Introduction

The Prospectus Directive 2003/71/EC has applied since July 2005. The Directive, together with its Implementing Regulation n°809/2004, lays down the rules governing the prospectus that must be made available to the public when a company makes an offer or an admission to trading of transferable securities on a regulated market in the EU. The prospectus contains information about the offer, the issuer and the securities, and has to be approved by the competent authority of a Member State before the beginning of the offer or the admission to trading of the securities.

Two key objectives underpin the Directive:
• **Investor and consumer protection.** A prospectus is a standardised document which, in an easily analysable and comprehensible form, should contain all information which is necessary to enable investors to make an informed assessment of the issuer and the securities offered or admitted to trading on a regulated market.

• **Market efficiency.** A prospectus aims at facilitating the widest possible access to capital markets by companies across the EU. The Directive sought to achieve this through requiring a common form and content of the prospectus and introducing an EU wide passport: a prospectus approved by the competent authority of one Member State should be valid for the entire Union without additional scrutiny by the authorities of other Member States.

Following a review, the Directive was amended in November 2010 in the following areas: (i) investor protection was strengthened by improving the quality and effectiveness of disclosures and by facilitating comparison between products through the summary; (ii) efficiency was increased by reducing administrative burdens for issuers through various proportionate disclosure regimes (including for small and medium-sized enterprises (SMEs), companies with reduced market capitalisation and rights issues), a recalibration of the thresholds below which no prospectus is required and some further harmonisation of technical details in certain areas (withdrawal rights).

The review of the Directive in the context of the Commission’s action plan for a Capital Markets Union

The prospectus is the gateway into capital markets for firms seeking funding, and most firms seeking to issue debt or equity must produce one. It is crucial that it does not act as an unnecessary barrier to the capital markets. It should be as straightforward as possible for companies (including SMEs) to raise capital throughout the EU. The Commission is required to assess the application of the Directive by 1 January 2016 but given the importance of making progress towards a Capital Markets Union, has decided to bring the review forward. The review will seek to ensure that a prospectus is required only when it is truly needed, that the approval process is as smooth and efficient as possible, the information that must be included in prospectuses is useful and not burdensome to produce and that barriers to seeking funding across borders are reduced.

The review of the Prospectus Directive is featured in the Commission Work Programme for 2015, as part of the [Regulatory Fitness and Performance Programme (REFIT)](#).

**Shortcomings of the Directive and objectives of the review**

There are several potential shortcomings of the prospectus framework today. The process of drawing up a prospectus and getting it approved by the national competent authority is often perceived as expensive, complex and time-consuming, especially for SMEs and companies with reduced market capitalisation. Member States have applied differently the flexibility in the Directive to exempt offers of securities with a total value below EUR 5 000 000: the requirement to produce a prospectus kicks in at different levels across the EU. There are indications that prospectus approval procedures are in practice handled differently between Member States. Prospectuses have become overly long documents, which has brought into question the effectiveness of the Directive from an investor protection perspective.
The objective of the review of the Directive is to reform and reshape the current prospectus regime in order to make it easier for companies to raise capital throughout the EU and to lower the associated costs, while maintaining effective levels of consumer and investor protection.

The Directive also needs to be updated to reflect market and regulatory developments including the development of multilateral trading facilities (MTFs), creation of SME growth markets and organised trading facilities (OTFs), the introduction of key information documents for packaged retail and insurance-based investment products (PRIIPs) under Regulation (EU) No 1286/2014.

This public consultation seeks to identify the needs of market users with regard to prospectuses concerning scope, form, content, comparability, the approval process, liability and sanctions. In addition, interested parties should provide feedback about the aspects which unduly hinder access to capital markets for issuers, and which, if amended, could reduce administrative burden without undermining investor protection.

**Please note:** In order to ensure a fair and transparent consultation process only responses received through our online questionnaire will be taken into account and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-prospectus-consultation@ec.europa.eu.

More information:
- on this consultation
- on the consultation document
- on the protection of personal data regime for this consultation

## 1. Information about you

*Are you replying as:
- [ ] a private individual
- [x] an organisation or a company
- [ ] a public authority or an international organisation

*Name of your organisation:

Financial Service User Group FSUG

Contact email address:

The information you provide here is for administrative purposes only and will not be published

pcoenen@veb.net
*Is your organisation included in the Transparency Register?
(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)

☐ Yes  ☑ No

*Type of organisation:
- ☐ Academic institution
- ☐ Consultancy, law firm
- ☐ Industry association
- ☐ Non-governmental organisation
- ☐ Trade union
- ☐ Company, SME, micro-enterprise, sole trader
- ☐ Consumer organisation
- ☐ Media
- ☐ Think tank
- ☐ Other

*Please specify the type of organisation:

EC advisory/expert group

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

Belgium

* Field of activity or sector (if applicable):
  at least 1 choice(s)
  - ☐ Accounting
  - ☐ Auditing
  - ☐ Banking (issuing-finance department)
  - ☐ Banking (investment department)
  - ☐ Credit rating agencies
  - ☐ Insurance
  - ☐ Pension provision
  - ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
  - ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
  - ☐ Social entrepreneurship
  - ☑ Other
  - ☐ Not applicable
**Please specify your activity field(s) or sector(s):**

- advise the Commission in the preparation of legislation or policy initiatives which affect the users of financial services
- provide insight, opinion and advice concerning the practical implementation of such policies
- proactively seek to identify key financial services issues which affect users of financial services
- liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level

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**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)*

- 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*)
- No, I do not want my response to be published

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**2. Your opinion**

**I. Introduction**

Please refer to the corresponding section of the consultation document to read some context information before answering the questions.

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

- Admission to trading on a regulated market
- An offer of securities to the public

- Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public)
- Other
- Don’t know / no opinion
Additional comments on the principle whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public:

FSUG proposes to revise 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 issuer should be liable on the basis of this revised summary prospectus. The length should be limited to 10 pages.

Furthermore, FSUG believes that, ideally, the obligation to draw up a prospectus should be mandatory for all offers and admissions to trading, except for certain secondary offerings and offers exclusively to qualified investors. Instead of narrowing the scope of the Directive, FSUG supports an extension of the proportionate disclosure regime and incorporation by reference in order to alleviate administrative burdens for certain issuers and offers.

For a more extensive answer, please see document attached.

2. In order to better understand the costs implied by the prospectus regime for issuers:
a) Please estimate the cost of producing a prospectus (between how many euros and how many euros for a total consideration of how many euros):

<table>
<thead>
<tr>
<th>Don’t know (add an X in the next three fields)</th>
<th>Minimum cost (in €)</th>
<th>Maximum cost (in €)</th>
<th>For a total consideration of (in €)</th>
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<tbody>
<tr>
<td>Equity prospectus</td>
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<td>Non-equity prospectus</td>
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<td>Base prospectus</td>
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<td>Initial public offer (IPO) prospectus</td>
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<td>Don’t know (add an X in the next three fields)</td>
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Additional comments on the cost of producing a prospectus:

1,000 character(s) maximum

FSUG does not have the necessary knowledge to answer this question. Nevertheless, FSUG generally believes that enhancing investor protection cannot be rejected by invoking undesirable greater costs, increased administrative costs or petitioning to maintain extant structures in the financial markets.
b) What is the share, in per cent, of the following in the total costs of a prospectus:

<table>
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<tr>
<th>Don’t know (add an X in the next three fields)</th>
<th>Share in the total costs (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuer’s internal costs</td>
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<td>Audit costs</td>
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<td>Legal fees</td>
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<td>Competent authorities’ fees</td>
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<td>Other costs (please specify which)</td>
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<tr>
<td>Don’t know (add an X in the next three fields)</td>
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</tbody>
</table>
Additional comments on the share in the total costs of a prospectus:

1,000 character(s) maximum

FSUG does not have the necessary knowledge to answer this question. Nevertheless, FSUG generally believes that enhancing investor protection cannot be rejected by invoking undesirable greater costs, increased administrative costs or petitioning to maintain extant structures in the financial markets.

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.

- Yes, a percentage of the costs above would be incurred anyway
- No
- Don’t know / no opinion

Additional comments on the fraction of the costs indicated above that would be incurred by an issuer anyway:

1,000 character(s) maximum

FSUG does not have the necessary knowledge to answer this question. Nevertheless, FSUG generally believes that enhancing investor protection cannot be rejected by invoking undesirable greater costs, increased administrative costs or petitioning to maintain extant structures in the financial markets.

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?

- Yes
- No
- Don’t know / no opinion

Additional comments on the possibility that additional costs are outweighed by the benefit of the passport attached to the prospectus:

1,000 character(s) maximum

FSUG strongly believes that the advantages of having an EU prospectus regime, whereby the same disclosure standards are applied across the EU and whereby a prospectus, once approved by the home competent authority, enables an issuer to raise financing across the whole EU, clearly outweigh the costs for issuers.
II. Issues for discussion

Please refer to the corresponding section of the consultation document to read some context information before answering the questions.

A. When a prospectus is needed

A1. Adjusting the current exemption thresholds

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

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

- Yes, from EUR 5 000 000 to more
- No
- Don’t know / no opinion

Please justify your answer on the EUR 5 000 000 threshold:

1,000 character(s) maximum

Ideally, the threshold should be brought to zero (i.e. the exemption should be deleted). This does not mean that disclosure requirements should be the same for each offer of securities below 5 000 000, regardless of the total consideration. Instead, a proportionate disclosure regime should be applied whereby the disclosure requirements are based on the degree of risk of not recovering one’s initial investment at maturity and the total value of securities owned by the investor at the end of the offer (see Q5).

In any case, FSUG believes that the threshold should not be adjusted upwardly. The benefits that such an upward adjustment provides to issuers do not outweigh the negative effects it has on retail investors.

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

- Yes, from EUR 75 000 000 to more
- No
- Don’t know / no opinion
Please justify your answer on the EUR 75 000 000 threshold:

1,000 character(s) maximum

Ideally, the threshold should be brought to zero (i.e. the exemption should be deleted). In that case, requirements on the information that must be provided can however be less stringent (i.e. proportionate) for offers with a total consideration below 75 000 000. In any case, the threshold should not be adjusted upwardly. The benefits that such an upward adjustment provides to issuers do not outweigh the negative effects it has on retail investors.

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

- Yes, from 150 persons to more
- No
- Don’t know / no opinion

Please justify your answer on the 150 persons threshold:

1,000 character(s) maximum

Ideally, the threshold should be brought to zero (i.e. the exemption should be deleted). FSUG finds it is illogical and dangerous that any offer of securities addressed to a number of natural or legal persons per Member State below the number of 150 persons, other than qualified investors, would be exempted from the requirement to produce a prospectus. In this respect, it is also important that the Commission looks at how to deal with the ‘retailisation’ of products that were initially only sold to qualified investors. The effects of the removal of this exemption could be mitigated by making it easier for retail investors to qualify as ‘qualified investor’. In any case, FSUG believes that the threshold should not be adjusted upwardly. The benefits that such an upward adjustment provides to issuers do not outweigh the negative effects it has on retail investors.

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

- Yes, from EUR 100 000 to more
- No
- Don’t know / no opinion

Please specify from EUR 100 000 up to how many euros:

€
Please justify your answer on the EUR 100 000 threshold:

1,000 character(s) maximum

The denomination per unit does not tell us anything about the professionalism of the investor. However, requirements on the information that should be provided can be less stringent (i.e. proportionate) for offers with a denomination per unit above a certain value. In any case, FSUG believes that the threshold should not be adjusted downwardly. The benefits that such a downward adjustment provides to issuers do not outweigh the negative effects it has on retail investors.

As described in our answer to Q1, certain exemptions specifically for equity crowdfunding could be granted.

5. Would more harmonisation be beneficial in areas currently left to Member States’ discretion, such as the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000?
   - Yes
   - No
   - Other areas
   - Don’t know / no opinion

Please justify your answer on whether more harmonisation be beneficial:

1,000 character(s) maximum

Convergence of disclosure requirements in EU Member States would be beneficial to the safety and soundness of the financial markets, contribute to ensuring the same level of consumer protection and help creating a level playing field for financial service providers.

For a more extensive answer, please see the document attached.

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)?
   - Yes
   - No
   - Don’t know / no opinion

Please justify your answer on the possibility of including a wider range of securities in the scope of the Directive:

1,000 character(s) maximum

FSUG believes that the Commission should look at the following non-transferable securities when analysing the appropriate range of securities: closed-end funds, structured products and embedded derivatives, money-market instruments and derivatives.
7. Can you identify any other area where the scope of the Directive should be revised and if so how? Could other types of offers and admissions to trading be carried out without a prospectus without reducing consumer protection?

☐ Yes
☐ No
☐ Don’t know / no opinion

Please justify your answer on possible other area:

1,000 character(s) maximum

FSUG believes that a prospectus should be drawn up with each type of offer or admission to trading (except for, in some instance, secondary issuances (see Q8), and for offers exclusively to qualified investors (see Q 4(c)). FSUG supports an extension of the proportionate disclosure regime and incorporation by reference in order to alleviate administrative burdens for certain offers/issuers.

Also note our approach regarding equity crowdfunding, as described in Q1

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?

☐ Yes
☐ No
☐ Don’t know / no opinion

Please justify your answer on the possible mitigation of the obligation to draw up a prospectus:

1,000 character(s) maximum

As a prospectus has already been published with the IPO, FSUG believes it is not necessary to publish a new one if the secondary offering takes place within 3 years after IPO and does 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.
9. How should Article 4(2)(a) be amended in order to achieve this objective?

- The 10% threshold should be raised
- The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued
- No amendment
- Don’t know / no opinion

Please justify your answer on the amendment of Article 4(2):

In case of secondary issuances representing more than 10% of the shares, a prospectus should be published.

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?

- One or several years
- There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)
- Don’t know / no opinion

Please specify the length of the ideal timeframe (in years):

3 years

Please justify your answer on the convenience of having a timeframe for the exemption:

FSUG believes that a three year-timeframe would be appropriate. The timeframe that is applied should be based on the average holding period. Noticing that the average holding period within the EU differs from 12 till 36 months, three years is an appropriate time frame.

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?

- Yes, on all MTFs
- Yes, but only on those MTFs registered as SME growth markets
- No
- Don’t know / no opinion
Please justify your answer on whether a prospectus should be required when securities are admitted to trading on an MTF:

1,000 character(s) maximum

FSUG sees no reason to make a distinction between MTFs and regular markets when it comes to the obligation to publish a prospectus. Retail investors that want to have access to MTFs should obtain the same information regarding the issuer, the offer and the securities as when they invest on regular markets. The rules should moreover be harmonized across the EU.

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?

- Yes, the amended regime should apply to all MTFs
- Yes, the unamended regime should apply to all MTFs
- Yes, the amended regime should apply but not to those MTFs registered as SME growth markets
- Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets
- Yes, the amended regime should apply but only to those MTFs registered as SME growth markets
- Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets
- No
- Don’t know / no opinion

Please justify your answer on the possible application of the proportionate disclosure regime:

1,000 character(s) maximum

Whether a proportionate disclosure regime applies or not should not depend on the type of market the securities are offered to the public or admitted to trading, but on the type of issuer or the type of offer.

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?

- Yes, such an exemption would not affect investor/consumer protection in a significant way
- No, such an exemption would affect investor/consumer protection
- Don’t know / no opinion
Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds:

Such an exemption would affect investor/consumer protection due to the differences between the sets of disclosure requirements which cumulate to these funds. A proportionate disclosure regime could be applied and, insofar as information is equal, incorporation by reference might be used.

**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?

- Yes
- No
- Don’t know / no opinion

Please explain your answer on the possible extension of the scope of the exemption provided to employee shares schemes in Article 4(1)(e) to non-EU, private companies and provide supporting evidence:

It depends on whether employees of non-EU private companies can be expected to have the knowledge necessary to decide whether to invest without having the ability to obtain a prospectus. FSUG highly doubts whether this is the case in most instances, even in case of EU private companies.

**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?

- Yes
- No
- Don’t know / no opinion
If so, what targeted changes could be made to address this without reducing investor protection?

If the threshold is lowered, investor protection will be sacrificed as there retail investors who make investments of more than EUR 50 000 in a single transaction. For FSUG, the only option to increase liquidity and to maintain a high level of investor protection is to remove the EUR 100 000 exemption and make it mandatory to publish a prospectus for both debt securities with denomination per unit of above EUR 100 000 as well as for those below EUR 100 000. Proportionate disclosure regime could be applied to the former. FSUG also believes that issuers of debt securities above a denomination per unit of EUR 100 000 should publish annual and half-yearly financial reports.

Please justify your answer on whether the system of exemptions may be detrimental to liquidity in corporate bond markets:

See previous comment

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

- Yes
- No
- Don’t know / no opinion

Please justify your answer on whether the EUR 100 000 threshold should be lowered:

See previous comment

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

- Yes
- No
- Don’t know / no opinion

Please justify your answer on whether the favourable treatments granted to the above issuers should be removed:

A proportionate disclosure regime should apply to issuers of debt securities with a denomination per unit of above EUR 100 000.
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?

- Yes
- No
- Don’t know / no opinion

Please justify your answer on whether 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:

1,000 character(s) maximum

No debt issuer should be exempted, regardless of the denomination per unit of their debt securities.

**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?

- Yes
- No
- Don’t know / no opinion

Please justify your answer on whether the proportionate disclosure regime has met its original purpose:

1,000 character(s) maximum

FSUG is supportive of a proportionate disclosure regime according to the risks associated with the envisaged commitment or investment. The proportionate disclosure regime is not widely used in practice by small and medium-sized enterprises and companies with reduced market capitalisation. It is still believed to be too burdensome for these smaller entities.

17. Is the proportionate disclosure regime (Article 7(2)(e) and (g)) used in practice, and if not what are the reasons? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues

- Yes
- No
- Don’t know / no opinion
Please justify your answer on the proportionate regime for rights issues:

1,000 character(s) maximum

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

☐ Yes
☐ No
☐ Don’t know / no opinion

Please justify your answer on the proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation:

1,000 character(s) maximum

The proportionate disclosure regime is not widely used in practice by small and medium-sized enterprises and companies with reduced market capitalisation. It is still believed to be too burdensome for these smaller entities.

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

☐ Yes
☐ No
☐ Don’t know / no opinion

Please justify your answer on the proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC:

1,000 character(s) maximum

18. Should the proportionate disclosure regime be modified to improve its efficiency, and how? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues:

1,000 character(s) maximum
b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation:

1,000 character(s) maximum

See answer Q17b

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

1,000 character(s) maximum

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

- [ ] To types of issuers or issues not yet covered
- [ ] To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive
- [x] Other
- [ ] Don’t know / no opinion

Please specify which other possibilities:

1,000 character(s) maximum

The proportionate disclosure regime could be extended to those offers and admissions trading that were previously exempted (see Q 4) and to all forms of secondary offers that fall within the scope of the Directive.

Please justify your answer on to whom the proportionate disclosure regime should be extended:

1,000 character(s) maximum

FSUG believes that, ideally, the obligation to draw up a prospectus should be mandatory for all offers and admissions to trading, except for certain secondary offerings and offers exclusively to qualified investors. Instead of narrowing the scope of the Directive, FSUG supports an extension of the proportionate disclosure regime and incorporation by reference in order to alleviate administrative burdens for certain issuers and offers.

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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?

- Yes
- No
- Don’t know / no opinion

Please justify your answer on the possible alignment of “company with reduced market capitalisation” (Article 2(1)(t)) 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:

1,000 character(s) maximum

Yes, as long as no exemption is made in the Directive for companies with reduced market capitalisation. A proportionate disclosure regime should apply. Also, incorporation by reference should be available for companies with reduced market capitalisation.

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

- Yes
- No, the higher risk profile of SMEs and companies with reduced market capitalisation justifies disclosure standards that are as high as for issuers listed on regulated markets
- Don’t know / no opinion

Please justify your answer on the possible creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market:

1,000 character(s) maximum

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.

FSUG is supportive of a proportionate disclosure regime according to the risks associated with the envisaged commitment or investment.

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

2,000 character(s) maximum

An amended proportionate disclosure regime should be applied to SMEs and companies with reduced market capitalisation, regardless of whether they are offered or admitted to trading on regular markets, MTFs (including SME growth markets) or OTFs.
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?

- Yes
- No
- Don’t know / no opinion

Please please indicate how this could be achieved (in particular, indicate which documents should be allowed to be incorporated by reference):

1,000 character(s) maximum

FSUG believes that incorporation by reference should be facilitated in order to lower the administrative burden for issuers that have to comply with different sets of partially overlapping disclosure requirements, for SMEs/companies with reduced market capitalisation as well as secondary offers that fall within the scope of the Directive. To ensure this does not go at the expense of investor protection, the documents that are referred to should be accessible at the same location (e.g. website, database) as the prospectus. Using references should not be allowed in revised summary prospectus.

Please justify your answer on the possible recalibration of the provision of Article 11 (incorporation by reference) in order to achieve more flexibility:

1,000 character(s) maximum

FSUG believes that incorporation by reference should be facilitated in order to lower the administrative burden for issuers that have to comply with different sets of partially overlapping disclosure requirements, for SMEs/companies with reduced market capitalisation as well as secondary offers that fall within the scope of the Directive. To ensure this does not go at the expense of investor protection, the documents that are referred to should be accessible at the same location (e.g. website, database) as the prospectus. Using references should not be allowed in revised summary prospectus.
24. a) Should documents which were already published/filed under the Transparency Directive no longer need to be subject to incorporation by reference in the prospectus (i.e. neither a substantial repetition of substance nor a reference to the document would need to be included in the prospectus as it would be assumed that potential investors have anyhow access and thus knowledge of the content of these documents)?

- Yes
- No
- Don’t know / no opinion

Please justify your answer on whether documents which were already published/filed under the Transparency Directive should no longer need to be subject to incorporation by reference in the prospectus:

1,000 character(s) maximum

All the information that is necessary for retail investors to make informed investor decision should be easily accessible and be included or referred to, in the prospectus. One cannot assume that potential investors have anyhow access and thus knowledge of the contents of the documents that have been published under the Transparency Directive.

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

- Yes
- No
- Don’t know / no opinion

Please justify your whether you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive:

1,000 character(s) maximum

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

- Yes
- No
- Don’t know / no opinion
Please justify your whether the above-mentioned obligation could 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:

1,000 character(s) maximum

In these circumstances, a supplement to the prospectus should always be provided by the issuer and approved by the competent authority.

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

- Yes
- No
- Don’t know / no opinion

Please justify your whether you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive:

1,000 character(s) maximum

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?

- Yes, regarding the concept of key information and its usefulness for retail investors
- Yes, regarding the comparability of the summaries of similar securities
- Yes, regarding the interaction with final terms in base prospectuses
- No
- Don’t know / no opinion
Please provide suggestions for re-assessment of the concept of key information and its usefulness for retail investors:

1,000 character(s) maximum

The summary prospectus has not proven to be very useful. The retail investor cannot make an informed assessment about the issuer, the offer and the securities, and compare it with other securities, solely on the basis of the summary. After all, there is no liability attached to it which means that it should be read in conjunction with the remainder of the prospectus.

FSUG therefore proposes to revise the summary prospectus. 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 investment 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. The length should be limited to 10 pages.

Please provide suggestions for re-assessment of the comparability of the summaries of similar securities:

1,000 character(s) maximum

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.

FSUG fully supports the development of risk labels for financial products which indicates the risk level of savings and investment products in a highly standardized format. It is intended to enable retail clients to gain an initial insight into the risk associated with such products. FSUG refers to good practices as there are in Belgium.

Please justify your answer on the possibility to reassess the rules regarding the summary of the prospectus:

1,000 character(s) maximum


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?

- By providing that information already featured in the KID need not be duplicated in the prospectus summary
- By eliminating the prospectus summary for those securities
- 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
- Other
- Don’t know / no opinion

Please specify which other ways you would consider to addressing the overlap of information required to be disclosed:

1,000 character(s) maximum

Incorporation by reference

Please justify your answer on the possible ways to address the overlap of information required to be disclosed:

1,000 character(s) maximum

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?

- Yes, it should be defined by a maximum number of pages
- Yes, it should be defined using other criteria
- No
- Don’t know / no opinion
Please justify your answer on the possible introduction of a maximum length to the prospectus:

1,000 character(s) maximum

As the Commission itself stated in the consultation document, by introducing a maximum length issuers will be tempted to put information in supplements. FSUG proposes to revise the summary prospectus. This document should, read on its own, provide the investor with an overview of all the material risks associated with a certain investment decision. The information provided and risks addressed, should be arranged by the issuer to the level of importance. The length of the revised summary prospectus should be limited to 10 pages and it should have civil liability attached.

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

1,000 character(s) maximum

Yes, FSUG believes a length limit of ten pages should be applied to the revised summary prospectus. However, in order to prevent issuers from having to omit necessary information, the competent authority should be able, under strict circumstances, to allow for a longer summary prospectus. This is important as there will be liability attached to it. However, the extended summary prospectus should never exceed 20 pages.

B6. Liability and sanctions

31. Do you believe the liability and sanctions regimes the Directive provides for are adequate?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>No opinion</th>
</tr>
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<tbody>
<tr>
<td><img src="image1" alt="" /></td>
<td><img src="image2" alt="" /></td>
<td><img src="image3" alt="" /></td>
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<td><img src="image4" alt="" /></td>
<td><img src="image5" alt="" /></td>
<td><img src="image6" alt="" /></td>
</tr>
</tbody>
</table>

The overall civil liability regime of Article 6

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

The sanctions regime of Article 25

If not, how could they be improved?

1,000 character(s) maximum

See Q27 for comments on the liability regime for prospectus summaries
Please justify your answer on the adequacy of the liability and sanctions regimes the Directive provides for:

1,000 character(s) maximum

FSUG supports maximum harmonization

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

- Yes
- No
- Don't know / no opinion

Please justify your answer on possible problems relating to multi-jurisdiction (cross-border) liability:

1,000 character(s) maximum

C. How prospectuses are approved

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

Please refer to the corresponding section of the consultation document to read some context information before answering the questions.

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?

- Yes
- No
- Don't know / no opinion

Please justify your answer on possible material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses:

1,000 character(s) maximum
34. Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs?

- Yes
- No
- Don’t know / no opinion

If you think there is a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs, please specify in which regard:

*1,000 character(s) maximum*

FSUG supports maximum harmonisation in this respect.

Please justify your answer on the possible need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs:

*1,000 character(s) maximum*

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

- Yes
- No
- Don’t know / no opinion

If you think the scrutiny and approval procedure should be made more transparent to the public, please indicate how this should be achieved:

*1,000 character(s) maximum*

Yes, it should especially be clear to retail investors that the national competent authority does not give a judgment on the correctness of the information provided in the prospectus.

Please justify your answer on the opportunity to make the scrutiny and approval procedure more transparent to the public:

*1,000 character(s) maximum*
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?

- Yes
- No
- Don’t know / no opinion

Please justify your answer on the possibility 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:

1,000 character(s) maximum

Although no legally binding purchase is yet possible, there is the danger that retail investors already make their decision on the basis of the draft prospectus and do not look at the final prospectus anymore (assuming that no changes were made). If it would be allowed, changes that have made should be communicated clearly to the investor.

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

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

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

1,000 character(s) maximum

Risk-based approach can lead to supervisory gambling. Ex-post can lead to problems. What if information essential to investor decision has been omitted? The preferred option is therefore to review all prospectus ex ante.

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?

- Yes
- No
- Don’t know / no opinion
Please explain your reasoning and the benefits (if any) this could bring to issuers:

1,000 character(s) maximum

Having the same authority making the decision to admit securities and doing the approval process provides benefits for both the issuer as well as investor protection. The prospectus should be part of the decision to admit securities to trading on a regular market. It would also ensure that both decisions are made by a commercially independent authority.

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

- Yes
- No
- Don’t know / no opinion

What improvements could be made to the EU passporting mechanism of prospectuses?

1,000 character(s) maximum

FSUG thinks that it is appropriate to put as condition for the passporting mechanism of prospectuses the obligation to sell a minimum of the offered products (20%) in the Member State where the draft prospectus is submitted, in order to ensure a minimum link between the national authority in charge of the approval and the final investor.

Please justify your answer on whether the EU passporting mechanism of prospectuses is functioning in an efficient way:

1,000 character(s) maximum

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?

- Yes
- No
- Don’t know / no opinion

Please justify your answer on whether the notification procedure set out in Article 18 between NCAs of home and host Member States could be simplified:

1,000 character(s) maximum

No, not as long as there is not sufficient harmonization of approval and scrutiny.
C2. Extending the base prospectus facility

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

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:
   - I support
   - I do not support

Please justify your answer on whether or not you support the possibility for the use of the base prospectus facility to be allowed for all types of issuers and issues, and for the limitations of Article 5(4)(a) and (b) to be removed:

1,000 character(s) maximum

b) The validity of the base prospectus should be extended beyond one year:
   - I support
   - I do not support

Please justify your answer on whether or not you support the possibility for the validity of the base prospectus to be extended beyond one year:

1,000 character(s) maximum

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:
   - I support
   - I do not support

Please justify your answer on whether or not you support the possibility for the Directive to 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:

1,000 character(s) maximum
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:

- I support
- I do not support

Please justify your answer on whether it should be possible for the components of a tripartite prospectus to be approved by different NCAs:

1,000 character(s) maximum

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e) The base prospectus facility should remain unchanged:

- I support
- I do not support

Please justify your answer on whether the base prospectus facility should remain unchanged:

1,000 character(s) maximum

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f) Other possible changes or clarifications to the base prospectus facility (please specify):

1,000 character(s) maximum

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

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

1,000 character(s) maximum

FSUG believes that the tripartite regime should be abolished. The prospectus should be a single document of which the different components are approved simultaneously and by the same competent authority. Alternatively, all relevant information and documents should be published in a centralised manner on the issuers company website.

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**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?
   - No, status quo should be maintained
   - 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
   - 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

Please explain how this dual regime should be amended:
1,000 character(s) maximum

The home Member State should always be prescribed by law.

Please justify your answer on the possibility for the dual regime for the determination of the home Member State for non-equity securities to be amended:
1,000 character(s) maximum

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)?
   - Yes
   - No
   - Don’t know / no opinion

Please justify your answer on the possible supression of the options to publish a prospectus in a printed form and to be inserted in a newspaper:
1,000 character(s) maximum

This would be an option. The possibility to request a paper version, on the basis of Article 14(7), should of course remain.

44. Should a single, integrated EU filing system for all prospectuses produced in the EU be created?
   - Yes
   - No
   - Don’t know / no opinion
Please give your views on the main benefits (added value for issuers and investors) and drawbacks (costs) of the creation of a single, integrated EU filing system for all prospectuses produced in the EU?

1,000 character(s) maximum

This could increase accessibility, also comparability. However, it should be complementary to the obligation of issuers to publish the prospectus on, for example, their own website. 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.

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

1,000 character(s) maximum

Accessibility, comparability and transparency

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?

☐ Yes
☐ No
☐ Don’t know / no opinion

Please describe on which essential principles the creation of an equivalence regime in the Union for third country prospectus regimes should be based:

1,000 character(s) maximum

FSUG does not believe an equivalence regime is appropriate to ensure investor protection.

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)?

☐ 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

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

☐ Other

☐ Don’t know / no opinion
Please justify your answer on how a prospectus prepared by a third country issuer in accordance with its legislation should be handled by the competent authority of the Home Member State:

1,000 character(s) maximum

This is necessary to ensure a high level of investor protection.

III. Final questions

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

a) “Offer of securities to the public”?

☐ Yes
☐ No
☐ Don’t know / no opinion

Please justify your answer on the need for “offer of securities to the public” to be better defined:

1,000 character(s) maximum

There is a need to eliminate uncertainties about what constitutes a public offer. Through the revision of Prospectus Directive, companies should have greater reassurance with regard to what does not constitute an offer, so that certain information can be made publicly available without triggering disclosure obligations (e.g. research).

b) “primary market” and “secondary market”?

☐ Yes
☐ No
☐ Don’t know / no opinion

Please justify your answer on the need for “offer of securities to the public” to be defined:

1,000 character(s) maximum

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

☐ No, legal certainty is ensured
☐ Yes, the following should be clarified:
☐ Don’t know / no opinion
Please justify your answer on whether there are other areas or concepts in the Directive that would benefit from further clarification?:

1,000 character(s) maximum

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?

- Yes
- No
- Don't know / no opinion

Please explain your reasoning and provide supporting arguments for other possible modification to the Directive which could add flexibility to the prospectus framework:

1,000 character(s) maximum

FSUG proposes to revise the summary prospectus. 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 an investment and to make sure that the summary prospectus provides a true and fair view. The issuer should be liable on the basis of the revised summary prospectus. The length should be limited to 10 pages (instead of 25).

Furthermore, FSUG believes that, ideally, the obligation to draw up a prospectus should be mandatory for all offers and admissions to trading, except for certain secondary offerings and offers exclusively to qualified investors. Instead of narrowing the scope of the Directive, FSUG supports an extension of the proportionate disclosure regime and incorporation by reference in order to alleviate administrative burdens for certain issuers and offers.

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

- Yes
- No
- Don't know / no opinion

Please explain your reasoning and provide supporting arguments for identifying incoherence(s) in the current Directive's provisions:

1,000 character(s) maximum
3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

- 745a29dd-c664-4b0a-853c-9a98805660ac/FSUG answers to question 1 & 5.docx

Useful links
Consultation details (http://ec.europa.eu/finance/consultations/2015/prospectus-directive/index_en.htm)

Contact
✉ fisma-prospectus-consultation@ec.europa.eu