative burdens.

c) Removing the EUR 100 000 threshold altogether and granting the current exemptions to all debt issuers, regardless of the denomination per unit of their debt securities

There is a broad support for a simplification of the disclosure regime and a removal of the arbitrary EUR 100 000 threshold for disclosure purpose, including from individual respondents.

Respondents stress that given the costs and burdens of running a "retail compliant" prospectus (which for the most part are not read by retail investors), there is an over reliance on the EUR 100 000 exemption which leads to reduced investment choice for investors. The removal of the EUR 100 000 threshold is perceived as a meaningful tool to **increase participation of retail and high net worth investors in the EU corporate bond market**. Supporters argue that debt issues that would otherwise be suitable for retail are regularly made in denominations of EUR 100 000 or more, in order to benefit from the Article 3(2) exemption that reduces cost, and so are inaccessible to private investors. This distorts the market in favour of the institutional side and starves retail investors of a key asset category. It has led to reduced retail liquidity and company funding via the bond medium. Rather than protecting retail investors, the EUR 100 000 threshold has deprived them of the opportunity to invest in high rate corporate debt securities at the time when it is crucial for investors to be able to invest in bonds in preparation for the retirement. The removal of the 100 000 threshold would therefore end the bias against retail investors in corporate bond issues and free up the flow of retail capital into this vital investment category.

Those respondents call for a unified retail and wholesale market in plain vanilla bonds with a single prospectus in the same way as for equities.

The view is often expressed that while the minimum denomination should be eliminated, policy-makers should seek **alternative measures to protect unsophisticated investors**. Instead of an arbitrary quantitative threshold, more qualitative measures need to be developed to give an appropriate level of protection to retail investors accessing bond markets, if the threshold is eliminated. Retail protection will be more effectively obtained through means other than the minimum denomination per unit, for instance through MiFID II investor protection measures.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: A vast majority of national competent authorities were in favour of keeping the current threshold as there is no evidence that lowering the

threshold would lead to any notable improvement of the liquidity of the secondary bond market. One NCA expressed that the threshold was raised to EUR 100,000 by the Prospectus Directive 2 because of investor protection reasons, in particular, the evidence that the EUR 50,000 threshold no longer reflected the distinction between retail and professional investor in terms of investment capacity.

However, some respondents favoured the lowering of the threshold or even its removal. In particular, one NCA strongly favoured the removal of the dual-standard of disclosure in bond prospectuses altogether and granting the current exemptions to all debt issuers, regardless of the denomination per unit of their debt securities.

Crowdfunding organisations: This issue was not addressed by any crowdfunding organisation.

Non-governmental organisations: This issue was hardly addressed among non-governmental organisations.

Stock exchanges: Some contributors expressed the view that the threshold should be maintained as it is considered not detrimental by some stock exchange operators. Some contributors from those denying any detrimental effect of the EUR 100,000 threshold consider that the high denomination per unit of debt securities play an insignificant role in the lack of liquidity of corporate bonds: a multitude of other parameters explain it, including the “buy and hold" strategy of most investors in the debt market and the decreasing participation of market makers whose role is critical to support liquidity and the overall functioning of the secondary markets, due to their reduced willingness to maintain inventory and take positions for their own risk. The problem of liquidity in the bond market has to do mainly with the dispersion of the bonds at issuance: the traditional process involves a few large underwriters and their clients, which then pass them on (with a cut) to their clients.

On the contrary, some contributors consider that the threshold should be removed. If removed, will most likely increase participation of retail investors in corporate bonds markets, and then in turn this would also increase liquidity.

Investors' associations: The few investor' associations who expressed a view on this issue contended that the only option to increase liquidity and maintain a high level of investor protection is to remove the EUR 100.000 exemption and make it mandatory to publish a prospectus for debt securities with denomination per unit of below and above EUR 100,000. The proportionate disclosure regime could be applied to debt securities denominated above EUR 100,000. Issuers of debt securities above a denomination per unit of EUR 100,000 should publish annual and half-yearly financial reports under the Transparency Directive.

Consultancies and law firms: This issue was hardly addressed.

Companies, SMEs, micro-enterprises, sole traders: Views are split between those rejecting the view that the exemption might have a detrimental effect and those acknowledging that such a detrimental effect on bond liquidity might exist. A majority is in favour of lowering threshold. Moreover, the option to remove the threshold was not supported by any respondents within this category.

Financial industries: The views of associations were almost equally split between the different options. Many did not see any link between the high denominations and liquidity and therefore not need for change. Others argued for a lower threshold not only to improve the liquidity of the securities offered but also because mid-sized funds and private banking clients have problems accessing these securities. Others again argued to remove the threshold altogether because rather than protecting investors, the existing threshold has reduced drastically the investment options for investors that cannot trade in big sizes.

6. Reforming the proportionate disclosure regime

A large majority of respondents consider that the proportionate disclosure regime for SMEs has not met its original purpose. In practise, issuers who would eligible to it choose to prepare a full-blown prospectus instead. Respondents interpret this choice as an indication that the benefits of applying the proportionate disclosure regime are too limited and do not outweigh the disadvantage of being perceived by investors as providing more limited information when compared to large companies. The alleviations the proportionate disclosure regime brings to SMEs are insufficient and do not depart sufficiently from the standard disclosure regime to make any meaningful difference in terms of compliance cost. Also, the reduction in disclosures does not translate into a faster approval by the competent authority.

The choice to forego the proportionate disclosure regime may also result from a perception that investors investing in SMEs prefer to receive full disclosure (the market often requires a degree of disclosure that goes beyond what is strictly required by EU law). Providing proportionate disclosure may therefore have an adverse effect on the marketability of SMEs' securities. Some SMEs therefore choose the full disclosure regime in order to give investors information that is comparable to that available for other non-SME issuers.

The proportionate disclosure regime is also perceived as raising liability concerns as the proportionate disclosure is still required to meet the stringent disclosure test of Article 5(1) and SMEs are not comfortable with the risk of not making full disclosure. Because of such liability issues, banks involved in transactions require that full disclosure is provided. Lastly, some respondents consider that some national competent authorities have not adhered to the principle of the proportionate disclosure regime and have generally not been favourable to it, which may explain why it is not used.

Some respondents continue to take a positive view on the main principles of this regime, i.e. that there should be proportionality between the company size and the cost of producing a prospectus. Just because the regime has been used only scarcely by issuers, if at all, does not necessarily mean that the regime is ill-designed fundamentally. They acknowledge however the difficulty in reconciling the proportionate disclosure regime with the fact that SMEs are generally associated with a higher degree of risk, which would normally require more, rather than less, information to be disclosed to investors.

Respondents who are supportive of the concept of this regime for SMEs propose a number of measures to reform it. Some of them believe that it can be simplified further without endan-

gering investor protection. There is scope for avoiding the duplication of the information (on financial performance for instance), promoting a shorter presentation of some sections (e.g. a more tailored presentation of the governance section) and enhancing the "materiality filter" issuers should use for instance in the business model and risk factors sections. There is a need to bring coherence to transparency requirements and to allow for a systematic incorporation by reference of available financial information. The proportionate disclosure regime will be enhanced if the ability to incorporate documents by reference is extended to issuers traded on MTFs. Others argue that it is not so much the scope of information which should be reduced but rather the content which should be less detailed. An in-depth work should be undertaken to reach a more concise approach to information. The result should be a shorter document, focused on material items, which would be considered useful by retail investors.

Conversely, other respondents are sceptical about the principles of this regime and therefore unsure whether lightening it further is the right approach. They argue that SMEs are higher risk investments than large issuers and as such should be subject to greater standards of disclosure. It is counterintuitive to reduce the disclosure requirements for these companies. Due to the lack of information available in the market concerning them, one should be cautious about further eliminating disclosure requirements for these companies. Some fear that the proportionate disclosure regime could encourage a kind of negative selection: the riskiest SMEs which are unable to obtain funding from banks, may use the more permissive disclosure standard of the proportionate disclosure regime to tap capital markets instead and get funded by retail investors. Lastly, some reckon that due to the local bias of SMEs (deeply rooted in local business environments and more dependent on local investors), there is limited benefit in developing EU-wide rules, including an amended proportionate disclosure regime, and that future regulation should leave Member States with the latitude to address investor protection issues as they see fit.

Those sceptical about the proportionate disclosure regime express a preference for exploring a disclosure regime that falls outside of the Prospectus Directive (a new regime not derived from the full-blown prospectus regime but requiring instead publication of easy-to-read and more accessible documents) or even restricting the scope of the proportionate disclosure regime, which is currently too wide. The proportionate disclosure regime should not apply if an SME is seeking admission to a regulated market, in which case it should produce a full prospectus. The proportionate disclosure regime should only apply to unlisted SMEs or SMEs listed on an MTF which undertake an offer to the public. Others advise to focus efforts on alleviating secondary issuances for all issuers (not just SMEs) instead of modifying the regime.

Lastly, one notes a strong divergence between those who contend that eligibility to the regime should be venue-neutral, i.e. should not depend on the market on which the issuer is traded, but on the characteristics of the issuer (whether it is an SME or not), and those who argue on the contrary that there is no justification for a two-tier disclosure regime depending on whether the issuer is an SME or not.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: national competent authorities hardly addressed this issue. Some of the few proposals are:

- Instead of trying (again) to reduce the disclosure requirements for SMEs, a more useful exercise for ESMA could be to explore the possibility of standardising further the schedules for SMEs (i.e. clarifying what should be the minimum content for each item).
- The proportionate disclosure regime should become more lighter in order to improve its efficiency especially for SMEs without prejudice to investor protection. This could be achieved by avoiding duplication of disclosure information already in the Financial Statements and in proportionate prospectus schedules under Annexes XXIII and XIV of the Prospectus Regulation. This task could be achieved under Level 2.

Crowdfunding organisations: This issue was not addressed.

Non-governmental organisations: This issue was hardly addressed.

Stock exchanges: Not many views expressed. Some contributors consider that the proportionate disclosure regime could be enhanced further to make the prospectus regime more workable for SMEs and companies with reduced market capitalisation. They believe that there is scope for revising the disclosure requirements without impacting investor protection.

Investors' associations: The few respondents to this question consider that a proportionate disclosure regime should be applied to SMEs and companies with reduced capitalisation regardless of whether they are offered or admitted to trading on regular markets, Multilateral Trading Facilities (including SME growth markets) or Organised Trading Facilities.

The Financial Service User Group (FSUG) is supportive of a proportionate disclosure regime according to the risks associated with the envisaged commitment or investment. While these companies should not be exempted from the obligation to publish a prospectus because of their high risk profile, the disclosure requirements can be lowered (i.e. proportionate) in order to facilitate their access to capital market financing and reduce the proportionally very high respective costs for SMEs.

Consultancies and law firms: The majority of respondents support the option of further simplification as the prospectus is still too heavy for very small enterprises. Some contributors mention that the proportionate disclosure regime is not very often used and issuers do not consider it to be very helpful.

Companies, SMEs, micro-enterprises, sole traders: This issue was hardly addressed. One contributor considers that the benefits of the regime are too limited, and its application does not outweight the disadvantage of being perceived by investors as providing more limited information when compared to large companies. They suggest a simplification of the content requirements, including Regulation (EC) 809/2004. For e.g. the 3-year historical financial statements requirement and the risk factors paragraph should be reviewed. The risk factors paragraph should provide investors with concrete risks specific to the company, instead of being too long with essentially standardised paragraphs merely serving as a form of disclaimer.

Financial industry: This issue is hardly addressed by industry associations. Some supported further simplification (option 2) while others did not see a need for amendments.

7. Incorporation by reference

The enhancement of the incorporation by reference is generally considered as a valuable tool to reduce costs and administrative burden without impacting on the investor's protection. However on the definition of the actual standards to be adopted, the respondents express different views. The shared position

pursues the streamlining of the interaction between the disclosures required under the Prospectus Directive, the Market Abuse Regulation and the Transparency Directive. Some respondents would be in favour of a dynamic incorporation of any document filed with any national competent authority, while a certain majority are against it and would rather prefer ESMA drafting a specific RTS.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: the vast majority of authorities are in favour of making the incorporation by reference mechanism more flexible as this would reduce the costs of prospectuses without lowering the investor protection. However, a small group of respondent does not feel comfortable with granting the incorporation of documents filled voluntarily with the authorities as they would prefer the reference only to documents that have been previously or simultaneously approved and filed.

Crowdfunding organisations: This issue is hardly addressed by crowdfunding organisations.

Non-governmental organisations: few associations express a view on this specific topic, but they generally support an extension of the incorporation by reference specifying that the incorporated documents should be accessible at the same location of the prospectus and subject to a storage period aligned with the limitation period for the liability claims.

Stock exchanges: a slight majority of respondents favours the extension of the incorporation by reference mechanism, particularly concerning the information published under TD and MAR, while further incorporation by reference is considered cautiously. To this end ESMA should develop appropriate RTS.

Investors' associations: only a handful of associations replies to this question, but they express a general support. However, one respondent is reluctant to incorporate by reference information disclosed under the TD.

Consultancies and law firms: a significant majority of stakeholders supports making the incorporation by reference more flexible drawing up an exhaustive list based on existing EU legislation or on a principle based approach. The information is already available to the market and there is no need to duplicate it.

Companies, SMEs, micro-enterprises, sole traders: the majority of respondents supports the enhancement of the incorporation by reference mechanism (only two prefer the status quo), in particular via the streamlining of the disclosure provided under PD, TD and MAR.

Financial industry: a vast majority of stakeholders supports a more flexible use of the incorporation by reference, drawing up an exhaustive list of disclosure items based on the existing EU legislation. All information published under the legislation on MAR and TD should be allowed to be implicitly incorporated (only one stakeholder disagreed on this point though).

8. Prospectus summary and the Key Investor Information Document under the Packaged Retail and Insurance-Based Investment Products Regulation

There is a clear support for reassessing the rules applying to the prospectus summary, in particular regarding the concept of key information and its usefulness for retail investors, as more

than 80% of respondents consider that there is scope for improvement of the current prospectus summaries and that rules regarding the summary should now be evaluated against the Packaged Retail and Insurance-Based Investment Products Regulation (PRIIPs) Regulation. Many underline the usefulness of the prospectus summary for retail investors, as it is the (only) part of the prospectus which they are most likely to read. The summary, if effective, is considered an essential instrument of protection of investors.

There is clearly a widespread dissatisfaction from most respondents about the current summary. Almost unanimously, they consider that the summary format requirements introduced by Directive 2010/73/EU have not been helpful, and that the prescriptive modular approach of Annex XXII of Regulation No 809/2004 does not give enough flexibility to issuers to focus their summary on the key information retail investors really need. As a result, the prospectus summary, as it exists today, is blamed for being too long, unwieldy, too comprehensive and unreadable. It looks too much like a mini-prospectus and it is written in legal language that is not intelligible for the vast majority of individual investors. Overall, it adds costs for companies (incl. translation costs) without any meaningful benefit for investors.

There is therefore a wide support in favour of a significant revamping of the summary requirements. Instead of a compilation of legalistic information (as is the case today), it should become a more qualitative and accessible source of information. The information provided needs to be relevant, meaningful, written in plain language, otherwise potential investors will not read it. Issuers have demonstrated their ability to draft marketing materials that are accessible and reader-friendly: they should adopt the same approach in the prospectus summary, while being subject to the overarching principle that the key information about the company, its operations, risks and the offering information are presented in a fair, balanced and understandable way.

Many ideas are put forward on how the regime could be amended in order to make the summary fit for purpose:

- Summary length – The summary should be made shorter and this could be achieved by various means (e.g. providing that the maximum length of the summary shall be 7% of the prospectus or 15 pages, whichever is shorter, instead of “whichever is longer” currently; returning to a maximum word limit (e.g. 3-4,000 words), as was the case before Directive 2010/73/EU).
- Materiality and Risk factors – Increased emphasis on materiality is called for and management should use professional judgement in determining where and in what order information is presented in the summary. Provisions should be introduced to stem the rise in generic risk factors that are currently prevalent in prospectuses and their summaries. Their presentation in the summary should be limited to the top 10 specific risks (i.e. the most "material" ones, based on the issuer's judgement). Risk factors with no contingency and which are in effect just disclaimers should be banned.
- Writing style - The summary must be written in such a way as to be understood by the least specialist. The writing style must be understood by all (plain language). According to journalistic principles, each paragraph or sub-part must have an informative title. The

drafting of each paragraph should commence with the principal information and be followed by the details. Acronyms, legalese or over-technical terms should be replaced by simple terms, or be accompanied by a glossary.

Cross-referencing the prospectus in the summary should be allowed. It would allow investors to refer to specific sections of the whole prospectus if they wish so, for a proper in-depth assessment.

The summary should not be required to be in a rigid specified format any more. Issuers should be free to draft a narrative they think is a fair summary of the prospectus, based on their own judgement. This approach should help to ensure that the summary does not become formulaic and hard to understand for retail investors. They advocate a free form summary required to address pre-determined key issues, in a way similar to the PRIIPS key information document (KID). It would contain a small number of headings with a mandatory order, but without any imposed sub-headings. The summary content should only be subject to a high level principle that the information it contains offer a fair, balanced and understandable overview of the key information about the company, its operations, risks and the offering information.

Another group of respondents supports a similar approach, but present the PRIIPS KID as the model to replicate, albeit with some variations. They call for simplifying and standardizing the summary to transform it into some kind of equivalent of a PRIIPS KID providing retail investors with key information about the securities and their issuer in a concise manner and in plain, non-technical language. If properly inspired from the KID, a summary should be based on an easy-to-follow format, where a certain number of relevant topics providing essential information on the issuer would be mentioned. Repetition of information should be avoided as much as possible, in particular in relation to financial information. They warn that a simple "copy/paste" of the PRIIPS KID would not be appropriate. Applying the PRIIPs KID to shares and plain bonds would create some difficulties because the PRIIPS KID contains certain features which make it inappropriate for shares and bonds (the performance scenarios, the summary risk indicator and the requirements to keep documentation up to date). The summary, if revamped along a KID-like approach should absolutely avoid these features which would be inapplicable for simple securities. Besides, some warn that, contrary to the PRIIPS KID, the prospectus summary should contain also information on the issuer and the offer terms and conditions. Some also point at the fact that acknowledge that the respective authors of a prospectus summary and KID may be different and that KIDs are not subject to approval by national competent authorities.

Lastly, on a sub-issue, a number of respondents suggest revisiting the contents of the base prospectus summaries and the issue specific summaries in base prospectuses. The coexistence of these two summaries (one included in the base prospectuses and another one, annexed to the final terms, for the individual issue) is criticised for putting excessive burdens on issuers, making final terms over-complicated and summaries in base prospectuses unreadable by investors. In the non-equity space, for securities issued under a base prospectus, respondents support the elimination of the issue specific summary in relation to any product for which a KID is available.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: The majority of contributors consider that there is scope for improvement of the current prospectus summaries. Some of the most frequent suggestions are:

- Summary length – More adjustments or improvements can be made in terms of length and format in order to ensure a more investor friendly document by introducing more flexibility. The length of the summary should be reconsidered, i.e. 7% of the prospectus or 15 pages, whichever is shorter, rather than the current "whichever is longer". That could be done through (i) decreasing of the percentage allowed in comparison to the prospectus as a whole, (ii) excluding the financial statement from the calculation of this percentage and (iii) a "ban" of "copy and paste" from the main body of the prospectus.
- Strong emphasis on the importance of information provided being relevant, written in plain language, timely and meaningful. Summary should be short, simple, clear, and understandable for average retail investor. In reality summaries tend to be lengthy, generic, technical, not very user friendly and sometimes it seems like smaller version of the registration document and securities note.
- A KID should not be required where there is an obligation to publish a prospectus summary. The KID cannot substitute the prospectus summary (or part of the prospectus summary). The problem of trying to combine both documents is that there are material differences between the two, not only regarding the detail of the disclosures (which is already a very significant difference) but also in terms of the responsible person (intermediary for KID; issuer for the prospectus summary), approval by competent authority (not envisaged in PRIIPS Regulation; mandatory by the Prospectus Directive); liability regimes; publication requirements. Another suggestion is to align the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation. Conversely, one contributor does not agree to replace the prospectus summary with the key information document required under the PRIIPs Regulation. The views are that these two documents are prepared in different way and contained different set of information. Moreover the key information document is not approved by the national competent authority.
- The possible solution could be creation of the Prospectus Directive specific key information document containing information on both issuer and securities, this kind of document would be longer than key information document prepared according to PRIIPS but shorter than current prospectus summary and it should contain all information which are included in PRIIPS key information document to be comparable.

Crowdfunding organisations: The vast majority of respondents supported the introduction of a specific disclosure document, referred to as a standardisation of the KID; this would represent an important step towards market harmonisation. Several contributors made a proposal according to which SMEs using crowdfunding platforms shall have obligations and responsibilities. They consider necessary to harmonize within Europe a template of optional information to be sent under the responsibility of the issuer. The template should aim at given a harmonized way to present each category of information. Some platforms expect that such an

information document (as referred to as "KIID") provides a level of detail that would enable investors to gauge appropriateness of valuations and the associated risks. In addition, it should also take into account the level of experience/expertise of the retail investors, so complexity of such prospectus should aim to provide conceptually simple examples.

Non-governmental organisations: Very few and divergent opinions expressed. Several respondents express concerns regarding the quality of summaries. The Federal Chamber of Labour of Austria conducted a survey on the quality of information of key investor documents (UCITS) in 2013: The KID-regulation requires (COMMISSION REGULATION (EU) No. 583/2010 of 1 July 2010) a set of risk warnings which have to an obligatory part of the KID. They stated that those risk warnings are too general and reflect only the given phrases laid down in KID-regulation. Thus, both the KID and the prospectus should contain a set of individual risk warnings.

Conversely, another respondent suggests that the summary should be eliminated as the new KID in PRIIPs-regulation should be sufficient for retail investors to understand the main features and risks of the product. Therefore, the proposal consists in eliminating the prospectus summary for those securities falling under the scope of the packaged retail and insurance-based investment products (PRIIPS) Regulation.

Stock exchanges: Most contributors consider that where securities fall under the scope of PRIIPS regulation and the prospectus regime a duplication of information contained in the KID and in the prospectus summary should be avoided. Investors can make an informed investment decision using the information contained in the KID along with the prospectus and the issuer related information published according to the Transparency Directive.

The highlighted benefits deriving from the alignment of the format and content of the prospectus summary with those of the KIID are costs reduction and promotion of comparability of products.

Nevertheless, some respondents are concerned with the fact that as issuers are liable for all information that is included in the prospectus, the use of only a KID may present liability problems.

Investors' Associations: All contributors present concerns regarding the current prospectus summary regime and therefore favour its revision. Most frequently suggestions for its improvement are:

- The prospectus summary should be replaced by a 'Key Information Document' (KID) under the PRIIPs Regulation where both pieces of legislation, but it would go further and suggest that a three page maximum KID should be the required form of summary for all prospectuses. The Commission should undertake detailed consumer testing of the prospectus summary to identify how consumers interact with this document and how it influences their decision-making. Such research should occur before any formal legislative proposal is issued to alter, or abolish, the prospectus summary.
- The summary prospectus should, read on its own, provide the investor with an overview of all the material risks associated with a certain investment decision. It is the responsibility of the issuer to judge the materiality of the risks associated with the in-

vestment and to make sure that the summary prospectus provides a true and fair view of the risks. The issuer should be liable on the basis of the revised summary prospectus. Value-enhancing measures should moreover include a requirement for an adequate readability of the (summary) prospectus accompanied by the introduction of a risk-weighting model that shows (potential) investors the probability of risk occurrence and the risk impact. One respondent fully supports the development of risk labels for financial products which indicates the risk level of savings and investment products in a highly standardised format. It is intended to enable retail clients to gain an initial insight into the risk associated with such products. They also refer to good practices existing in Belgium.

- Some respondents propose to attach liability to the summary prospectus. The summary prospectus should provide the investor with an overview of all the material risks associated with a certain investment decision. It is the responsibility of the issuer to judge the materiality of the risks associated and to make sure that the summary prospectus provides a true and fair view. The risks should be ordered according to their degree of materiality (from high to low).

Most respondents agree that the length should be limited to 10 pages.

Consultancies and law firms: Not many contributors answered this question. One contributor supports the legislative developments on key information documents and welcomes the efforts to simplify the disclosure requirements for PRIIPs whilst maintaining a high standard of investor protection. The combination of a prospectus and a KID for packaged products provides sufficient information for prospective retail investors and an additional disclosure requirement in the form of a summary prospectus is not necessary.

Companies, SMEs, micro-enterprises, sole traders: Several contributors consider that any duplication of information should be avoided as it creates market inefficiency and increases costs. Therefore, any securities that are the subject of a prospectus prepared in accordance with the Prospectus Directive should be exempted from the scope of the PRIPs regulation and vice versa.

Financial industry: The vast majority of industry associations are in favour of aligning the prospectus summary with a KID+. Most contributors consider that the summary should be eliminated for those securities falling under the PRIIPS Regulation. This would reduce unnecessary costs and also streamlining administrative burdens.

One contributor considers that for retail investors, the PRIIPs KID offers the best disclosure mechanism given as (a) it is the shorter document and more likely to be read; (b) it aims to enhance comparability across a wide range of different instrument types, not just securities which require a prospectus; and (c) the PRIIPs Regulation allows the KID to cross-refer to other documents.

9. Liability and sanctions

The great majority of stakeholder does not express an opinion on the topic. However, those few that take a position advocate for harmonising the liability and sanctions provisions at EU level. Issuers face different frameworks in different Member States which deters their strategies of raising capital cross-border or increases their legal and compliance costs.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: only a few authorities respond, but they support the harmonisation of the prospectus civil liability. A common framework would help market participants to operate on a level playing field. However, each one of them makes reference to different aspect of a potential harmonisation: one would appreciate the introduction of a conflict of law provision, another would praise an upgrading of the actual liability content and another would prefer a more harmonised sanction regime.

Crowdfunding organisations: This issue is hardly addressed by crowdfunding organisations.

Non-governmental organisations: only one stakeholder responds and expresses a strong support for the harmonisation of liability provisions.

Stock exchanges: all the respondents, except one, advocate for the harmonisation of liability provisions.

Investors' associations: the associations support the maximum harmonization in this respect and consider that the issuer should be liable on the basis of the revised summary prospectus.

Consultancies and law firms: the participants do not express a clear view on the topic. Only a couple of them reply recognising that different liability regimes might undermine cross-borders issuances.

Companies, SMEs, micro-enterprises, sole traders: only a few stakeholders express views on this specific issue, but they express support for the harmonisation of the prospectus civil liability. A common framework would help market participants to operate on a level playing field.

Financial industry: the few respondents are in favour of upgrading civil liability and harmonise it. Some praise the introduction of a harmonised approach and private enforcement. Few operators suggest providing at least a conflict of law provision to determine the applicable law and competent forum in case of cross-border cases. A consensus emerges against the liability based on the sole prospectus summary.

10. Approval process of prospectuses by national competent authorities (NCAs)

The current general framework of the approval process is well considered among the stakeholders: a vast majority endorses the pre-vetting system as it guarantees legal certainty, while the alternative risk-based approach is perceived as potentially harmful (i.e. it would allow a faster market access, but would decrease legal certainty). Overall, the majority of respondents

would praise a further streamlining of the approval process. The target to be achieved should be granting a level playing field to all market participants. Some respondents called upon harmonising the scrutiny and the approval procedures, others upon supervisory convergence based on the results of the peer review conducted by ESMA. Furthermore there was a quasi-unanimous opposition to making the procedure more transparent: no one sees benefits, while many contend that this might confuse investors.

The protection of investors played a relevant role also for what concerns the proposal to allow marketing activities in parallel to the approval process (s.c. red herring prospectus). Opinions are quite divided with a slight majority of opponents that fear that this might mislead investors, generate uncertainty and ultimately increase compliance costs for issuers.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: the unanimous opinion is the appreciation of the current system which touches upon the ex-ante approval (praised for enhancing certainty) and the current pace of the procedure. Rather than further streamlining it, authorities would rather endorse the RTS adopted by ESMA. Similarly, the authorities are against the opportunity to make the procedure more transparent. The positions are more nuanced on the permission for the red herring prospectus whereby a small majority would actually allow some marketing activities in parallel to the approval procedure.

Crowdfunding organisations: This issue is hardly addressed by crowdfunding organisations. One stakeholder expresses its opposition to making more transparent the approval procedure, while another supports the option of allowing marketing efforts in parallel to the approval process.

Non-governmental organisations: the views expressed are scarce and not conclusive. The option to increase the transparency is supported by one actor and opposed by another, and so is the option allowing the red-herring marketing.

Stock exchanges: the majority of stock exchange operators welcomes a further streamlining of the approval procedure, but strongly rejects a transparency increase. The current pre-vetting system is perceived as the best placed for preserving legal certainty of all operators (however two operators are open to test the risk-based approach). Finally almost all the respondents oppose the one-stop shop approach as they consider that the prerogative to approve the prospectus and the admission to trading should be vested in two different entities.

Investors' associations: the associations generally welcome the current pre-vetting system as it grants better legal certainty. Moreover, they praise for major transparency, making as clear as possible that the role of NCAs is not approving the correctness of the information provided in the prospectus. There is a general opposition against allowing marketing activities in parallel to the approval process as this might engender confusion in investors and may bring them to overlook the final approved prospectus, having taken their decision on the base of the sole red herring. Finally they would appreciate the one-stop shop approach of concentrating in the same authority the approval of the prospectus and the admission to trading.

Consultancies and law firms: the majority of stakeholders retains the validity of the ex-ante review, but it would be in favour of streamlining the scrutiny and the approval procedures by

NCAs. There is a strong resistance against making the process more transparent. Opinions are split on the opportunity of allowing the marketing activity while the approval process is still not complete.

Companies, SMEs, micro-enterprises, sole traders: beside a strong support for the maintenance of the current pre-vetting system, opinions are particularly divided. An equal number of operators advocates for and against the streamlining of the approval procedure, and so happens for the proposal of allowing pre-approval marketing (while some operators explained the competitive advantages for issuers, other warned against the compliance costs and the risks for investors' protection). A general consensus is reached against increasing transparency.

Financial industry: the industry present nuanced views, but clearly prefers the current ex-ante system. There is a general consensus for achieving the harmonisation of approval procedures in order to guarantee a homogeneous timing to enter the market to all participants. Furthermore NCAs should provide written comments in the approval procedure in order to smooth the procedure and enhance the learning curve of issuers. However, there is clear consensus against making the process more transparent as this might cause leaks of sensitive information. The red herrings prospectus does not find substantial support as some participants suggest that this could happen only with clear disclaimers, but there might still be the danger of distributing outdated marketing material (outdated by the changes in the prospectus required by NCAs) and would distract the attention of investors which should remain focused on the prospectus.

11. Base prospectus and tripartite regime

The wide majority of the stakeholders favour the extension of the base prospectus facility to other types of issues. However, some respondents are doubtful that equities might be suitable for a similar facility. Only one interest group fiercely opposes the extension as a whole. The positions are more articulated for what concerns the validity period: the current 12 months duration is perceived as balanced by the majority of stakeholders, however a not negligible minority would praise an extension (in this case 24 months is the favoured option and 36 months is mentioned only by a few industry's operators. The tripartite prospectus is endorsed by the majority of respondents, but the opinions on the possible approval of each section by different national competent authorities are split.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: opinions are split on the option of extending the facility to all the issuers and to all the types of issues with some authorities having doubts on the viability of the system for equities. The issue concerning the validity period sees a majority of respondent in favour of an extension, but the positions on the favourite durations are rather dispersed ranging from 24 to 60 months. However, a clear majority of respondent supports the tripartite base prospectus.

Crowdfunding organisations: This issue is hardly addressed by crowdfunding organisations.

Non-governmental organisations: the proposal of extending the base prospectus to all issuers and issues is unanimously welcome, while the extension of the validity period of the base prospectus raises concerns. On the tripartite regime only one stakeholder expresses a view (fully supportive).

Stock exchanges: the extension of the base prospectus facility to other instruments is generally welcome (only one respondent opposes it). However different distinguishing points are raised (e.g. the new base prospectus should be extended only to convertible bonds, and there are doubts about the real scope of application once the scope exemptions will be extended). The current one year validity period is perceived as balanced (only two operators would like to extend it). Furthermore, all stock exchanges would welcome the tripartite base prospectus.

Investors' associations: all associations oppose the extension of the base prospectus facility and propose the abolishment of the very tripartite regime as the prospectus should be a single document. Alternatively the relevant documents should be all published in a centralised manner.

Consultancies and law firms: only a handful of responded replies to this question. However, there is a general support for extending the base prospectus to all issuers and all types of issues, as well as for allowing the tripartite base prospectus. Opinions are more divided concerning the extension of the validity period of the base prospectus beyond one year.

Companies, SMEs, micro-enterprises, sole traders: the extension of the base prospectus is generally welcome although one respondent considers it unfit for equities. Nevertheless, the validity period proves to be more contentious as opinions are equally split between those praising the current 12 months validity period and those willing to increase it to 24 months. Respondents unanimously support the extension of applicability of the tripartite prospectus.

Financial industry: the extension of the base prospectus is widely supported although some participants contend that a similar system is not fit to serve also equity issues. Extending the validity period finds relevant support, but the suggested optimal duration is not identified as it ranges from 24 to 36 months. On the other hand, the support of the tripartite prospectus is robust.

12. Home Member state determination for issues of non-equity securities

The determination of the Home Member state for issues of non-equity securities is quite polarizing. A majority of respondents supports the current framework highlighting how this permits issuers to have the necessary flexibility to seek capital. Many respondents promote an extension of the freedom of choosing the Home Member state even to non-equity securities with denomination below 1000 Euro. However one interest group strongly opposes the current framework and backs the complete abolishment of the freedom of determining the Home Member state.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: all stakeholders prefer to maintain the status quo.

Crowdfunding organisations: This issue is hardly addressed by crowdfunding organisations.

Non-governmental organisations: This issue is hardly addressed by crowdfunding organisations.

Stock exchanges: a minority of operators expresses a view on this specific issue and all except one support the current regime. One operator praises the choice of the home MS for all non-equity issuers, including issuing instruments whose denomination is below 1000 Euro.

Investors' associations: the associations advocate for the abolishment of the freedom of Home Member determination as this should be determined by the law.

Consultancies and law firms: the very few respondents present divergent views. For one law firm the *status quo* should be maintained, while for other two consultancies the issuers should be allowed to choose their home Member State for non-equity securities whose denomination amounts to less than below 1000 Euro.

Companies, SMEs, micro-enterprises, sole traders: only two operators want to maintain the *status quo*, while all the other respondents consider that issuers should be given more freedom of choice and extend the home determination choice even for issues of non-equity securities with denomination below 1000 Euro.

Financial industry: the unanimity of the respondents supported the *status quo* defending the current freedom of choice that, in turn, should be further extended also to issues of non-equity securities with denomination below 1000 Euro.

13. System for the electronic publication of prospectuses

In view of the example of the Transparency Directive it was asked in the public consultation, whether a single, centralised, EU database should be created for prospectuses as well. Such a database could operate as a unique entry point for both investors and persons producing and filing prospectuses across the 28 Member States and could facilitate effective cross-border access to information. Depending on its design it could even help streamlining the process of prospectus filing by issuers.

71 of the 88 respondents to the question supported the suggestion (7 regulators/governments, 58 companies/associations, 6 individuals); 17 were against such a system (3 regulators, 13 companies/associations, 1 individual).

Arguments in favour were lower costs for issuers, easier and speedier submissions and approval processes and greater transparency. An integrated system should also facilitate harmonisation and the spread of best practices which, in turn, should enhance investor protection. A one-stop-shop for all relevant information (Prospectus Directive, Transparency Directive, Market Abuse Regulation/Directive) would avoid the duplication of information provision, would be a natural part of the Capital Market Union and would improve the global competitiveness of EU markets. Investors would benefit from easier access and comparison of documents and wider choice across borders. Supervisors could enhance their monitoring of the passporting of prospectuses and benefit from cooperation / best practices. In the end, separate national databases in all Member States would be more expensive.

Opponents argue that national competent authorities would be and should remain the natural contact points; the more so as most prospectuses were only relevant nationally. Links from an ESMA web

portal as under the Transparency Directive to the national databases would be sufficient. An entirely new database would be extremely costly and burdensome to set up, especially in view of the translation needs that would evolve. It would provide little to no added value as all the information was already available online.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: Most competent authorities supported the creation of a single, centralised, EU database but expressed some concerns regarding costs. Arguments from those acknowledging the benefits of such system:

- It would facilitate the harmonization between different Member States and thus avoid the selection of different jurisdictions depending on its flexibility.
- ESMA's role as a central access point as an integrated EU filing system for all prospectuses should be further improved including the finals terms. The provisions concerning notification and communication procedures with regard to approved prospectuses and filed final terms (Article 5 (4), 14 (1), 17 and 18 of the Prospectus Directive) could be streamlined.

Crowdfunding organisations: This issue was not addressed.

Non-governmental organisations: Most contributors welcome the creation of an EU filling system. Arguments in favour of this option include:

- It would allow users to easily navigate between all prospectuses in the EU.
- Better accessibility and comparability. It will be easier to make the website well-known to companies and consumers.
- It would be a logical consequence of the CMU. A central information storage of all issuer related information would enhance transparency around prospectuses and the approval and pass-porting process, as well as enhancing the accessibility for investors to any related information, thereby enhancing investor protection.

Moreover, some contributors made the following suggestions:

- The EU filling system could be run by an already well-known organisation (e. g. national competent authorities or ESMA).
- It should further more be clear to the investor that the authority managing the platform (e.g. ESMA) does not guarantee the correctness of the information provided in the prospectus.
- The system should be complementary to the obligation of issuers to publish the prospectus on, for example, their own website.
- The possibility to request a paper version, on the basis of Article 14(7), should in any case remain.

One contributor against such system considers that most prospectuses will be of no relevance to investors outside the member state in which they were approved.

Stock exchanges: The majority of stock exchange respondents –only one exception- are in favour of the creation of a single, centralised, EU database as it would be beneficial for issuers and investors. The contributors made the following suggestions:

- The EU filling system should be free of charge and prospectuses should be available for an indefinite period of time.
- The European Electronic Access Point which is in progress by ESMA and deals with the dissemination of regulated information, could be used to cover this need with no additional implementation costs.
- The facility should be available if prospectuses are made pan-EU documents (automatically passported).
- Use of modern technology, such as XBRL schema, to support cross-border comparability of prospectuses would facilitate a single integrated filing system. As has been raised in discussions relating to the Shareholder Rights Directive, there may also be an argument in favour of issuers providing translations of certain key information into a common language such as English for the benefit of investors from other Member States.

Investors' associations: Only two investors associations addressed this question. Both respondents highlighted the benefits of the creation of a single, centralised, EU database as such system would increase accessibility, transparency and comparability. Moreover, they note that it should be complementary to the obligation of issuers to publish the prospectus on, for e.g. on their own website. Furthermore, it should be clear to the investor that the authority managing the platform, e.g. ESMA, does not guarantee the correctness of the info provided in the prospectus.

Consultancies and law firms: A majority of consultancies and law firms support the creation of a database. One respondent suggested the creation of a central and comprehensive database similar to the US EDGAR system. Only two respondents favoured the status quo. The main concerns expressed concern costs, additional complexity and language barriers. Amongst the arguments in favour of such system: issuers would benefit from lower cost of capital resulting from a wider pool of investors.

Companies, SMEs, micro-enterprises, sole traders: Many contributors support the creation of a single, centralised, EU database as investors and issuers would be able to access and compare documents easily. This system would increase the ease of use of an "incorporation by reference" system. Another respondent considered a unique access to all prospectuses published in Europe a pragmatic example of what capital market union should look like: implementation of appropriate tools at a unified European level. ESMA is a good candidate for leading the project. While some respondents expressed concerns regarding the costs involved, the majority considered that the benefits would far outweigh the set-up costs.

Financial industry: A majority of respondents are in favour of creating a single, centralised, EU database. An integrated EU filing system would give investors the possibility to get a complete overview of all offers to the public within a certain category of instruments. Therefore, this system would enhance transparency and accessibility for investors to any related information, thereby improving investor protection.

Several industry associations suggest using the Officially Appointed Storage Mechanisms (OAMs) along with the pan European network of OAMs.

II. Statistical analysis

1. INFORMATION ABOUT YOU

Are you replying as:

		Answers	Ratio
a private individual		36	19.78%
an organisation or a company		125	68.68%
a public authority or an international organisation		21	11.54%
No Answer		0	0%

Is your organisation included in the Transparency Register?

		Answers	Ratio
Yes		78	42.86%
No		47	25.82%
No Answer		57	31.32%

Type of organisation:

		Answers	Ratio
Academic institution		0	0%
Company, SME, micro-enterprise, sole trader		25	13.74%
Consultancy, law firm		12	6.59%
Consumer organisation		3	1.65%
Industry association		51	28.02%
Media		0	0%
Non-governmental organisation		7	3.85%
Think tank		0	0%
Trade union		0	0%
Other		27	14.84%
No Answer		57	31.32%

Type of public authority

		Answers	Ratio
International or European organisation		2	1.1%
Regional or local authority		0	0%
Government or Ministry		8	4.4%
Regulatory authority, Supervisory authority or Central bank		11	6.04%
Other public authority		1	0.55%
No Answer		160	87.91%

Where are you based and/or where do you carry out your activity?

		Answers	Ratio
Austria		8	4.4%
Belgium		18	9.89%
Bulgaria		2	1.1%
Croatia		2	1.1%
Cyprus		1	0.55%
Czech Republic		2	1.1%
Denmark		5	2.75%
Estonia		0	0%
Finland		2	1.1%
France		22	12.09%
Germany		38	20.88%
Greece		2	1.1%
Hungary		1	0.55%
Iceland		0	0%
Ireland		3	1.65%
Italy		7	3.85%
Latvia		0	0%
Liechtenstein		0	0%
Lithuania		0	0%
Luxembourg		1	0.55%
Malta		0	0%
Norway		1	0.55%
Poland		2	1.1%
Portugal		1	0.55%
Romania		0	0%
Slovakia		3	1.65%
Slovenia		0	0%
Spain		5	2.75%
Sweden		4	2.2%
Switzerland		1	0.55%
The Netherlands		6	3.3%
United Kingdom		37	20.33%
Other country		8	4.4%
No Answer		0	0%

Field of activity or sector (if applicable):

		Answers	Ratio
Accounting		16	8.79%
Auditing		13	7.14%
Banking (issuing-finance department)		31	17.03%
Banking (investment department)		27	14.84%
Credit rating agencies		4	2.2%
Insurance		8	4.4%
Pension provision		10	5.49%
Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)		37	20.33%
Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)		28	15.38%
Social entrepreneurship		6	3.3%
Other		75	41.21%
Not applicable		27	14.84%
No Answer		0	0%

Please indicate if you are:

		Answers	Ratio
a company listed on a regulated market of the European Economic Area (EU, Iceland, Liechtenstein and Norway)		11	6.04%
a company whose securities are admitted to trading on a multilateral trading facility (MTF) of the EEA		1	0.55%
none of the above		13	7.14%
No Answer		157	86.26%

Please indicate if you are:

		Answers	Ratio
a company with a market capitalisation below 200M€ (“small and medium-sized enterprise” under the meaning of Art. 4(1)(13) of Directive 2014/65/UE)		0	0%
a company meeting at least 2 of the following 3 criteria: 1. an average number of employees during the financial year of less than 250, 2. a total balance sheet not exceeding 43M€ 3. an annual net turnover not exceeding 50M€ (“small and medium-sized enterprise” under the meaning of Art. 2(1)(f) of Directive 2003/71/EC)		6	3.3%
none of the above		19	10.44%
No Answer		157	86.26%

Important notice on the publication of responses

Contributions received are intended for publication on the Commission’s website. Do you agree to your contribution being published? (see specific privacy statement)

		Answers	Ratio
Yes, I agree to my response being published under the name I indicate (name of your organisation/company/public authority or your name if your reply as an individual)		147	80.77%
No, I do not want my response to be published		35	19.23%
No Answer		0	0%

2. YOUR OPINION

I. Introduction

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:

		Answers	Ratio
Admission to trading on a regulated market		93	51.1%
An offer of securities to the public		99	54.4%
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)		19	10.44%
Other		8	4.4%
Don't know / no opinion		18	9.89%
No Answer		54	29.67%

c. 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? Please estimate this fraction.

		Answers	Ratio
Yes, a percentage of the costs above would be incurred anyway		21	11.54%
No		1	0.55%
Don't know / no opinion		66	36.26%
No Answer		94	51.65%

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?

		Answers	Ratio
Yes		26	14.29%
No		30	16.48%
Don't know / no opinion		40	21.98%
No Answer		86	47.25%

II. Issues for discussion

A. When a prospectus is needed

A1. Adjusting the current exemption thresholds

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

		Answers	Ratio
Yes, from EUR 5 000 000 to more		37	20.33%
No		60	32.97%
Don't know / no opinion		36	19.78%
No Answer		49	26.92%

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

		Answers	Ratio
Yes, from EUR 75 000 000 to more		13	7.14%
No		44	24.18%
Don't know / no opinion		73	40.11%
No Answer		52	28.57%

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

		Answers	Ratio
Yes, from 150 persons to more		41	22.53%
No		47	25.82%
Don't know / no opinion		45	24.73%
No Answer		49	26.92%

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

		Answers	Ratio
Yes, from EUR 100 000 to more		17	9.34%
No		62	34.07%
Don't know / no opinion		56	30.77%
No Answer		47	25.82%

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?

		Answers	Ratio
Yes		68	37.36%
No		27	14.84%
Other areas		1	0.55%
Don't know / no opinion		37	20.33%
No Answer		49	26.92%

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)?

		Answers	Ratio
Yes		10	5.49%
No		71	39.01%
Don't know / no opinion		50	27.47%
No Answer		51	28.02%

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?

		Answers	Ratio
Yes		58	31.87%
No		24	13.19%
Don't know / no opinion		47	25.82%
No Answer		53	29.12%

A2. Creating an exemption for "secondary issuances" under certain conditions

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, provided that relevant information updates are made available by the issuer?

		Answers	Ratio
Yes		105	57.69%
No		7	3.85%
Don't know / no opinion		22	12.09%
No Answer		48	26.37%

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

		Answers	Ratio
The 10% threshold should be raised		27	14.84%
The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued		43	23.63%
No amendment		20	10.99%
Don't know / no opinion		35	19.23%
No Answer		57	31.32%

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?

		Answers	Ratio
One or several years		35	19.23%
There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)		51	28.02%
Don't know / no opinion		39	21.43%
No Answer		57	31.32%

A3. Extending the prospectus to admission to trading on an MTF

11. Do you think that a prospectus should be required when securities are admitted to trading on an MTF?

		Answers	Ratio
Yes, on all MTFs		28	15.38%
Yes, but only on those MTFs registered as SME growth markets		3	1.65%
No		71	39.01%
Don't know / no opinion		27	14.84%
No Answer		53	29.12%

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?

		Answers	Ratio
Yes, the amended regime should apply to all MTFs		25	13.74%
Yes, the unamended regime should apply to all MTFs		1	0.55%
Yes, the amended regime should apply but not to those MTFs registered as SME growth markets		3	1.65%
Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets		1	0.55%
Yes, the amended regime should apply but only to those MTFs registered as SME growth markets		10	5.49%
Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets		1	0.55%
No		37	20.33%
Don't know / no opinion		38	20.88%
No Answer		66	36.26%

A4. Exemption of prospectus for certain types of closed-ended alternative investment funds (AIFs)
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?

		Answers	Ratio
Yes, such an exemption would not affect investor/consumer protection in a significant way		31	17.03%
No, such an exemption would affect investor/consumer protection		18	9.89%
Don't know / no opinion		71	39.01%
No Answer		62	34.07%

A5. Extending the exemption for employee share schemes
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?

		Answers	Ratio
Yes		42	23.08%
No		12	6.59%
Don't know / no opinion		58	31.87%
No Answer		70	38.46%

A6. Balancing the favourable treatment of issuers of debt securities with a high denomination per unit with liquidity on the debt markets
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?

		Answers	Ratio
Yes		65	35.71%
No		35	19.23%
Don't know / no opinion		32	17.58%
No Answer		50	27.47%

a) Do you then think that the EUR 100 000 threshold should be lowered?

		Answers	Ratio
Yes		53	29.12%
No		6	3.3%
Don't know / no opinion		4	2.2%
No Answer		119	65.38%

b) Do you then think that some or all of the favourable treatments granted to the above issuers should be removed?

		Answers	Ratio
Yes		30	16.48%
No		21	11.54%
Don't know / no opinion		5	2.75%
No Answer		126	69.23%

c) Do you then think that 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?

		Answers	Ratio
Yes		40	21.98%
No		12	6.59%
Don't know / no opinion		4	2.2%
No Answer		126	69.23%

B. The information a prospectus should contain

B1. Proportionate disclosure regime

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?

		Answers	Ratio
Yes		8	4.4%
No		60	32.97%
Don't know / no opinion		45	24.73%
No Answer		69	37.91%

a) Proportionate regime for rights issues

		Answers	Ratio
Yes		11	6.04%
No		43	23.63%
Don't know / no opinion		50	27.47%
No Answer		78	42.86%

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

		Answers	Ratio
Yes		22	12.09%
No		34	18.68%
Don't know / no opinion		47	25.82%
No Answer		79	43.41%

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

		Answers	Ratio
Yes		5	2.75%
No		17	9.34%
Don't know / no opinion		78	42.86%
No Answer		82	45.05%

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

		Answers	Ratio
To types of issuers or issues not yet covered		11	6.04%
To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive		14	7.69%
Other		24	13.19%
Don't know / no opinion		49	26.92%
No Answer		88	48.35%

B2. Creating a bespoke regime for companies admitted to trading on SME growth markets

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?

		Answers	Ratio
Yes		48	26.37%
No		19	10.44%
Don't know / no opinion		39	21.43%
No Answer		76	41.76%

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?

		Answers	Ratio
Yes		41	22.53%
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		32	17.58%
Don't know / no opinion		36	19.78%
No Answer		73	40.11%

B3. Making the "incorporation by reference" mechanism more flexible and assessing the need for supplements in case of parallel disclosure of inside information

23. Should the provision of Article 11 (incorporation by reference) be recalibrated in order to achieve more flexibility?

		Answers	Ratio
Yes		74	40.66%
No		13	7.14%
Don't know / no opinion		30	16.48%
No Answer		65	35.71%

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)?

		Answers	Ratio
Yes		35	19.23%
No		53	29.12%
Don't know / no opinion		26	14.29%
No Answer		68	37.36%

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

		Answers	Ratio
Yes		32	17.58%
No		16	8.79%
Don't know / no opinion		56	30.77%
No Answer		78	42.86%

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?

		Answers	Ratio
Yes		58	31.87%
No		28	15.38%
Don't know / no opinion		32	17.58%
No Answer		64	35.16%

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

		Answers	Ratio
Yes		17	9.34%
No		21	11.54%
Don't know / no opinion		62	34.07%
No Answer		82	45.05%

B4. Reassessing the objectives of the prospectus summary and addressing possible overlaps with the key information document required under the PRIIPs Regulation

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

		Answers	Ratio
Yes, regarding the concept of key information and its usefulness for retail investors		63	34.62%
Yes, regarding the comparability of the summaries of similar securities		25	13.74%
Yes, regarding the interaction with final terms in base prospectuses		29	15.93%
No		16	8.79%
Don't know / no opinion		37	20.33%
No Answer		63	34.62%

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?

		Answers	Ratio
By providing that information already featured in the KID need not be duplicated in the prospectus summary		12	6.59%
By eliminating the prospectus summary for those securities		27	14.84%
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		24	13.19%
Other		21	11.54%
Don't know / no opinion		35	19.23%
No Answer		63	34.62%

B5. Imposing a length limit to prospectuses

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

		Answers	Ratio
Yes, it should be defined by a maximum number of pages		9	4.95%
Yes, it should be defined using other criteria		6	3.3%
No		95	52.2%
Don't know / no opinion		18	9.89%
No Answer		54	29.67%

B6. Liability and sanctions

31. Do you believe the liability and sanctions regimes the Directive provides for are adequate?: The overall civil liability regime of Article 6

		Answers	Ratio
Yes		25	13.74%
No		23	12.64%
No opinion		44	24.18%
No Answer		90	49.45%

31. Do you believe the liability and sanctions regimes the Directive provides for are adequate?: The specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)

		Answers	Ratio
Yes		29	15.93%
No		20	10.99%
No opinion		43	23.63%
No Answer		90	49.45%

31. Do you believe the liability and sanctions regimes the Directive provides for are adequate?: The sanctions regime of Article 25

		Answers	Ratio
Yes		26	14.29%
No		21	11.54%
No opinion		44	24.18%
No Answer		91	50%

32. Have you identified problems relating to multi-jurisdiction (cross-border) liability with regards to the Directive?

		Answers	Ratio
Yes		41	22.53%
No		11	6.04%
Don't know / no opinion		59	32.42%
No Answer		71	39.01%

C. How prospectuses are approved

C1. Streamlining further the scrutiny and approval process of prospectuses by national competent authorities (NCAs)

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?

		Answers	Ratio
Yes		50	27.47%
No		11	6.04%
Don't know / no opinion		47	25.82%
No Answer		74	40.66%

34. Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs?

		Answers	Ratio
Yes		37	20.33%
No		24	13.19%
Don't know / no opinion		44	24.18%
No Answer		77	42.31%

35. Should the scrutiny and approval procedure be made more transparent to the public?

		Answers	Ratio
Yes		14	7.69%
No		55	30.22%
Don't know / no opinion		41	22.53%
No Answer		72	39.56%

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?

		Answers	Ratio
Yes		47	25.82%
No		31	17.03%
Don't know / no opinion		27	14.84%
No Answer		77	42.31%

37. What should be the involvement of national competent authorities (NCA) in relation to prospectuses? Should NCA:

		Answers	Ratio
review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)		66	36.26%
review only a sample of prospectuses ex ante (risk-based approach)		6	3.3%
review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)		0	0%
review only a sample of prospectuses ex post (risk-based approach)		0	0%
Other		14	7.69%
Don't know / no opinion		23	12.64%
No Answer		73	40.11%

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?

		Answers	Ratio
Yes		29	15.93%
No		30	16.48%
Don't know / no opinion		40	21.98%
No Answer		83	45.6%

39. a) Is the EU passporting mechanism of prospectuses functioning in an efficient way?

		Answers	Ratio
Yes		36	19.78%
No		29	15.93%
Don't know / no opinion		42	23.08%
No Answer		75	41.21%

b) Could the notification procedure between NCAs of home and host Member States set out in Article 18 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?

		Answers	Ratio
Yes		28	15.38%
No		20	10.99%
Don't know / no opinion		51	28.02%
No Answer		83	45.6%

C2. Extending the base prospectus facility

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:

		Answers	Ratio
I support		44	24.18%
I do not support		26	14.29%
No Answer		112	61.54%

b) The validity of the base prospectus should be extended beyond one year:

		Answers	Ratio
I support		50	27.47%
I do not support		35	19.23%
No Answer		97	53.3%

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:

		Answers	Ratio
I support		60	32.97%
I do not support		10	5.49%
No Answer		112	61.54%

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:

		Answers	Ratio
I support		40	21.98%
I do not support		24	13.19%
No Answer		118	64.84%

e) The base prospectus facility should remain unchanged:

		Answers	Ratio
I support		29	15.93%
I do not support		33	18.13%
No Answer		120	65.93%

C3. The separate approval of the registration document, the securities note and the summary note ("tripartite regime")

C4. Reviewing the determination of the home Member State for issues of non-equity securities

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?

		Answers	Ratio
No, status quo should be maintained		26	14.29%
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		33	18.13%
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		5	2.75%
No Answer		118	64.84%

C5. Moving to an all-electronic system for the filing and publication of prospectuses

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)?

		Answers	Ratio
Yes		77	42.31%
No		16	8.79%
Don't know / no opinion		21	11.54%
No Answer		68	37.36%

44. Should a single, integrated EU filing system for all prospectuses produced in the EU be created?

		Answers	Ratio
Yes		71	39.01%
No		17	9.34%
Don't know / no opinion		28	15.38%
No Answer		66	36.26%

C6. Equivalence of third-country prospectus regimes

46. Would you support the creation of an equivalence regime in the Union for third country prospectus regimes?

		Answers	Ratio
Yes		53	29.12%
No		14	7.69%
Don't know / no opinion		38	20.88%
No Answer		77	42.31%

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)?

		Answers	Ratio
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		27	14.84%
Such a prospectus should be approved by the Home Member State under Article 13		17	9.34%
Other		7	3.85%
Don't know / no opinion		40	21.98%
No Answer		91	50%

III. FINAL QUESTIONS

a) "Offer of securities to the public"?

		Answers	Ratio
Yes		40	21.98%
No		44	24.18%
Don't know / no opinion		30	16.48%
No Answer		68	37.36%

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

		Answers	Ratio
Yes		27	14.84%
No		36	19.78%
Don't know / no opinion		39	21.43%
No Answer		80	43.96%

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

		Answers	Ratio
No, legal certainty is ensured		18	9.89%
Yes, the following should be clarified:		30	16.48%
Don't know / no opinion		56	30.77%
No Answer		78	42.86%

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?

		Answers	Ratio
Yes		45	24.73%
No		13	7.14%
Don’t know / no opinion		48	26.37%
No Answer		76	41.76%

51. Can you identify any incoherence in the current Directive’s provisions which may cause the prospectus framework to insufficiently protect investors?

		Answers	Ratio
Yes		18	9.89%
No		18	9.89%
Don’t know / no opinion		57	31.32%
No Answer		89	48.9%