



BANKING AND FINANCE

# Public consultation on the review of the Prospectus Directive

Fields marked with \* are mandatory.

## Introduction

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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.

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**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-consultationec.europa.eu](https://fisma-prospectus-consultationec.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

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\*Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

\*Name of your organisation:

International Swaps and Derivatives Association, Inc. (ISDA)

Contact email address:

**The information you provide here is for administrative purposes only and will not be published**

amillar@isda.org

\*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

\*If so, please indicate your Register ID number:

46643241096-93

\*Type of organisation:

- |   |   |
|---|---|
| <input type="radio"/> Academic institution            | <input type="radio"/> Company, SME, micro-enterprise, sole trader |
| <input type="radio"/> Consultancy, law firm           | <input type="radio"/> Consumer organisation                       |
| <input checked="" type="radio"/> Industry association | <input type="radio"/> Media                                       |
| <input type="radio"/> Non-governmental organisation   | <input type="radio"/> Think tank                                  |
| <input type="radio"/> Trade union                     | <input type="radio"/> Other                                       |

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

Other country

\*Please specify your country:

Global

\*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):

Industry Association - Banking



## Important notice on the publication of responses

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\*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

## 2. Your opinion

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### 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:

*1,000 character(s) maximum*

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):

Don't know (add an X in the next three fields)	Minimum cost (in €)	Maximum cost (in €)	For a total consideration of (in €)
Equity prospectus			
Non-equity prospectus			
Base prospectus			
Initial public offer (IPO) prospectus			
Don't know (add an X in the next three fields)			

Additional comments on the cost of producing a prospectus:

*1,000 character(s) maximum*

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

Don't know (add an X in the next three fields)	Share in the total costs (in %)
Issuer's internal costs	
Audit costs	
Legal fees	
Competent authorities' fees	
Other costs (please specify which)	
Don't know (add an X in the next three fields)	



Additional comments on the share in the total costs of a prospectus:

*1,000 character(s) maximum*

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*

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*

## 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*

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*

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*

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 justify your answer on the EUR 100 000 threshold:

*1,000 character(s) maximum*

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*

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*

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 specify what other area:

*1,000 character(s) maximum*

Yes, please see our responses to Q8 and Q9.

Please justify your answer on possible other area:

*1,000 character(s) maximum*

## **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*

Yes, the obligation to draw up a prospectus could be lifted for any subsequent secondary issuance of the same (i.e. fungible) securities, provided that the issuer is subject to on-going disclosure obligations under the Market Abuse Directive and the Transparency Obligations Directive. For investor protection purposes it should be sufficient that the initial issuance of securities has been admitted to trading on a regulated market. It should not be limited to an initial public offering of shares or other equity related securities but apply to all types of securities subject to the Prospectus Directive.

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):

*1,000 character(s) maximum*

The exemptions in Article 4(2) of the PD covering other categories of securities than shares have not achieved their objectives. NCAs have taken different views as to whether a secondary issuance of fungible securities (a 'tap issue') following the initial admission to trading trigger the obligation to publish a prospectus creating an unlevel playing field between different jurisdictions.

One or more exemptions should apply to all secondary issuances of fungible securities. Such exemptions should cover secondary issuances being admitted to trading on the same regulated market where the initial issuance of securities has already been admitted to trading and should also address situations where a dual or replacing admission to trading relates to another regulated market.

Please see the additional information in relation to Question no. 9 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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

*1,000 character(s) maximum*

There should be no timeframe.

Given the combined disclosure and publication requirements under the Market Abuse Directive and the Transparency Obligations Directive for an issuer with securities admitted to trading on a regulated market, there is no apparent rationale to introduce a timeframe.

### **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*

No.

Please see the additional information in relation to Question no. 11 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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*

#### **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:

*1,000 character(s) maximum*

#### **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:

*1,000 character(s) maximum*

#### **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

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

*1,000 character(s) maximum*

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

*1,000 character(s) maximum*

## **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*

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*

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*

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*

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
- Other
- Don't know / no opinion

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

*1,000 character(s) maximum*

## **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*

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*

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*

### **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*

Yes.

We refer to JAC's response dated 18 December 2014 to ESMA's consultation paper, dated 25 September 2014, "Draft Regulatory Standards on prospectus related issues under the Omnibus II Directive" as regards the views of our members regarding the position under the current regime. Many of the views expressed in our response are also relevant in the context of a recalibrated regime. A recalibrated regime should focus exclusively on the following parameters:

- i. Maximum flexibility for issuers wishing to incorporate information by reference;
- ii. NCAs' access to the information to be incorporated by reference; and
- iii. Investors' access to the information which has been incorporated by reference.

Please see the additional information in relation to Question no. 23 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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*

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*

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*

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*

Please also see the information in relation to Question no. 27 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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

*1,000 character(s) maximum*

Please provide suggestions for re-assessment of the interaction with final terms in base prospectuses:

*1,000 character(s) maximum*

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

*1,000 character(s) maximum*

Please also see the additional information in relation to Question no. 27 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

## **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*

Please also see the additional information in relation to Question no. 29 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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*

No, there are no such sections.

## B6. Liability and sanctions

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

	Yes	No	No opinion
The overall civil liability regime of Article 6	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The sanctions regime of Article 25	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please justify your answer on the adequacy of the liability and sanctions regimes the Directive provides for:

*1,000 character(s) maximum*

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

If you are aware of material differences, please provide examples/evidence:

*1,000 character(s) maximum*

Please see the additional information in relation to Question no. 33 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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

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

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*

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*

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*

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*

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*

## 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 indicate the appropriate validity length:

months

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*

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*

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

*1,000 character(s) maximum*

Please also see the additional information in relation to Question no. 40 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

### **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*

### **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*

There is no evidence that any investor detriment would result from a removal of this limitation. Should the limitation be retained nonetheless, a recalibration is required in the context of derivative securities for the purposes of enhancing harmonisation. Given the absence of investor detriment any recalibrated regime should aim for maximum flexibility for issuers.

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 suppression of the options to publish a prospectus in a printed form and to be inserted in a newspaper:

*1,000 character(s) maximum*

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*

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

*1,000 character(s) maximum*

## **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*

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*

### 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*

Please see the additional information in relation to Question no. 48 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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*

Please see the additional information in relation to Question no. 48 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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*

Please see the additional information in relation to Question no. 50 provided in Annex 1 to the letter submitted by JAC in conjunction with the review of the Prospectus Directive.

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

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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:

- **fcffed18-3d2e-4fe1-b657-32d2ad9bf2bd/PDIII - JAC response letter.docx**

#### Useful links

Consultation details ([http://ec.europa.eu/finance/consultations/2015/prospectus-directive/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/prospectus-directive/index_en.htm))

Consultation document

([http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf))

Specific privacy statement

([http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/privacy-statement\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/privacy-statement_en.pdf))

More on the Transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>)

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#### Contact

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