12 May 2015

# Afep response

# European Commission Consultation – Review of Prospectus Directive

## SUMMARY OF KEY POINTS

- **Companies call for several measures to facilitate fundraising:**
  - Removal of the requirement to produce a prospectus for any secondary issuance of the same securities (equity or non-equity securities), with no timeframe between the primary issuance and the secondary issuance;
  - More flexible provisions regarding incorporation by reference, especially for documents already published/registered under the Transparency Directive and the Market abuse legislation;
  - Removal of the obligation to publish a supplement to the prospectus for the information to be published under the Market Abuse Directive;
  - Replacement of paper publications by an electronic equivalent, while providing for the possibility to obtain a paper copy upon request.
- More specifically, they agree on the following:
  - The prospectus exemption for secondary issuances of the same securities would be subject to the following conditions to inform investors and ensure their protection:
    - publication, as a single document, of a specific securities note specifying in particular: a) the reasons for the issuance and the general terms of the offer; b) essential characteristics of the investment in the relevant security, including any rights attaching to the securities; c) the intended use of proceeds;
    - in this specific note, explicit or implicit incorporation by reference of the information for the market;
    - ability to demonstrate that the information published for the market is up-to-date.
  - When the issuer clearly states in the prospectus or in the securities note where relevant information can be found, **incorporation by reference should be allowed to be implicit and to concern future documents** (including future financial statements and updates to the registration document).
- There is **no need to reassess the rules on the summary of the prospectus**, which form the appropriate framework for the issuance of shares and corporate bonds of all kinds (therefore including convertible bonds, subject to both the Prospectus Directive and the European PRIIPs Regulation/Packaged Retail Investment and Insurance-based Products). In particular, companies are

opposed to **replacing the summary of the prospectus by the Key Information Document** (KID, as provided for by that Regulation), **which raises particular difficulties (form and content; revision requirements and liability regime**);

- In order to reduce information redundancy **for convertible bonds,** and while waiting for their future exclusion from the scope of the PRIIPs Regulation, **the summary of the prospectus should prevail over KID, as regards financial information and information on risks**. Where a KID is made available in a non-continuous manner and where feasible, other information that would be already featured in the KID should not be required to be duplicated in the prospectus summary;

- Companies support an **ex post review system for the registration document**, with an exception for certain issuers in limited circumstances (if the company has not prepared three successive documents, as is the case in France) and are opposed to generalizing an ex ante review system. They are **not opposed in principle to a risk-based review approach for registration documents and prospectuses, if it were less restrictive, but in the absence of details, are** unable to assess its substance and possible consequences for companies and therefore **have reservations on the subject**;

- As regards the approval of the prospectus, **tacit approval and shorter time limits should be considered, especially where mandatory information is reduced;**

- Companies **favor** the creation of a **European web portal interconnected with national systems** to serve as a European electronic access point to all prospectuses produced in the EU. **However**, they do not favor the **creation of a single database**, which **would result in burdens** and costs **without providing real added value to this system, which is already provided for by the Transparency Directive**;

- Concerning the **electronic format** to be used, **companies are particularly opposed to some approaches and technical options considered by ESMA**, especially to a mandatory reporting format based on a "built-in or integrated" approach or to a structured electronic format, such as XBRL and Inline XBRL, which would require companies to make significant and costly changes upstream in their processes and IT systems and affect the quality and comparability of information;

- In order to **ensure a level playing field** for European companies, the rules applicable to third country prospectuses should be subject to a system of equivalence.

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**About Afep**

The purpose of **Afep**, the **French Association of Large Companies**, is to present their views to the European Institutions and the French authorities, mainly with regard to non-sectoral legislation (on the economy, finance, financial information and markets, taxation, company law, competition, intellectual property rights, consumer affairs, social protection, employment legislation, environment and energy, corporate social responsibility, etc.).

Afep represents 113 top private sector companies operating in France. Afep member companies employ more than 2 million people in France and 8,5 million people worldwide. Their annual combined turnover amounts to €650 billion in France and €2,600 billion worldwide.

As a major force for analysis and proposals, Afep is also a prime forum for contacts between member companies and public authorities, which consult the Association when considering policy directions, plans for reforms or legislation. Senior officials in the European Union and French administrations regularly take part in meetings organised at the head office of the Association, enabling direct and constructive dialogue to take place.

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# Afep response

# European Commission Consultation – Review of Prospectus Directive

# RESPONSES TO THE QUESTIONNAIRE

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

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

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

There should be exemptions to the requirement to establish a prospectus, in particular when the issuer is well known by the market and when relevant information has already been (and is) published by the issuer.

Please see our responses to question (8).

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

**a) Please estimate the cost of producing the following prospectus**

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

No comment.

**b) What is the share, in per cent, of the following in the total costs of a prospectus: - Issuer's internal costs: [enter figure]%**

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

**What fraction of the costs indicated above would be incurred by an issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law?**

No comment.

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

Additional costs are not outweighed by the benefit of the passport attached in the case where exemptions are needed (please see responses to question (8).

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

**a) the EUR 5 000 000 threshold of Article 1(2)(h): - Yes, from EUR 5 000 000 to EUR [enter monetary figure]**

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

**b) the EUR 75 000 000 threshold of Article 1(2)(j): - Yes, from EUR 75 000 000 to EUR [enter monetary figure]**

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

**c) the 150 persons threshold of Article 3(2)(b) - Yes, from 150 persons to [enter figure] persons**

- **No;**

**d) Don't know/no opinion**

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

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

No comment.

**(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**

No comment.

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

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

**No**. We do not believe that the Prospectus Directive should include a wider scope of securities (i.e. non-transferable securities).

The Prospectus Directive was written for transferable securities; to add non-transferable securities into the scope would both not work within its parameters or be aligned with the original aim of the Prospectus Directive.

**(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**
- **Other areas:**
- **Don't know/no opinion**

**Yes**. Please see our response to question (8).

**(8) Do you agree that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, providing relevant information updates are made available by the issuer?**

- **Yes**
- **No**

**Don't know/no opinion**

**Yes. The requirement to draw up a full-blown prospectus should be lifted** for any subsequent secondary issuance of the same securities on a regulated market, provided that the following **conditions** are met:

- The issuer publishes **as a single document** a **specific securities note**, which specifies:
  . the reasons for the issuance and the general terms of the offer;
  . essential characteristics of the investment in the relevant security, including any rights attaching to the securities;
  . the intended use of proceeds.
- This document **incorporates by reference** – possibly by implicit reference (please see our responses to questions 24 and 25) - the information for investors (please see also our response to question 23);
- The **issuer** is **able to demonstrate that the information published for the market is up-to-date**, i.e. meets the requirements of the Transparency Directive and of the legislation on market abuse (ongoing information), for example by a reference to the web site (s) where this information can be found.

We believe one of the key issues and inconsistencies within the Prospectus Directive is its failure to adequately distinguish between the information appropriate when an issuer is new to a public market and when it is seeking financing through secondary offers, where significant information is already in the public domain.

Therefore, we believe that using a document more relevant and focused on the salient terms of an offer and of an issuer will benefit investor protection, and will result in fact in existing and potential investors being better informed about both the company and the offer, since the most important details of the offer will be clearly visible.

Having to disclose all such information again within a prospectus for a secondary offer adds very little value. Drawing up a full-blown prospectus is redundant for the investor and involves unjustified costs for the issuer:

- The issuer whose securities are traded on a regulated market is "visible" to the market, as it has already published an **information document at the time of admission or of the first issuance of similar securities**;
- In particular it is subject to the requirement to regularly publish information under the Transparency Directive. It is also subject to requirements for ongoing disclosure of information under the Market Abuse legislation ;
- The requirement to sign a statement of responsibility ("management statement") gives investors confidence about the quality of financial reports and the fact **that the published information enables informed decisions**.

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

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

The exemption from a full-blown prospectus should apply to all secondary issuances of shares and bonds, regardless of their proportion with respect to those already issued.

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

- **[ ] 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**

There should be no timeframe between the first issuance and the secondary issuance.

The investor has access to relevant information regarding the issuer and the securities issued, given the publications required under the Transparency Directive and the legislation on market abuse (ongoing information).

In this context, updating a registration document is not relevant.

A prospectus only provides a snapshot in time of a company - the information it contains is prone to becoming outdated -. The information in a prospectus is replaced over time by annual reports and financial statements together with market announcements. The publication of the prospectus for admission to trading should have no bearing on the document required for a secondary offer.

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

- **Yes, on all MTFs**
- **Yes, but only on those MTFs registered as SME growth markets**
- **No**
- **Don't know/no opinion**

No comment.

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

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

No comment.

**(13) Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF)4 and European venture capital funds (EuVECA)5of the closed-ended type and marketed to non-professional investors, be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document? Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds.**

- **Yes, such an exemption would not affect investor/consumer protection in a significant way**
- **No, such an exemption would affect investor/consumer protection**

**Don't know/no opinion**

Please see our response to question (28) regarding the key information document (KID) under the PRIIPs Regulation.

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

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

No comment.

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

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

No opinion.

**If you have answered yes, do you think that:**

**a) the EUR100 000 threshold should be lowered? –**

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

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

- **Yes, please indicate to what extent :**
- **No**
- **Don't know/no opinion**

**No**. We believe that exemptions should continue to be granted to issuers of debt securities.

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

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

No opinion.

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

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

No comment.

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

a) **Proportionate regime for rights issues**
   - **Yes - No**
   - **Don't know/no opinion**

b) **Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation**
   - **Yes - No**
   - **Don't know/no opinion**

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**

No comment.

**(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**

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

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

No comment.

**(19) If the proportionate disclosure regime were to be extended, to whom should it be extended?**
- **To types of issuers or issues not yet covered? Please specify: [text box]**
- **To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive? Please specify: [text box]**
- **Other. Please specify: [text box]**
- **Don't know/no opinion**

No comment.

**(20) Should the definition of "company with reduced market capitalisation" (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000?**
- **Yes**
- **No**
- **Don't know/no opinion**

No comment.

**(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**

No comment.

**(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.**

No comment.

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

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

**Yes**. We believe that the provision of Article 11 (incorporation by reference/IBR) should be recalibrated in order to bring more flexibility. While recognising that Article 11(3) of the current Prospectus Directive requires ESMA to develop draft regulatory technical standards on that point, we **believe that the elaboration of an exhaustive list of documents that should be allowed to be incorporated by reference would not be relevant**.

With incorporation by reference, investors are able to access and review the key information they need in a shorter and more easily understandable prospectus dealing with specific factors relevant to the issuance. **There is no loss of protection for investors, provided the issuer clearly states in the prospectus or in the securities note where and how relevant information can be found** (for secondary issuances, please refer to our response to question 8).

We believe that a restrictive interpretation of the application of incorporation by reference would be disproportionately burdensome for issuers and would impede access to capital markets. In addition **the approval by the NCA of documents eligible for incorporation by reference is time consuming and prevents issuers from taking advantage of favourable market conditions**.

Finally, **incorporation by reference should also be possible for upcoming documents**, such as financial statements to be published and updates to the registration document.

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

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

**Yes**. The **incorporation by reference** should be **implicit for all documents already published**, particularly under the Transparency Directive, provided that the issuer specifically states in the prospectus or in the securities note on which web site the documents published/filed can be found and how to access this information.

**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**

No comment.

**(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**

**Yes. All information published under the legislation on market abuse should be allowed to be implicitly incorporated by reference** in the prospectus, **without requiring the publication of a supplement** to the prospectus.

In the same way as for documents published/filed under the Transparency Directive, the issuer should specifically state in the prospectus or in the securities note on which web site the documents published/filed can be found and how to access this information.

Relaxing some disclosure requirements is necessary for issuers to better take advantage of windows of opportunity in the markets.

**(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**

No comment.

**(27)Is there a need to reassess the rules regarding the summary of the prospectus? (Please provide suggestions in each of the fields you find relevant)**

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

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

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

**d) No.**

**e) Don't know/no opinion**

**No**. There is no need to reassess the rules regarding the summary of the prospectus (**option d)**).

**In particular, the summary note should continue to contain the following information:**

- Details on the offer;

- Essential information concerning selected financial data;

- Risk factors;

- Operating and financial review and prospects.

Please also see our responses to questions (8) and (28).

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

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

**b) By eliminating the prospectus summary for those securities.**

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

**d) Other:**

**e) Don't know/no opinion**

There is no need to reassess the rules on **the summary of the prospectus**, which form the **appropriate framework for shares and corporate bonds of all kinds (thus including convertible bonds, subject to both the Prospectus Directive and the PRIIPs Regulation**). In particular, companies are **opposed to replacing the summary of the prospectus by the KID**

**(option b), which raises particular difficulties (form and content; revision requirements and liability regime).**

**The PRIIPs Regulation should be amended to scope out convertible bonds, which are different in nature from other instruments covered by this Regulation. Meanwhile, in order to reduce information redundancy for convertible bonds, the summary of the prospectus should prevail over KID, as regards financial information and information on risks**. Where a KID is made available in a non-continuous manner and where feasible, other information that would be already featured in the KID should not be required to be duplicated in the prospectus summary. **The format and content of the prospectus summary should not be aligned with those of the KID (option c) of question (28)).**

**Regarding non-financial companies/corporates, this question specifically targets convertible bonds**, which are in the scope of the PRIIPs Regulation, while it rightly does not apply to equities and other corporate bonds.

- **First, companies wish to emphasize that they remain strongly opposed to the publication of a Key Information Document/KID for the issuance of shares and corporate bonds of all kinds. For these securities, applying the framework defining the prospectus summary appears to be the only appropriate solution. This position is based on the following reasons**:

  - The KID should comprise a **summary risk indicator and performance scenarios**. For shares and corporate bonds, these **are very difficult to establish and may mislead investors**: given the diversity and multiplicity of parameters that characterise a company's or a group's activities, it is extremely difficult to summarise these – for the most part, non-financial - parameters and risks in a short document or in a risk-reward profile, or to build appropriate performance scenarios;

  - The KID is a short, **stand-alone** document, whose content must however be consistent with the specific requirements defined by the PRIIPs Regulation. However, as mentioned, it is particularly difficult for a company or group to summarise diverse, often complex information;

  - The KID should be **reviewed regularly**, revised where the review indicates that changes need to be made and be made available promptly. This gives more importance to compliance than to the conduct of business activities and results in disproportionate burden and costs for companies;

  - **The issuer is held liable if the KID is not consistent with the specific information requirements defined by the PRIIPs Regulation**. Unlike the summary note of the prospectus, the KID cannot be read together with the information published in the other parts of the prospectus.

- **The PRIIPs Regulation should be amended to scope out convertible bonds, which are different in nature from other instruments covered by this Regulation**

  Convertible bonds are debt instruments, certain characteristics of which are linked to the shares of the issuer, making investors in convertible bonds potential shareholders. They are very different in nature from the other instruments covered by the PRIIPs Regulation, given the diversity and complexity of the parameters that characterize companies' and groups' activities

and that go well beyond financial factors (please see above). **Like shares and corporate bonds, which they are related to, convertible bonds should be excluded from the scope of the PRIIPs Regulation**. Indeed, as had been demonstrated by the European Association EuropeanIssuers (please see table attached to its position of 24/01/2014), there is no risk (and reward) indicator that is both synthetic and reliable. Bonds, which are traded on regulated markets, already meet transparency requirements and are subject to relevant and sufficient information for investors.

- **For convertible bonds, pending their exemption from the PRIIPs Regulation, it would be irrelevant and inappropriate to eliminate the prospectus summary to the benefit of the KID (option b) of question (28)), as the summary would be set to apply again. In addition, the format and content of the prospectus summary should not be aligned with those of the KID (option c) of question (28)).**

  **- We do not support option a) either, for convertible bonds. Rather, as an alternative option ("option d"):**

  - **The prospectus summary should prevail as regards financial information and information on risks. This information should be included in the prospectus summary only, while related information would be omitted from the KID. Consistently with Article 6(2) of the PRIIPs Regulation, the KID should refer to the appropriate items of the prospectus summary, as follows**:

| **Information omitted from the KID, with cross-references to the summary note** | **Refer in the KID to the following items of the summary note (source Prospectus Directive / Annex IV).** | **Comments** |
|---|---|---|
| **Nature and main features of the product (PRIIPs Regulation Art. 8(3)(c))** | Please see below. | |
| Description of the underlying instruments or reference values. (PRIIPs Regulation Art. 8(3)(c)(ii)) | Information concerning the issuer/Business overwiew | |
| **Risk-reward profile comprising the following elements:** (PRIIPs Regulation Art. 8(3)(d)) | Please see correspondence below, according to the type of elements. | |
| Risk-reward profile/Summary risk indicator and narrative explanation of the risks which are materially relevant to the PRIIP and which are not adequately captured by the summary risk indicator. (PRIIPs Regulation Art. 8(3)(d)(i)) | Risk factors | Risks cannot be adequately captured by a summary risk indicator. |
| Maximum loss of invested capital (PRIIPs Regulation Art. 8(3)(d)(ii)) | - Financial information<br>- Operating and financial review (OFR) and prospects (including trends) | |
| Appropriate performance scenarios (PRIIPs Regulation Art. 8(3)(d)(iii)) | - Essential information concerning selected financial data; capitalization and indebtness;<br>- OFR and prospects. | |

- **<u>Where a KID is made available in a non-continuous manner</u> – e.g. when securities are offered to the public or admitted to trading on a regulated market – <u>and where</u>**

**feasible**, other information[1] that would be already featured in the KID should **not be required to be duplicated in the prospectus summary**, which could be shortened in this respect (please also see our response to question (27)). This information, which is normally included in the summary note, could include the following items (as designated by the annex IV of the Prospectus Directive):

* Offer statistics and expected timetable;
* Details on the offer and admission to trading;
* Documents available for inspection.

**For secondary issuances**, i**n case of an exemption from drawing up a full-blown prospectus** (including a summary note)**, the KID should instead refer to the single document ("single securities note"), which, only in this case, would contain essential information concerning selected financial data and prospects, and would include risk factors specific to the issuers** (as specified in the Annex IV of the Prospectus Directive).

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

- **Yes, it should be defined by a maximum number of pages and the maximum should be [ figure] pages**
- **Yes, it should be defined using other criteria, for instance:**
- **No**

**Don't know/no opinion**

**No**. We do not support introducing a maximum length to the prospectus. This would deprive the persons responsible for the prospectus from their ability to adapt the information published to investors' needs and to legal and regulatory requirements.

**(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?**

Please see our response to question (29).

Companies wish to emphasize that the section describing risk factors should not be subject to a rule limiting its length, as this section may require developments.

[1] Other than: description of the underlying instruments or reference value; risk-reward profile (please see above).

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

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

We believe that the current liability and sanctions regimes the Directive provides for are adequate. Furthermore, a specific liability and sanctions regime is available under the Market Abuse legislation.

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

**Yes**

**No**

**Don't know/no opinion**

No comment.

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

**Yes**

**No**

**Don't know/no opinion**

**Yes**.

French regulations (General Regulations of the French financial markets authority/Autorité des Marchés Financiers/AMF) require a control of the prospectus by the issuer's statutory auditors, the issuance by them of a "work completion letter", which the issuer must provide to the competent authority (AMF). This document, which does not reduce the issuer's liability, is not published, but its existence is known to investors.

It is essential to harmonize the scrutiny and approval procedures of prospectuses by NCAs in order to ensure legal certainty and a level playing field among the issuers concerned.

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

**No**

**Don't know/no opinion**

The European Securities and Markets Authority (ESMA) should **organise and monitor control methods and programs at EU level to ensure a level playing field between issuers concerned**, with the implementation of controls remaining within the remit of national supervisory authorities.

The approval procedures could also be improved as regards the **time limits** set out in Article 13 paragraphs 2 and 3 of the Prospectus Directive and the fact that the NCA may require supplementary information according to paragraph 4. Sometimes this procedure is repeated several times, which may create **uncertainty about the real time limits, lengthen the timeframe for the approval and unduly delay access to the market**.

**Tacit approval** – under Article 13 (2) – **and shorter time limits** - **should be considered, especially where mandatory information is reduced.**

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

**Yes**

**No**

**Don't know/no opinion**

**No**.

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

**Yes**

**No**

**Don't know/no opinion**

We believe that allowing marketing activities by the issuer regarding the issuance, in the period between the first submission and the approval of the prospectus would give the issuer more flexibility.

It would allow the issuer to benefit from market opportunities without harming/jeopardising investors' protection, as the legally binding purchase would only take place after the approval of the final version of the prospectus.

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

a) **review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)**

b) **review only a sample of prospectuses ex ante (risk-based approach)**

c) **review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)**

d) **review only a sample of prospectuses ex post (risk-based approach)**

e) **Other**

f) **Don't know/no opinion**

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

Companies **support an ex post review system for the registration document, with the possible exception of an ex ante review system for certain issuers, in limited circumstances (option e**; please see below the description of the system applied in France for registration documents). However, **they are opposed to generalizing an ex ante review system for the registration document (option a)**.

They are **not opposed in principle to a risk-based review approach for registration documents and prospectuses, but, in the absence of details** on such approach, **are unable** to assess its substance and possible consequences for companies and investors. Thus they **have reservations about the related options** (options b) and d)).

Companies consider that **the system applied in France for** reviewing **the registration document** (please see the **details in appendix**) **should not be replaced by a more restrictive system**. Indeed, this system, **which is based on the track record of the issuer and the market's and competent authority's knowledge of the issuer, works quite well for the market and ensure investor protection**.

In France, any company whose securities are admitted to trading on a regulated market may draw up an annual **registration document**. This document, which is filed with the AMF, is the subject of its checks, with control modalities varying according to the issuer's track record:

- **General case for larger issuers, ex post review**: if the issuer has already prepared three consecutive registration documents, the document is subject to ex post checks by the AMF; the AMF may require the publication of corrections (to be made available to the public), if it discovers a material omission or inaccuracy that could manifestly distort an investor's assessment of the organisation, business, risks, financial position or earnings of the issuer. Other observations by the AMF are brought to the attention of the issuer, which will take them into account in the next year's registration document;

- **Exceptionally, ex ante review of some registration documents**: if the company has not yet prepared three consecutive registration documents, the AMF reviews the draft document and may ask for changes or conduct additional checks before the document is registered and published.

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

**Yes**

**No**

**Don't know/no opinion**

No comment.

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

**Yes**

**No**

**Don't know/no opinion**

No comment.

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

**Yes**

**No**

**Don't know/no opinion**

No comment.

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

| | I support | I do not support | Justify |
|---|---|---|---|
| a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed | Yes | No comment | Please see comment below |
| b) The validity of the base prospectus should be extended beyond one year | [ ] Extension of the period of validity to three years[ ] | [ ] | Please see comment below |
| c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA | Yes, in case a registration document has already been filed with the NCA (only). | No comment | Please see comment below |
| 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 | No comment | No comment | [ textbox ] |
| e) The base prospectus facility should remain unchanged | [ ] | We do not support. | [ textbox ] |
| f) Other (please specify) | No comment | | |

Companies believe that a **period of validity of three years** would enable European issuers to **benefit from better conditions to access capital markets, such as those that apply to US issuers**[2]

[2] Shelf registration process: Shelf registration is a process authorized by the U.S. Securities and Exchange Commission under Rule 415 that allows a single registration statement to be filed by an issuer that permits multiple securities offerings based on the same registration for a period of **three years**. It can be used for both **debt and equity** offerings. To be eligible to file a shelf registration statement the issuer must meet certain **eligibility requirements**. There are many benefits to using a shelf registration statement. It enables an issuer to **quickly access the capital markets as takedowns can be made without SEC staff review or delay**. The registration statement also **allows issuers to incorporate by reference periodic reports** filed under the Securities Exchange Act of 1934 after the shelf's effective date, **eliminating the need to file post-effective amendments to reflect material (business and financial) changes in the issuer's business**. When a **specific offering** is planned, a prospectus

, and make European markets more appealing (**response to questions 40 b) and d))**. The use of the base prospectus facility should be allowed for **both equity and non-equity securities** (**response to question 40 a))**.

A most important condition would be to **update the information** for the market **before any issuance**, while allowing issuers to incorporate information by reference (please see our responses to questions (23), (24) and (25)). Indeed, the material changes in the issuer's business over a period of time longer than one year should be made available to the public, in order to ensure investors' protection.

Finally, 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 with the national competent authority**. In this respect, it should be noted that **the registration document is not necessarily "approved" by the NCA (response to question 40 c))**.

**(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?**

Please refer to our responses to questions (28) and (37).

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

a) **No, status quo should be maintained.**

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

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

**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 (**option b)**).

**(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**

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**supplement** is **filed** with the SEC (in most cases, the prospectus supplement is filed after the takedown has already been priced).

**Yes**. We support the removal of the options to publish a prospectus in a printed form and by insertion in a newspaper, while providing for the possibility to obtain a paper copy upon request and free of charge.

This would not be detrimental to investors and would save costs for issuers. A digital format (such as pdf) should be made the default format for prospectus (please also see our response to question 45 for more detailed information relating to electronic formats).

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

**Yes**

**No**

**Don't know/no opinion**

**No.**

**Companies support the creation of a web portal** to serve as a European electronic access point to regulated information of issuers, **along the lines defined in the Transparency Directive**.

**The interconnection between this portal and the national** officially appointed **mechanisms** (OAM) for the central storage of regulated information **will facilitate effective cross-border access to all prospectuses produced in the EU**.

**Creating a single database** that would operate as a unique entry point for both investors and persons producing and filing prospectuses across the EU **would be burdensome and costly and would not add value. Therefore a single database is not necessary.**

In any case, **some technical options regarding the electronic format to be used should be discarded** (please see our response to question (45)).

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

Concerning the electronic format to be used, **companies are particularly opposed to some approaches and technical options considered by ESMA, especially to a mandatory reporting format based on a "built-in or integrated" approach or to a structured electronic format, such as XBRL and Inline XBRL, which would require companies to make significant and costly changes upstream in their processes and IT systems and affect the quality and comparability of information**.

***Some technical options should be discarded***

**Whatever the filing system may be** (please see our response to question (44)), **it should not imply a requirement on companies to apply certain technical approaches/options as regards the electronic format to be used**.

**While recognising the need to implement the Transparency Directive's requirement, companies** continue to highlight the **major concerns related to some technical options that are being considered by ESMA as regards the electronic reporting format (European Single Electronic Format/ESEF).**

Companies **are particularly opposed to the introduction of a mandatory reporting format based on a "builtin or integrated" approach or to a structured electronic format, such as XBRL and Inline XBRL, which would require them to make upstream significant and costly changes throughout their processes and information technology systems[3], and would affect the quality**

[3] Besides significant direct costs (such as costs of tagging each item of data), the use of a taxonomy or of a structured format — such as XBRL or Inline XBRL — involves very high indirect costs relating to overhauling the architecture and content of companies' internal IT applications, even for applications that do not use a structured format (costs related

**and comparability of their publications.**

**On the contrary such format would have far-reaching consequences on the quality of issuers' reporting and on the liability attached**. Indeed, many data in annual financial reports — such as quantitative or narrative data —could not be properly reflected in taxonomies and in reports that would use an integrated approach. This would alter corporate communication, make information understanding and comparability hazardous and pose a serious liability issue for companies.

Companies emphasize the **absence of demand from information users for** an electronic reporting **format based on an integrated approach** and the **difficulties encountered in the United States in the implementation of XBRL**.

***Essential features of the system***

**Against this background, the system introduced by the Transparency Directive:**

- **should allow for the prospectuses to be quickly available and free of charge**, in order to be useful;
- should provide **maximum flexibility in corporate communication, without affecting its quality**;
- **should not lead to companies being held responsible or liable for the consequences of using taxonomies that would prove unsuitable or of using an electronic format that eventually would fail to reflect the substance of their communications.**

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

**Yes**

**No**

**Don't know/no opinion**

**Yes.** The creation of an equivalence regime in the Union for third country prospectus regimes would contribute to ensure a **level playing field** between European and third country issuers **when accessing capital markets situated or operating within the European Union**.

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

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

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

**c) Don't know/no opinion**

to consultancy, overhauling applications, maintenance and control). Indeed, as most companies' IT systems include interrelated applications, even the partial use of a structured format would imply to review and change ail these systems.

Such a prospectus should be approved by the Home Member State (**option b)**).

**(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**

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

**Yes**

**No**

**Don't know/no opinion**

No comment.

**(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**

No comment.

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

**Yes**

**No**

**Don't know/no opinion**

Companies want to reduce to two years the number of comparative periods in the information required to be published in the prospectus. Such measure would alleviate the descriptive information that has already been presented in former documents, without depriving investors from information needed for decision-making.

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

**Yes**

**No**

**Don't know/no opinion**

No comment.