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IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading

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INTRODUCTION

The Prospectus Directive[1] on the prospectus to be published when securities[2] are offered to the public or admitted to trading on a regulated market was adopted in order to make it easier and cheaper for companies to raise capital throughout the Union on the basis of approval from a regulatory authority ("home competent authority") in only one Member State. Under the Directive, issuers, offerors or persons asking for the admission to trading on a regulated market[3] can use a "passport" for their prospectuses for cross-border offers and listings. The Directive also ensures harmonised minimum protection for investors by guaranteeing that all prospectuses, wherever they are published, provide them with the clear, comprehensive and standardised information they need to make informed investment decisions. Investors thus benefit from common EU standards for prospectus disclosure and approval by national competent authorities. The Directive only concerns initial disclosure requirements for a public offer or listing on a regulated market. It neither affects on-going nor ad-hoc reporting obligations laid down in particular in the Transparency Directive and Market Abuse Regulation.[4]

The Directive entered into force in 2005 and was reviewed in 2009[5]: The review revealed that while overall the Directive was meeting its objectives of market efficiency and investor protection, in a number of cases it created legal uncertainty and unjustified requirements, which increased costs and created inefficiencies hampering the process of raising funds on the securities markets in the EU. To promote investor protection taking into account the loss of confidence in capital markets due to the financial crisis, the review identified in particular the need to improve the summary of the prospectus to make it a simpler and better understandable document.

As a result of the review, the Directive was amended in November 2010 as part of a simplification exercise within the "Action programme for the reduction of administrative burdens"[6]. The objectives were to increase legal clarity and efficiency in the prospectus regime while enhancing the level of investor protection and ensuring that the information provided is sufficient and adequate.

The main changes were as follows:

- for some types of securities issues less comprehensive disclosure requirements were introduced (small and medium enterprises [SMEs] and companies with reduced

[1] OJ L 345, 31.12.2003, p. 64–89; Annex 4 provides a short description of the Prospectus Directive (also referred to as "the Directive" below).

[2] Technical terms are explained in a glossary in Annex 2.

[3] Offerors or persons asking for the admission to trading on a regulated market are referred to below as "issuers".

[4] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390, 31.12.2004 and Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014. Conditions for admission to listing also remain subject to existing European and national requirements such as the Listing Directive (Directive 2001/34/EC of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities).

[5] Impact Assessment for the amending Directive SEC(2009) 1223.

[6] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Action Programme for Reducing Administrative Burdens in the European Union COM(2007) 23 final.

market capitalisation, credit institutions, rights issues and government guarantee schemes);

- the format and content of the prospectus summary were amended;
- the exemptions from the obligation to publish a prospectus when companies sell through intermediaries ("retail cascades") and for employee share schemes were clarified;
- disclosure requirements that overlapped with the Transparency Directive[7] were repealed;
- the definition of "qualified investors" in the Prospectus Directive were aligned with the one of "professional clients" as defined in the Directive on Markets in Financial Instruments (MiFID).[8]

These measures were expected to generate savings. The evaluation of the functioning of the amended Directive indicated that all stakeholder groups, issuers, investors and Member States consider the Directive to be a useful instrument to foster market efficiency and integration as well as investor protection (see Annex 5). The Directive has created a minimum standard for disclosure and approval by national competent authorities which can be relied upon throughout the Union. However, despite those positive achievements, changes were largely incremental and not sufficient to materially reduce the cost of capital raising using a prospectus.

PROCEDURAL INFORMATION CONCERNING THE PREPARATION OF THE IMPACT ASSESSMENT

An Inter-Service Steering Group for this Impact Assessment, chaired by the Secretariat General comprised representatives from the following services of the European Commission: the Legal Service, the Directorates General for Competition; Economic and Financial Affairs; Financial Stability, Financial Services and the Capital Markets Union; Internal Market, Industry, Entrepreneurship & small and mid-sized enterprises; Justice; and Trade. This Group met three times. The last meeting took place on 28 July 2015.

1. REGULATORY SCRUTINY BOARD

The Regulatory Scrutiny Board analysed this Impact Assessment and delivered a first opinion on 18 September 2015 that focused on the three following aspects:

1) The report should elaborate on why the lighter regime for SMEs did not meet its objectives and explain better why the new approach is more likely to succeed. These explanations should be supported by relevant evidence and data, drawing inter alia on the stakeholder consultation and evaluation.

2) As part of REFIT, the report should estimate the possible cost savings for SMEs introduced by lighter reporting requirements. In addition, it should substantiate the overall regulatory and administrative burdens for prospectus issuers, including for bond, secondary or frequent issuers.

[7] Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended.

[8] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU; OJ L 173, 12.6.2014

3) The report should present the package of preferred options in a clearer manner, specifying its separate elements, how they interrelate and their overall coherence.

On the basis of a revised impact assessment, a second opinion of the Regulatory Scrutiny Board was provided on 2 October 2015 that acknowledged that the revised report has been improved.

It noted that the relevant prospectus problems were better described, the package of preferred options and its impacts had been clarified, cost savings estimates had been added and the report drawn better on the evaluation and the stakeholder consultation. Moreover, the revised version explained better how the preferred options interact to generate synergies for issuers, which seem more comprehensive and substantial than the amendments from 2010. The report was therefore considered to be clearer and supports better the claim that the proposed changes can lead to costs savings and improve the function of the capital markets.

Further improvements were recommended, in particular on the estimated cost savings, that are taken into account in the version published today.

2. CONSULTATION OF INTERESTED PARTIES

The most important consultation of interested parties was an on-line public consultation which invited interested parties to comment on a broad range of issues between 18 February and 13 May 2015.[9] This consultation was accessible through the European Commission's central consultation tool "EUSurvey"[10] and was announced widely through a specific press release and mentioned in meetings and presentations as well as more generally through the launch of the Commission's landmark project on a Capital Markets Union.[11] 182 interested parties responded to the consultation.[12] In addition, the European Commission was provided with 83 position papers. Furthermore, the European Commission consulted national competent authorities specifically via the European Securities and Markets Authority (ESMA) between March and May 2015 in order to gather more detailed data. Finally, many interested parties expressed their views regarding the review of the Prospectus Directive in meetings held at the Commission's premises in Brussels.

3. POLICY CONTEXT, PROBLEM DEFINITION AND SUBSIDIARITY

3.1. Policy context

This impact assessment serves several purposes: It contains the review required by Article 4 of the Directive which requests the Commission to "assess the application of Directive 2003/71/EC as amended by this Directive, in particular with regard to the application and the effects of the rules (…)" by 1 January 2016, in Annex 5 on evaluation. Annex 5 serves as the REFIT evaluation report to which the Commission had committed itself in 2014[13].

[9] Stakeholder views expressed in the public consultation are summarised in Annex 5.
[10] https://ec.europa.eu/eusurvey/home/welcome/runner
[11] For more information regarding the Capital Markets Union project see: http://europa.eu/rapid/press-release_IP-15-4433_en.htm?locale=en
[12] Non-confidential responses can been accessed via: https://ec.europa.eu/eusurvey/publication/prospectus-directive-2015?language=en#
[13] "Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook", accompanying the Commission Communication "Better Regulation for Better Results – An EU Agenda" COM(2015) 215 final. http://ec.europa.eu/smart-regulation/better_regulation/documents/swd_2015_110_en.pdf

Furthermore, on the basis of the conclusions drawn by the evaluation and problems detected, this impact assessment serves to scrutinise certain potential amendments to the Directive which the Commission is reviewing as part of the Capital Markets Union initiative[14] and as a contribution to its Jobs and Growth initiative.[15]

3.2. Problem definition

The Prospectus Directive was a top priority in the Financial Services Action Plan[16] in 1999 to foster the raising of capital on an EU-wide basis. Although it has led to a significant harmonisation of the rules concerning prospectuses in the Member States and created the cross-border passporting mechanism, the evaluation mentioned above has identified the following issues which seem to still hinder the raising of capital on an EU-wide basis.

3.2.1. Drivers

1. High costs of compliance with the Prospectus Directive

Respondents to the public consultation stressed that compliance costs related to the Directive are high. Rough estimates for costs of equity prospectus are on average at EUR 1 million. Estimates of the costs of a non-equity prospectus are considerably lower at around a fourth of the costs for equity prospectuses. Furthermore, prospectuses and their summaries are long documents often focused on avoiding liability risks, thus legal fees are accounting for 40% or more of the compliance costs. This makes the drafting and approval process an expensive, complex and time-consuming exercise. This holds especially for SMEs as some of these costs are fixed costs and thus the overall costs do not vary perfectly proportionally with the sums raised. Therefore, the costs of a new prospectus have a proportionally bigger impact on smaller issuances.

The review of the Prospectus Directive in 2010 tried to address the problem with the so-called "proportionate disclosure regimes", introducing alleviated minimum disclosure and thus a reduced prospectus content for SMEs and rights issues. However, there was almost unanimity in the public consultation that the proportionate disclosure regimes introduced only very limited improvements and were not widely used (see section 5.4).

When assessing the specific costs of preparing a prospectus, available data is very limited[17]. Less than 20 respondents to the public consultation provided an estimate of these costs. The figures provided show a very wide range and respondents themselves stressed that they should not be generalised. The minimum cost estimates for an equity prospectus range from EUR 1 000 to EUR 3 million, with an average of almost EUR 700 000. The maximum

[14] COM(2015) 468 final

[15] Commission Communication "An Investment Plan for Europe" COM(2014) 903 final; http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0903&from=EN

[16] "Financial Services: Implementing the framework for financial markets: Action Plan", http://ec.europa.eu/internal_market/finances/docs/actionplan/index/action_en.pdf

[17] The Centre for Strategy & Evaluation Services (CSES) published a study on the impact of the Prospectus Regime on EU financial markets in June 2008 which contained cost estimates on the basis of the feedback from a survey with market participants. CSES stressed that the additional costs of preparing a prospectus vary from issue to issue depending on what work has already been done by the issuer and its counsels, and provided estimates of the total costs of prospectuses, by type of prospectus (see Annex 5 below for further detail), which are broadly consistent with the feedback to the consultation (see Annex 6 below for a summary thereof). http://ec.europa.eu/finance/securities/docs/prospectus/cses_report_en.pdf

amounts range between EUR 10 000 and EUR 4 million, averaging at EUR 1.3 million[18]. Estimates of the costs of a non-equity prospectus are considerably lower with the minimum average of EUR 57 000 and the maximum average at almost EUR 500 000. Legal fees are by far the most important contributor to the overall cost of preparing a prospectus according to respondents to the public consultation, as legal fees represent about 40% of the total costs. The second most important cost factor are internal costs (about 23%), followed by audit costs and fees charged by competent authorities representing together about a quarter of the costs. However, as for the total costs, the figures are rough estimates and would vary considerably from case to case. Fees charged by the national competent authorities are usually well below EUR 10 000 for one prospectus[19].

2. Ineffective investor protection

The length of prospectuses and the fact that they are often drafted with the objective to address any potential legal liability rather than to inform investors in a suitable way, undermine the objective to protect investors through the provision of suitable and appropriate information to protect them from being attracted into investments they would not have made had they fully understand the offer. Similarly, the divergent implementation and application of the Directive as well as very different approaches by Member States to regulate the offer of securities outside the scope of the Directive lead to irritation and uncertainty among investors.

An example of ineffective investor protection is the prospectus summary which was intended to provide investors with concise and easy to understand information about the product. There was a widespread dissatisfaction expressed by most respondents to the public consultation about the current summary regime.[20] Almost unanimously they consider that the revised requirements introduced in 2010 have not been helpful and as a result, the prospectus summary, as it exists today, is blamed for being too long, unwieldy and too comprehensive (see section 5.5).

3. Regulatory framework not flexible and inappropriate for SMEs and some securities

The insufficient differentiation and proportionality of the requirements between specific situations and issuers results in an inappropriate administrative burden and might even deter companies from accessing capital markets. The proportionate disclosure regimes mentioned above are again a prominent example.

Another example of the unsatisfactory design of the prospectus regime is the treatment of securities with a high denomination of EUR 100 000 or above: Under both the Prospectus and Transparency Directive, a system of exemption and alleviation thresholds currently creates incentives for issuers to issue debt securities with a high denomination per unit, namely above EUR 100 000.[21] The OECD found that this threshold most likely reduces liquidity on the secondary market for corporate bonds and a limits issuance of debt securities in smaller denominations (see section 5.3).[22] The other consequence is that such a threshold prevents

[18] Estimates for initial public offerings were very similar (average minimum costs: about EUR 680 000; average maximum costs: almost EUR 1.6 million).

[19] For example, the German supervisory authority BaFin and the Luxemburg supervisory authority CSSF charge administrative fees of EUR 6 500 and EUR 8 000, respectively, for the approval of a base prospectus.

[20] See section 5 of Annex 6: Summary of public consultation.

[21] The incentive for debt issuers to denominate their debt securities above EUR 100 000 per unit is that they either have to disclose less information if the securities are admitted to trading on a regulated market, or are even fully exempted from the prospectus obligation if no such admission is sought.

[22] S. Çelik, G. Demirtaş and M. Isaksson (2015), "Corporate Bonds, Bondholders and Corporate Governance", *OECD Corporate Governance Working Papers*, No. 16, OECD Publishing, Paris.

many investors from entering the bond market due to the high entry tickets. This concerns mainly small investors, for example, small investment funds but also retail investors.

4. Insufficient harmonisation achieved by the Prospectus Directive

The Directive leaves Member States with considerable discretion in its implementation and application. The resulting differences hinder the emergence of a truly integrated EU capital market. For example, Member States have applied differently the flexibility in the Directive to exempt offers of securities with a total value below EUR 5 000 000 so that the requirement to produce a prospectus kicks in at different levels across the EU (see section 5.1). There are also indications that prospectus approval procedures are in practice handled differently between Member States as evidenced by ESMA's peer reviews including the currently ongoing peer review.[23]

The problems that arise from diverging implementation and application are also reflected in the difficulties investors have in finding and comparing issuances even if they come with a prospectus: No IT-tool exists which would allow investors easy and free online access to the relevant material or would even ensure that they are immediately informed about new issuances or offers (see section 5.6)

5. Insufficient alignment of more recent EU law with the Prospectus Directive

The financial crises and market developments in the last years have led to a number of new or revised legislative texts which constitute the current EU legal framework for financial markets. Recent examples are the creation of SME growth markets under MiFID II, the introduction of key information documents for packaged retail and insurance-based investment products (PRIIPs) under Regulation (EU) No 1286/2014 and the revision of the Transparency Directive. These have sometimes led to insufficient alignment or even inconsistencies with the Prospectus Directive. For instance the market capitalisation threshold of EUR 200 000 000 which defines SMEs under MiFID II is not coherent with the definition of "companies with reduced market capitalisation" under the Prospectus Directive, which is based on a maximum market capitalisation of EUR 100 000 000. Likewise, when the PRIIPS Regulation and the Prospectus Directive both apply, there is a certain level of redundancy between the key information document required under PRIIPS and the prospectus summary, with both documents serving the same objectives of comparing investment products and helping investors' decision-making. It is thus necessary to review the prospectus regime with the objective of creating more consistency and legal clarity with regard to its inter-linkages with other legislative instruments.

3.2.2. Problems

The above-identified drivers contribute to a number of problems which limit capital market integration and efficiency as well as the effectiveness of investor protection in these markets in the Union. Capital markets play a very limited role in the financing of companies in most Member States and the capital market of the Union is very fragmented. The following four contextual problems are linked to the current legal regime for prospectuses in the Union.

1. **High costs of financing** on capital markets in some Member States.

Initial public offerings (IPOs) and debt underwriting are characterised by substantial fixed costs which are generated by due diligence and regulatory requirements, including the cost of

[23] http://www.esma.europa.eu/system/files/2012-300.pdf

information disclosure required by investors or regulators and meeting other corporate governance requirements.[24] Data shows that compliance costs and disclosure requirements related to an IPO are particularly high for smaller firms: A study[25] estimates that listing costs can account for 10 to 15% of proceeds for IPOs of less than EUR 6 million and only 5 to 8% for IPOs above EUR 50 million. For many firms, in particular SMEs, initial and on-going listing costs outweigh the benefits of listing: According to the International Organization of Securities Commissions (IOSCO), the 'costs and fulfilment of regulatory requirements'[26] (i.e. the financial and bureaucratic burden) during and after an IPO are one of the two most important impediments faced by SMEs in accessing capital markets. Table 1 illustrates the relatively high burden of the overall costs of raising capital, which include the cost of a prospectus, when smaller amounts are being raised.

Table 1: Costs of raising capital

Amount raised from the IPO	**Cost of raising capital** (as a % of the amount raised)
less than EUR 6 million	10 to 15%
between EUR 6 million and EUR 50 million	6 to 10%
between EUR 50 million and EUR 100 million	5 to 8%
more than EUR 100 million	3 to 7.5%

Source: Federation of the European Securities Exchanges (FESE)

2. Differences in financing conditions between Member States

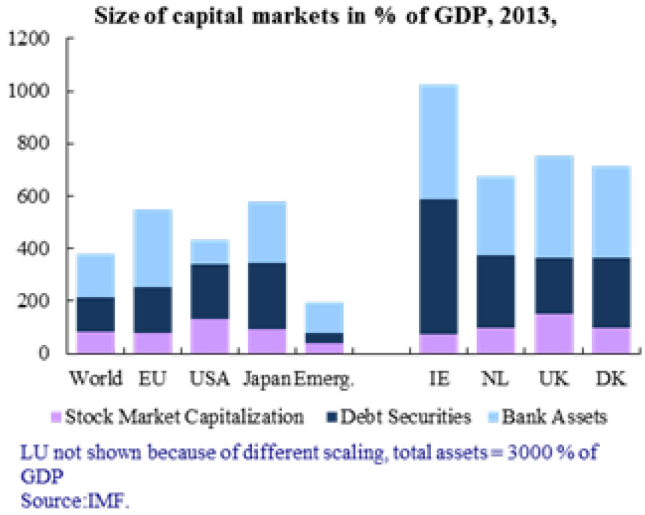
The size of capital markets is conventionally measured by the ratio of outstanding financial assets relative to economic activity. According to this measure, the EU market is relatively big. However, this is largely driven by the extremely large share of bank assets. The stock market capitalisation on the other hand is below the global average. Furthermore, there is a wide variation in the development of capital markets across EU Member States, as illustrated in Figure 1 below: several EU Member States (Luxemburg, Ireland, Netherlands and Denmark) have relatively larger capital markets than the USA, suggesting that conditions in the EU can be supportive to the development of large capital markets.

[24] On costs of accessing public capital markets see also Commission Staff Working Document "Initial reflections on the obstacles to the development of deep and integrated EU capital markets (SWD(2015) 13 final) which accompanied the Green Paper (http://ec.europa.eu/transparency/regdoc/rep/10102/2015/EN/10102-2015-13-EN-F1-1-ANNEX-1.PDF) and European IPO Task Force, EU IPO Report – Rebuilding IPOs in Europe (2015). http://www.europeanissuers.eu/_mdb/spotlight/44en_Final_report_IPO_Task_Force_20150323.pdf .

[25] FESE, Guide to Going Public in Europe, 2013. Annex 7 provides additional data on European IPOs by value and volume.

[26] IOSCO, Final Report: SME Financing through Capital Markets, http://www.iosco.org/library/pubdocs/pdf/IOSCOPD493.pdf, p. 38.

Figure 1: Size and composition of capital markets as share of Gross Domestic Product



Source: IMF Global Financial Stability Report, April 2015

3. Limited access to finance for many SMEs

European companies, and in particular SMEs, rely heavily on bank finance. The Commission services found that the vast majority of their financing is via banks and only 20 per cent of capital or less is obtained from capital markets. Also for SMEs considerable differences between Member States exist: In Slovakia, Denmark and Sweden 9 to 32% of SMEs used equity as a source of funding, whereas in Hungary, Portugal and the Czech Republic almost no equity funding was used and the EU average is at only 3%.There are, of course, various factors influencing the decision of companies when choosing the most appropriate source of capital. For example, most companies have well-established relationships with their banks and therefore turn to them as a preferred choice of finance. Similarly, tax and liability treatments differ between different sources of finance and Member States. Nevertheless, the recent banking crisis showed that reliance on bank financing only can have severe adverse effects in case of such a crisis. Furthermore, it limits the company's bargaining position vis-a-vis the bank. It is therefore important that access to capital markets is open at least as a viable alternative.

4. Ineffective investor protection on capital markets, in particular in across borders

By increasing the investment opportunities, efficient capital markets offer investors a broader set of financial products to (i) meet their investment objectives, (ii) diversify and manage their risks and (iii) optimise their risk-return profile, while respecting their investment constraints. However, considerable differences exist within the EU concerning investor protection, which are mainly caused by different legal and institutional traditions. An example where these differences amongst Member States become obvious are withdrawal rights relating to prospectuses. The withdrawal right is the right of investors who have agreed to purchase or subscribe for securities to withdraw their acceptances. The Directive grants such withdrawal rights during two working days under two sets of circumstances: (i) if the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus and is thus published after the approval; or after the publication of a supplement by the issuer, when a significant new factor, a material mistake or an inaccuracy relating to the information included in the prospectus arises or is noted before the final closing of the offer to the public. Some Member States have introduced additional, sometimes very far-reaching withdrawal rights. This creates uncertainty for investors as to their level of protection when investing

abroad, but also for issuers who perceive these differences as legal risks deterring them from cross-border offers. This in turn, results in a considerable home-bias.

3.2.3. Consequences

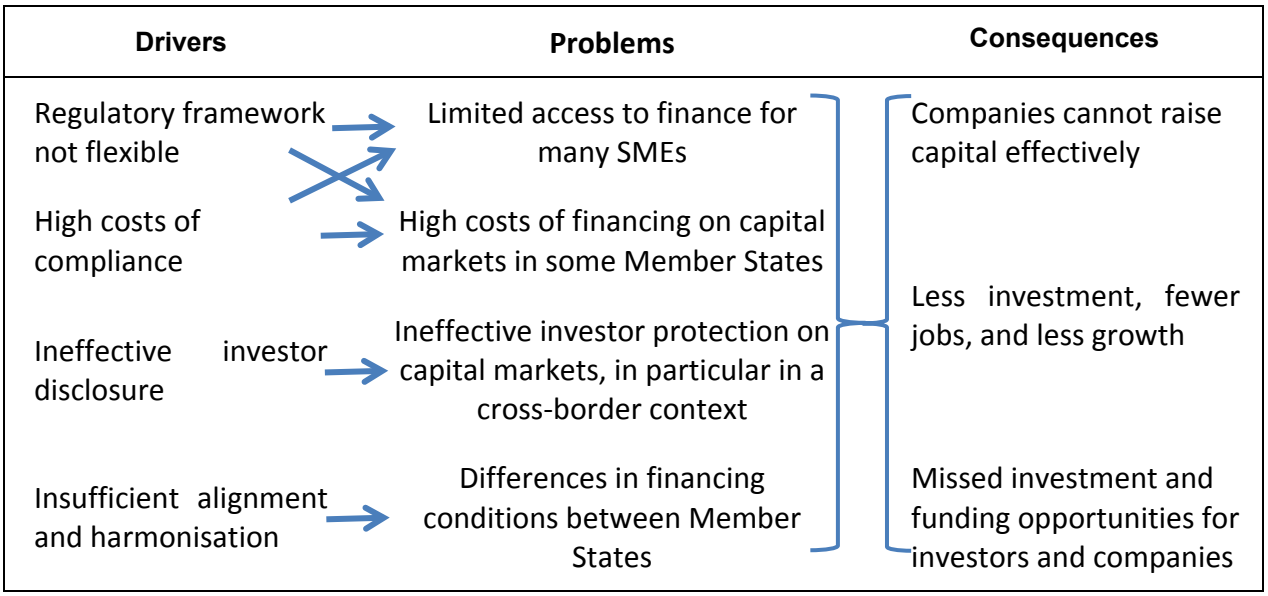
These problems make capital markets unattractive for many companies, in particular SMEs, as an alternative source of funding. However, if **companies cannot raise capital effectively** this often translates into **less investment, fewer jobs and less growth in the Union.**

The differences across Member States as well as the ineffective investor protection make investors reluctant to invest in securities and in particular in those from other Member States. Similarly, issuers are not interested in targeting capital markets in other Member States as this would often trigger considerable additional costs while expectations to raise a lot of funding remain low. Taken together, this means **missed investment and funding opportunities for investors and companies in the Union.**

Although the short-comings in the prospectus regime are only one part of the capital market regulatory framework and there are many other factors influencing the functioning of these markets, these shortcomings can in specific cases nevertheless be the decisive element that keeps a company from raising capital or keeps investors from investing in the most suitable financial instrument. Both situations would contribute to triggering the above consequences.

Figure 2 illustrates how the problems and the drivers described above interrelate. Each of these drivers and problems can have adverse impacts as described in the third column of Figure 2 and in section 3.2.3 below.

Figure 2: Problem Tree



3.3. How would the problem evolve without EU action? The Baseline Scenario

Financial fragmentation has a significant effect on the possibility to share economic risks across borders. Economic literature identified capital markets and bank credit markets as

having an important role in cushioning the impact of economic shocks.[27] By giving access to foreign assets, the capital markets channel can provide stable revenues to investors when domestic income sources decay. The bank credit market channel assumes that banks provide stable funding to the economy even when the economic activity weakens and credit risks increase. Studies on risk sharing in the euro area found that these channels were ineffective during the financial crisis. Indeed, the credit market channel was impaired because of the severity and persistence of the economic downturn and because the fragmentation it entailed annihilated the cushioning effect of diversification. The reasons for the capital market channel having a limited cushioning effect during the crisis were seen in the limited size of capital markets in the EU. Economic theory has long conjectured a link between financial integration, risk sharing and higher economic growth through a "risk-amelioration" channel. The recent EU experience of low growth coinciding with financial market fragmentation is consistent with it.[28]

Deep, liquid and efficient capital markets bring advantages to borrowers and investors not only during times of financial distress, but also under normal market conditions: For borrowers they (i) improve their access to funds; (ii) reduce their capital costs by creating competition among investors; and (iii) reduce the risk of disruption in financing by diversifying their funding sources. On the investors' side, by increasing the investment opportunities, efficient capital markets offer investors a broader set of financial products to (i) meet their investment objectives, (ii) diversify and manage their risks, and (iii) optimise their risk-return profile, while respecting their investment constraints (such as terms of risk, duration, preference for certain asset types).

As described above, the Directive plays an important role at the gateway of EU securities markets. If no measures were taken to improve the Directive, prospectus disclosure could not support creating deeper, more liquid, more efficient and less fragmented capital markets within the EU. While Member States could try to make their national capital markets somewhat more efficient, they could not change the shortcomings of the Directive itself. Companies, in particular SMEs and companies based in smaller markets, would therefore remain deprived of a potentially important source of finance. This in turn would hamper the creation of jobs and growth in the Union.

3.4. Subsidiarity and proportionality

According to the principle of subsidiarity (Article 5 (3) of the Treaty on the Functioning of the European Union), action on EU level should be taken only when the objectives of the proposed action cannot be achieved sufficiently by Member States alone and thus mandate action on an EU level. The first objective of reviewing the Directive in the context of the Capital Markets Union is to remove undue administrative burden, to enable companies, in particular SMEs, to easily and timely access capital markets in order to diversify their sources of capital from anywhere within the EU, and thus to improve the financing of the EU economy. The second and equally important objective is to safeguard investor protection by making available prospectus disclosure which enables them to take informed investment

[27] Compare Anderson, N., M. Brooke, M. Hume and M. Kürtösiová (2015), "A European Capital Markets Union: implications for growth and stability", Bank of England Financial Stability Paper No. 33; Demyanyk, Y., C. Ostergaard and B. E. Sørensen (2008), "Risk sharing and portfolio allocation in EMU", DG ECFIN Economic Paper No 334.

[28] Compare Obstfeld, M. (1994), "Risk-taking, global diversification, and growth", American Economic Review, 84, 5, pp. 1310-1329; Femminis, G. (2001), "Risk-sharing and growth: The role of precautionary savings in the "Education" model", Scandinavian Journal of Economics, 103, pp. 63-77.

decisions. Both objectives aim at facilitating cross-border flows of capital and ultimately at enhancing growth and creating jobs in all EU Member States.

The passporting of harmonised prospectuses as introduced by the Prospectus Directive in 2003 links issuers or offerors, authorities and potential investors from different Member States and European Economic Area (EEA)-Member States: When a competent authority approves a prospectus, the issuer can ask for a passport to another EU or EEA Member State where the prospectus can then be used without undergoing another approval. The minimum content of the prospectus is harmonised at EU level by the Prospectus Regulation (EC) No 809/2004. The prospectus regime is therefore European in nature and its improvement can only be tackled at EU level. The possible alternatives, i.e. non-legislative action at Union level, e.g. guidelines by ESMA, and action at Member State level, could not sufficiently and effectively achieve the objectives as they could not amend the provisions of the Directive or Regulation. Improving the EU prospectus regime will lead to a more level playing field for issuers and investors alike and to avoiding regulatory arbitrage, which in the end could work against the objectives of the Capital Markets Union. The proposed action would give a clear and consistent signal throughout the EU that the prospectus regime performed well even during the financial crisis, but that substantial improvements need to be made to create a truly single market for capital and foster convergence amongst Member States. Therefore, the objectives of the proposed action cannot be achieved by the Member States alone and can be better achieved by the Union.

The options analysed respect the principle of proportionality, are adequate for reaching the objectives and do not go beyond what is necessary. The retained policy options are compatible with the proportionality principle, taking into account the right balance between the public interest at stake and cost-efficiency. Member States will still enjoy flexibility due to the proposed exemption thresholds. The retained options are consistent with the existing EU transparency, market abuse and MiFID regimes. Thus, financial markets can continue to function on the basis of the existing legal framework without having to face unnecessary regulatory disruption. Hence, the overall objectives of reducing the administrative burden (in particular compliance costs) whilst safeguarding investor protection will be met.

3.5. The EU's right to act and justification

The legal basis for action is the Treaty on the Functioning of the European Union (TFEU), and in particular Article 114 thereof.

4. OBJECTIVES

The **general objectives** of the proposal are to ensure that companies everywhere in the Union can raise capital effectively in the financial markets and that investors can invest in those securities they consider most appropriate for their needs, based on adequate disclosure about the security as well as the issuer. This should help to increase investment, job creation and growth in the Union.

Specific objectives would therefore be:

1. to reduce the costs of financing;
2. to achieve more convergence in the disclosure regimes for capital markets across Member States;

3. to improve access to capital markets for SMEs and companies with reduced market capitalisation;
4. to improve investor protection in capital markets.

Finally, **operational objectives** are:

1. to reduce the administrative burden of compliance with the Prospectus Directive;
2. to make the regulatory framework for prospectuses more flexible and appropriate for the various types of securities and issuers covered, in particular SMEs;
3. to achieve more convergence in the application of the Prospectus Directive;
4. to better align the Prospectus Directive with recent EU law;
5. to make disclosure to investors under the prospectus regime more effective.

The operational objective of investor protection under the Prospectus Directive is primarily to be understood as providing retail investors with access to appropriate securities and information about the respective security, its issuer and putting them in a position to assess and compare different offers.

Consistency of the objectives with other EU policies: The identified objectives are coherent with the EU's fundamental goals of promoting a harmonised and sustainable development of economic activities, a high degree of competitiveness, and a high level of consumer protection, which includes safety and economic interests of citizens (Article 169 TFEU).

Consistency of the objectives with fundamental rights: Future legislative measures on the prospectus regime, including appropriate sanctions, need to be in compliance with relevant fundamental rights embodied in the EU Charter of Fundamental Rights ("EU CFR"), and particular attention should be given to the necessity and proportionality of the legislative measures. Only the protection of personal data (Article 8), the freedom to conduct a business (Art. 16) and consumer protection (Art. 38) of the EU CFR are to some extent relevant. Limitations on these rights and freedoms are allowed under Article 52 EU CFR. The objectives as defined above are consistent with the EU's obligations to respect fundamental rights. However, any limitation on the exercise of these rights and freedoms must be provided for by the law and respect the essence of these rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

In the case of the prospectus-related legislation, the general interest objective which justifies certain limitations of fundamental rights is the objective of ensuring the market integrity and financial stability. The freedom to conduct a business may be impacted by the necessity to follow certain disclosure, approval and filing obligations in order to ensure an alignment of interests in the investment chain and to ensure that potential investors act in a prudent manner. As regards the protection of personal data, the disclosure of certain information in the prospectus is necessary to ensure that investors are able to conduct their due diligence. It is however noted that these provisions are currently already in place in EU law. All retained options safeguard proportionality with regard to limitation of fundamental rights.

In other words, the objective of the Prospectus Directive is to balance on the one hand the trade-off between ensuring investor protection and limiting administrative burden for issuers and on the other hand the trade-off between fostering the internal market for capital and the Capital Market Union and preserving sufficient flexibility for national and local markets.

5. DESCRIPTION, ANALYSIS AND COMPARISON OF POLICY OPTIONS

In order to address the problems discussed above it is necessary to amend different parts of the Prospectus Directive. Therefore, as already indicated above, this impact assessment discusses options regarding various separate issues. Which of these issues address which driver is illustrated in Table 2.

Table 2: Drivers and issues discussed

Driver: / *Issue:*	*High costs of compliance with the Prospectus Directive*	*Ineffective investor protection*	*Regulatory framework not flexible and inappropriate for SMEs and some securities*	*Insufficient harmonisation achieved by the Directive*	*Insufficient alignment of more recent EU law with the Directive*
Exemption thresholds	✓			✓	
"Secondary issuances"	✓		✓		
High denomination per unit			✓		
Proportionate disclosure regime for SMEs	✓	✓	✓		
Prospectus summary	✓	✓			✓
Electronic publication system				✓	

In the remainder of this chapter for each of these issues policy options will be described, their potential impacts discussed and their relative (dis-)advantages compared.

5.1. Exemption thresholds

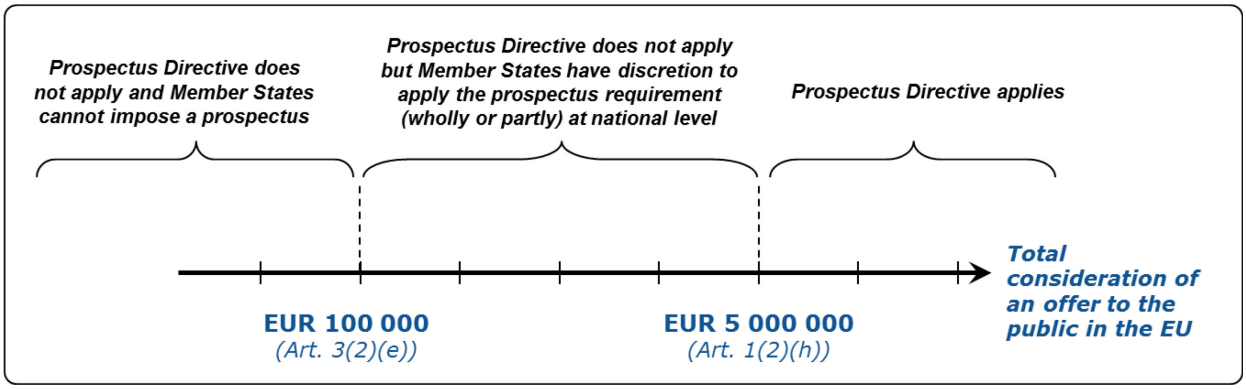
The scope of the Directive is defined by a number of thresholds[29]. These thresholds were initially designed to strike a balance between investor protection and alleviating the administrative burden on small issuers and small offers. Some of these thresholds were raised by Directive 2010/73/EC (see Annex 5). However, in view of market developments, in particular the development of securities-based crowdfunding, some thresholds, including those not amended by the review in 2010, might need to be re-calibrated.

The thresholds that identify the offers exempted from the scope of application of the EU Prospectus regime are related, firstly, to the size of an offer: under the current Article 1(2)(h) the EU prospectus is mandatory for offers above **EUR 5 000 000**, while under Article 3(2)(e) Member States are not allowed to require any prospectus for offers below **EUR 100 000**. For offers of a total consideration between EUR 100 000 and EUR 5 000 000, Member States are free to apply national rules. Secondly, under Article 3(2)(b) an offer of securities addressed to a restricted circle of non-qualified investors is exempted from the prospectus requirement: to

[29] Set out in Articles 1(2)(h) and (j), 3(2)(b), (c), (d) and (e), respectively.

that end, the Directive sets a limit of **150 natural or legal persons** per Member State, other than qualified investors. This threshold was raised from 100 to 150 persons by the amending Directive 2010/73/EU. Figure 3 below illustrates the exemption thresholds related to the total consideration of an offer.

Figure 3: The prospectus requirement in function of the total consideration of the offer



Some stakeholders claim that the thresholds are set too low as they render the Directive already applicable to small offers. In particular the threshold of EUR 100 000 be it at national or EU level, is regarded as too low to support emerging models such as crowdfunding.

5.1.1. Description of policy options

Option 1 – "Do nothing": Exemption thresholds of EUR 100 000, EUR 5 000 000 and 150 persons remain unchanged and Member States retain the ability to regulate prospectus requirements for offers between EUR 100 000 and EUR 5 000 000 as they deem appropriate.

Option 2 – "Raise the **upper threshold** under Article 1(2)(h)" from EUR 5 000 000 to EUR 10 000 000, keep the other thresholds unchanged.

Option 3 – "Raise the **lower threshold** under Article 3(2)(e)" from EUR 100 000 to EUR 500 000, keep the other thresholds unchanged.

Option 4 – "Raise the number of **non-qualified investors** under Article 3(2)(b)": Raise from 150 to 300 the maximum number of non-qualified investors to whom an offer can be addressed in each Member State without triggering a prospectus obligation, keep the other thresholds unchanged.

5.1.2. Analysis of impacts and comparison of options

Option 1: With regard to the "EUR 5 000 000" and "150 persons" thresholds, the general feedback from the consultation was that they should remain unchanged because they already strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers. According to stakeholders, reducing barriers to access capital markets could not be effectively achieved by raising them. The preference for a status quo was confirmed by the Expert Group of the European Securities Committee (EGESC), where a majority of Member States was reluctant to change the thresholds, highlighting in particular that the quantum of 150 persons is already very large in view of the underlying concept of "restricted circle of non-qualified investors". Besides, as the "150 persons" threshold is expressed per Member State, increasing it further could cause some

cross-border offers addressed to several thousands of non-qualified investors within the EU to become prospectus-exempt[30], which would run counter the objective of investor protection.

Option 2: An increased upper threshold would not affect larger issuers as they do not usually carry out offerings on such small scale. Smaller issuers, especially private companies or issuers traded on multilateral trading facilities (including SME growth markets) might benefit from lower regulatory costs if they issued and offered securities for a total consideration between the old and the new threshold. However, such savings are confined to Member States who would: (1) decide to forego any disclosure obligation at national level or (2) apply significantly lighter disclosure requirements below the new threshold. Currently, based on available data, 17 Member States extend the prospectus obligation below the EUR 5 000 000 threshold, while 9 Member States don't (Table 3). A reduction in administrative burden would be granted to small issuers domiciled in these 9 Member States, assuming that the latter do not extend the prospectus obligation below the new threshold of EUR 10 000 000. In the other 17 Member States, the increase to EUR 10 000 000 would have no effect assuming these Member States continue to apply their current lower thresholds.

Table 3: Threshold above which Member States require an EU prospectus to be drawn up (expressed as the total consideration of the offer in the EU over 12 months)

Threshold (EUR)	**100 000**	**250 000**	**1 000 000**	**1 500 000**	**2 500 000**	**5 000 000**
Member States	Belgium, Bulgaria, Germany, France(1), Hungary, Latvia, Slovak Republic, Slovenia	Austria	Czech Republic, Denmark, Romania(2)	Finland(3), Luxemburg	The Netherlands, Sweden, Poland	Croatia, Greece, Ireland, Italia, Lithuania, Malta, Portugal, Spain, United Kingdom

Note: Data not available for Cyprus, Estonia. (1) Only for offers representing more than 50% of the share capital of the issuer. (2) EUR 200 000 for debt instruments. (3) Finland is in the process of raising this threshold to EUR 2 500 000.
Source: ESMA.

In addition, the number of prospectuses for offers between EUR 5 000 000 (included) and EUR 10 000 000 (excluded) approved by the national competent authorities in 2013 and 2014 was fairly small: about 3% of all prospectuses related to offers within that range.[31]

While it could be expected that there would have been more offers between EUR 5 000 000 and EUR 10 000 000 if there was no or only a lighter prospectus requirement under national law, it is not possible to provide a robust estimate of the potential increase of capital raised in the EUR 5 000 000 – EUR 10 000 000 bracket. It should also be borne in mind that the national prospectus requirements applicable in this bracket would not necessarily prove less costly than the EU prospectus.[32] This option would to some extent run counter the stated objective to achieve more convergence in the disclosure regimes for capital markets across Member States. Small companies in Member States imposing the prospectus requirements below EUR 10 000 000 will be disadvantaged in comparison to companies operating in countries not imposing such thresholds, potentially leading to different costs of capital according to the country of domicile. However, those companies would still be free to offer or list securities of this size range in more favourable markets.

[30] With the current threshold of '150 persons', an offer could in theory be addressed to up to 4 172 non-qualified investors within the EU (149 in each of the 28 Members States) without a prospectus.
[31] Raising the threshold to EUR 20 000 000 would have exempted only about 6% of prospectuses approved in 2013 and 2014.
[32] Companies might nevertheless be obliged to produce a prospectus under national law.

Retail investors, on the other hand, would be left with less information to take an investment decision or even no disclosure at all in those Member States who would decide not to put in place any safeguard below the new threshold. Hence Option 2 could result in reduced investor protection. It is, however, open to what extent such investor protection concerns would actually materialise as, even without an EU or national requirement to draw up a prospectus, issuers would still need to provide appropriate information to attract and convince investors.

A minority of respondents to the consultation (essentially trade associations and some market operators) argued in favour of raising the "EUR 5 000 000" threshold to considerations between EUR 7 500 000 and EUR 50 000 000 (with EUR 10 000 000 most frequently cited), invoking the necessity to simplify the fund raising process for small issuers and offerings. However, according to the majority of respondents the lack of convergence regarding the prospectus requirement throughout the EU below the "EUR 5 000 000" threshold creates a non-level playing field and represents an impediment to cross-border financing that is contrary to the goals of the Capital Market Union. They argue that the flexibility of Member States below this threshold results in market fragmentation and thus higher compliance costs for issuers seeking to carry out offerings in several Member States.

Option 3 would directly benefit small issuers and in particular securities-based crowdfunding in those nine Member States which currently require a prospectus for offers with a consideration below EUR 500 000 and would preclude the introduction of such a requirement in the other Member States. Currently, platforms and companies wishing to raise funds via crowdfunding need to consider each Member State as a domestic market in respect of the prospectus requirement and to carry out a country-by-country analysis before addressing investors across borders. Respondents to the consultation stated that offers on crowdfunding platforms usually have a total consideration between EUR 50 000 and EUR 1 500 000. Research found that the average fund raising on crowdfunding platforms in the EU was about EUR 250 000[33]. Therefore, raising the lower threshold from EUR 100 000 up to EUR 500 000 would provide a safe harbour for the development of the vast majority of crowdfunding initiatives.

Option 4: Option 4 would most likely not have impacts on the majority stakeholder groups analysed in this impact assessment. Stakeholders suggest that the "150 persons" threshold could be increased to 300 or even 500 persons, arguing that such a rise could benefit the development of crowdfunding[34]. However, for crowdfunding platforms the 'private placement' threshold is much less relevant than those relating to the total consideration of the offer: today most offers on crowdfunding platforms, even if addressed to more than 150 non-qualified investors, are prospectus-exempt anyway because they remain below the EUR "5 000 000" threshold, or, where applicable, the lower threshold set by Member States at national level above which the prospectus requirement applies[35]. This is reflected in comments from stakeholders from the crowdfunding sector who responded to the

[33] This is confirmed by the few available data on crowdfunding platforms worldwide and in the EU: 89% of funds raised through equity-based crowdfunding platforms internationally for the years 2009-2011 were for projects raising less than $250,001 (~220,000 €). According to ESMA's report "Investment-based crowdfunding: insights from regulators in the EU" of May 2015, UK hosts 57% of the regulated platforms in the EU. An analysis of data on UK platforms between 2011 and the first quarter of 2014 found that the average amount raised was £199,095 (~ 270,000 €) through equity crowdfunding.

[34] It was reported that in one Member State where crowdfunding is most developed, the number of investors on some of the most popular platforms ranges from 50 to 400 persons on average.

[35] The data provided in footnote 33 suggests that projects of average size on major crowdfunding platforms in the Union were considerably below the EUR 100 000 threshold. In any case, offers on crowdfunding platforms would only exceptionally reach the EUR 5 000 000 threshold from where the Prospectus Directive applies.

consultation. They were satisfied with the 'EUR 5 000 000' threshold but mainly criticised Member States' discretion to extend the prospectus requirement below that level, arguing that the diversity of domestic regulations was a barrier to the development of equity crowdfunding in Europe.

Furthermore, a threshold of 300 non-qualified investors per Member State would add up to 8 400 non-qualified investors across the entire Union. Were those investors to invest only EUR 2 500 on average, this would add up to more than 20 million euro of retail money collected without a legal requirement for appropriate disclosure. This would go far beyond the original objective of the exemption which was to serve as a kind of 'de minimis' clause allowing issuers in a private placement to include a restricted circle of non-qualified investors in their offer.

Impacts per stakeholder:

Options	Description	Types of issuers and markets affected	Estimated impact
Option 2	Raise the threshold of Article 1(2)(h) (**EUR 5 000 000**) to a higher level while maintaining Member States' ability to extend the prospectus requirement below such threshold, subject to option 3	- Unlisted companies and companies not listed on a regulated market [(1)]	If threshold set at **10 million euro**: at least 3% of approved prospectuses in 2013-2014 would have fallen out of scope If threshold set at **20 million euro** : at least 6% of approved prospectuses in 2013-2014 would have fallen out of scope
Option 3	Raise the threshold of Article 3(2)(e) (**EUR 100 000**) to EUR 500 000, below which Member States cannot extend the prospectus requirement	- Unlisted companies and companies not listed on a regulated market - Companies raising capital through crowdfunding platforms	n/a[(2)]

[(1)] As a prospectus is required upon admission to trading of securities on a regulated market, companies listed on a regulated market would not normally benefit from the exemption.
[(2)] No data available on the size of public offers taking place in the EUR 100 000 – EUR 5 000 000 range, where a prospectus is required under national law.

Table 4: Thresholds - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2 (upper threshold):	*0*	++	*0*	-	*0*
Option 3 (lower threshold):	*0*	+	*0*	*0*	*0*
Option 4 (300 persons):	+	+	*0*	-	*0*

*SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration;
– –: significant deterioration

Comparison of options:

Option 2 and **3** would have similar effects on small issuers and investor protection, but arguably with a different magnitude as each one of them targets different ranges of the offering activity. While Option 3 would lower the regulatory burden on offers in the range between EUR 100 000 and EUR 500 000, Option 2 would do so on offers in the range

between EUR 5 000 000 and EUR 10 000 000 to the extent that there are no disclosure requirement at national level. Higher thresholds under both **option 2 and 3** would reduce administrative burden and make access to capital markets relatively easier for SMEs not listed on regulated markets. However, the effectiveness of **option 2** would largely depend on how each Member State would compensate for the absence of EU disclosure requirement under the new threshold. In those Member States who decide not to put in place a national prospectus requirement below the new threshold, retail investors would suffer from the reduction of available information while small offers of securities would be facilitated. Conversely, in those Member States who impose a national prospectus, investor protection would not be affected and there would be no real reduction of administrative burden on SMEs. This option will also result in an increase of the size range of offers or admissions to trading where prospectus requirements might diverge among Member States. In comparison, the effectiveness of **option 3** can be more easily predicted (as it does not depend on national choices by Member States), but would be of a lesser magnitude given the range of offers concerned. It would lower administrative burden for offers which would no longer fall under the national prospectus requirements and SMEs' access to capital markets would improve. Retail investors might benefit from an increase in the number of offers but would see a reduction in approved disclosure material. Both **options** would not trigger any costs (except maybe search costs and compliance costs in option 2 for issuers wishing to offer securities to the public in several Member States) but would have some positive impacts on access to capital markets, they can be considered efficient and effective.

It is even more difficult to assess the impacts of **option 4** as it would rather work 'at the fringes' of the scope of application. There is no obvious reason for exempting offers on the basis of the number of (retail) investors as each investor should have the right to benefit from investor protection. Therefore, the '150 persons' exemption is only justified if there is an appropriate trade-off in the form of the costs of compliance or if it is to provide legal certainty at the fringes. These objectives are already achieved with the current threshold level. Therefore, option 4 provides a much lower net benefit than options 2 and 3.

The preferred options are therefore Options 2 and 3 combined, i.e. to raise the lower threshold of Article 3(2)(e) from EUR 100 000 to **EUR 500 000** and the upper threshold of Article 1(2)(h) from EUR 5 000 000 to **EUR 10 000 000**.

Table 5: Thresholds - Achievement of objectives relative to option 1 ('do nothing')

Impact on: *Options:*	*Administrative burden reduction*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	+	++	*0/-*	+	++
Option 3:	+	+	-	+	+
Option 4:	*0*	*0*	-	-	-

++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration;
– –: significant deterioration

5.2. Appropriate alleviated prospectus requirements for "secondary issuances"

A company which already has a class of securities admitted to trading on a regulated market is known to the market through the prospectus it prepared and got approved on the occasion of its initial listing (IPO), as well as through the ongoing disclosure requirements under Regulation (EU) 596/2014 (Market Abuse Regulation) and Directive 2004/109/EC (Transparency Directive). This could justify the introduction of certain alleviations in the disclosure requirements when such company makes further offers to the public, as some of the information about the issuer usually contained in the prospectus (e.g. the 'operating and

financial review' and the 'historical financial information') could also be found in the annual financial report which issuers whose securities are admitted to trading on a regulated market have to publish under the Transparency Directive. The annual financial report comprises, among others, the audited financial statements and the management report.

One already-existing alleviation is the option given by the Prospectus Directive to issuers to draw up a prospectus as three separate documents (the registration document, the securities note and the summary) approved separately and at different points in time ("tripartite prospectus"). The rationale behind this is that the information relating to the issuer in the registration document can be prepared and kept up-to-date "on the shelf" and then completed later by adding a securities note and a summary when market conditions allow the issuer to raise financing. The intent of this "tripartite regime" is to provide issuers with an optional faster and more flexible procedure since producing a securities note and a summary at the time of issue is much less time-consuming than the preparation of a full-blown prospectus. Yet, as shown in the evaluation below (Annex 5), the tripartite prospectus is only popular in a few Member States[36] and there is scope to encourage more issuers to use it.

Another existing alleviation is the proportionate disclosure regime granted to 'rights issues', i.e. any issue of statutory pre-emption rights which allows for the subscription of new shares and is addressed only to existing shareholders. Under this regime, a prospectus consists of a registration document and a securities note which contain less information items than required for a normal prospectus as illustrated in Table 6.

Table 6: Overview of the most significant alleviations granted by the proportionate disclosure regime for 'rights issues', in the share registration document (compared to a regular prospectus)[(1)]

1. The following information items and sub-items – required in a regular prospectus – are not required: ▪ Selected financial information ▪ Operating and financial review ▪ Capital resources ▪ Conflicts of interests ▪ Remuneration and benefits ▪ Pro forma financial information ▪ History and development ▪ Important events in the developments of the issuer's business ▪ Products sold or services performed ▪ Breakdown of revenues by category of activity and geographic market ▪ List of issuer's subsidiaries and information thereof	**2. The following items need only be disclosed for the past year (instead of the past two years)** ▪ Material contracts **3. The following items need only be disclosed for the past year (instead of the past three years)** ▪ Historical financial information ▪ Nature of the issuer's operation and its principal activities ▪ Related party transactions ▪ Dividend per share

[(1)] Comparison between Annexes I and XXIII of the Prospectus Implementing Regulation No 809/2004.

Although the alleviations granted under that regime are significant and aim at avoiding duplications with ongoing disclosures under the Transparency Directive, the regime is in practice rarely used, arguably because its scope is too narrow (only "rights issues" to existing shareholders are covered). In consequence, only 97 prospectuses were drawn up under that regime in 2013-2014, i.e. 1.2% of all prospectuses approved in those years (see figures in the evaluation, Annex 5). The specific problem to be addressed is the insufficient differentiation

[36] The tripartite prospectus is only widely used in France, Luxembourg and Norway (see Figure 7 of Annex V). In the case of France, this is attributable to procedural alleviations – the shortened approval process once the shelf registration is used in a prospectus - associated with the "*document de référence*" (see Option 5 below).

between the prospectus required upon first admission to trading (IPO) and the prospectuses required for subsequent offers ('secondary issuances') once the issuer is listed. For secondary issuances, in the absence of widespread use of proportionate disclosure regime, this leads to overlapping disclosure between the prospectus and the ongoing disclosure required by the Transparency Directive. Besides, issuers already listed on regulated markets face the time-consuming and costly process of preparation and approval of their prospectus which makes it often difficult for them to take advantage of market windows. In the public consultation they expressed the need for faster access to capital markets when using a prospectus.

5.2.1. Description of policy options

Option 1 – "Do nothing and keep the current regime": If no action was taken, the alignment of disclosure requirements between the Prospectus Directive and the Transparency Directive would remain limited to rights issues. For other secondary issuances the duplication of disclosures would continue. Absent any incentive to encourage its use, the tripartite prospectus would remain a popular practice in only a handful of Member States.

Option 2 – "Abolish the admission prospectus when securities are already listed on a regulated market". Under this option, the exemption of admission prospectus in Article 4(2)(a) of the Directive would be extended to all fungible securities (equity and non-equity) already listed on a regulated market in the EU, and the 10% dilution cap would be removed[37]. As an issuer of such securities is already subject to the disclosure obligations under the Market Abuse Regulation and Transparency Directive, investors would have access to the secondary issuers annual and half-yearly financial reports and the inside information[38] on that issuer, as both are required to be made public as regulated information.

Option 3 – "Raise the dilution threshold of Article 4(2)(a)". Under this option, the exemption of admission prospectus in Article 4(2)(a) of the Directive would be extended, but, unlike under Option 2, subject to conditions. The threshold for the dilution of existing shares would be raised from 10% to 20% of shares of the same class already admitted to trading on the same regulated market, calculated over a period of 12 months. In addition, the exemption would be extended from shares to all fungible securities.

Option 4 – "Alleviate the prospectus regime for all secondary issuances of securities". The current proportionate disclosure regime of Article 7(2)(g) of the Directive would be extended to all secondary issuances of securities[39] and recalibrated to take into account all information that issuers on a regulated market or on an SME growth market have already published pursuant to the Market Abuse Regulation, the Transparency Directive (for issuers on a regulated market) or the market rules concerning ongoing periodic financial reporting (for issuers on an SME growth market). Option 4 would therefore focus the secondary issuance prospectus on information needed by investors in securities that are already known on the market and are subject to the disclosure requirements of regulated markets. This approach is supported by a large majority of respondents to the public consultation[40] and Member States as it would address the perceived failure of the current prospectus regime to adequately distinguish between the information appropriate when an issuer is new to a public market and

[37] Currently, the prospectus exemption is conditional on the newly issued shares representing less than 10% of the number of shares of the same class already admitted to trading on the same regulated market.

[38] I.e. information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments.

[39] Including rights issues, open offers and re-opening of debt issuances.

[40] Investors' associations generally did not express a view on the proportionate disclosure regime for rights issues.

when it is seeking financing through secondary issuances (where a significant amount of information is already in the public domain with regard to the financial statements and the operating and financial review of the issuer's past performances).

Option 5 – "Universal registration document and tripartite prospectus for frequent issuers": The registration document, containing information on the issuer, is typically the part of a prospectus which generates the most discussion with the competent authority during the scrutiny and approval process. A registration document typically amounts up to 2/3 or 4/5 of the size of a full prospectus. To streamline prospectus approvals, Option 5 envisages a new optional system for frequent issuers who repeatedly file updated registration documents with their national competent authorities. A "universal registration document"[41] would contain the essential descriptive information about the issuer (incl. risk factors, business overview, corporate governance, shareholding structure, financial information), irrespective of the type of securities to be issued by the company. When a national competent authority reviews the registration document every year, the review process of the securities note and summary becomes a more straightforward and faster exercise. An issuer which has obtained approval for its universal registration document with its competent authority for three consecutive years would be granted a fast-track approval process of 5 days (instead of the current 10 days) for the approval of the securities note and the summary. The aim is to provide frequent issuers with easier and faster access to capital markets once an opportunity to raise funds presents itself. This new system would be optional and available to all listed issuers (including SMEs) on regulated markets and multilateral trading facilities.

Options 2 and 3 are mutually exclusive but could be combined with options 4 and 5

5.2.2. Analysis of impacts and comparison of options

Option 2 would lead to a considerable reduction in the administrative burden for listed issuers, but would deprive investors of essential information which only a prospectus contains and which is not featured in the ongoing disclosures required under the Market Abuse Regulation and the Transparency Directive. In the absence of a prospectus, investors would no longer have access to comprehensive and well-structured information on the issuer (shareholding structure, board practices, related party transactions, risk factors, etc.), on the securities (terms and conditions, risk factors, use of the capital raised, etc) and the admission itself (timetable, expenses, etc.). This full exemption would therefore severely undermine investor protection and investor confidence as investors may be less willing to participate to secondary issuances of listed issuers. In light of these shortcomings, Option 2 will not be pursued further.

Option 3 would open the incentive to increase capital and/or "reopen" previous debt issuances to more issuers and may have a positive effect on the liquidity of equity and non-equity markets. A threshold of 20% seems to reflect the needs of market participants as voiced in their responses to the consultation, without compromising the interests of existing shareholders. A higher threshold than 20%, on the other hand, would potentially allow for transformational transactions which significantly alter the capital structure of a company to be exempted from the prospectus requirement and thus would not be desirable from an investor protection point of view. The suggestion to raise the dilution threshold from 10% to 20% was supported by Member States and respondents to the public consultation[42]. It would also

[41] France has already introduced with some success a similar mechanism known as "document de référence". Other Member States have expressed interest in exploring further this system.

[42] In particular stock exchange operators, banks and associations of issuers.

benefit smaller companies for which already a fairly small new issuance could represent more than 10% of its capital. As offers resulting in a capital dilution in excess of 20% are, however, likely to be transformational transactions with a significant impact on the structure and prospects of the company, it is legitimate that detailed information should continue to be provided to investors through a prospectus.

Through its wider scope, **Option 4** has the potential of significantly increasing recourse to the proportionate disclosure regime (PDR) for secondary issuances. The PDR for rights issues established by Directive 2010/73/EU was only used in 97 prospectuses in 2013 and 2014 in the Union, representing a mere 1.2% of the total number of prospectuses approved in those years. Option 4 would extend the current PDR to all secondary issuances of securities fungible with securities already admitted to trading on a regulated market or an SME growth market, as well as offers of non-equity securities by issuers whose shares are already admitted to trading on a regulated market or SME growth market. Besides, in order to increase take-up of the PDR, Option 4 would cover all forms of "secondary" equity issuances (share capital increases with or without pre-emptive rights for existing shareholders). Based on statistical data provided by 21 Member States, an average of 70% of all equity prospectuses approved in 2013 and 2014 corresponded to secondary issuances (public offers made by companies already admitted to trading on a regulated market or an MTF). Equity prospectuses represented a quarter of all prospectuses approved in the EU in 2014 (935 prospectuses). Assuming that the total number of prospectuses approved in the EU remains stable at around 4 000 per year on average and that the new regime would be used mostly by equity issuers - re-openings of non-equity "benchmark" issuances still appear to be a rare practise in the Union - the expected usage rate of the new proportionate disclosure regime could be estimated at 17.5% (instead of 1.2% currently) of all approved prospectuses, i.e. **700 prospectuses per year** on average[43].

Based on an analysis of some of the elements that do not have to be disclosed in the current PDR (e.g. 2 years of historical financial information, selected key financial data and operating and financial review) compared to a regular equity prospectus, Option 4 is estimated to reduce the cost of a secondary issuance prospectus by about **20%** when compared to a full prospectus[44]. Compared to producing a regular equity prospectus (that would otherwise cost about € 1 million on average), this means that savings of around EUR 200 000 per prospectus seem realistic. Based on these assumptions, the administrative costs saved under Option 4 could be in the range of **EUR 130 million per year**[45].

Option 5: The idea of a fast-track approval process of 5 working days for frequent issuers admitted to trading on regulated markets or MTFs who file annually a universal registration document with their competent authority, is modelled on the "*document de référence*" which has been in operation in France for more than two decades and which around 350 issuers voluntarily file every year with the French competent authority. Such issuers integrate the

[43] 4 000 (number of prospectuses approved) x 25% (share of equity prospectuses in the total) x 70% (share of secondary issuances of the equity prospectuses) = 700

[44] The Commission impact assessment accompanying the legislative proposal for the first revision of the Prospectus Directive in September 2009 made the assumption that 50% of the average cost of producing a prospectus could be saved by issuers using the proportionate disclosure regime for rights issues. This cost reduction was based on an estimated breakdown of the cost of producing a prospectus and on the assumption that the costs related to external auditors would be reduced by 100%, transaction counsel costs by 30%, publication costs by 20%, lead manager costs by 50%, issuer internal costs by 50% and auditors costs by 100%.

[45] 4,000 prospectuses x (17.5% - 1.2%)[share of prospectuses concerned] x 200,000€ [savings per prospectus] = 130m€. As cost savings of 20% are regarded as a cautious estimate, savings could even be higher, up to twice as much.

universal registration document into a tripartite prospectus when they offer securities to the public. Based on data collected by ESMA during the 2013-2014 period[46], only 20% of equity prospectuses (excluding IPO prospectuses) and 32% of non-equity prospectuses (excluding base prospectuses) were approved by competent authorities in less than 10 working days. In France, partly due to the widespread use of tripartite prospectuses, these proportions are much higher, **50%** and **55%**, respectively. Therefore, the introduction of a universal registration document could shorten approval times significantly across the EU.

Assuming that the number of prospectuses approved every year remains in the range observed in 2013-2014 (around 4000 per year), a more widespread use of the universal registration document could lead to **370 equity prospectuses** and **838 non-equity prospectuses** to be approved every year in less than 10 working days (instead of respectively 150 and 493 on average per year in 2013-2014). Use of the universal registration document could potentially lead an increase by **146%** for fast track approvals in the case of equity and by **70%** in fast track approvals for non-equity prospectuses. Although these shortened approval times cannot easily be expressed in monetary terms, shorter approval times means more opportunities for issuers to seize "market windows" and raise financing on capital markets.

Impacts per stakeholder:

Options	Description	Issuers and markets affected	Estimated reduction of administrative burden
Option 3	Extend exemption of admission prospectus of Article 4(2)(a) to all fungible securities and raise dilution threshold from 10% to 20%	Issuers (including SMEs) listed on regulated markets issuing "more of the same"	n/a(1)
Option 4	Extend scope of 'proportionate disclosure regime' to all secondary issuances of securities	Issuers (including SMEs) listed on regulated markets or SME growth markets who only **occasionally** offer securities to the public	Around € 130 million per year, saved collectively by issuers drawing up a PDR prospectus.
Option 5	Fast-track approval for frequent issuers filing a 'universal registration document' every year and drawing up a tripartite prospectus	Issuers (including SMEs) listed on a RM or traded on MTFs (including SME growth markets) who **frequently** issue new securities / offer them to the public	Increase by ~150% and ~70% respectively in the number of equity and non-equity prospectuses approved by competent authorities in less than 10 working days, every year.

SME-GM = SME growth markets.
(1) There are no available EU data linking capital dilution with prospectuses required on account of an admission to trading on a regulated market (with no concurrent offer to the public).
Note: The three options target different types of issuers and transactions; they would be implemented in parallel.

[46] Based on 1 481 approved equity prospectuses (excluding IPO prospectuses) and 3 047 non-equity prospectuses (excluding base prospectuses) approved in 2013 and 2014 in the 28 Member States as well as Iceland, Norway and Liechtenstein.

Table 7: Secondary issuances - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	++	+	+	--	*0*
Option 3:	+	++	*0*	*0*	*0*
Option 4:	+	++	+	+	*0*
Option 5:	+	++	+	+	*0*

*Falling under the exemptions for SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration;
– –: significant deterioration

Comparison of options:

Option 2 would be the most radical but is not pursued due to its detrimental consequences for investor protection. **Options 4** and **5** would alleviate considerably the burden on issuers, albeit less radically than option 2. These Options would safeguard investors' interests, while addressing different profiles of listed issuers. Both options provide "tools" which listed issuers are free to use or not. Listed issuers frequently offering securities to the public would seek the flexibility of the tripartite prospectus and fast-track approval granted under **Option 5**, in exchange for the commitment to file a comprehensive registration document every year. Conversely, listed issuers who do not envisage regular capital raising on the market will be more inclined to make use of the proportionate regime under **Option 4** as it allows them to draw up a lighter registration document (still, the normal approval process applies).

Option 3 is independent of the other options and would be preferred because of its positive impacts on the administrative burden as well as SME's access to finance. **The preferred options are therefore Options 3, 4 and 5 combined.**

Table 8: Secondary issuances - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	++	*0*	--	+	-
Option 3:	+	+	*0*	+	+
Option 4:	+	+	*0*	+	+
Option 5:	+	+	*0*	+	+

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – – : significant deterioration

5.3. Favourable treatment of issuers of debt securities with a high denomination per unit, with liquidity on the debt markets

The specific problem to be addressed is the potential adverse unintended effects of the existing exemptions under the Prospectus Directive which grant a favourable treatment to companies issuing debt securities with a denomination per unit of EUR 100 000 or above. There is evidence that such a high threshold creates an incentive for debt issuers to only issue in large denominations, which as a consequence contributes to inhibiting liquidity on the secondary market for bonds and limits the issuance of debt securities in smaller, retail-friendly denominations.

More specifically, the Prospectus Directive contains a prospectus exemption in Article 3(2)(d) for issuers of securities (debt or equity) with a denomination per unit of at least EUR

100 000[47]. In practice this exemption (which only applies to public offers[48]) is used by issuers of non-equity securities traded on unregulated markets or by issuers of unlisted non-equity securities offered to institutional investors through private placements which may then be traded over the counter.

On the contrary, non-equity securities traded on regulated markets are caught by the prospectus requirement on account of their admission to trading so that the exemption of Article 3(2)(d) does not apply. Instead, the Directive grants alleviations to issuers of high-denomination debt. The prospectus necessary for the admission to trading on regulated markets[49] of debt securities with a denomination per unit of at least EUR 100 000 is less burdensome than for smaller denominations[50]: the content to be covered in the prospectus is reduced, no summary is required and issuers benefit from some greater flexibility in the choice of language used in the documents. This dual information content between retail and wholesale debt prospectuses creates an incentive to only issue in larger denominations in order to save the costs and time for a prospectus.

Therefore, the incentive for debt issuers to denominate their debt securities above EUR 100 000 per unit is (i) either less information and no summary to disclose if the securities are admitted to trading on a regulated market, (ii) or no prospectus at all if no such admission is sought. This favourable treatment encourages investment-grade issuers to issue non-equity securities in denomination per unit above EUR 100 000, making them inaccessible to retail investors.

The EUR 100 000 threshold (which was raised from EUR 50 000 by Directive 2010/73/EU from 1 July 2012) was originally intended as a "price protection" for non-professional investors, but it is now argued that the differentiation made by the Directive between "retail" and "wholesale" prospectuses mainly leads issuers, including blue chip companies with a high creditworthiness, to shun the retail market to avoid the costs of preparing a "retail prospectus" and because they can easily find funding from institutional investors. This is eventually detrimental to European retail investors, at a time when a growing portion of them needs to have access to appropriate debt securities to invest their savings in anticipation of their retirement.

However today, the high-quality end of the corporate bond market is inaccessible to them, as the majority of securities are denominated above EUR 100 000. This is illustrated in the evaluation report in Annex 5. According to OECD data, about 70 per cent of bonds listed in the Union are in such high denominations.

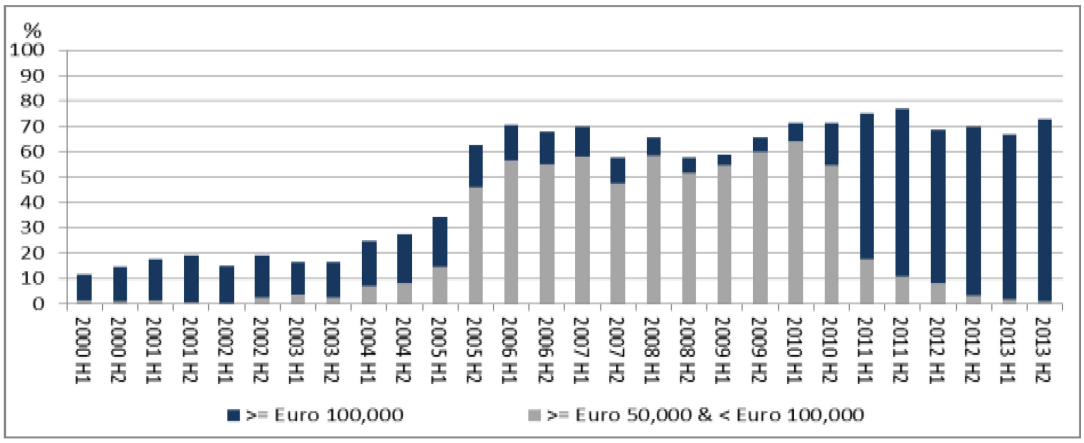
[47] Although the "100,000 €" exemption of Article 3(2)(d) targets all securities, it is only used in practice by issuers of non-equity securities (there is no evidence that shares are issued anywhere in the EU with a denomination above 100,000 €).

[48] There is no such prospectus exemption in case of admission of securities to trading on a regulated market.

[49] To date, there is no reliable data available about the number and volume of bonds which are traded on EU regulated markets, MTFs and over the counter (OTC), MiFID II for the first time establishes a principle of transparency for non-equity instruments such as bonds and derivatives and broadens the pre- and post-trade transparency regime to include non-equity instruments, but is not applied yet. High denomination bonds which are "plain vanilla", i.e. non-structured, will however be still directly (without financial intermediary) accessible to retail investors on an "execution-only basis" even when MiFID II will be applied.

[50] The Implementing Regulation No 809/2004 contains schedules for issuers of debt securities with a denomination per unit of at least EUR 100 000 ("wholesale prospectus", Annexes IX & XIII) which are lighter than those for debt securities with a denomination per unit below EUR 100 000 ("retail prospectus", Annexes IV & V).

Figure 4: Denomination of debt securities



Source: OECD 2015[51]

Figure 4 illustrates the apparent anomaly caused by the favourable provisions granted by the EU prospectus regime. Several US and European companies issued almost identical bonds around the same date, if not on the same day, in two European currencies and in US dollar. However, the differences in denomination are obvious: while the minimum denomination in the European currencies is at or above the exemption threshold of EUR 100 000 and therefore out of scope for retail investors (except some high-net-worth individuals), the minimum denomination in US dollar is only USD 1 000 or USD 2 000, i.e. clearly accessible by retail investors. This shows that the EUR 100 000 denomination threshold might deprive retail investors from access to blue chip bonds issued by well-known international companies with good credit ratings. Although the business considerations behind these differences in denominations are not known, it can reasonably be inferred that these companies did not try to avoid retail participation in the US (as evidenced by the low denomination in US dollar) while they purposely chose to denominate their debt securities in the EU at a level which would be inaccessible to EU retail investors and would grant them a lighter prospectus regime (if the securities were to be admitted to trading on a regulated market) or a total prospectus exemption (if the securities were to be traded on a multilateral trading facility or not listed at all). Overall, it can be considered that the EUR 100 000 has distorted the behaviour of debt issuers in the EU.

[51] S. Çelik, G. Demirtaş and M. Isaksson (2015), "Corporate Bonds, Bondholders and Corporate Governance", *OECD Corporate Governance Working Papers*, No. 16, OECD Publishing, Paris.

Table 9: Examples of bond issuance in Sterling, Euro and US Dollar highlighting the differences in minimum denominations

Issuer Name	Announce Date	Minimum Piece	Amount Outstanding	Currency
McDonald's Corp	06/04/2014	100 000	300 000 000	GBP
McDonald's Corp	06/04/2014	100 000	400 000 000	EUR
McDonald's Corp	06/04/2014	1 000	500 000 000	USD
Walgreens Boots	11/10/2014	100 000	300 000 000	GBP
Walgreens Boots	11/10/2014	100 000	750 000 000	EUR
Walgreens Boots	11/06/2014	2 000	2 000 000 000	USD
Bat Intl Finance	09/02/2013	100 000	650 000 000	GBP
Bat Intl Finance	03/10/2015	100 000	800 000 000	EUR
Bat Intl Finance	06/10/2015	2 000	1 500 000 000	USD
Pepsico Inc	10/23/2012	100 000	500 000 000	GBP
Pepsico Inc	04/23/2014	100 000	500 000 000	EUR
Pepsico Inc	08/08/2012	2 000	1 000 000 000	USD
BP Capital PLC	03/07/2011	100 000	750 000 000	GBP
BP Capital PLC	02/11/2015	100 000	1 250 000 000	EUR
BP Capital PLC	02/10/2015	1 000	1 250 000 000	USD

GBP: Pound Sterling, EUR: Euro, USD: US Dollar;
Source: The Wealth Management Association (WMA), based on data provided by Bloomberg

5.3.1. Description of policy options

Option 1 – "Do nothing": the EUR 100 000 threshold of Article 3(2)(d) remains unchanged and the dual standard of disclosure linked to the EUR 100 000 denomination per unit, as mandated by Article 7(2)(b) for non-equity securities admitted to trading on a regulated market, is kept.

Option 2 – "Lower the threshold": Lower the EUR 100 000 threshold of Article 3(2)(d) to a level between EUR 10 000 and EUR 50 000 (level in place before the amending Directive 2010/73/EU was adopted).

Option 3 – "Remove the incentives to issue debt securities in high denominations". This option has two components: (i) it removes the prospectus exemption under Article 3(2)(d) of the Directive and (ii) for non-equity securities admitted to trading on a regulated market, it unifies the disclosure regimes in order to promote retail investor participation in debt securities listed on regulated markets.

5.3.2. Analysis of impacts and comparison of options

Option 1 - If no action was taken the current situation would persist. As the threshold is fixed in the Directive, Member States could not address the issue at their level. A large part of the debt securities would remain outside the reach of retail investors. The market fragmentation between non-equity securities below and above the EUR 100 000 threshold would remain. This part of the market would remain fairly illiquid because of the size of the single securities which limits the range of potential investors considerably while the public market would remain small and therefore neglected by many smaller investors. No reliable data is available whether the current EUR 100 000 threshold is overall beneficial for the protection of retail investors or not.

Option 2 would at least partially address the concerns regarding liquidity in the sense that more investors, possibly including a higher number of non-qualified investors, could afford to buy debt securities in denominations between EUR 10 000 and EUR 50 000. The positive

effect of this option on the liquidity of the secondary market for debt securities is only likely to be sizable if the new threshold is set close to or at EUR 10 000. Where bonds denominated above the new threshold would be admitted to trading on a regulated market, a wholesale prospectus (without a summary) would be required, whose content would not be suitable for those retail investors who could afford to spend more than EUR 10 000 in one bond. In that case, some retail investors may invest a considerable share of their savings in one security for which they would receive insufficient information. Therefore, investor protection could suffer considerably.

Under **Option 3,** where admission to trading on a regulated market is sought, a single disclosure standard for non-equity prospectuses would be adopted by defining the same minimum information items through the implementing legislation (currently the Prospectus Regulation). Companies issuing debt securities admitted to trading on regulated markets would cease to be incentivised to use denominations of EUR 100 000 or above as doing so would not translate into lighter disclosure requirements any longer. The average denomination per unit of bonds traded on regulated markets should therefore decrease and, assuming the overall volume of debt issuances admitted to trading on regulated markets remains unchanged, retail investors would benefit from more investment opportunities as more corporate bond issuances would become accessible to them due to their lower denomination per unit. Retail investor participation into corporate bonds listed on regulated markets would therefore increase, in line with the CMU objectives. There is however a risk that this Option could lead to a shift of new listings of debt securities from regulated markets towards multilateral trading facilities, as the Directive does not apply to the admission to trading on these venues. Option 3 seeks to introduce a level playing field in the disclosure contents of prospectuses drawn up for non-equity securities admitted to trading on the regulated market (arguably a small fraction of all non-equity securities issued), by removing the distinction between "retail" and "wholesale" prospectuses, to foster liquidity on the regulated markets for non-equity securities, while ensuring adequate investor protection, as a prospectus will still be required.

Responses to the consultation did not provide a clear picture on any prevailing view regarding the removal of the favourable treatments granted to the above issuers. In particular, it should be noted that the consultation did not highlight the unification of the debt prospectus templates as being a question to be treated at the level of the Directive.

Where no admission to trading on a regulated market is sought, i.e. for debt securities traded on multilateral trading facilities or offered through private placements, the removal of the prospectus exemption of Article 3(2)(d) for public offers of debt securities would also contribute to lifting one potential cause for the lack of liquidity in secondary debt markets and foster more "retail-friendly" denominations, consistent with the objective to foster retail participation in these markets.

Regarding the EUR 100 000 threshold of Article 3(2)(d), the majority of Member States expressed a preference for leaving it unchanged because this exemption supposedly offers legal certainty to issuers and because they believe that there are other more fundamental reasons explaining the lack of liquidity of the secondary markets for bonds. Conversely, stock exchange operators and portfolio managers supported the removal of Article 3(2)(d), as the EUR 100 000 was repeatedly criticised by these professionals for being a barrier to the development of electronic trading platforms using a central limit order book protocol, and for constituting an impediment to proper diversification of portfolios. Lastly, the Financial Service User Group (FSUG) expressed the view that the threshold should not be adjusted

downwardly as it considered that the benefits that such a downward adjustment provides to issuers would not outweigh the negative effects it has on retail investors.

Impacts per stakeholder:

Option 2 would broaden the exemption from the prospectus obligation considerably and therefore benefit larger issuers as they would no longer have to issue in EUR 100 000 but could use denomination between EUR 10 000 to EUR 50 000, or above, and thereby gain some flexibility. Smaller issuers would not be impacted much as they usually do not use such high denominations. However, some might issue in denominations between EUR 10 000 to EUR 50 000 in order to avoid the prospectus obligation. Wholesale investors (e.g. portfolio managers) would benefit as well as they would gain some flexibility in their investments if more securities were offered in smaller denominations. The majority of retail investors would probably not be affected directly; depending on where the threshold is set between EUR 10 000 to EUR 50 000 only a few might be able to afford to invest in securities of such denominations. The lower the threshold, the higher the risk that retail investors might take uninformed investment decisions.

Option 3 may result in a relatively higher disclosure burden for debt issuers seeking admission to trading on a regulated market, although it will have to be taken into account that the revision of the Prospectus Directive will alleviate a substantial number of burdens attached to the preparation of a prospectus, in particular the alleviations for secondary issuances and frequent issuers (see section 3.2) and those resulting from the simplified and shortened summary (see section 3.5). The level 2 Regulation that contains all the details to be reported in a prospectus will also be considerably streamlined, thereby also contributing to reduce the disclosure burdens. The expected higher disclosure burdens can therefore not be compared to the current situation but to the situation when the revised Prospectus legislation will enter into application.

Smaller issuers, who do not typically issue non-equity securities with a denomination above EUR 100 000, should not be affected by this option. The ability of retail investors to participate in the corporate debt market would be enhanced as this option would potentially lead to the decrease of the average denomination per unit of bonds traded on regulated markets. Besides, under that option, the removal of the exemption of Article 3(2)(d) Prospectus Directive will not necessarily cause an increase in the administrative burden on issuers who currently make use of it today. This is because issuers currently use this exemption as an additional legal protection to avoid the prospectus requirement, while they are already eligible to the exemption of Article 3(2)(a) Prospectus Directive[52], as debt securities traded on multilateral trading facilities and/or offered through private placements are typically addressed to professional investors only. In addition, issuers seeking legal certainty may still introduce a contractual clause imposing a "minimum entry ticket" per investor of EUR 100 000, thus placing themselves under the prospectus exemption of Article 3(2)(c)[53], which will not be removed.

[52] "The obligation to publish a prospectus shall not apply to the following types of offer: (…) (a) an offer of securities addressed solely to qualified investors."

[53] "The obligation to publish a prospectus shall not apply to the following types of offer: (…) (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer."

Table 10: Denomination - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors*	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	++	*0*	+	*0*	+
Option 3:	-	*0*	*0*	++	*0*

++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

Option 2 would reduce administrative burden for issuers of high denomination bonds and give them more flexibility in choosing a lower denomination. SME access to capital markets would not be affected as SMEs do not typically issue securities of such high denominations. Investor protection would suffer as some retail investors may be able to afford to buy securities with a denomination of EUR 10 000 to EUR 50 000. The efficiency of the option is difficult to assess as it on the one hand will address the risk to liquidity in bond markets at least to some extent at almost no cost in terms of implementation, on the other hand, it will not improve but reduce investor protection. As this latter impact is regarded more important than the (uncertain) liquidity impact and the reduction of administrative burden for some debt issuers the overall effectiveness is considered to be negative.

For companies issuing debt securities with a denomination above EUR 100 000, **Option 3** will result in a somewhat higher administrative burden than under option 1 (depending on how the unified disclosure schedules compares with the previous wholesale template), but it will create more opportunities for investors (in particular retail investors) to invest in non-equity securities, and in particular in corporate bonds, and it will remove one barrier to liquidity on the secondary markets for debts, while enhancing retail participation into these markets.

Preferred option	Description	Types of issuers and markets targeted	Estimated impact
Option 3	(i) Unify the disclosure regimes for retail and wholesale non-equity securities admitted to trading on a regulated market, (ii) Remove the prospectus exemption of Article 3(2)(d) for denominations of EUR 100 000 or more	All issuers of non-equity securities, whether traded on regulated markets, MTFs or offered through private placements	It can be expected that a considerable share of debt securities will be issued in much smaller denominations, e.g. EUR 1 000, as it is mainly done in the US. [(1)]

[(1)] Compared to the current situation where more than 70% of debt securities issued have a denomination per unit of more than EUR 100 000.

Thus option 3 is the preferred option.

Table 11: Denomination - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	+	*0*	--	*0*	-
Option 3:	-	*0*	++	+	+

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – – : significant deterioration

5.4. Reforming the proportionate disclosure regime for SMEs

The proportionate disclosure regime for SMEs and companies with reduced market capitalisation (SME PDR) established by Directive 2010/73/EU was only used in 143 prospectuses in 2013 and 2014 in the Union, representing a mere 1.8% of the total number of prospectuses approved in those years. The SME PDR has not delivered its intended effect mainly because it is still perceived as too burdensome. The reductions were so small that most issuers decided not to make use of the SME PDR as they feared that damage from the possible 'stigma' of making use of the regime, regarded as a potential attempt to hide some information, might be greater than the benefit of the reduced prospectus costs.

5.4.1. Description of policy options

Option 1 – "Do nothing and keep the proportionate disclosure regime for SMEs as it is"

Option 2 – "Design a new SME PDR that would further alleviate the mandatory contents of the proportionate disclosure regime for SMEs. To avoid the abovementioned SME stigma, the new SME PDR would not be available for companies listed on a regulated market. It would, however, be available to all unquoted SMEs and SMEs traded on MTFs (including the new category of SME growth markets).[54] The objective is to cut administrative burden for SMEs who wish to do a public offer or to trade on an MTF/SME growth market but do not seek admission to trading on regulated markets.

Option 3 – "Modified alternative presentation ("MAP") prospectus": An alternative prospectus format in the form of a prospectus template containing standardised language typically included in prospectuses which SMEs could then complement themselves with their specific, individual issuer / issue-specific information. This format would create a distinct approach to prospectuses for SMEs as they would "fill in" a prospectus instead of draft it from scratch. The "MAP prospectus" would also contain guidance on how to fill in the additional issuer / issue-specific content not covered by the standardised language. In addition, ESMA and national competent authorities would be required to develop tools to assist SMEs in drafting a "MAP prospectus" and remove any national rule forcing SMEs to use the services of an intermediary (lawyer, bank, etc.) to interact with the competent authority during the approval process in order to reduce the cost of preparing a prospectus. Prospectus drawn up as a "MAP prospectus" might be easier for investors to compare than regular prospectuses, as their content would partially consist of standardised language. It is important to point out that this alternative format would be optional, i.e. issuers would not be obliged to use it and would still have the possibility to draw up a prospectus in a classic format under the proportionate disclosure regime. Being an alternative format under the proportionate disclosure regime, the "MAP prospectus" would not be available for companies listed on a regulated market.

Options 2 and 3 are not mutually exclusive but could be implemented in a combined manner.

5.4.2. Analysis of impacts and comparison of options

Option 2: Although no reliable data exists on the number of prospectuses drawn up for public offers by unlisted companies which meet the definition of an SME, a major part of the prospectuses approved for public offers carried out by companies traded on MTFs/SME

[54] Annex 8 provides a comparison between the disclosure requirements of some major MTFs and those of the Prospectus Directive on regulated markets.

growth markets can reasonably be assumed to have been drawn up by either SMEs or companies with reduced market capitalisation.[55] Companies listed on MTFs/SME growth markets can therefore serve as a useful proxy to estimate the potential number of prospectuses which could be drawn up under the new SME PDR. Based on statistical data from 24 Member States, on average 8% of all prospectuses approved in 2013 and 2014 were drawn up for a public offer of securities traded on an MTF. Assuming that the total number of prospectuses approved in the EU remains around 4 000 per year on average, this means that at least **320 prospectuses per year** could be eligible to the new SME PDR.

Assuming that the average cost of producing a prospectus for a small quoted company is EUR 700 000 (the average minimum cost, based on the consultation feedback), and that the cost reduction could be in the range of **20%**[56] (based on the information items that would no longer be required to be disclosed, including the third year of historical financial data), the savings in administrative costs for issuers whose securities are traded on MTFs could be around 140 000 euro per prospectus or **45 million euro per year in total**[57].

Option 3: The "MAP" prospectus containing standardised language would provide SMEs with additional flexibility in the choice of the disclosure format. It would avoid or reduce significantly the cost of legal advice in the preparation of the prospectus by empowering SMEs to draw up the prospectus with their in-house capacity. This presentation might also appeal more to (retail) investors who might find it easier to understand and to compare prospectuses based on this template. Furthermore, institutional investors might not be ready to adjust to the new format. Therefore, it might probably appeal most to very small issuers which are of little interest for institutional investors anyway but rely on small, in particular local investors. Lastly, although there is no precedent for this new format in the EU, it is worth highlighting that a similar format has been available in the United States since 1989 for the filing requirements of small companies under state securities laws[58].

Impacts per stakeholder:

Option 2 would not directly affect larger issuers. Smaller issuers of securities on MTFs would benefit significantly from the revised PDR as administrative burden would be reduced considerably. Wholesale investors would benefit from more offers by smaller issuers and retail investors would benefit from both more offers and less but more appropriate disclosure documentation. The relatively few smaller issuers of securities on regulated markets who currently make use of the PDR would no longer be able to do so. For them, administrative burden would most likely increase slightly as the revised full-fledged prospectus would probably still be more demanding in terms of costs and effort than the current PDR. This cost would stand against the benefit for investors who would no longer have to deal with different types of prospectuses in the prime market which many retail investors consider as a 'safe harbour with no strings attached'.

[55] While the assumption that all issuers on MTFs would qualify is clearly an overestimate, it is balanced by the fact that unlisted issuers will also benefit from the lighter regime, although their number cannot be reliably estimated.

[56] The Commission impact assessment accompanying the legislative proposal for the first revision of the Prospectus Directive in September 2009 made the assumption that the reduction of the costs compared to producing a regular prospectus would lie in the range of 10 to 20 percent.

[57] 320 prospectuses x 700,000€ [current average costs] x 20% cost savings = 45m€.

[58] The Small Company Offering Registration Form (U-7) developed by the North American Securities Administrators Association (NASAA).

Option 3 would have similar effects and would also be optional for smaller issuers. As it is not available under the current regime, there would be no adverse impact on small issuers on regulated markets.

Options	Description	Types of issuers and markets affected	Estimated reduction of burden
Option 2	- Simplify further the contents of the proportionate disclosure regime for SMEs (based on the content of admission documents required by EU junior MTFs[(1)])	- Unquoted SMEs	**Option 2** : Around 45 million euro per year saved collectively by SMEs drawing up a prospectus under the proportionate regime
Option 3	- Under the proportionate disclosure regime for SMEs, create an alternative format in the form of a template containing standardised language (questionnaire type).	- SMEs and companies with reduced market capitalisation (< 200 million euro) traded on MTFs	**Option 3** : n/a[(2)]

MTF = multilateral trading facility.
(1) EU Multilateral trading facilities catering for SMEs (e.g. AIM, OMX First North, Madrid Mercado Alternativo Bursátil (MAB)…)
(2) The new "question & answer" template is a new creation with no precedent in the EU.

As both options provide considerably greater advantages for eligible issuers than the current PDR without detriment to investors it can be expected that those issuers will make more use of this option than of the current regime. It is also important to note that the scope of eligible issuers will be larger.

Table 12: Proportionate disclosure regime - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	*0*	++	+	+	*0*
Option 3:	*0*	++	+	+	*0*

*Falling under the exemptions for SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

Option 2 would most likely have the above positive impacts on administrative burden for SMEs aiming to raise capital through offers of securities to the public. **Option 3** would also have these same positive impacts but might result in additional cost savings for the drawing up of a proportionate SME disclosure document. **The preferred options are therefore options 2 and 3 combined.**

Table 13: Proportionate disclosure regime - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	+	+	*0*	+	+
Option 3:	++	++	+	+	+

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – –: significant deterioration

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

The prospectus summary, as amended by the Prospectus Directive II, is considered as not being fit for purpose. This view was confirmed by responses to the public consultation and reactions of Member States during the Expert Group of the European Securities Committee (EGESC). Currently, instead of being a document which is short, simple, comparable and easy for targeted investors to understand, a summary tends to be lengthy, generic and technical and does not help much to improve the knowledge of the average investor about potential investment opportunities and risks.

Besides, for certain types of securities, there will be a certain degree of duplication between the prospectus summary and the key information document (KID) required by Regulation (EU) No 1286/2014 (PRIIPS Regulation, which will become applicable on 31 December 2016). The overlap between the prospectus summary and the PRIIPS KID should therefore be addressed.

5.5.1. Description of policy options

Option 1 – "Do nothing and keep the current summary regime"

Option 2 – "Reduced length of summaries": Currently, Article 24(1) of the Prospectus implementing Regulation provides that a prospectus summary shall not exceed 7% of the length of the prospectus or 15 pages, whichever is the longer. These ceilings could be lowered (e.g. to 5% and 10 pages), or the terms “whichever is the longer” replaced by "whichever is the shorter".

Option 3 – "Free form summary": Replace the current summary with a free form summary only subject to a limit in the number of pages. Issuers would only be required to address pre-determined key issues/headings: e.g. company overview, key balance sheet and profit and loss figures, context and objectives of the offering, terms and conditions of the securities offered/admitted to trading and five main risk factors. Issuers would not be constrained in how they fill in the sections, except by the length limit and by the overarching principle that information be presented in a fair, balanced and understandable way. This option should be combined with option 2 and thus be introduced together with a length limit, otherwise it would most likely lead to excessively long summaries.

Option 4 – "Redesign the summary as a KID+": The current summary could be replaced with a Prospectus Directive-specific key information document ("KID+"): The KID+ would be focused only on the most material pieces of information on the issuer, the securities and the offer. It should be written in plain, descriptive language which the average retail investor could understand, and its content should be presented in a fair, balanced and understandable way. Its length could be limited to 6 pages of A4-sized paper, i.e. longer than the KID prepared according to PRIIPS, but shorter than the current prospectus summary on average. It would consist of the information sections of the PRIIPS KID combined with additional information on the issuer and the offer to give potential investors a complete overview of the information contained in the prospectus. This additional information on the issuer and offer should also be structured by user-friendly headings inspired by those of the PRIIPS KID (e.g. "Who is the issuer of the securities?", "What are the key risks specific to the issuer?", "What are the essential facts relevant to the offer/issue?"). With regard to the section describing the securities, the issuer would be allowed to fill it in with exactly the same content as that contained in the PRIIPS KID, if such securities are "packaged products" falling under the

scope of PRIIPS. Therefore, the "PD-specific KID+" would not only be fit-for-purpose, shorter and accessible to retail investors, but it would also solve the content overlap between the PRIIPS KID and the prospectus summary for those securities which fall under the scope of both PD and PRIIPS.

Option 2 and 3 could be combined; option 4 would also entail a length limit of an absolute number of pages. The specific liability regime applying to the summary would be kept unchanged under all options.

5.5.2. Analysis of impacts and comparison of options

Option 1: As the current requirements are laid down in the Prospectus Directive, the situation would not evolve without action at EU level. Issuers would still face the high costs and administrative burden of preparing a summary which does not really achieve its objective to improve investor protection as it is not read or understood by most investors, in particular retail investors. Respondents to the public consultation, including a majority of Member States, very strongly support reassessing the rules applying to the prospectus summary. This widespread dissatisfaction about the current summary and the need for alignment with the PRIIPs Regulation would be ignored if option 1 was retained.

Option 2: Reducing the length of the prospectus summary would produce some 'quick wins': a shorter summary would be more concise and it would be more likely that investors, in particular retail investors, actually read it. There would also be less of a risk that important information is hidden in less relevant material so that investors take wrong decisions. A shorter summary might be cheaper to produce and certainly cheaper to translate. This would be particularly beneficial for SMEs. Furthermore, it would reduce the workload of competent authorities to some extent. This option would address concerns raised in the public consultation that summaries are overly lengthy, containing superfluous information and that even the volume of prospectuses gets artificially inflated to gain more pages for the summary.

Option 3: A "Free form summary" could help issuers, in particular SMEs, in better presenting their specificities and free them from the need to complete sections of the current templates which might not be fully appropriate for them. A length limit would preclude the publication of overly long "narrative" documents which make it hard for the reader to identify the key information. A risk of a free form would be that it would be much harder to compare the features of different security offers and also for competent authority to check summaries as part of the scrutiny and approval process. Whether it would otherwise help or harm investor protection is difficult to assess and would probably depend on the preferences of the individual investor, whether he or she prefers structured information or a more narrative style.

Option 4: Introducing the KID+ summary would allow investors to benefit from a disclosure document which is much shorter and from which it is much easier to grasp the relevant information than it is currently in a prospectus summary. This would improve the comparison of various investment products. Furthermore, a KID+ summary would represent a considerable reduction in the administrative burden for issuers as the document would be much shorter and more clearly structured. Here again these savings would be of particular relevance for SMEs as for them the costs represent a bigger share of the total consideration than they do for larger issuers. Lastly, there was a clear appetite from a majority of Member States for Option 4 on the grounds that it would lead issuers to cease to draft summaries by copy-pasting parts of the prospectus, enable the re-use of the contents of the key information document required by the PRIIPS Regulation, and significantly reduce the length of the summary while making its content more user-friendly and accessible to the average retail

investor. If the format of the prospectus summary were to converge towards that of the KID, investors would find it easier to compare investment products which fall under the PRIIPS Regulation and the Prospectus Directive.

Impacts by stakeholders:

A shorter summary (option 2) would present some benefit for all stakeholders. In most cases, however, they would be fairly minor. Only for smaller issuers and retail investors would they be more significant in relative terms.

A free form summary (option 3) would make the preparation of the summary and in particular the presentation of the investment proposition easier for issuers, in particular smaller ones. As described above, it is more difficult to assess the impact on retail investors and it might net out across their different preferences. The impact on competent authorities would be positive on the one hand as the summaries would be shorter and potentially negative on the other hand as it might be more difficult to scrutinise them.

As wholesale investors do not rely on summaries as much as retail investors do, the various options would not impact them directly. However, if the changes could trigger a greater interest in transferable securities by retail investors, this would make the market more dynamic and liquid which would benefit wholesale investors as well. As option 4 is most likely to trigger such interest, it would be most likely to also benefit wholesale investors.

Finally option 4, a KID+, would have strong overall positive impacts on issuers and retail investors. Retail investors benefit from the redesign of the summary as a KID+ and from the fact that the maximum page limit exercises discipline on issuers to keep the document focused on what is really essential. Retail investors would also benefit as the predetermined and user-friendly headings inspired by PRIIPS would allow for easier comparison of investment opportunities. Issuers would benefit from the flexibility to draft brief narratives and assemble material information from the prospectus under accessible headings. Issuers would also benefit from the possibility to reuse existing PRIIPS KID contents in the prospectus summary. Positive impacts on competent authorities would arise as their workload in approving prospectuses would be reduced.

Table 14: Prospectus summary - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	*+/0*	*+/0*	*0*	*+/0*	*0*
Option 3:	*+/0*	*+*	*0*	*0?*	*0*
Option 4:	*++*	*++*	*0*	*++*	*+*

*Falling under the exemptions for SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

Option 2 would have a limited positive impact in reducing administrative burden, making SME access to capital markets easier and ensuring investor protection. As it would only require minor legislative changes to achieve it would be an efficient measure. However, as the impacts would be limited its overall effectiveness would also be limited.

Option 3 would have a similar impact regarding administrative burden and SME access to capital markets. But as it would remain uncertain whether it could ensure investor protection, its efficiency would be limited and its effectiveness marginal.

Option 4 would score positive on all criteria as it would reduce administrative burden, increase investor protection significantly and also facilitate SME access to capital markets. It would therefore be an efficient and very effective measure.

Thus option 4 is the preferred option.

Table 15: Prospectus summary - Achievement of objectives relative to option 1 ('do nothing')

Impact on: *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	+	+	+	++	+
Option 3:	+	+	*?*	-	*0*
Option 4:	++	+	++	+	++

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – –: significant deterioration

5.6. System for the electronic access to prospectuses

Today it is not possible to search prospectuses in the EU in an efficient and effective manner: ESMA's website only compiles a list of hyperlinks to prospectuses and supplements on the basis of notifications made to it by the national competent authorities of the Member States of the EU and EEA.[59] The ESMA list:

(i) does not contain all approved prospectuses, supplements and final terms which ESMA receives from competent authorities according to Articles 5(4) and 13 of the Prospectus Directive,
(ii) is not up to date as time lags of more than three months can be observed between approval of a document by a competent authority and inclusion in the ESMA list,
(iii) often contains inoperative hyperlinks or hyperlinks which do not lead to the prospectuses but, e.g., to companies' homepages and
(iv) only provides for a very limited search function[60] as ESMA does not receive so-called "meta-data" describing the issuer and securities covered by the prospectus.

Commission services are not aware of an EU-wide public or private database that would allow for full text or targeted searches in all approved prospectuses.[61] To date, it is not even clear if the prospectuses found online refer to still valid offers. No provisions for storage and access to prospectuses after termination of the validity period exist.

[59] http://registers.esma.europa.eu/publication/searchProspectus

[60] The only available search criteria are: home and host member state, security type, content type meaning regular or base prospectus, issuer name, approval and notification date.

[61] In the US, the Securities and Exchange Commission (SEC) provides an online database called EDGAR containing registration statements, prospectuses and periodic reports as well as recent corporate events, and offers numerous search tools. This database was mentioned frequently in responses to the Commission public consultation on the review of the Prospectus Directive as an example for best disclosure practice. EDGAR's pilot program cost 30m$ in 1985, while the periodical three years modernization plans cost 49m$ in 1998 and 16m$ in 2014. EDGAR costs are financed by the SEC's budget that is in turn based on an offsetting scheme according to which the appropriation that would be funded by the Federal Treasury is actually financed by the fees paid by issuers and traders.

5.6.1. Description of policy options

Option 1 – "Do nothing and keep the current regime": Continuation of the current decentralised and fragmented system with very limited functionality and reliability in terms of comprehensiveness and timeliness.

Option 2 – "Single national electronic access points": In order to provide a more efficient and effective access to prospectuses and related Member States could be required to ensure that prospectuses and related documents approved or filed can be accessed easily and for free in electronic form on the website of the competent authority of the home Member State. Competent authorities will remain subject to the obligation to transmit the approved prospectuses to ESMA, as well as issuers will remain liable for the content of published prospectuses.

Option 3 "European single electronic access point": An online access and search system, free of charge users, could be set up. This would make all prospectuses and related documents approved under the Prospectus Directive accessible via a single website at ESMA and would include a search function for investors. It could be run by ESMA and could leverage on the fact that ESMA already receives all approved prospectuses, supplements and final terms and publishes a list of them according to Articles 5(4) and 13 of the Directive. In order to enable searches national competent authorities would be obliged to provide ESMA with meta-data on the prospectuses.[62]

5.6.2. Analysis of impacts and comparison of options

Option 1: In principle, the provision of information on prospectuses could be left to the market. However, so far no such private service tool has evolved in the in the more than ten years that the Prospectus Directive has been applicable. One reason for this might be that such a service would be relatively expensive if the provider had to ensure or even guarantee that the documents provided are the correct ones and still valid. These costs might then be too high to attract sufficient demand. On the other hand, if the service was not fully reliable, it would not be appreciated either. There are therefore no reasons to expect such a private service to emerge in the future. Some national competent authorities have developed databases for the prospectuses etc. they have approved. However, not all Member States have done so and where they exist these databases are only available in the national languages from the competent authority's website. In order to get an overview of offers across the Union investors or other interested parties would therefore have to consult 28 websites in more than 20 languages. It would therefore remain unlikely that European prospectuses could easily be searched and compared across borders. This precludes investors from properly considering investments in securities which might be suitable for them and issuers might have more difficulties in raising the amount of finance they would like to raise. Only a small minority of respondents to the public consultation was in favour of keeping the status quo.

Option 2: Member States and the EU would need to bear the costs of adapting the IT-systems developed under the Transparency Directive in order to integrate prospectuses and related documents as well. These costs would depend on the existing design and functions of competent authorities' and Officially Appointed Storage Mechanisms' IT-infrastructures:

[62] Meta-data such as ISIN, Legal Entity Identifiers (LEI), type of issuer, IPO prospectus (yes or no), coverage of equity, debt or both, issuance volume, coverage of public offer, admission to trading or both, trading venue, maturity (for prospectuses covering fixed income securities) would allow for sensible search functions.

authorities which already dispose of appropriate systems would not face relevant costs; others might have to make some investments to upgrade their systems.

Option 3: A system for electronic access to prospectuses and related documents which also includes a search-functionality would provide potential investors a wealth of information and bring considerable improvements. They could access and compare prospectuses across the Union from a single site ensuring the reliability of the information. (Potential) issuers could use the IT-tool as well to get a market overview before finalising their offer/listing documents. It could help them to identify favourable periods or Member States for their offers. Competent authorities could use this IT-tool for enforcement purposes, e.g. to monitor the passporting of prospectuses. By increasing transparency of prospectuses in the Union considerably this option would be an important contribution to the EU's efforts to create a Capital Markets Union. As the system could be built on the basis of investments already made by competent authorities and ESMA under the current regime and would therefore not cause high IT-costs.

No such system has emerged in the past on the European market and also existing databases at national level are being run and provided by public authorities or institutions. It is therefore not to be expected that the installation of such a system at ESMA would preclude an immanent private market initiative. This might be due to the necessary up-front investment before a database would become operational and could potentially generate revenue. It would also be difficult for a private provider to get access to all relevant prospectus material as they could not source it directly from ESMA or national authorities and would not have any means to ensure to get it from issuers. Therefore, there would be a great risk that the database would be incomplete or not up-to-date. Furthermore, as ESMA is already receiving all prospectuses and runs or is setting up databases for similar purposes locating such an access system at ESMA would benefit from considerable synergies.

Impacts by stakeholders:
Option 2 would in particular benefit stakeholders in those Member States that do not have developed searchable tool at national level, but might not benefit cross-border investors much. Issuers would on the one hand benefit from increased transparency, resulting potentially in more investor interest in their offers. On the other hand they might face slightly higher fees if national competent authorities decided to shift the costs of the database updates onto issuers. Option 3 would benefit investors by providing a single access point to prospectuses approved in the Union. This would Union-wide searches for appropriate investments much easier. National competent authorities and ESMA would face some costs which they might shift to issuers. For issuers the costs and benefits would be similar to those under option 2 with the additional benefit of a greater likelihood to attract investors from other Member States.

Table 16: System for the electronic access to prospectuses - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	+	++	+	++	-
Option 3:	+	++	+	++	+

*Falling under the exemptions for SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

While option 2 would only improve access to prospectuses at national level, option 3 would do so at Union level. The additional costs of the latter option would be relatively limited as it would build on existing infrastructure and would not require the creation of 28 searchable databases at national level. Therefore, while it would be an improvement vis-à-vis the status quo (option 1), option 2 would be inferior to option 3. Option 3 would be about as cost-efficient as option 2 but would be much more effective in achieving the objectives of the review, namely to empower investors to assess investment offers and to contribute to the creation of a single market for capital in the Union. It would therefore be the preferred option.

Table 17: System for the electronic access to prospectuses - Achievement of objectives relative to option 1 ('do nothing')

Impact on: *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	*0*	+	+	*0*	-
Option 3:	+	+	+	*0*	++

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – –: significant deterioration

5.7. Overall impact of the proposed options, compliance costs and subsidiarity

This section analyses the impacts of the six issues discussed above as a package. The reason for doing so is that each of the preferred options might impact on the others in a positive or adverse manner.

The package of preferred options should ensure that companies in general, and the larger listed SMEs in particular, benefit from significant alleviations when preparing their prospectuses and that European start-ups are able to carry out small offers through crowdfunding with the benefit of a prospectus exemption. This should help financing innovative activities in the Union.

Summary table on the preferred package of measures and their anticipated impacts

Table 18 provides a holistic view of all the preferred options and how they complement each other. For example, the URD for frequent issuers is complementary to the PDR for secondary issuances and the two options in combination could yield savings that are not captured by the analysis in this impact assessment (which looks at both options in isolation). Equally, due to its cross-cutting nature, the prospectus summary in the form of a KID+ would reinforce the two proposed PDRs and especially the "Pro SMEs" PDR: for example, an SME carrying out a public offer on an SME Growth market could enjoy the cumulative benefits of a MAP– prospectus in "question and answer form" and of the KID + summary.

In addition, the cross-cutting initiative concerning denomination sizes for non-equity (essentially bond) issuances benefits all issuers as it could foster a deeper and more liquid secondary market for corporate debt. Again, SMEs and frequent issuers stand to benefit from the 'KID+' summary, their respective PDRs and the issuance of debt securities in significantly lower denominations per unit as a consequence of the abolition of the specific treatment currently reserved to issuances in denomination of EUR 100 000 and above.

Table 18: Summary of expected impacts of the proposed measures

Preferred policy options	Cost impact on stakeholders	Impact on relevant markets/sectors
Increase prospectus exemption threshold to EUR 500 000	No prospectus for capital raisings above the current threshold of EUR 100 000. Useful extension as for example, the average crowdfunding project amounts to around EUR 220 000.	Impact mainly focused on crowdfunding platforms that currently operate with average project sizes below EUR 500 000.
Decrease scope of prospectus to issuances above EUR 10 million	Approximately 100 prospectuses (around 3% of annually approved prospectuses) would no longer be obliged to draw up an EU prospectus. Member States are at liberty and can continue to impose or introduce national disclosure requirements for offers below EUR 10 million.	Cost savings depend on whether Member States prospectuses would apply in the range of EUR 5 to EUR 10 million.
Simplified disclosure regime for secondary issuances	Very significant market potential as approximately 70% of all equity prospectuses approved annually concern "secondary issuances", meaning around 700 out of 935 equity prospectuses could benefit. Overall annual savings are estimated at about EUR 130 million.	Impact on equity markets: increase in secondary issuances facilitates raising equity capital after successful IPOs, a major plank of the ongoing effort to build a capital markets union (CMU).
Raise dilution threshold for prospectus exemption in case of admission to trading (Article 1(4)(a))	Cost savings of up to 1 million per prospectus if admission of less than 20% of outstanding securities.	Impact on equity markets: increase in secondary issuance facilitates raising of equity capital in line with CMU
Universal registration document (URD) for frequent issuers on regulated markets or MTFs	Significant market potential as currently only 20% of equity prospectuses and 32% of non-equity prospectuses benefit from approval periods inferior to 10 days. Taking the example of France, where a similar system has been in place for nearly two decades, the URD could increase this percentage to 50% for equity (= 370 prospectuses/year) and 55% (= 838 prospectuses/year for non-equity issuances).	Fast track approval brings benefits to frequent issuers of equity and non-equity securities. The reduced prospectus approval time of 5 days will save cost and allow frequent issuers to exploit market windows to raise capital or debt.
Uniform prospectus for non-equity securities listed on regulated markets (abolition of the wholesale / retail dual regime)	Slight increase resulting from the need to produce an admission prospectus including a summary for non-equity securities. Increase can be appropriately mitigated in the design of the uniform non-equity prospectus template in the delegated acts.	Lower denominations result in more buying and selling interest which enhances liquidity and investor base in EU bond markets. Investors benefit from diversification of portfolios.
Abolish the EUR 100 000 exemption for offers of non-equity securities to the public	Increase resulting from the need to produce a public offer prospectus for non-equity securities. Likely to be compensated by the availability of other exemptions (qualified investors / minimum commitment of EUR 100 000). Balanced against the benefit of	Lower denominations result in more buying and selling interest which enhances liquidity in EU on MTFs. Investor benefit from diversification of portfolios.

Preferred policy options	Cost impact on stakeholders	Impact on relevant markets/sectors
	a larger market for corporate bonds.	
Simplified disclosure regime for SMES and companies with reduced market capitalisation	Potentially 320 SME prospectuses would benefit from the new simplified prospectus resulting in expected annual savings of EUR 45 million. Additional savings above those indicated above could arise if the "question and answer" format takes off.	With a less costly and more user-friendly simplified prospectus, more SMEs would be able to list on MTFs/SME Growth markets. More SME listings facilitate investor portfolio diversification.
New prospectus summary modelled after the PRIIPS KID	Equity and non-equity issuers benefit from the flexibility to draft brief narratives and assemble material information from the prospectus under accessible headings. Issuers would also benefit by reusing existing PRIIPS KID material in the prospectus summary.	Retail investors benefit from the redesign of the summary with maximum page limit. Predetermined/user-friendly headings inspired by PRIIPS allow for easier comparison of investment opportunities.
Electronic publication (centralised storage mechanism at ESMA)	Single access point facilitates research, enforcement and increases the efficiency of prospectus pass-porting.	Essential tool for online access to prospectuses enabling comparability and fostering CMU objectives.

The abolishment of the prospectus exemption for offers in denomination of EUR 100 000 or more is the second measure with a potential adverse impact as it will lead to a higher administrative burden for such offers. However, this impact will be mitigated to some extent by the reformed disclosure regime for secondary issuances which should make such issuances both more flexible and less costly, two arguments brought forward by stakeholders for making use of the exemption. Besides, issuers may avail themselves of other exemptions to the prospectus requirement, which will remain available (offer addressed to qualified investors only, minimum commitment of EUR 100 000). Lastly, as it is unlikely that bonds in denominations exceeding EUR 100 000 are issued by SMEs or issuers with reduced market capitalisation, the additional costs of compliance with the Directive will be relatively small compared to the amount of capital raised.

It can therefore be expected that the overall package will result in a reduction in the administrative burden for issuers, make access to capital markets for SMEs easier and cheaper, safeguard investor protection by improving the appropriateness of the disclosure documents and ultimately enlarge choice of prospectus-based financial instruments. This should then translate into further integration of capital markets in the Union in the form of more prospectus-based financial instruments being offered across borders and greater transparency and comparability. It should be noted, however, that the Prospectus Directive only covers a fraction of the financial instruments traded in the Union and is only one factor among many that influence the functioning of capital markets. The proposed measures should therefore be seen in the context of the broader forthcoming Capital Markets Action Plan of which it forms part.

Quantification of some of the impacts

As has already been explained there is only little data available on the issues addressed in this report. While this prohibits any sound reliable quantification of the potential impacts of the various options discussed above, an effort was nevertheless made to provide to the

extent possible at least some indications of the order of magnitude of the impacts for some of the options for some of the issues.

Regarding the **threshold** above which a prospectus in accordance with the Directive is obligatory the calculations show that if this threshold was at 10 million euro in the years 2013-2014 about 3% of approved prospectuses in these years would not have been required, i.e. their total consideration was between 5 and 10 million euro. A threshold set at 20 million euro would have reduced the number of approved prospectuses in 2013-2014 only by about 6%.

Calculations based on statistical data provided by Member States and anecdotal evidence from the public consultation show that around 130 million euro per year could be saved collectively by issuers drawing up a prospectus under the **proportionate regime for secondary issuances** as proposed in the preferred option. Furthermore, the number of equity prospectuses and non-equity prospectuses approved by competent authorities in less than 10 working days could increase by about 150% and 70% in every year, respectively.

The use of the **proportionate regime for SMEs** proposed above could result in 45 to 67 million euro per year saved collectively by SMEs.

These rough estimates show that the review should result in a sizable reduction in administrative burden for issuers.

Besides the reduction in administrative burden the review should result in a prospectus that is more user-friendly for retail investors thanks to the reform of the format and content of the prospectus summary, its shortening and alignment with the approach and spirit of the key information document under PRIIPs. The limitation that only the five main risk factors are to be discussed in the prospectus summary should also help investors to better assess the appropriateness of the respective offer for their needs. This list will allow investors to better assess the importance of any additional risk factors issuers might still want to list in the prospectus in order to avoid legal liability risks,

Considerably reduced administrative burden and greater interest from the (retail) investor side should make capital markets an interesting venue to raise capital for many companies and in particular for SMEs which so far have shied away from these markets and had to rely on bank financing. This should have a positive impact on the cost of financing of SMEs and other companies in the Union.

The unification of the prospectus content for non-equity securities admitted to trading on a regulated market should remove some of the incentives of issuers (in particular issuers of corporate debt) to denominate their securities at EUR 100 000 or more, thus resulting in a higher participation of retail investors in investment-grade corporate debt and contributing to enhanced liquidity on the secondary market. The incremental increase in administrative burden for those non-equity issuers should be seen in the context of the overall package of alleviations to the prospectus requirements proposed in parallel and should be balanced with the above benefits for the investors.

As the different measures do not overlap in what they address, there are no direct synergies but also no risk of measures mutually offsetting each other. The package is therefore consistent and coherent.

Greater interest from and activity on both sides of the market, issuers and investors, should result in more liquid, broader and deeper securities markets, a feature which, in turn, should increase the attractiveness of EU capital markets and thus promote jobs and growth. This could result in the re-location of some offers which are currently placed in third countries,

notably the United States, to trading venues in the Union. However, in view of the size of those foreign markets no significant impact on third countries is to be expected.

As the number of companies concerned by the prospectus regime is very limited, no distributional impacts on sectorial or regional level are to be expected.

No environmental or social impacts are to be expected from these measures.

5.8. Choice of legal instrument, compliance costs and subsidiarity

Bearing in mind that the Prospectus Directive dates back to 2003, to reduce significant differences in implementation and application among Member States, thus to reduce administrative and supervisory burden and enhance legal clarity, a more modern way of legal drafting is now necessary. In addition, the non-negligible number of EU Pilot[63] cases that the Commission had to open concerning the implementation of the prospectus regime in many Member States reinforces the need to create a single rulebook.

Transforming the Prospectus Directive into a Regulation would rule out such problems which arise in the transposition of a Directive and would enhance coherence and integration throughout the internal market.

A single rule book will also eliminate the problem that even relatively minor divergences between national laws, potential or actual ones, require issuers and investors who are interested in raising or investing capital across borders to compare national rules in order to ensure that they have fully understood the underlying law. With the use of a Regulation such unproductive search costs could be avoided. The adaptation of national laws which transposed the current Prospectus Directive to the proposed Regulation should be facilitated by the fact that the implementing measures currently in place already take the form of a Regulation. Therefore, the preferred option is to transform the Prospectus Directive into a Regulation.

The choice of the legal instrument should not have a relevant impact on the compliance costs for issuers and enforcement costs for competent authorities. The impact of the proposed measures on compliance costs and enforcement costs can be summarised as follows:

- Raising the threshold below which no prospectus can be required from 100 000 Euro to 500 000 Euro will reduce compliance costs for issuers who issue in this range and reduce resource needs at the respective competent authorities.

- The amendments to the proportionate disclosure regimes for secondary issuances and SMEs should both result in considerably lower compliance costs for issuers and also reduce the work load of competent authorities as less information will have to be disclosed and examined. This reduction in costs would apply even more to issuers that could not benefit from the proportionate regimes so far but will be eligible in the future. There would, however, be a certain cost for those issuers that are using the current schedules as they might have to adapt their IT software and to familiarise themselves with the new rules.

- The stakeholders that would face higher compliance costs would be issuers that currently benefit from the prospectus exemption and alleviations for offers in

[63] EU Pilot is an on-line information-exchange and problem solving network between the European Commission and Member States.

denominations of EUR 100 000 or more. Those of them that cannot benefit from any of the exemptions would have to prepare a prospectus either under the standard regime or the proportionate disclosure regime.

- Transforming the prospectus summary in a document similar to the key investor information document (KID+) would also mean a considerable reduction in compliance costs as the summary would be much less extensive and therefore less expensive to produce.

- The creation of a central database for prospectuses at ESMA would reduce the search costs for investors and others interested in prospectuses considerably. There would, however, be implementation costs for ESMA and national competent authorities as well as marginal costs of managing the database. These costs would either be borne by the supervisors or by issuers. The latter would benefit from the greater transparency given to their prospectuses. This should translate to slightly lower financing costs for them.

If the review leads to the expected increase in the number of prospectuses to be approved, national competent authorities might have to invest more resources in the approval and monitoring of prospectuses, this however could be mitigated by the fact that national competent authorities will also generate more approval fees.

The current Prospectus Directive already aims at maximum harmonisation, which means that Member States cannot impose more onerous provisions than those set out in the Directive. Therefore choice of the Regulation as the legal instrument does not impact Member States' discretion much. The subsidiarity principle was primarily respected through the 5 000 000 Euro threshold which allows Member States to regulate offers of a total consideration below this value at national level. This should enable them to take into consideration the circumstances of their domestic markets for smaller issuances which are usually focussed entirely on the national market. With a higher threshold of 10 000 000 Euro respect of this principle will be reinforced.

What would be amended, however, is the threshold below which Member States would no longer be free to require a prospectus in national law. Raising the threshold from EUR 100 000 to EUR 500 000 will reduce Member States' discretion somewhat. However, only a minority of Member States currently actually requires prospectuses for offers below EUR 500 000, and in the consultation of Member States via the Expert Group of the European Securities Committee in September 2015 no Member State opposed this option. Furthermore, raising the threshold seems proportionate in light of the objective to build a European market for crowdfunding platforms.

6. MONITORING AND EVALUATION

The revised Directive should be evaluated and potentially reviewed again about 5 years after it entered into application in order to see whether the objectives have been achieved and no unintended side-effects occurred. Furthermore, the implementation of the revised Directive should be permanently monitored with regard to the extent to which the objectives (reduction of administrative burden, better access to capital markets for SMEs, investor protection) have been achieved. Indicators for this monitoring would be, for example:

- the number of prospectuses approved annually under the two simplified disclosure rules for secondary issuances and for SMEs and companies with reduced market

capitalisation; success will be measured against the estimates on take-up as set out above and in the accompanying impact assessment;

- the number of prospectuses that have benefitted from the universal registration document as described above to obtain a fast-track approval;
- the overall reduction in approval times that results from the introduction of the universal registration document;
- the share of retail investors among the investors in non-equity debt issuances (yardstick of success is a decrease in denomination sizes for non-equity issuances);
- the cost of preparing and getting a prospectus approved compared to the current costs;
- the share of prospectuses that have been passported to other Member States.

Most of the data should be available from ESMA and trading venues. Information on the liquidity of secondary markets should become available from a study and monitoring work stream launched recently by DG FISMA. A study or survey will have to be launched to gather formation on the cost of preparing and getting a prospectus approved compared to the current costs.

ANNEXES

ANNEX 1: GLOSSARY

(Note: This glossary is for explanation only it does not define terms in any legally binding way.)

Admission to trading: the decision by the operator of a regulated market, a multilateral trading facility, or an organised trading facility to allow a financial instrument to be traded on its systems.

Alternative Investment Funds (AIFs): collective investment undertakings, including investment compartments thereof, which raise capital from a number of investors, with a view to investing in accordance with a defined investment policy for the benefit of those investors and do not require an authorisation pursuant to the UCITS IV Directive.

Base prospectus: a prospectus containing all relevant information concerning the issuer and the securities to be offered to the public or admitted to trading, and, at the choice of the issuer, the final terms of the offering.

Capital Markets Union (CMU): the CMU *is a plan of the European Commission that aims to create deeper and more integrated capital markets in the EU.* The objectives of CMU are to help businesses tap into more diverse sources of capital from anywhere within the EU, make markets work more efficiently and offer investors and savers additional opportunities to put their money to working in order to enhance growth and create jobs.

Companies with reduced market capitalisation: a concept introduced by the amending Directive 2010/73/EU, it covers companies listed on a regulated market that had an average market capitalisation of less than EUR 100 000 000 on the basis of end-year quotes for the previous three calendar years.

Crowdfunding: the practice of funding a project or a venture by raising money from a large number of people who each contribute a relatively small amount, typically via the Internet.

Denomination: face value of financial instruments.

Dilution: a reduction in the ownership percentage of a share of stock caused by the issuance of new stock. Dilution can also occur when holders of stock options exercise their options. When the number of shares outstanding increases, each existing stockholder will own a smaller, or diluted, percentage of the company, making each share less valuable.

Directive: a directive is a legislative act of the European Union, which requires Member States to achieve a particular result without dictating the means of achieving that result. A Directive therefore needs to be transposed into national law contrary to regulation that has direct applicability.

The European Economic Area (EEA): The European Economic Area unites the EU Member States and the three EEA/EFTA States (Iceland, Liechtenstein, and Norway) into an Internal Market governed by the same basic rules. These rules aim to enable goods, services, capital, and persons to move freely about the EEA in an open and competitive environment, a concept referred to as the four freedoms.

European long term investments funds (ELTIF): a type of collective investment scheme that focuses on investing in various types of alternative asset classes such as infrastructure, small and medium sized enterprises and real assets.

European Securities and Markets Authority (ESMA): the European Securities and Markets Authority ESMA is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA fosters supervisory convergence both amongst securities regulators and across financial sectors by working closely with the other European Supervisory Authorities.

Employee share scheme: an offer addressed by a company to its own employees or associates. The offer can consist of shares, stapled securities, or rights (including options) to acquire other securities.

European social entrepreneurship funds (EuSEF): an investment scheme that focuses on all kinds of enterprises that achieve proven social impacts.

European venture capital funds (EuVECA): an EuVECA is a subcategory of alternative investment schemes that focus on start-up companies.

Expert group of the European Securities Committee: The Expert Group is a consultative entity composed of experts from the 28 Member States. The Commission Services (Internal Market and Services) have set it up in order to provide advice, expertise and to exchange views, in the area of the securities law. It has a particular role in the preparation of delegated acts in the area of securities law.

Fungible securities: securities or instruments that are equivalent and, therefore, interchangeable. They consist of many identical parts which can be easily replaced by other and if they are attributed with an ISIN (International Security Identification Number) fungible securities bear the same ISIN.

High net worth individuals: individuals or families with high net worth that qualify for separately managed investment accounts and do not fall within the scope of application of the framework reserved to retail investor protection.

High Yield securities: security (generally a bond) that offers a higher rate of interest because of its higher risk of default.

Initial Public offering (IPO): The first sale of stock by a private company to the public.

Key Information Document (KID): KIDs are short, plainly-worded documents – no more than a few pages long – that provide investors with answers to the key questions they have about the features, risks, and costs of investment products. They are designed for the retail investor rather than the professional. So the investor can better compare investment products, every KID will follow the same structure. They answer a standard set of questions,

Liquidity: liquidity is a complex concept that is used to qualify market and instruments traded on these markets. It aims at reflecting how easy or difficult it is to buy or sell an asset, usually without affecting the price significantly. Liquidity is a function of both volume and volatility. Liquidity is positively correlated to volume and negatively correlated to volatility. A stock is said to be liquid if an investor can move a high volume in or out of the market without materially moving the price of that stock. If the stock price moves in response to investment or disinvestments, the stock becomes more volatile.

Market Abuse Regulation (MAR): Regulation No 596/2014 on market abuse will enter into application in July 2016. The new rules on market abuse update and strengthen the existing framework to ensure market integrity and investor protection provided by the existing Market Abuse Directive (2003/6/EC) which will now be repealed.

Market in Financial Instruments Directive (MiFID): Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

Multilateral Trading Facility (MTF): an MTF is a system, or "venue", defined by MiFID (Article 4) which brings together multiple third party buying and selling interests in financial instruments in a way that results in a contract. MTFs can be operated by investment firms or market operators and are subject to broadly the same overarching regulatory requirements as regulated markets (e.g. fair and orderly trading) and the same detailed transparency requirements as regulated markets.

National Competent Authority: a competent authority is any organisation that has the legally delegated or invested authority, capacity, or power to perform a designated function.

OECD: the Organisation for Economic Co-operation and Development is an international economic organisation of 34 countries, founded in 1961 to stimulate economic progress and world trade. It is a forum of countries describing themselves as committed to democracy and the market economy, providing a platform to compare policy experiences, seeking answers to common problems, identify good practices and coordinate domestic and international policies of its members.

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

Organised Trading Facility (OTF): any facility or system operated by an investment firm or a market operator that on an organised basis brings together multiple third party buying and selling interests or orders relating to financial instruments. It excludes facilities or systems that are already regulated as a regulated market and MTF. Examples of organised trading facilities would include broker crossing systems and inter-dealer broker systems bringing together third-party interests and orders by way of voice and/or hybrid voice/electronic execution.

Non-equity securities: all securities that are non-equity. Equity securities are shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities.

Packaged retail and insurance based investment products (PRIIPS): packaged retail investment products cover a range of investment products that are marketed to retail investors. They are the investment products retail investors would typically be offered by their bank when they want to make an investment. They take a variety of legal forms; they can be distinguished by the broadly comparable functions they perform for retail investors. They typically combine exposures to multiple underlying assets; they are designed to deliver capital accumulation over a medium- to long-term investment period; they entail a degree of investment risk, although some provide capital guarantees; and they are normally marketed directly to retail investors. Broadly speaking, they can be categorised into four groups: investment funds, insurance-based investment products, retail structured securities and structured term deposits.

PRIIPs Regulation: Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

Private equity: equity capital that is not quoted on a public exchange. Retail and institutional investors raise capital that can be used to make investments directly into private companies or conduct buyouts of public companies, thus funding new technologies, expand working capital within an owned company, make acquisitions, or strengthen a balance sheet.

Professional clients: a professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. Criteria defining a professional client can be found in Annex II of MiFID.

Proportionate disclosure regime: alleviated version of the full blown prospectus presenting a reduced level of information and reserved to rights issues and SMEs issues.

Prospectus Directive: Directive 2003/71/EC of the European Parliament and of the Council, which lays down rules for information to be made publicly available when offering financial instruments to the public as amended

Prospectus Directive II: Directive 2010/73/EU revising Directive 2003/71/EC in substance.

Prospectus Regulation: Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

Prospectus summary: a disclosure document accompanying a financial product, provided to investors by the issuers before the offer to the public or admission to trading. The written document is a concentrated version of the prospectus and allows investors to read the most important information regarding the investment.

Regulated Market: A regulated market is a multilateral system, defined by MiFID (Article 4), which brings together or facilitates the bringing together of multiple third party buying and selling interests in financial instruments in a way that results in a contract. Examples are traditional stock exchanges such as the London Stock Exchange.

Regulation: a regulation is a form of legislation that has direct legal effect on being passed in the Union.

Retail cascade: a term that describes methods of non-exempt retail distribution of securities. An issuer is selling the securities to investment banks underwriting the issue which, in turn, sell the securities on to retail distributors, thereby creating a distribution chain. The retail distributors then sell the securities to their clients at prices that may vary from sale to sale, reflecting market conditions at the time of sale.

Retail investor/client: a person investing his own money on a non-professional basis. Retail client is defined by MiFID as a non-professional client and is one of the three categories of investors set by this Directive besides professional clients and eligible counterparties.

Rights issues: secondary issuances addressed to existing shareholders where the statutory pre-emption rights are not disapplied.

Secondary issuance: the issuance of new securities for public sale by a company that has already made its initial public offering.

Secondary Market: the trading of securities already issued and admitted to trading after the original issuance.

Securities: a financial instrument representing either the ownership of a corporation (share), the credit with a governmental body or a corporation (bond), or the right to ownership (option). A security is generally fungible and negotiable, representing some sort of financial value.

Small and medium-sized enterprises (SMEs): Recommendation 2003/361/EC defines small and medium-sized enterprises as 'enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million'. In the context of financial services SMEs are defined in MiFID II with regard to their market capitalisation: "'small and medium-sized enterprises' for the purposes of this Directive, means companies that had an average market capitalisation of less than EUR 200 000 000 on the basis of end-year quotes for the previous three calendar years";

SME Growth Markets: Have been established in MiFID II. In order to qualify as an SME Growth Market at least 50 % of the issuers whose financial instruments are admitted to trading on the MTF have to be SMEs at the time when the MTF is registered as an SME growth market and in any calendar year thereafter. In addition, the MTF has to comply with a number of other criteria set out in Article 33 of MiFID II.

Synthetic risk indicator: a visual indicator with a risk scale of 1-7. On the left hand of the scale is 1, noted "lower risk" and "typically lower rewards". On the right side of the scale is 7, noted "higher risk" and "typically higher rewards".

Trading venue: a trading venue is an official venue where securities are exchanged. In MiFID it consists of MTFs and regulated markets.

Transparency Directive: Directive 2004/109/EC of the European Parliament and of the Council which lays down rules for the publication of financial information and major holdings.

Tripartite prospectus: a prospectus drawn up as three separate documents (the registration document, the securities note and the summary) approved separately and at different points in time by the competent authority.

UCITS IV Directive: Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

Underwriting: underwriting refers to the process of taking responsibility for selling an allotment of a public offering.

ANNEX 3: BACKGROUND ON CAPITAL MARKETS UNION

The Capital Markets Union ("CMU") project is one of the flagship projects of this Commission and ties in with the ambition to expand and diversify alternative sources of funding to bank lending to help EU companies to better finance their expansion and therefore to contribute to creating jobs and growth. While banks will continue to play a central role in financing the EU economy, the CMU will seek to develop market-based finance so that businesses and long-term projects such as infrastructure easier access to funding opportunities and a greater range of financing options. These range from equity markets, securitisation, business angels, venture capital, bond markets, private placement and crowdfunding. This is particularly needed in those Member States where the banking system is still under repair.

The CMU aims at creating a single market for capital by 2019 for all 28 Member States by removing barriers to cross-border investment and lower costs of funding within the EU. This project should be built on firm foundations of financial stability, with consistent and effective implementation of the financial regulation that has been passed after the 2008 crisis. It should also ensure an effective level of consumer and investor protection.

On 18 February 2015, the Commission adopted the Green Paper on "Building a Capital Markets Union" which launched a broad debate on the difficulties that businesses face today in terms of financing their growth, the extent of the problems on both the supply and the demand side, and the elements that should constitute the building blocks of the CMU. The Commission have received more than 420 responses to the public consultation from all corners of Europe (25 Member States) and beyond. The Commission will set out a comprehensive roadmap for the CMU in its Action Plan to be published in late September 2015. The Action Plan will consider a broad set of approaches ranging from market-driven solutions, sharing of best practices amongst Member States, EU legislation and supervisory convergence.

A key objective of CMU is notably facilitating capital raising on public markets. Public markets are vital to mid-sized firms and large companies. They offer access to a wide set of funding providers and provide an exit opportunity for private equity and business angels, which invest in companies at an earlier stage of their development.

In this regard, the revision of the Prospectus Directive is viewed as an important first step to build a CMU. The prospectus is the gateway into capital markets for firms seeking funding, especially on public markets. Prospectuses are legally required documents presenting all information about the company on which investors can make information about whether to invest. However, it is crucial that the prospectus does not act as an unnecessary barrier to the capital markets. For instance, medium-sized companies can be deterred from offering securities to the public simply because of the paperwork involved and the high costs incurred. It should become easier for firms to fulfil their administrative obligations, but in a way that investors are still well informed about the products they are investing in.

ANNEX 4: SHORT DESCRIPTION OF THE PROSPECTUS DIRECTIVE

1. INTRODUCTION

The Prospectus Directive (2003/71/EC, "the Directive") was adopted in November 2003 in the context of the Financial Services Action Plan proposed by the European Commission in May 1999. It was revised once in 2010 by Directive 2010/73/EU[64]. This amending Directive contains a review clause whereby the Commission must assess the application of the Directive and prepare a report and proposal to European Parliament and Council by 1 January 2016 on a number of areas addressed by the 2010 review.

2. PURPOSE AND SCOPE

A prospectus shall contain all the necessary information to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. The Prospectus Directive aims to harmonise requirements for the drawing up, approval and distribution of prospectuses to be made available to the public in case a public offer or an admission to trading of transferable securities on a regulated market takes place in the EU.

Two major principles underpin the Directive: investor protection and market efficiency. The latter is linked to the "passporting mechanism": the Directive facilitates public offers and admissions to trading across Member States by granting a EU-passport for prospectuses approved by any national competent authority and thus removes regulatory obstacles in the form of varying disclosure requirements in different jurisdictions. As a result, the prospectus framework increases confidence in securities which contributes to the proper functioning and development of capital markets.

The Directive applies only to transferable securities as defined in Article 2(1)(a).[65] Thus, securities which do not fall under that definition are subject to either no or national, non-harmonised prospectus requirements. The scope of the Directive is currently determined by a number of exemptions from the obligation to publish a prospectus which cover certain types of securities and offers such as:

- EUR 5 000 000: any offer of securities with a total consideration in the EU below this amount calculated over a period of 12 months falls outside the scope of the Directive (Article 1(2)(h)).

[64]The Directive was amended in November 2010 with the following objectives: (i) strengthen investor protection was by improving the quality and effectiveness of disclosures and by facilitating comparison between products through the summary; (ii) increase efficiency by reducing administrative burdens for issuers through proportionate disclosure regimes (for SMEs and companies with reduced market capitalisation as well as rights issues), a recalibration of the thresholds below which no prospectus is required and some further technical harmonisation.

[65]Transferable securities as defined by Article 4(1)(44) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, with the exception of money market instruments having a maturity of less than 12 months.

- EUR 75 000 000: any offer of non-equity securities, issued in a continuous or repeated manner by credit institutions, with a total consideration in the EU below this amount falls outside the scope of the Directive (Article 1(2)(j)).
- 150 persons: any offer of securities addressed to a number of natural or legal persons per Member State below this number, other than qualified investors is exempted from the requirement to produce a prospectus (Article 3(2)(b)).
- Qualified investors: Offers which are addressed solely to qualified investors (i.e. "professional clients" under Directive 2014/65/EU[66] on markets in financial instruments ("MiFID II") are also exempted (Article 3(2)(a)).
- EUR 100 000: any offer of securities whose denomination per unit is equal or above this value, or where investors are subject to a minimum individual investment equal or above this value, is exempted from the requirement to produce a prospectus (Article 3(2)(c) and (d)).

3. CONTENT OF THE PROSPECTUS

A prospectus consists of (i) a registration document containing the information relating to the issuer, (ii) a securities note containing the information concerning the securities and (iii) a summary note which, in a concise manner and in non-technical language, provides key information on the securities concerned in order to aid investors when considering whether to invest in such securities. A summary should be a key source of information relating to the company, its securities and the offering. The summary is drawn up in a prescribed format in order to facilitate comparability of the summaries of similar securities.[67]

The general provisions of the Directive provide empowerments for implementing measures. Thus, the Prospectus Regulation 809/2004/EC as amended determines further the information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, most importantly in the form of specific Annexes addressing different types or denominations of issuers and securities.

4. APPROVAL OF THE PROSPECTUS

The approval of the prospectus is the positive act whereby, before a public offer or admission to trading takes place, the competent authority scrutinises the prospectus, in line with the requirements of the Directive, to assess the completeness and consistency of the information given and its comprehensibility. The competent authority does not review the correctness of the information, as this is the sole responsibility of the person seeking the approval.

The publication of a prospectus cannot take place until it has been approved. Once approved by the competent authority of one Member State (the "home Member State") the prospectus can be passported to all EU and EEA Member States without additional scrutiny by the authorities of the other Member State (the "host Member States").

A prospectus is potentially valid for up to 12 months after its publication for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any required supplement. In particular, every significant new factor, material

[66] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, Article 4(1)(11).

[67] Prospectus Directive Article 5 (2).

mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises between the time when the prospectus is approved and the final closing of the offer to the public or, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus.

5. LIABILITY AND SANCTIONS REGIME

The Directive aligns liability and sanctions only to a limited degree.[68] It contains some specific provisions on civil liability attaching to the prospectus which attaches at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the guarantor, as the case may be.[69]

Without prejudice to the right of Member States to impose criminal sanctions and without prejudice to their civil liability regime, Member States are required to ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible, where there is a breach of the national rules implementing the Directive. Member States shall ensure that these measures are effective, proportionate and dissuasive.

[68] See for further information ESMA's report on "Comparison of liability regimes in Member States in relation to the Prospectus Directive" (ESMA/2013/619).

[69] A specific liability regime exists for summaries: namely no civil liability attaches to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.

ANNEX 5: EVALUATION OF THE PROSPECTUS DIRECTIVE 2003/71/EC, AS AMENDED

In June 2014 the Prospectus Directive has been included in the European Commission's Regulatory Fitness and Performance programme (REFIT). Inclusion in the REFIT programme was justified as stakeholders had expressed concerns regarding the high costs of preparing a prospectus and getting it approved by the competent authority. A particular emphasis on simplification and a reduction of the administrative burden seemed therefore appropriate. The first review of the Directive which led to the amending Directive 2010/73/EU did not aim at reforming the Directive thoroughly, but rather to focus on specific requirements that were deemed to cause particularly high administrative burden and which would only require marginal changes to the Directive. However, despite some positive achievements, these changes were not sufficient to materially reduce the cost of capital raising using a prospectus and thus to improve access to capital markets for smaller companies who traditionally have relied on bank financing. An evaluation of the Directive was then scheduled for 2015 to ensure that the results would be available in time for the report on the application of the Directive which the European Commission has to send to the European Parliament and the Council by 1 January 2016 at the latest (Article 4 of the Prospectus Directive II (2010/73/EU)). Where appropriate, this report should be accompanied with proposals to amend the Directive.

As it seemed very likely at an early stage that such amendments would be necessary, the incoming Commission decided at the end of 2015 to speed up the process and, exceptionally, to launch the work on an impact assessment in parallel with the evaluation. As the evaluation overlaps to some extent with the impact assessment it has been decided to prepare only one report on the results of the two exercises. For this reason and because an external study[70] commissioned by the European Commission in 2009 had analysed in detail to what extent the original Prospectus Directive had achieved its objectives, this evaluation report is not a fully-fledged evaluation. Nevertheless, it has been decided to conduct an evaluation at this stage as the Commission has been tasked with a review of the application of this Directive five years after the date of entry into force, i.e. by December 2015. In addition, stakeholders, both from the market side as well as from the regulators' side, had repeatedly expressed the view that some of the amendments introduced by Prospectus Directive II (Directive 2010/73/EU) in particular seemed not to have achieved their intended objectives.

1. INTRODUCTION: SCOPE, METHODOLOGY AND INPUT

The scope of this evaluation is the Prospectus Directive, with a specific focus on the amendments introduced by the Prospectus Directive II (Directive 2010/73/EU), and on those provisions which are considered to generate a significant administrative burden for issuers. Accordingly, it focuses on the period since July 2012, when the Prospectus Directive II (Directive 2010/73/EU) entered into application. It covers all 28 Member States.

This evaluation is based primarily on desk research of Commission services[71]. A literature research revealed that not much academic or other publicly available research on the

[70] http://ec.europa.eu/finance/securities/docs/prospectus/cses_report_en.pdf

[71] The Directorate General for *Financial Stability, Financial Services and Capital Markets Union* was in charge of this evaluation. It was supported by the Directorates General and services which participated in the steering

functioning of the Directive exists. Therefore, besides this relatively scarce publicly available material the information used in this evaluation stems primarily from a public online consultation the Commission services conducted from 18 February to 13 May 2015. 182 responses were received from various categories of stakeholders so that the consultation can be regarded as fairly representative of the relevant stakeholder groups in the relevant market[72]. The issues addressed in the consultation were also discussed in two meetings of the Expert Group of the European Securities Committee (EG ESC) in April and July 2015. A separate questionnaire about the application of the Directive was addressed to national competent authorities via the European Securities Markets Authority (ESMA) in March 2015; replies were received in May 2015 from almost all Member States. Furthermore, numerous bilateral meetings have been held between the Commission services and stakeholders. Data, in particular more granular data about the costs of preparing a prospectus and of getting it approved, is very scarce. Similarly, there is no comprehensive information available about the funding of SMEs in capital markets. Therefore, this evaluation makes only very cautious use of such data and it should be rather understood as 'anecdotal evidence' than as comprehensive and/or representative.

2. BACKGROUND: OBJECTIVES AND INTERVENTION LOGIC OF THE PROSPECTUS DIRECTIVE

The Prospectus Directive regulates the information to be disclosed to investors when transferable securities are offered to the public or admitted to trading on a regulated market. The Directive and its implementing Regulation (Regulation (EC) No 809/2004) define the minimum disclosure requirements which issuers, offerors and persons seeking admission to trading (thereafter together referred to as "issuers" for the sake of simplicity) need to fulfil, depending on the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market.

The Prospectus Directive entered into force on 31 December 2003. Member States (MS) were required to implement it in their jurisdictions no later than 1 July 2005. The current framework is based on the consolidation of the original Prospectus Directive[73] as amended.

Recital (10) of the Prospectus Directive states its **objectives**:

> *The aim of this Directive and its implementing measures is to ensure investor protection and market efficiency, in accordance with high regulatory standards adopted in the relevant international fora.*

Its **purpose** is described in Article 1(1):

> *The purpose of this Directive is to harmonise requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.*

These quotes make clear that the **intervention logic** of the Directive has to be seen in the overall context of financial market regulation at EU and national level. The Prospectus

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group for the impact assessment, in particular the Secretariat General and Directorate General for *Internal Market, Industry, Entrepreneurship and SMEs*.

[72] Annex 5 provides more detail about the population of respondents and further information about this consultation.

[73] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0064:0089:EN:PDF

Directive addresses only a very limited part of the activities of the actors in financial markets and of the products traded in these markets, namely the raising of capital through the offering of transferable securities to the public or through seeking admission for them to be traded on a regulated market situated or operating within a Member State. It does not deal with issues such as on-going reporting requirements or conduct of business of issuers which are regulated in other EU laws such as the Transparency Directive.

Recital (18) explains how **investor protection** should be achieved:

> *The provision of full information concerning securities and issuers of those securities promotes the protection of investors. Moreover, such information provides an effective means of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The appropriate way to make this information available is to publish a prospectus.*

However, it is stated in the Prospectus Directive that appropriate investor protection should take account of the different requirements for protection of the various categories of investors and their level of expertise. In other words, when adopting the Directive, legislators saw less of a need for investor protection measures for qualified investors[74] as they are assumed to be capable of protecting themselves. This is why no prospectus is required by the Directive for offers that are addressed solely to qualified investors. In contrast, the publication of a prospectus is required for any sale or resale to the public or public trading through admission to trading on a regulated market. This clause is intended to avoid any (intentional or unintentional) circumvention of the requirements of the Directive resulting from restricting the original offer to qualified investors who would then resell the securities to non-qualified investors (the so-called 'retail cascade'). Extensive coverage of equity and non-equity securities offered to the public or admitted to trading on regulated markets was regarded as necessary to ensure investor protection.

According to Article 5(1) of the Prospectus Directive, the prospectus itself is to "*contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. This information shall be presented in an easily analysable and comprehensible form*."

In addition, the prospectus should include a summary, written in a concise manner and in non-technical language, which provides key information in order to aid investors when considering whether to invest in securities. The summary should be drawn up in a common format in order to facilitate comparability of the summaries of similar securities (Article 5(2) of the Prospectus Directive). Details on the format and content of the prospectus and the summary for the various types of securities, offers and admissions to trading etc. are laid down in the Implementing Regulation (Regulation (EC) 809/2004) and its annexes, the so-called "level 2".

The second objective of **market efficiency** is primarily addressed through granting issuers whose prospectuses have been approved by the national competent authority with the benefit of a single passport to offer the respective securities in any host Member States. That is to say

[74] Qualified investors are professionals in all investment services and activities and financial instruments as defined in Annex II of Directive 2004/39/EC. All other investors are regarded as 'non-qualified investors'.

that a prospectus approved by the home Member State and any supplements thereto will be valid for the public offer or the admission to trading in any number of host Member States, provided that the competent authority of each host Member State is notified accordingly and, if requested by the host Member State, the summary is translated into its (their) official language(s)[75].

Additional provisions of the Directive regarding the responsibility attached to the prospectus and the powers of competent authorities aim at harmonising the conditions under which prospectuses are being prepared in the different Member States. This should help to create a level-playing field among issuers in the Union and provide investors with confidence in the enforcement of the provisions of the Directive so that they are willing to participate in public offers carried out by issuers from other Member States.

In summary, the Prospectus Directive seeks to achieve the objective to ensure investor protection by requiring issuers to provide potential investors with all relevant information on the securities and their issuers in a comprehensible language. The harmonisation of the prospectus requirements across the Union should increase market efficiency by allowing investors to have confidence in prospectuses approved in other Member States and by enabling issuers to offer their securities, under certain conditions, in other Member States once the prospectus has been approved in one Member State.

The 2010 review of the Prospectus Directive

The 'Prospectus Directive' was amended several times since 2003. The most important and substantial amendments took place in November 2010 with the adoption of the amending Directive 2010/73/EU which was part of a simplification exercise within the "Action Program for the reduction of administrative burdens in the EU", launched in January 2007 (going forward, the review which led to the adoption of Directive 2010/73/EU is referred to as "the 2010 review").

Back then, the general feedback from stakeholders on the Directive was very positive and market participants were generally satisfied with the regime, in particular as regarded the passporting and language regimes[76]. The prospectus was deemed to be far superior in its functioning to the previous system of mutual recognition in force until July 2005, and the Directive was felt to have had a positive effect on the Single Market overall. Therefore, the general approach of the review was not to reform the Directive thoroughly, but rather to focus on a limited list of areas where the administrative burden could be alleviated. The review focused on specific requirements that were deemed to be particularly burdensome and which would only require marginal changes to the Directive.

The approach taken by the 2010 review was therefore to amend the Directive only with regard to those identified areas where there was a need for (i) "*increasing legal clarity and effectiveness in the prospectus regime; and (ii) reducing the burdens for EU companies when*

[75] It is worth noting that the competent authority scrutinises the prospectus, in line with the requirements of the Prospectus Directive, only to assess the completeness, consistency and comprehensibility of the information given. It does not review the correctness of the information, as this is the sole responsibility of the person seeking the approval.

[76] In its report on Directive 2003/71/EC (September 2007), the European Securities Markets Expert Group (ESME) noted that "*the Prospectus Directive could be considered as a mile-stone in the construction of a single European securities market. The new system of notification, the common rules for the contents of a prospectus, the language regime, and other basic principles represent step forwards towards this objective which, despite a lot of hurdles, has been achieved to a major extent*."

raising capital in the European securities markets"[77]. Policy options in these areas were then assessed against the overall objective of "*maintaining and, when necessary, enhancing the level of investor protection envisaged in the Directive and ensuring that the information provided is sufficient and adequate to cover the needs of retail investors*".

The main areas addressed by the 2010 review are as follows[78]:

(i) amendments aimed at addressing the lack of clarity of the Directive:

- Retail cascade (Article 3(2)) – the obligations in case of a placement of securities through financial intermediaries were clarified: when placing or subsequently reselling securities, investors are entitled to rely upon the initial prospectus published by the issuer (subject to consent) as long as this is valid and duly supplemented.
- Definition of qualified investors (Article 2(1)(e), 2(2), 2(3)) - the definition of 'qualified investors' in the Prospectus Directive was aligned with that for 'professional clients' as defined in the Directive on markets in financial instruments (MiFID) and the system of central registers of qualified investors was removed.
- Supplements and withdrawal rights (Article 16) - the period of time when withdrawal rights may be exercised was harmonized (2 days) with possibility for issuers to grant longer time.
- Summary of the prospectus (Article 5(2)) - the 2500 word limit was removed and replaced by the obligation that the summary length not exceed the maximum of 7% of the prospectus or 15 pages, whichever is the longer (Article 24 Prospectus Regulation). The content of the summary was standardised.

(ii) amendments aimed at removing requirements perceived as burdensome:

- Exemption for Employee Shares Schemes ("ESS") (Article 4(1)(e), 4(2)(f)) - the prospectus exemption was extended to ESS launched by EU companies that are listed on a non-regulated market or that are not listed, and to ESS launched by non-EU issuers subject to an equivalence decision.
- Redundancy with the Transparency Directive[79]- Article 10 was removed to avoid overlapping disclosure obligations with TD.
- "Proportionate disclosure regime" (Article 7(2)(e) and (g)) - for some types of securities issues less comprehensive disclosure requirements were introduced (small companies, credit institutions, rights issues and government guarantee schemes).
- Exemption thresholds - the threshold of Article 1(2)(h) was raised from EUR 2 500 000 to EUR 5 000 000 and the threshold of Article 1(2)(j) was raised from EUR 50 000 000 to EUR 75 000 000.

3. IMPLEMENTATION

The Prospectus Directive entered into force on 31 December 2003 and Member States had until 1 July 2005 to make their laws compliant with it. As regards the Prospectus Directive II (Directive 2010/73/EU), the respective dates were 31 December 2010 and 1 July 2012.

[77] Commission Staff working document accompanying the Proposal for a Directive amending Directive 2003/71/EC. Impact Assessment, p.19.

[78] Unless otherwise stated, all references to articles refer to the Directive.

[79] Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended.

The evaluation of the implementation of the Prospectus Directive II resulted in a number of own-initiative cases regarding incorrect transposition in an EU Pilot, an on-line information-exchange and problem solving network between the European Commission and Member States. Most of them, however, related to the Prospectus Directive provisions and were rather of a technical, non-substantive nature. Only one of them reached the stage of a formal infringement procedure. No formal complaints by citizens or companies have been received.

4. EVALUATION QUESTIONS AND ANSWERS

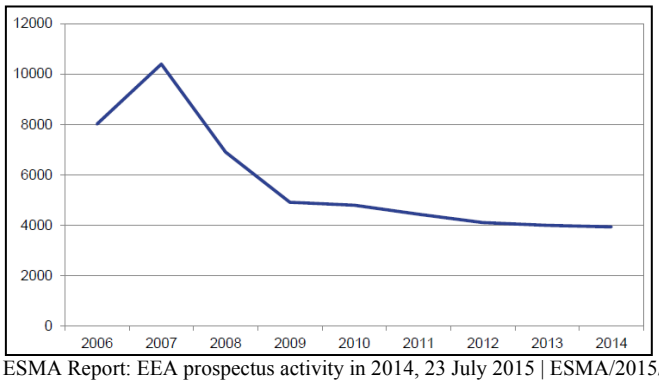
This evaluation addresses seven questions with regard to the Prospectus Directive.

4.1. Effectiveness

1. *To what extent have the objectives of the Directive been achieved?*
2. *What are the main drivers for not achieving the desired outcomes? What are the unexpected outcomes?*

In 2014, 3,838 prospectuses were approved by national competent authorities of the EU/EEA (down by 4.4% compared to 2013)[80]. In terms of overall trend, following a strong decrease between 2007 (10,389 prospectuses approved) and 2009 (4,912 prospectuses, i.e. a 53% contraction in two years), the prospectus activity has undergone a slow and steady decrease to the extent that the level in 2014 corresponds to just 37% of the peak level amount of prospectuses in 2007. While this trend seems essentially attributable to the overall economic conditions in Europe, it seems that the Prospectus Directive II (Directive 2010/73/EU) has had no impact on the continuing decrease in prospectus activity in the EU.

Figure 5: Annual number of prospectus approvals from 2006 to 2014 (total EEA)



Source: ESMA Report: EEA prospectus activity in 2014, 23 July 2015 | ESMA/2015/1136[81]

In terms of passporting activity, 931 prospectuses were passported in 2014 (992 in 2013), representing 24.3% of the total number of prospectuses approved[82]. This proportion is relatively stable over time, around 24-25%, since 2011. Although one notes a 16% decrease, in absolute terms, in the number of passported prospectuses between 2011 and 2012, it is difficult to trace any obvious link with the Prospectus Directive II (Directive 2010/73/EU), which entered into application on 1 July 2012 only.

[80] All data in this paragraph is taken from ESMA's report "EEA prospectus activity in 2014".
[81] http://www.esma.europa.eu/system/files/2015-1136_eea_prospectus_activity_in_2014.pdf
[82] Those prospectuses for which a passport has been requested addressed on average three other Member States.

Figure 6: Evolution of the number of prospectuses passported out between 2011 and 2014 (total EEA)

	2014	2013	2012	2011
Prospectuses passported out	931	992	967	1,151
Total number of prospectuses approved	3,838	4,014	4,113	4,453
%	*24.3%*	*24.7%*	*23.5%*	*25.8%*

Source : ESMA

Overall, these figures do not reveal any significant impact of the 2010 review on the prospectus activity.

It must be acknowledged that statistics gathered by ESMA are not granular enough to allow for an analysis of the impact of the 2010 revision on such parameters like the total consideration of the offers (amounts raised), the average length of prospectuses and their summaries or the number of offers of securities to the public which became "prospectus-exempt" following some of the Directive's higher exemption thresholds in 2010. Some specific data on the use of the proportionate disclosure regimes introduced in 2010 could however be gathered from competent authorities and are presented below. Yet, overall, the effects of the 2010 revision are more of a qualitative nature and can only be assessed based on the feedback received from stakeholders. This is why the responses to the 2015 public consultation are used extensively in this evaluation.

The level of achievement of the 2010 revision must be assessed against the two major objectives of investor protection and market efficiency. While there is no evidence that the **investor protection** provided by the Prospectus Directive was not sufficient, there are indications that it had not been achieved in the most efficient and effective way. This criticism primarily relates to the length of the prospectus, the format of its summaries and the way the latter are drafted. As regards **market efficiency**, the assessment is similar. It is widely acknowledged that the Directive has contributed to market efficiency thanks to its passporting mechanism: indeed around a quarter of all prospectuses approved every year are passported to at least one host Member State, meaning that issuers make use of the prospectus to offer securities across borders in the EU/EEA, which was simply impossible prior to the Prospectus Directive. Still, there are a number of issues which suggest that this objective has not been achieved to the fullest extent possible. These issues include in particular the cost of preparing a prospectus, which is often considered disproportionate for small issuers, as well as the regulatory burden that the prospectus represents for issuers listed on regulated markets and already subject to ongoing disclosure requirements. Although it tried to tackle them through the "proportionate disclosure regime", the 2010 review seems not to have been entirely successful.

Investor protection

The **length of prospectuses** and the fact that they are often drafted with the objective to address any potential legal liability rather than to inform investors in a suitable way undermine the objective to provide investors with appropriate protection. In its 2007 report on the Directive, the European Securities Market expert Group (ESME) highlighted that "*the length and complexity of prospectuses make them more a sort of 'liability shield' for the persons involved in the preparation (issuers, intermediaries, auditors, law firms and competent authorities), effective ex post in minimizing the risk of potential litigation, rather than a document to be used ex ante by an investor when making investment decisions*". This assertion still holds today. Because issuers generally task specialised lawyers with preparing the prospectus in order to minimise liability risks and because the disclosure test of Article

5(1) of the Directive is particularly demanding (a prospectus must contain "*all information which is necessary to enable investors to make an informed assessment*"), prospectuses have grown in size over time and generally have a length of several hundred to even a thousand pages. Due to their length and complexity, most investors do not use the prospectus as a means of information prior to taking an investment decision and prefer to refer to marketing materials instead.

The tendency to use prospectuses as liability shields is nowhere more evident than in the "**risk factors**" section. Risk factors are defined by the Prospectus Regulation (Article 2(3)) as "*risks which are **specific** to the situation of the issuer and/or the securities and which are **material** for taking investment decisions*" (emphasis added). Despite the specificity and materiality tests contained in that definition, market practice has developed in such a way that issuers, partly driven by liability concerns, often overload their prospectus with many generic or boiler-plate risk factors. This increases investor risk by obscuring the most important or specific risks that they should be aware of, and also increases the overall length of the document.

Stakeholders also claim that the Directive has not achieved a sufficient degree of harmonisation as it leaves Member States with considerable discretion in its implementation and application. This is particularly true with regard to **prospectus approval procedures** which are in practice handled differently between Member States. Respondents to the consultation pointed out material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses. In particular, these relate to the speed of responses by competent authorities, the transparency of the scrutiny timetable, and the magnitude and focus of the scrutiny. Overall, it creates a lack of a level playing field within the EU, and encourages regulatory arbitrage by issuers seeking to have their prospectus approved by the least demanding competent authority. Besides, as the Prospectus Directive allows issuers of certain types of non-equity securities to choose their home Member State – i.e. which national competent authority will approve its prospectus – such divergent application of the Directive lays the ground for practices of NCA forum shopping and can eventually give rise to concerns related to investor protection.

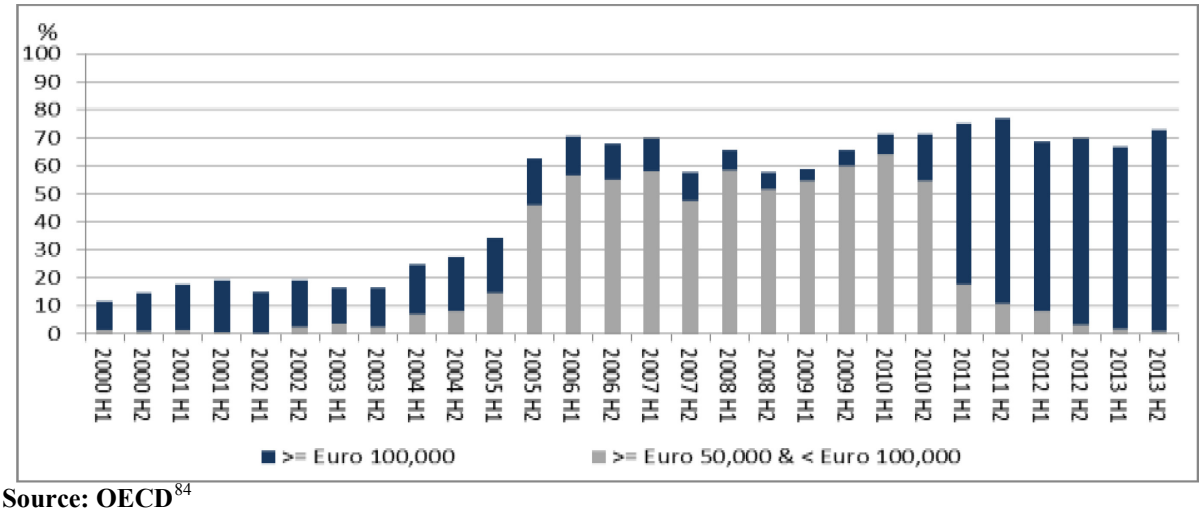
Market efficiency

An unintended outcome of both the Prospectus Directive (2003/71/EC) and the Prospectus Directive II (2010/73/EU) concerns the **treatment of securities with a high denomination per unit**. Under the Directive, a system of exemption thresholds currently creates incentives for issuers to issue debt securities with a high denomination per unit, namely above EUR 100 000 (a threshold raised from EUR 50 000 by the Prospectus Directive II (Directive 2010/73/EU))[83]. From the outset, this threshold was meant as a delineation between the retail and wholesale markets, the rationale being that securities with such a high denomination would be de facto inaccessible to non-qualified investors and that their issuers could consequently be spared with all or part of the burden of a prospectus. However, this high threshold has created an incentive for non-equity issuers to only issue in larger denominations, which, as a consequence, contributes to inhibiting liquidity on the secondary market for bonds and limit the issuance of debt securities in smaller denominations.

[83] Art. 3(2)(d) of the Prospectus Directive exempts public offers of securities (debt or equity) with a denomination per unit of at least EUR 100 000. The Directive alleviates the prospectus requirements for admission of these securities to trading on a regulated market from certain requirements: the disclosure requirements are lighter than those for debt securities with a denomination per unit below EUR 100 000, they are not required to provide a summary and benefit from a more flexible language regime.

That issuers reacted to these incentives was demonstrated twice quite clearly, first when the Directive entered into application in 2005 and again when the threshold was raised from EUR 50 000 to EUR 100 000 by the Prospectus Directive II (Directive 2010/73/EU)(in application from July 2012). The following chart (source: OECD) shows that first the share of EU bonds with a denomination between EUR 50 000 and EUR 100 000 went up from about 15% in the first half of 2005 to around 50% in the following years. In 2011, after adoption of the Prospectus Directive II (Directive 2010/73/EU), the share of EU bonds with a denomination above EUR 100 000 suddenly grew from about 10% to almost 70% while the share of denominations between EUR 50 000 and EUR 100 000 collapsed. It is interesting to note that the share of EU bonds with a denomination below EUR 50 000 decreased from about 70% before the Prospectus Directive entered into application, to less than 30% in 2013.

Figure 7: Percentage of EU bonds with a denomination between EUR 50 000 and EUR 100 000 and above EUR 100 000



Source: OECD[84]

It has been argued, including by respondents to the consultation, that the favourable treatment granted by the Directive to non-equity securities with a high denomination has resulted in an unintended adverse impact on the liquidity of the bond market as there are fewer investors which are willing to invest in bonds of such high denominations and at the same time the market in lower denominations is smaller than it otherwise would be. While the intention of the threshold was to protect retail investors, it might therefore have led to a considerably limited choice for them.

The lack of harmonisation between Member States with regard to the Directive also impacts market efficiency as illustrated by the divergent approaches taken by Member States when regulating the offers of securities with a consideration below the exemption threshold of EUR 5 000 000. The Directive leaves Member States with the **discretion to implement national regimes for offers with a total consideration below EUR 5 000 000,** and only requires that no prospectus be required for offers with a consideration below EUR 100 000. In effect, an offer whose total consideration falls in the range of EUR 100,000 to EUR 5 000 000 will be treated differently depending on the Member State where it takes place and depending on whether and how this Member State has extended the prospectus obligation to considerations below EUR 5 000 000. The table below displays the extent to which EU Member States have extended the prospectus requirement below EUR 5 000 000.

[84] Çelik, S., G. Demirtaş and M. Isaksson (2015), "Corporate Bonds, Bondholders and Corporate Governance", *OECD Corporate Governance Working Papers*, No. 16, OECD Publishing, Paris.

Figure 8: Threshold above which Member States require a prospectus to be drawn up (expressed as the total consideration of the offer in the EU over 12 months)

Threshold	EUR 100,000	EUR 250,000	EUR 1,000,000	EUR 1,500,000	EUR 2,500,000	EUR 5,000,000
Member States	BE, BG, DE, FR[(1)], HU, LV, SK, SI	AT	CZ, DK, RO[(2)]	FI[(3)], LU	NL, SE, PL	HR, EL, IE, IT, LT, MT, PT, ES, UK

Source: ESMA. Note: Data not available for CY, EE. [(1)] Only for offers representing more than 50% of the share capital of the issuer. [(2)] EUR 200,000 for debt instruments. [(3)] FI is in the process of raising this threshold to EUR 2 500 000.

3. What is the early assessment of the impact of the previous revision? Has the revision achieved its objectives?

Of all the amendments introduced by the Prospectus Directive II (Directive 2010/73/EU), two in particular have raised criticisms to the extent that it can reasonably be considered that the revision failed to achieve their objectives: the **prospectus summary** and the **proportionate disclosure regimes**.

The prospectus summary, although it was reformed by the Prospectus Directive II (Directive 2010/73/EU), is still not deemed fit for purpose. The reform introduced by the last review was intended to harmonise disclosure to make information of different issuers easier to compare for investors, by way of a prescriptive modular approach set out in Annex XXII of Implementing Regulation No 809/2004. Yet, the public consultation showed widespread dissatisfaction of most respondents. The general view is that the prospectus summary falls short of its objective to provide investors with concise and easy-to-understand information about the securities on offer. Almost unanimously, respondents consider that the summary format requirements introduced by the Prospectus Directive II (Directive 2010/73/EU) are not helpful and do not give enough flexibility to issuers to focus their summary on the key information retail investors really need. As a result, the prospectus summary, as it exists today, is blamed for being too long (it can easily comprise 20 to 30 pages, as Article 24(1) of the Prospectus Regulation provides that "*the length of the summary (...) shall not exceed 7 % of the length of a prospectus or 15 pages, whichever is the longer*"), unwieldy and unreadable. As was highlighted already at the time of the 2010 review[85], the summary is most of the time just a "cut and paste" exercise of various parts of the prospectus without any attempt to simplify the language and avoid legal jargon. As a result, retail investors do not read the summaries and tend to rely instead on the marketing material prepared in connection with the offering. Because they do not focus enough on the key aspects of a transaction and are usually written in legal language, summaries fail to achieve their objective, which is to summarise key information in a way that is understandable for the average retail investor. This reduces the effectiveness of the prospectus in delivering investor protection.

Before the 2010 review, the Prospectus Directive was largely based on the concept of one single prospectus applying for every type of issuer, regardless of its size, as well as for both public offers and admission to trading on a regulated market alike (no distinction made between new listings and further offers by issuers already listed)[86]. The 2010 review somehow challenged that approach and introduced some differentiation between different

[85] See ESME's report on Directive 2003/71/EC of September 2007 (http://ec.europa.eu/internal_market/securities/docs/esme/05092007_report_en.pdf). Pages 10-11

[86] However, from the outset, the Directive and its Implement Regulation had provided for a lighter-touch regime for financial institutions and public issuers, in the form of lighter disclosure contents.

types of issuers by establishing **proportionate disclosure regimes** (i) for SMEs and companies with a reduced market capitalisation, (ii) for credit institutions issuing certain types of non-equity securities for a consideration below EUR 75M and (iii) for companies admitted to trading on a regulated market or on an MTF offering shares as part of a rights issue. The rationale underpinning these regimes was that such companies – either because of their size and shorter track-record, or because they are already subject to ongoing disclosure requirements[87] – could be allowed to disclose less information in their prospectus.

As regards SMEs and companies with a reduced market capitalisation, this relative alleviation of the minimum disclosure contents was driven by the concern that the high cost of compliance with the Directive could deter such companies from raising funds on the capital markets. According to estimates from stakeholders, the average costs for SMEs and companies with reduced market capitalisation[88] to draw up a prospectus were estimated between EUR 100 000 and EUR 300 000 at the time of the adoption of the delegated acts of the Prospectus Directive II (Directive 2010/73/EU) in 2012[89]. The proportionate disclosure regime for SMEs and Small Caps introduced by Directive 2010/73/EU (which entered into application in July 2012) was therefore an attempt to reduce those costs for these companies in order to make them more proportionate to the amounts raised. The following chart displays the number of prospectuses drawn up by an SME or a Small Cap, approved in each Member State in 2013 and 2014, which used the proportionate schedules set out in the Annexes XXV to XXVIII of Regulation (EC) n°809/2004.

Figure 9: Number of prospectuses drawn up using the proportionate schedules of Annexes XXV to XXVIII (SMEs & Small Caps)

	AT	BE	DE	DK	EL	ES	FR	IT	LT	LU	LV	NL	PL	SE	SI	SK	UK	**Total**
2013	1	2	13	-	1	-	n/a	-	-	6	-	3	2	17	1	2	1	**49**
2014	2	-	3	1	2	-	14	2	1	6	-	2	7	42	-	10	-	**94**

Source: National competent authorities of EU/EEA States. No prospectuses were drawn up using the proportionate disclosure regime for SMEs and Small Caps in 2013 and 2014 in the following Member States and EEA States: HR, CY, CZ, ES, IE, PT, RO, IS. No data was provided by BG, EE, MT, FI, HU, LI, NO (although, for the latter, a "handful" of prospectuses were mentioned).

In total, 94 approved prospectuses were drawn up in 2014 (49 in 2013) according to the proportionate disclosure regime for SMEs and companies with a reduced capitalisation. These figures should be compared with the total number of prospectuses approved in 2013 and 2014, of respectively 4,014 and 3,838 (source: ESMA). With the exception of a small group of Member States where SMEs have made use of the proportionate disclosure regime rather frequently (SE, FR, SK, LU, PL), the regime is hardly ever used at all in all other Member States, where it is often observed that issuers who are eligible to it choose to prepare a full-blown prospectus instead. This indicates that the proportionate disclosure regime for SMEs and Small Caps introduced by the Prospectus Directive II (Directive 2010/73/EU) has not fully met its objectives and is still considered unattractive, as confirmed by the feedback from the public consultation. Respondents pointed out in particular that the disclosure schedules of

[87] See Recital 18 of Directive 2010/73/EU.

[88] For ease of reference, companies with reduced market capitalisation, as defined in article 2(1)(t) of the Directive will be referred to as "Small Caps" in this document.

[89] See the Impact assessment of Commission Delegated Regulation (EU) No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 (page 29). The 2015 public consultation sought input from respondents on the costs of preparing a prospectus (see *infra*) but the estimates submitted were not specific to SMEs and Small Caps.

the regime introduced very little alleviation for SMEs, compared to the normal disclosure regime.

A similar diagnosis can be made for the other two proportionate disclosure regimes. The regime for credit institutions (Annex XXIX of Regulation (EC) n°809/2004) was never used in any Member State in 2013 and 2014, and the regime for rights issues (Annex XXIII & XXIV of Regulation (EC) n°809/2004) only on very limited occasions, as illustrated by the figure below. Respondents to the consultation considered that the regime for rights issues is not used because the alleviations it provides compared to the standard disclosure are too limited to make any real difference in time or cost. They highlighted also that its scope is too limited, as it does not apply to all secondary issues, and that its coexistence with the general disclosure test of Article 5(1) creates legal uncertainty.

Figure 10: Number of prospectuses drawn up using the proportionate schedules of Annexes XXIII & XXIV (rights issues)

	AT	BE	DE	EL	ES	IT	NL	NO	PL	RO	SE	**Total**
2013	1	1	1	-	1	2	4	-	2	7	29	**48**
2014	1	-	3	1	1	6	3	4	-	23	7	**49**

Source: National competent authorities of EU/EEA States. No prospectuses were drawn up using the proportionate disclosure regime for rights issues in 2013 and 2014 in the following Member States and EEA States: CY, CZ, DK, FR, HR, IE, IS, LT, LU, LV, PT, SI, SK, UK. No data was provided by BG, EE, MT, FI, HU, LI.

The fact that issuers have shunned the proportionate disclosure regimes to a large extent raises the question of whether the Prospectus Directive II (Directive 2010/73/EU) and its corresponding delegated acts have gone far enough in differentiating the minimum disclosure requirements according to the various types of issuers and issues. After all, what was observed at the time of the 2010 review – that well-known frequent issuers are treated in the same way as issuers which enter the market for the first time – still appears valid today. In view of the relative failure of the proportionate disclosure regimes created by the Prospectus Directive II (Directive 2010/73/EU), there is scope for further work on the calibration of disclosure requirements for frequent issuers and SMEs/Small caps to make it easier for them to issue new securities. These issues are discussed further in the impact assessment above.

4.2. Efficiency

4. What are the areas where there is potential to reduce regulatory burden and simplify the intervention?

The aim of a prospectus is to provide investors with information necessary to take an investment decision. In order to ensure that this information is complete, consistent and comprehensible, prior approval of the prospectus by the competent authority is required before an offer or an admission to trading can take place. The regulatory burden cannot therefore be totally avoided. The majority of respondents to the public consultation supported the current system of ex-ante approval of prospectuses arguing that it provides for investor protection and legal certainty.

However, as highlighted by respondents, the current system may still be improved in relation to those areas where the Directive produces more costs than strictly necessary. The following are examples of areas where a simplification of the prospectus regime would help alleviate regulatory burdens:

- Prospectuses often contain information that investors can already have access to. This is particularly relevant for issuers that are listed on regulated markets, as these are

required by other pieces of EU law (notably the Transparency Directive and the Market Abuse Regulation) to publish certain information (financial statements, management report) on an ongoing basis, which the prospectus will also need to contain, including through incorporation by reference when applicable. A recurring criticism of the Prospectus Directive is that it fails to adequately scale the disclosure requirements to the situation of listed issuers seeking financing through secondary offers, in view of the fact that significant information is already in the public domain. As mentioned before, Directive 2010/73/EU tried to address this issue by creating a "proportionate disclosure regime" for offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility. However, this regime was made available to rights issues[90] only, and statistics gathered from national competent authorities show that it has not been used much (only 48 and 49 prospectuses were drawn up on the basis of this regime in 2013 and 2014 respectively).

- Arguably, the requirements of the Prospectus Directive are still not fully appropriate for SMEs. The preparation of the prospectus represents a considerable cost which can amount to hundreds of thousands of Euros, which can be disproportionate for SMEs which typically seek to raise small amounts of capital. However, while Directive 2010/73/EU attempted to better calibrate the disclosure requirements for SMEs and Small Caps, through the "proportionate disclosure regime", statistics gathered from national competent authorities show that the number of prospectuses drawn up under that regime was not significant (1% to 2% of all prospectuses approved in 2013 and 2014, see figures above).

Amendments to the Directive in the areas mentioned above could significantly reduce the administrative and regulatory burden for issuers.

Besides, it is worth noting that the Prospectus Directive already provides tools for issuers to reduce the regulatory burden, although they may not be used to their full potential. The best example is perhaps the so-called "**tripartite regime**", which gives issuers the option to draw up a prospectus as three separate documents (the registration document, the securities note and the summary) approved separately and at different points in time. The rationale behind it is that the information relating to the issuer in the registration document can be prepared and kept up-to-date "on the shelf" and then completed later by adding a securities note and a summary when market conditions allow the issuer to raise financing. The intent of the "tripartite regime" is to provide issuers with an (optional) fast-track procedure since producing a securities note and a summary at the time of issue is much less time consuming that the preparation of a full-blown prospectus. Yet this fast-track regime is used in practice in varying degrees across Member States and EEA States, as shown in the table below. For instance, the tripartite regime is very commonly used in France, Luxembourg and Norway, while in Germany, Ireland, or the UK this regime is much less used. Between 12% and 14% of all prospectuses approved in 2013 and 2014 were in the tripartite format, which is indicative that this tool is probably still underdeveloped and that there is room for creating incentives for issuers to use it. Besides, the Directive does not currently allow base prospectuses to be drawn up under the tripartite regime.

[90] Secondary offers of shares in which the issuer has not disapplied the statutory pre-emption rights.

Figure 11: Number of "tripartite" prospectuses approved in the EU

	BE	DE	DK	EL	ES	FI	FR*	IE	IS	IT	LU	NL	NO	PL	SE	SK	UK	**Total**
2013	9	8	0	-	21	13	130	10	13	5	68	13	111	2	9	44	38	**494**
2014	5	19	1	1	13	14	130	19	9	16	113	4	112	-	13	23	47	**539**

Source: National competent authorities of EU/EEA States. No tripartite prospectuses were drawn up in CZ, CY, HR, LT, LV, PT, RO and SI in 2013 and 2014. No data was provided by BG, EE, MT, HU, LI. * estimated.

As shown in the impact assessment above, some of the policy options developed in order to alleviate the burden on secondary issuances are designed to promote the use of the tripartite regime by issuers (see option 5 of § 4.2).

5. *What are the main cost drivers? Are there differences among types of issuers and issues/offers and/or among Member States?*

The public consultation invited stakeholders to provide estimates of the costs triggered by the Prospectus Directive. The feedback revealed that there are considerable differences in the cost of producing a prospectus depending on the types of securities and issuers.

Some stakeholders provided useful information regarding the **total costs of raising capital**[91], a fraction of which will be attributable to the prospectus itself. Deutsche Börse, for example, estimated that the average total costs for newly issued securities admitted to trading represent between 7.6% and 9.7% of the total consideration of the issuance, depending on the stock exchange chosen. According to FESE, the cost of raising capital through an initial public offering (IPO) represents between 3 and 15% of the amount raised, depending on the magnitude of the IPO (see table below). This is confirmed by Euronext which estimates that the average costs for completing an initial public offering is 7.5% of the total amount raised and that the average IPO cost varies from 8.5% for less than EUR 20 million raised to 3.5% for more than EUR 1 billion raised. Ballpark figures for the costs of an initial public offering of EUR 10 million would then be EUR 850 000, and of an initial public offering of EUR 1 billion would be EUR 35 million.

Figure 12: Costs of capital in initial public offerings (IPO)

Amount raised from the IPO	**Cost of raising capital** (as a % of the amount raised)
less than EUR 6 million	10 to 15%
between EUR 6 million and EUR 50 million	6 to 10%
between EUR 50 million and EUR 100 million	5 to 8%
more than EUR 100 million	3 to 7.5%

Source: Federation of the European Securities Exchanges (FESE)

However, many respondents to the public consultation stressed that it is not possible to estimate the costs of producing a prospectus as there is no typical issuer or typical circumstances. Therefore, the figures presented here should only be understood as general indications in order to give an idea of the amounts involved, not as precise calculations.

When turning to the **specific costs of preparing a prospectus**, data becomes scarcer. Only a few respondents to the public consultation (less than 20) provided an estimate of these costs. The figures they provided diverge very widely and respondents themselves stressed that they should not be generalised. For example, the minimum cost figures for an equity prospectus

[91] It should be noted that these cost figures have been provided by stakeholders and that the Commission is not in the position to verify their correctness.

range from EUR 1 000 to EUR 3 million, with an average of almost EUR 700 000. The maximum amounts range between EUR 10 000 and EUR 4 million, averaging at EUR 1.3 million[92]. Estimates of the costs of a non-equity prospectus are considerably lower with the minimum average of EUR 57 000 and the maximum average at almost EUR 500 000. Average cost estimates for base prospectuses were in a similar range[93]. The above estimates cannot be related to the size of an offer.

Legal fees are, by far, the most important contributor to the overall cost of preparing a prospectus, according to respondents to the public consultation, as they represent about 40% of the total costs. The second most important cost factor are internal costs (about 23%), followed by audit costs and fees charged by competent authorities representing together about a quarter of the costs. However, as for the total costs, the figures are rough estimates and would vary considerably from case to case. Fees charged by the relevant national competent authority are well below EUR 10 000 for a (base) prospectus[94]. Another factor influencing the cost of a prospectus is the requirement to produce a prospectus summary and translate it into the official languages of the Member States where the offer takes place.

All respondents (with one exception) agreed however that a substantial part of the above costs of the preparation of a prospectus would be incurred by the issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there was no prospectus requirement under EU law, as investors will require a minimum standard of disclosure and an issuer cannot expect to raise capital from the public without providing it and carrying out the corresponding due diligence. No quantitative indication of this share of the prospectus costs was given by respondents.

At the time of the 2010 review, the European Commission had asked the Centre for Strategy & Evaluation Services (CSES) for a study on the impact of the Prospectus Regime on EU financial markets[95]. The main findings of this report (dated June 2008) are summarised here, and appear to be broadly consistent with the cost estimates reported by respondents to the consultation:

- CSES could not reliably isolate the effect of the Prospectus regime on the market cost of raising capital using available market data and explained it by the fact that it was difficult to isolate the effect of the Prospectus Directive from other influences. CSES concluded that it was likely that the Prospectus Directive had not significantly altered the fundamentals that determined the market cost of debt or equity capital.

- CSES stressed that the additional costs of preparing a prospectus vary from issue to issue depending on what work has already been done by the issuer and its counsels. Costs will include both in-house costs incurred by the issuer as a result of time spent preparing the document and dealing with administrative questions and the fees of auditors and accountants, legal and financial advisers, regulatory fees, translation fees, etc. all of which will vary from issue to issue.

[92] Estimates for initial public offerings were very similar (average minimum costs: about EUR 680 000; average maximum costs: almost EUR 1.6 million).

[93] There are many other reasons for the wide ranges of costs, cost differences for the relevant services across Member States and service quality being probably among the most relevant.

[94] For example, the German authority BaFin and the Luxemburg authority CSSF charge administrative fees of EUR 6 500 and EUR 8 000, respectively, for the approval of a base prospectus.

[95] http://ec.europa.eu/finance/securities/docs/prospectus/cses_report_en.pdf

- CSES carried out a survey with market participants and experienced that most respondents found it impossible to provide clear estimates of the total costs involved in drawing up a prospectus and that, where estimates were however given, these ranged between EUR 200 000 and EUR 300 000 with the most significant expense being accountancy and auditing fees (since pro-forma financial statements, forward-looking statements and historical financial information must be approved by auditors).

- Based on the responses to its survey, CSES provided the following estimates of the total costs of prospectuses, by type of prospectus:

Type of prospectus	Average cost
Equity prospectus	EUR 912 000
Non-equity prospectus	EUR 63 000
Base prospectus (continuous issue)	EUR 145 000
Supplement	EUR 19 000

Source: CSES estimations

6. *To what extent are the costs of complying with the Prospectus Directive proportionate to the benefits achieved?*

One of the main benefits of complying with the prospectus requirement is that, once approved by the home competent authority, the prospectus enables an issuer to raise capital across all EU capital markets simultaneously thanks to the passport notification. Already at the time of the 2010 review, it had been acknowledged that the passporting mechanism has delivered a real benefit to issuers intending to publicly offer and/or seek admission to trading in another Member State. This conclusion still holds true today, as illustrated by data from ESMA revealing that 3,162 prospectus notifications have been received in 2014 by host Member States[96]. Compared to "mutual recognition system" which pre-existed Directive 2003/71/EC, there is little doubt that "*the Prospectus Directive has made it easier to publicly offer and list securities not only in one country, but in several countries at the same time*", as highlighted by ESME in its 2007 report on the Directive[97].

The public consultation therefore asked stakeholders whether this benefit actually outweighs the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority. Although there is no general consensus and the views expressed offer a rather mixed picture, the following opinions seem to prevail:

For large-scale issuances, the benefit of an offer to many Member States definitely outweighs the extra cost due to the possibility of tapping additional liquidity from international investors. The passport is also particularly useful where the issuer chooses an offering jurisdiction or listing location which is different from its Home Member State, or in rights issues or open offers where an issuer has a significant number of existing shareholders in another Member State.

Conversely, issuers of non-equity securities typically use exemptions (e.g. the EUR 100,000 denomination threshold) to avoid the prospectus obligation and will offer to qualified

[96] This figure represents the total number of prospectus "received" by competent authorities of the host Member States, and should not to be confused with the total number of prospectus "sent" by competent authorities of the home Member States, which was 931 in 2014.

[97] http://ec.europa.eu/internal_market/securities/docs/esme/05092007_report_en.pdf.

investors only, including cross-border and through private placements, which makes the passport of the Directive of no use to them. Only a small proportion of issuers in the debt space see value in passporting a prospectus for public offers. Likewise wholesale prospectuses for admission to trading of debt securities are rarely passported, and debt securities, when they are sold to retail investors, tend to be sold on a national, rather than cross-border, basis.

Also, the feedback revealed that the passport is not used for small and mid-sized businesses both because of the cost of preparing a prospectus and the local focus of their capital raising. For some SMEs the costs of preparing a prospectus and getting it approved can be so high relative to the amount of capital to be raised that this form of access to capital is economically not viable for them. When they do decide to incur that cost and draw up a prospectus, SMEs usually raise funds in one Member State only.

It was also pointed out that EU-harmonised prospectuses provide a benefit for the wider investor community: the larger the pool of consistent and comparable prospectuses across the EU, the wider the choice for investors and the more analysts can evaluate investment opportunities[98].

More generally, it is argued that the efficiency of the passporting mechanism – which relies on the principle that, once a certificate of approval has been notified by a home authority to a host authority, the latter must accept it without undertaking any approval or administrative procedure relating to the prospectus – is somehow diminished by an array of local practices which vary depending on the host jurisdiction. This includes the review of marketing materials by the host authority, mandatory tax disclosures, specific compliance statements, national requirements to publish an advertisement/notice in a local newspaper, or market rules set by domestic exchanges. Such additional requirements lead to additional costs, are detrimental to issuers active on more than one market, and somewhat reduce the efficiency of the passport.

Another barrier to the use of the passport is the fact that liability regimes are not harmonised across the EU: some issuers will think twice before carrying out a public offer across borders in the EU, as extensive legal due diligence may be needed beforehand to assess the specificities of each host jurisdiction in terms of administrative, civil and criminal liability. As there is no harmonised liability standard for prospectuses, the same information can be subject to different liability standards depending on the home Member State where the prospectus is approved and the host Member State where the prospectus is used.

In conclusion, there seems to be a mixture of practical, marketing and demand considerations accounting for the fact that just a quarter of all approved prospectuses are actually passported out on average to at least one host Member State.

4.3. Relevance

7. *To what extent are the objectives of the Prospectus Directive still relevant today? Do they correspond to stakeholder needs? How has the economic context evolved?*

The objectives of the Prospectus Directive, to increase market efficiency and to ensure investor protection, are still as relevant as they were when the Prospectus Directive was originally adopted in 2003. Without the prospectus it would not be ensured that investors, in

[98] See responses by the CFA Institute (an association of investment professionals) and ACCA Global (a body for professional accountants).

particular retail investors, receive sufficient and appropriate information about the transferable securities at offer. As in the times of online banking and investment there are most likely more retail investors investing online without advice today than there were in 2003. Similarly, market efficiency cannot be taken for granted. Here as well the prospectus is an important tool to narrow the information gap between investor and issuer. This is crucial as information asymmetry is an important cause of market inefficiency. Furthermore, the prospectus provides comparable information across Member States, allowing investors to better compare offers from different Member States and issuers to offer their securities in other Member States. This helps to make capital markets more efficient and liquid, in particular in the smaller countries which joined the Union since 2004. Responses to the public consultation in spring 2015 showed that stakeholders broadly support the view that the Prospectus Directive still plays an important role and is therefore needed. Events like those mentioned above, online banking and enlargement, as well as the adverse impact of the economic crisis on the access to capital from banks for companies in some Member States increase the importance of the Prospectus Directive even more.

8. *Is the prospectus still an appropriate disclosure tool for transferable securities?*

Despite much criticism regarding details, many respondents to the public consultation recognise the value and function of the prospectus as exemplified by the following statement by a respondent:

"The prospectus is an indispensable instrument of investor protection. (1) The prospectus is an essential source of information for financial experts who give advice to retail investors. Therefore the prospectus is also indirect but indispensable information for retail investors. (2) The prospectus is a liability base and therefore a cornerstone of legal certainty. (3) The prospectus is part of a selection process necessary to the effective functioning of market mechanisms. The making and publication of a prospectus implies a preliminary and standardized verification of the business project that is to be financed. It is linked to the approval by a regulating authority, which allows to partly sort out inefficient and fraudulent financing projects."[99]

In view of the responses to the public consultation and other feedback the European Commission has received, it is, however, questionable whether the Directive fully achieves its objective to provide investor protection as it seems that retail investors are hardly able to understand the prospectus or its summary and hardly ever read them. However, the prospectus fulfils an important role ex-ante as all advertisement or marketing material has to properly reflect what is written in the prospectus. This provides an indirect legal protection through the prospectus. Instead of providing 'ex-ante investor protection' by enabling potential investors to take informed investment decisions on the basis of appropriate information, the Directive provides perhaps at least 'ex-post investor protection' as investors might refer to the prospectus if issuers made incorrect statements which resulted in losses for investors.

9. *Are the instruments and procedures prescribed in the Directive still appropriate, in particular in view of the technological development?*

The Directive allows an approved prospectus to be published through various means and leaves the issuer discretion to choose the most appropriate one. The printed form (insertion in a newspaper or printed copy available at the offices of the market operator, the issuer or the financial intermediary) is still featured among the options for making a prospectus available to the public. Given the advances in technology and the progress in internet access over the past

[99] Verbraucherzentrale Bundesverband (vzbv)

years, this appears somehow outdated, and a simplification of the publication rules should be assessed, whereby the publication requirement would be fulfilled by the sole posting of a prospectus on a website.

Also, shortcomings have been identified in the current **system of publication and storage of prospectuses**. Currently, pursuant to Article 14(4a) of the Prospectus Directive, the website of ESMA compiles a list of prospectuses and supplements thereto on the basis of notifications made to it by the national competent authorities. In addition, it provides links to the national lists of approved prospectuses. These national lists generally only allow searches by name of issuer and/or ISIN and in some cases by year. Only a few of them offer additional features (such as allowing investors to search by type of security, content type (prospectus or base prospectus), approval/notification date and home/host Member State). However, these national lists do not allow for full text searches or targeted searches. It is not even clear if the offers are still valid. Furthermore, in practice, national lists do not generally provide direct access to the respective documents. In some cases there are only hyperlinks to the issuer's general website or hyperlinks to the prospectus do not work. In short, these national lists are not user-friendly and not suitable for targeted searches by investors looking for investment opportunities. This can result in investors finding it hard to access prospectuses, compare issuances or offers. Not only do such shortcomings of the storage system undermine the efficiency of the EU prospectus regime, but it also hinders the emergence of a truly integrated EU capital market.

The ability to **incorporate documents by reference** in a prospectus, as provided in Article 11(1) of the Directive is a key tool to facilitate the procedure of drawing up a prospectus and to lower the costs for issuers without affecting investor protection. Yet, based on the current drafting of the Directive, it is widely regarded as being particularly restrictive as regards the nature of the information that can be incorporated by reference (e.g. voluntary filings of information required under the Transparency Directive by issuers that are outside its scope cannot be incorporated by reference). There is a wide consensus that the mechanism of incorporation by reference could be extended to other types of information that has been filed with a competent authority pursuant to EU laws and is available online. This would lead to further cost reductions without adverse impacts on investor protection provided that easy access to such information can be ensured at all times during the "life" of the public offer.

Back at the time of the 2010 review, it was argued that the Prospectus Directive is based on a very traditional model of how securities are placed and traded. The Directive was designed at a time when the prevailing model was that of an issuer deciding to launch an offer of shares at a determined time in the following months, preparing a prospectus, starting a subscription period with a fixed price, selling all the shares and listing them afterwards on a regulated market. However, this model is no longer representative and the market has long since developed other kinds of flexible and innovative offering structures. For instance, already the 2007 ESME report highlighted that "*even the IPO market has become a flexible business with issuers deciding within days to tap the market without fixed prices or volumes, with the ability to interrupt the subscription if market sentiment changes. In the case of debt securities, such practice is standard – there may be a span of no more than a few hours between the first discussion of an idea and the launch of the bond or a reference pricing when approaching investors, in order to be open to any market movement"*. In an environment where issuers need to be able to promptly react to favourable market windows, it can be questioned whether

the prospectus approval process, as currently designed[100], offers the necessary flexibility. This is why the impact assessment above explores certain policy options designed to facilitate a swift approval process for frequent issuers (see option 5 in § 4.2.1).

4.4. Consistency and coherence

10. Are the provisions of the Prospectus Directive coherent?

Stakeholders were asked in the public consultation whether they could identify any incoherence in the current Directive's provisions which may cause the prospectus framework to insufficiently protect investors. Although respondents identified a number of smaller technical issues it can be said that the provisions are all in all coherent.

11. Is the Prospectus Directive consistent with other EU laws and the wider EU policy?

The objectives of the Prospectus Directive are consistent with the wider EU policy and their full achievement would be an important step to build a Capital Markets Union (CMU). This is because the harmonised EU prospectus is the "gateway" for issuers in need of finance to gain access to European capital markets. Stronger European capital markets are an important part of the Commission's response to the pressing challenge of boosting Europe's economy and stimulating investment to create jobs.

However, in the public consultation and other feedback the European Commission received some comments regarding inconsistencies, or rather inefficiencies in the alignment of the Prospectus Directive with other EU laws. They refer in particular to overlaps in reporting requirements between the Directive and the Transparency Directive, the Markets in Financial Instruments Directive, the Market Abuse Regulation and European investment fund legislation.

The following are two examples of insufficient alignment of the Prospectus Directive with other pieces of EU law (some more recent than the Directive itself) which would likely hinder market efficiency in the future unless amendments are introduced through the current review of the Directive:

- the creation of SME growth markets, as a subset of multilateral trading facilities, by Directive 2014/65/EU (MiFID II). There is a misalignment between the definition of "SMEs" under MiFID II (defined as companies with an average market capitalisation of EUR 200 000 000 or below) and the definition of "companies with reduced market capitalisation" introduced by Directive 2010/73/EU (companies traded on a regulated market with an average market capitalisation of EUR 100 000 000 or below). To illustrate the consequence of the above, a company traded on an SME growth market, with a market capitalisation of EUR 150 000 000, but which does not meet the criteria defining an SME according to Article 2(1)(f) of the Prospectus Directive will be deemed an SME for the purpose of MiFID II (Directive 2014/65/EU), but not for the purpose of the Prospectus Directive. Nor will it qualify as a "company with reduced market capitalisation" under the Prospectus Directive. Hence it will not be eligible to use the proportionate disclosure regime. According to data gathered from national competent authorities, there were about

[100] The timeframe allocated to competent authorities to carry out their review of a prospectus, from the moment a complete draft prospectus is submitted by the issuer is either 10 days (for regular submissions) or 20 days (for IPO submissions).

600 companies traded on a regulated market or an MTF in the EU/EEA as of end 2014, with a market capitalisation between EUR 100 000 000 and EUR 200 000 000. Unless thresholds of market capitalisation are harmonised between the two directives, these companies are likely to suffer from the abovementioned misalignment.

- the introduction of key information documents for packaged retail and insurance-based investment products (PRIIPs) under Regulation (EU) No 1286/2014. For certain types of securities, the prospectus summary will overlap to a certain degree with the key information document (KID) required by the PRIIPS Regulation when the latter becomes applicable on 31 December 2016. Both documents serve the same objectives, although (i) their contents are not fully aligned, (ii) their authors may differ and (iii) KIDs are not subject to approval by national competent authorities while prospectus summaries are. This will inevitably lead to a duplication of the same information in a KID and the corresponding prospectus summary.

These issues have been discussed further in the impact assessment above.

4.5. Added value of the Prospectus Directive

12. What changes can be reasonably argued to be attributed to the Prospectus Directive? Why the same outcomes cannot be achieved at the Member State level?

Given the wide range of factors that influence a company's decision to seek funding through capital markets, banks or other channels, it is not possible to link any direct economic impact to the Directive or to estimate its overall added value. The analysis presented in section 4.2 above shows that the number or prospectuses and the capital raised through them are relatively low compared to the size of company financing in the EU in general.

Notwithstanding the limited economic impact, the evaluation suggests that the Directive certainly lowered the barriers for raising capital across borders and contributed to market efficiency. For example, around a quarter of all prospectuses approved every year are passported to at least one host Member State, meaning that issuers make use of the prospectus to offer securities across borders in the EU/EEA, the cost of which were prohibitive in most cases prior to the Prospectus Directive.

In addition, the qualitative evidence shows that the Directive established a clear standard for the information that has to go with it. This 'signalling effect' certainly goes beyond the prospectuses approved under the Directive but also influenced the standards for other disclosure documents for public offerings and listings. It is reasonable to assume that it would have been difficult, if not impossible, to achieve this opening of national markets to offers from other Member States through national measures.

4.6. Conclusions

When Directive 2003/71/EC was adopted in 2003, it replaced two directives on listing particulars (1980) and prospectuses (1989) which had faced strong criticisms from stakeholders because they allowed widely varying practices across the Union and were based on a system of mutual recognition with significant discretion left to the host Member State authorities (including for instance that of requiring the translation of the full prospectus into the host Member State official languages).

In comparison, the Prospectus Directive can be credited for having facilitated the raising of capital across borders in Europe, thanks to the application of the "single passport" principle which implied that only one set of disclosure documents could be approved by the home

country authority and accepted throughout the EU for public offer and/or admission to trading on regulated markets. The contribution of the Prospectus Directive for building up a single European securities market can therefore not be underestimated and it may be considered as a mile-stone in that regard.

Still, the 2010 review rightly identified a number of shortcomings in Directive 2003/71/EC, affecting the legal clarity of some of its concepts and undermining its efficiency in establishing the right balance between market efficiency (areas of excessive regulatory burden) and investor protection (quality, readability and materiality of disclosures). Directive 2010/73/EU introduced targeted changes to address them.

Three years after Directive 2010/73/EU entered into application, the evaluation shows that the diagnosis made during the previous review is still very much valid today and that the revised Directive has only partially met its objectives of investor protection and market efficiency. Indeed, it seems that the trends identified back then (prospectus used as a "liability shield", retail investors shunning prospectuses and their summaries, inappropriate scaling of the disclosure requirements between IPOs and secondary issuances) have continued, and even worsened, arguably because the remedies proposed by the amending Directive were either inappropriate (the prospectus summary) or not bold enough (the proportionate disclosure regimes), or because Directive 2010/73/EU did not contain measures to address them.

The evaluation has also identified certain issues related to the coherence of the Prospectus Directive with other EU laws. Despite much criticism regarding the efficiency and effectiveness of the Directive, feedback from stakeholders clearly shows that the objectives of the Prospectus Directive are still relevant today.

Within the REFIT context, the evaluation identifies unnecessary regulatory burdens related to the Prospectus Directive. These issues include in particular the cost of preparing a prospectus, which is often considered disproportionate for small issuers, as well as the regulatory burden that the prospectus represents for issuers listed on regulated markets and already subject to ongoing disclosure requirements.

In view of the shortcomings identified in this evaluation it is appropriate to thoroughly review the Prospectus Directive. In particular, with respect to the amendments performed by the 2010 review, it is appropriate to readdress the "proportionate disclosure regimes" (for SMEs and Small Caps and for rights issues) and the prospectus summary as the amendments introduced by Directive 2010/73/EU have failed to reach their objectives.

ANNEX 6: SUMMARY OF PUBLIC CONSULTATION

Feedback from the online public consultation on the review of the Prospectus Directive, 18/02-2015 – 13/05/2015

I. SYNOPSIS OF THE RESPONSES TO THE ISSUES DISCUSSED IN THE IMPACT ASSESSMENT:[101]

1. Exemption thresholds

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

A minority group of respondents (essentially trade associations and some market operators) supports raising the threshold to considerations **between EUR 7 500 000 and EUR 50 000 000**, with EUR **10 000 000** most frequently cited as appropriate. Their main argument is the disproportion of the costs to prepare a prospectus as a percentage of the size of the offering, for offerings of small size. Below EUR 10 000 000 or EUR 20 000 000, a significant percentage of the total proceeds of the offering are used to pay transaction costs as opposed to growing the business. The time and costs involved in preparing a prospectus are prohibitive for small companies precluding them from seeking capital from the public and leaving no alternative but to seek funding from banks or private equity funds. A relatively modest increase in the threshold would give these companies greater flexibility. Some highlight the fact that if more and larger offerings/issues can be made without a prospectus being required, the need for other forms of investor protection (such as the suitability test, minimum financial commitment per retail investor) will become more important to ensure that investors are adequately protected. National legislation could provide investors with such protection.

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

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

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

Conversely, a minority of respondents is of the view that Member States should retain the ability to adjust the exemption threshold of the Directive to local circumstances. Market sizes vary between Member States and consideration must be given to proportionality concerns, and hence the minimum harmonisation level of the Directive should be maintained. Member State discretion below the EUR 5 000 000 threshold is a recognition that retail markets are essentially national markets with their own characteristics. Member States should be left with the flexibility to deal with the protection of retail investors for offers below EUR 5 000 000 as they are best placed to find the correct balance between investor protection and market access nationally, and such offers are never made on a pan-EU basis.

Stakeholder views as expressed by different interest groups:

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

Concerning the 150 persons threshold of Article 3(2)(b), some competent authorities note that this threshold is difficult to monitor in practice, particularly, in the debt capital markets space. It is impractical as it is hard to prove that the offer was addressed to fewer than 150 persons.

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

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

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

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

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

Non-governmental organisations[102]: Most of respondents supported raising the threshold to considerations, with EUR 10 000 000 as most frequently cited as appropriate. A relatively modest increase in the threshold would give greater flexibility.

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

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

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

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

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

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

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

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

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

2. Exemption for "secondary issuances" under certain conditions

A very large majority of respondents agreed that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, providing relevant

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

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

Stakeholder views as expressed by different interest groups:

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

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

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

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

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

- Some argued that in a capital increase, the issuer should have to provide information about the use of proceeds and the expense of the offering as this information cannot be obtained by potential investors from other sources or specific information about the

offer, the essential characteristics of the securities, and the major risks associated with the investment.

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

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

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

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

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

Companies, SMEs, micro-enterprises, sole traders: Most of respondents agree that the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, providing relevant information updates are made available by the issuer. One respondent mentions Canada as a good practice example for the creation of a

lighter regime. In Canada, the review period for a short form prospectus is generally three working days and an offering can generally be completed in approximately three weeks.

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

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

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

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

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

The public consultation tested three possible policy actions with a view to mitigating the effects of the EUR 100 000 threshold[103].

a) Lowering the EUR 100 000 threshold

The issue of a possible change to the EUR 100,000 threshold of Article 3(2)(d) was raised in two different parts of the consultation (Questions 4.d and 15.a). The feedback from respondents to these two questions displays some incoherence and therefore an analysis of responses does not provide a clear picture. Under Question 15.a, a clear majority of respondents favoured lowering the 100,000 threshold. Yet, it is worth noting that half of the

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

respondents who supported this option were individuals. Conversely, under Question 4.d, a clear majority of respondents expressed a preference for leaving the EUR 100,000 threshold unchanged. This includes all Member States and national competent authorities, as well as investors' associations. None of the individuals who answered Question 4d) answered Question 15a).

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

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

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

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

Opponents provide several rationales for not removing the favourable treatment of high-denomination bonds. The wholesale exemption allows bank to offer securities throughout the EU, without the burdens of a prospectus. Removing it would increase the regulatory burden for a significant proportion of issuers who currently issue those securities. It would therefore increase costs for them and be counter to the aims of the Capital Markets Union initiative. It may result in a reduction of issuance levels, with some large issuers choosing to access capital markets in the EU and third countries. This would significantly decrease liquidity in European capital markets. Also, institutional investors do not need the increased levels of disclosure currently required for securities with a denomination below EUR 100 000 (indeed they may find it unhelpful to have prospectuses cluttered with information they do not require). Were

the favourable treatment to be removed, market efficiency would suffer while no benefit for investor protection would be achieved.

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

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

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

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

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

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

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: A vast majority of national competent authorities were in favour of keeping the current threshold as there is no evidence that lowering the threshold would lead to any notable improvement of the liquidity of the secondary bond market. One NCA expressed that the threshold was raised to EUR 100,000 by the Prospectus Directive 2 because of investor protection reasons, in particular, the evidence that the EUR 50,000 threshold no longer reflected the distinction between retail and professional investor in terms of investment capacity.

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

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

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

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

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

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

Consultancies and law firms: This issue was hardly addressed.

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

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

4. Reforming the proportionate disclosure regime

A large majority of respondents consider that the proportionate disclosure regime for SMEs has not met its original purpose. In practise, issuers who would eligible to it choose to prepare a full-blown prospectus instead. Respondents interpret this choice as an indication that the benefits of applying the proportionate disclosure regime are too limited and do not outweigh the disadvantage of being perceived by investors as providing more limited information when compared to large companies. The alleviations the proportionate disclosure regime brings to SMEs are insufficient and do not depart sufficiently from the standard disclosure regime to

make any meaningful difference in terms of compliance cost. Also, the reduction in disclosures does not translate into a faster approval by the competent authority.

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

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

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

Respondents who are supportive of the concept of this regime for SMEs propose a number of measures to reform it. Some of them believe that it can be simplified further without endangering investor protection. There is scope for avoiding the duplication of the information (on financial performance for instance), promoting a shorter presentation of some sections (e.g. a more tailored presentation of the governance section) and enhancing the "materiality filter" issuers should use for instance in the business model and risk factors sections. There is a need to bring coherence to transparency requirements and to allow for a systematic incorporation by reference of available financial information. The proportionate disclosure regime will be enhanced if the ability to incorporate documents by reference is extended to issuers traded on MTFs. Others argue that it is not so much the scope of information which should be reduced but rather the content which should be less detailed. An in-depth work should be undertaken to reach a more concise approach to information. The result should be a shorter document, focused on material items, which would be considered useful by retail investors.

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

and that future regulation should leave Member States with the latitude to address investor protection issues as they see fit.

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

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

Stakeholder views as expressed by different interest groups:

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

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

Crowdfunding organisations: This issue was not addressed.

Non-governmental organisations: This issue was hardly addressed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stakeholder views as expressed by different interest groups:

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

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

Crowdfunding organisations: The vast majority of respondents supported the introduction of a specific disclosure document, referred to as a standardisation of the KID; this would

represent an important step towards market harmonisation. Several contributors made a proposal according to which SMEs using crowdfunding platforms shall have obligations and responsibilities. They consider necessary to harmonize within Europe a template of optional information to be sent under the responsibility of the issuer. The template should aim at given a harmonized way to present each category of information. Some platforms expect that such an information document (as referred to as "KIID") provides a level of detail that would enable investors to gauge appropriateness of valuations and the associated risks. In addition, it should also take into account the level of experience/expertise of the retail investors, so complexity of such prospectus should aim to provide conceptually simple examples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. System for the electronic publication of prospectuses

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

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

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

Opponents argue that national competent authorities would be and should remain the natural contact points; the more so as most prospectuses were only relevant nationally. Links from an ESMA web portal as under the Transparency Directive to the national databases would be sufficient. An entirely new database would be extremely costly and burdensome to set up, especially in view of the translation needs that would evolve. It would provide little to no added value as all the information was already available online.

Stakeholder views as expressed by different interest groups:

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

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

Crowdfunding organisations: This issue was not addressed.

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

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

Moreover, some contributors made the following suggestions:

- The EU filling system could be run by an already well-known organisation (e. g. national competent authorities or ESMA).
- It should further more be clear to the investor that the authority managing the platform (e.g. ESMA) does not guarantee the correctness of the information provided in the prospectus.

- The system should be complementary to the obligation of issuers to publish the prospectus on, for example, their own website.
- The possibility to request a paper version, on the basis of Article 14(7), should in any case remain.

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

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

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

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

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

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

Financial industry: A majority of respondents are in favour of creating a single, centralised, EU database. An integrated EU filing system would give investors the possibility to get a complete overview of all offers to the public within a certain category of instruments.

Therefore, this system would enhance transparency and accessibility for investors to any related information, thereby improving investor protection.

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

II. STATISTICS OF THE RESPONSES TO THE ISSUES DISCUSSED IN THE IMPACT ASSESSMENT:

Online public consultation on the review of the Prospectus Directive
- Statistics exported from EUSurvey –[104]

Are you replying as:

	Answers	Ratio
a private individual	36	19.78%
an organisation or a company	125	68.68%
a public authority or an international organisation	21	11.54%

Type of organisation:

	Answers	Ratio
Academic institution	0	0%
Company, SME, micro-enterprise, sole trader	25	13.74%
Consultancy, law firm	12	6.59%
Consumer organisation	3	1.65%
Industry association	51	28.02%
Media	0	0%
Non-governmental organisation	7	3.85%
Think tank	0	0%
Trade union	0	0%
Other	27	14.84%

Type of public authority

	Answers	Ratio
International or European organisation	2	1.1%
Regional or local authority	0	0%
Government or Ministry	8	4.4%
Regulatory authority, Supervisory authority or Central bank	11	6.04%
Other public authority	1	0.55%

[104] Please note that the percentage figures reported in the column 'Ratio' always refer to the full number of 182 responses and not only to the responses to the respective question. Therefore, in almost all cases these percentage figures do not add up to 1.

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

	Answers	Ratio		Answers	Ratio
Austria	8	4.4%	Liechtenstein	0	0%
Belgium	18	9.89%	Lithuania	0	0%
Bulgaria	2	1.1%	Luxembourg	1	0.55%
Croatia	2	1.1%	Malta	0	0%
Cyprus	1	0.55%	Norway	1	0.55%
Czech Republic	2	1.1%	Poland	2	1.1%
Denmark	5	2.75%	Portugal	1	0.55%
Estonia	0	0%	Romania	0	0%
Finland	2	1.1%	Slovakia	3	1.65%
France	22	12.09%	Slovenia	0	0%
Germany	38	20.88%	Spain	5	2.75%
Greece	2	1.1%	Sweden	4	2.2%
Hungary	1	0.55%	Switzerland	1	0.55%
Iceland	0	0%	The Netherlands	6	3.3%
Ireland	3	1.65%	United Kingdom	37	20.33%
Italy	7	3.85%	Other country	8	4.4%
Latvia	0	0%			

Field of activity or sector (if applicable):

	Answers	Ratio
Accounting	16	8.79%
Auditing	13	7.14%
Banking (issuing-finance department)	31	17.03%
Banking (investment department)	27	14.84%
Credit rating agencies	4	2.2%
Insurance	8	4.4%
Pension provision	10	5.49%
Investment management	37	20.33%
Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)	28	15.38%
Social entrepreneurship	6	3.3%
Other	75	41.21%
Not applicable	27	14.84%

Please indicate if you are:

	Answers	Ratio
a company listed on a regulated market of the European Economic Area	11	6.04%
a company whose securities are admitted to trading on a multilateral trading facility (MTF) of the EEA	1	0.55%
none of the above	13	7.14%

Please indicate if you are:

	Answers	Ratio
a company with a market capitalisation below EUR 200 000 000 ("small and medium-sized enterprise" under the meaning of Article 4(1)(13) of Directive 2014/65/UE)	0	0%
a company meeting at least 2 of the following 3 criteria: 1. an average number of employees during the financial year of less than 250, 2. a total	6	3.3%

balance sheet not exceeding EUR 43 000 000 3. an annual net turnover not exceeding EUR 50 000 000 ("small and medium-sized enterprise"; under the meaning of Article 2(1)(f) of Directive 2003/71/EC)		
none of the above	19	10.44%

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

	Answers	Ratio
Admission to trading on a regulated market	93	51.1%
An offer of securities to the public	99	54.4%
Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public)	19	10.44%
Other	8	4.4%
Don't know / no opinion	18	9.89%

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

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

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

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

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?

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

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

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

	Answers	Ratio

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

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

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

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

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

5. Would more harmonisation be beneficial in areas currently left to Member States' discretion, such as the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000?

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

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

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

7. Can you identify any other area where the scope of the Directive should be revised and if so how? Could other types of offers and admissions to trading be carried out without a prospectus without reducing consumer protection?

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

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

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

9. How should Article 4(2)(a) be amended in order to achieve this objective[105]?

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

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

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

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

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

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

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

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

[105] To mitigate or lift the obligation to draw up a prospectus for any subsequent secondary issuances of the same securities, provided that relevant information updates are made available by the issuer

exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document?

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

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

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

15. Do you consider that the system of exemptions granted to issuers of debt securities above a denomination per unit of EUR 100 000 under the Prospectus and Transparency Directives may be detrimental to liquidity in corporate bond markets?

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

If you have answered yes:

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

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

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

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

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

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

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?

	Answers	Ratio
Yes	8	4.4%
No	60	32.97%

Don't know / no opinion	45	24.73%

17) Is the proportionate disclosure regime used in practice, and if not what are the reasons?

a) Proportionate regime for rights issues

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

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

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

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

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

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

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

20. Should the definition of 'company with reduced market capitalisation' (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000?

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

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

	Answers	Ratio
Yes	41	22.53%
No, the higher risk profile of SMEs and companies with reduced market capitalisation justifies disclosure standards that are as high as for issuers listed on regulated markets	32	17.58%
Don't know / no opinion	36	19.78%

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

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

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

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

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

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

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

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

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

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

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

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

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

	Answers	Ratio
By providing that information already featured in the KID need not be duplicated in the prospectus summary	12	6.59%
By eliminating the prospectus summary for those securities	27	14.84%
By aligning the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation, in order to minimise costs and promote comparability of products	24	13.19%
Other	21	11.54%
Don't know / no opinion	35	19.23%

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

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

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

The overall civil liability regime of Article 6

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

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

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

The sanctions regime of Article 25

	Answers	Ratio
Yes	26	14.29%
No	21	11.54%

No opinion 44 24.18%

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

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

33. Are you aware of material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses that are submitted to them for approval?

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

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

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

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

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

36. Would it be conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, under the premise that no legally binding purchase or subscription would take place until the prospectus is approved?

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

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

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

38. Should the decision to admit securities to trading on a regulated market (including, where applicable, to the official listing as currently provided under the Listing Directive) be more closely aligned with the approval of the prospectus and the right to passport?

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

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

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

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

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

40. Please indicate if you would support the following changes or clarifications to the base prospectus facility.
a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed:

	Answers	Ratio
I support	44	24.18%
I do not support	26	14.29%

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

	Answers	Ratio
I support	50	27.47%
I do not support	35	19.23%

c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA:

	Answers	Ratio
I support	60	32.97%
I do not support	10	5.49%

d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs:

	Answers	Ratio
I support	40	21.98%
I do not support	24	13.19%

e) The base prospectus facility should remain unchanged:

	Answers	Ratio
I support	29	15.93%
I do not support	33	18.13%

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

	Answers	Ratio
No, status quo should be maintained	26	14.29%
Yes, issuers should be allowed to choose their home Member State even for non-equity securities with a denomination per unit below EUR 1 000	33	18.13%
Yes, the freedom to choose the home Member State for non-equity securities with a denomination per unit above EUR 1 000 (and for certain non-equity hybrid securities) should be revoked	5	2.75%

43. Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed (deletion of Article 14(2)(a) and (b), while retaining Article 14(7), i.e. a paper version could still be obtained upon request and free of charge)?

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

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

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

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

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

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

	Answers	Ratio
Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18	27	14.84%
Such a prospectus should be approved by the Home Member State under Article 13	17	9.34%
Other	7	3.85%
Don't know / no opinion	40	21.98%

48) Is there a need for the following terms to be (better) defined, and if so, how:
a) 'Offer of securities to the public'?

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

b) 'primary market' and 'secondary market'?

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

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

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

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

	Answers	Ratio
Yes	45	24.73%
No	13	7.14%
Don't know / no opinion	48	26.37%

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

	Answers	Ratio
Yes	18	9.89%
No	18	9.89%
Don't know / no opinion	57	31.32%

ANNEX 7: SELECTED STATISTICS ON INITIAL PUBLIC OFFERINGS (IPOS) MADE IN EUROPEAN STOCK EXCHANGES

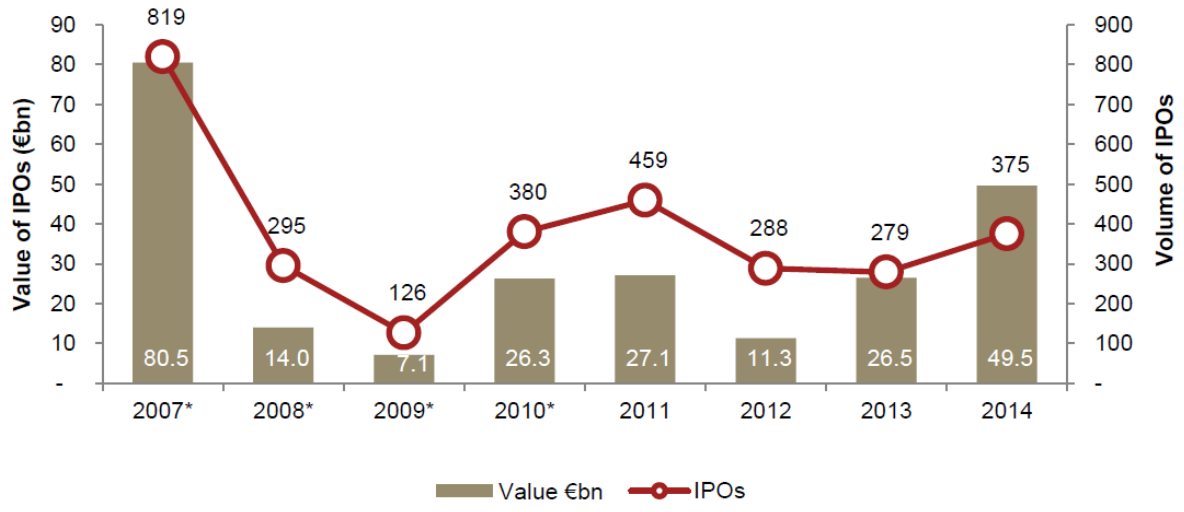
Figure 2: Quarterly European IPO activity by value and volume

	2013	2014	Q1 2014	Q2 2014	Q3 2014	Q4 2014
Total European listings comprise those with:						
Less than $5m raised	118	109	19	34	29	27
Greater than $5m raised	161	266	49	111	47	59
Total number of listings	**279**	**375**	**68**	**145**	**76**	**86**
Money raised excl. greenshoe (€m)	26,478	49,537	11,391	22,325	6,615	9,206
Exercised greenshoe (€m)	1,447	2,835	871	1,284	519	161
Total money raised (€m)	**27,925**	**52,372**	**12,262**	**23,609**	**7,134**	**9,367**
Average offering value (€m)*	173	196	250	212	151	158

** Average offering value has been calculated based on total money raised, excluding listings raising less than $5m*

Source: PWC's IPO Watch Europe 2014

Figure 4: Yearly European IPO activity **



Source: PWC's IPO Watch Europe 2014

Appendix 1: European IPOs by market

Stock exchange	2013 IPOs	2013 Value (€m)*	2014 IPOs	2014 Value (€m)*	Q1 2014 IPOs	Q1 2014 Value (€m)*	Q2 2014 IPOs	Q2 2014 Value (€m)*	Q3 2014 IPOs	Q3 2014 Value (€m)*	Q4 0214 IPOs	Q4 0214 Value (€m)*
TOTAL												
London Stock Exchange	103	14,409	137	19,394	32	5,925	54	9,942	23	1,899	28	1,628
Euronext	26	2,994	41	10,495	6	2,113	22	4,457	8	1,747	5	2,178
BME (Spanish Exchange)	2	2	13	4,514	2	900	4	2,731	5	871	2	12
NASDAQ OMX	31	876	62	4,524	7	1,947	26	1,332	7	304	22	941
Deutsche Börse	9	2,409	17	3,565	1	-	6	857	5	11	5	2,697
Borsa Italiana	18	1,273	26	2,593	5	72	7	1,154	10	1,088	4	279
Oslo Børs & Oslo Axess	11	941	17	1,572	2	147	5	239	5	53	5	1,133
SIX Swiss Exchange	1	745	6	1,155	-	-	5	1,073	-	-	1	82
Irish Stock Exchange	3	725	3	483	1	265	2	218	-	-	-	-
Bucharest	2	454	1	444	-	-	-	-	1	444	-	-
Warsaw	54	1,134	35	313	10	18	6	89	10	161	9	45
Borsa Istanbul	11	481	13	253	2	4	6	39	1	2	4	208
Wiener Börse	1	-	2	194	-	-	2	194	-	-	-	-
Athens Stock Exchange	-	-	1	35	-	-	-	-	1	35	-	-
Budapest	-	-	1	3	-	-	-	-	-	-	1	3
Luxembourg	7	35	-	-	-	-	-	-	-	-	-	-
Total	**279**	**26,478**	**375**	**49,537**	**68**	**11,391**	**145**	**22,325**	**76**	**6,615**	**86**	**9,206**

Source: PWC's IPO Watch Europe 2014

ANNEX 8: SUMMARY OF THE MOST SIGNIFICANT ALLEVIATIONS GRANTED BY THE PROPORTIONATE DISCLOSURE REGIME FOR RIGHTS ISSUES AND THE ALLEVIATIONS GRANTED UNDER THE PROPORTIONATE DISCLOSURE REGIME FOR SMES

<table>
<tr><th colspan="2">Most significant alleviations granted by Proportionate Disclosure Regime for Rights Issues in the share registration document compared to a regular prospectus[106]</th></tr>
<tr><td>Removal of the following items:
Selected financial information (I, 3)
Operating and financial review (I, 9)
Capital resources (I, 10)
Conflicts of interests (I, 14.2)
Remuneration and benefits (I, 15)
Pro forma financial information (I, 20.2)</td><td>Removal of the following sub-items:
Information about the issuer:
History and development (I, 5.1)
Important events in the developments of the issuer's business (I, 5.1.5)
Business overview:
Products sold or services performed (I, 6.1.1)
Breakdown of revenues by category of activity and geographic market(I, 6.2)
Organisational structure:
List of issuer's subsidiaries and information thereof (I, 7.2)</td></tr>
<tr><td colspan="2">Reduction of the relevant period for the disclosure of the following items:
One year instead of two years: material contracts (I, 22)
One years instead of three years for:
Historical financial information (Item 20)
Nature of the issuer's operation and its principal activities (Item 6.1.1)
Related party transaction (Item 19)
The amount of the dividend per share (Item 20.7.1)</td></tr>
</table>

[106] Share registration document of Annex XXIII, PR compared to Annex I, PR

Alleviations granted under the Proportionate Disclosure Regime for SMEs in the share registration document	
Current regime[107]	**Proposed regime**[108]
• Business overview (I,6) focused on the last two fiscal years only (instead of three) • Statement on where the audited financial statements for the last 2 financial years may be obtained, instead of producing the audited financial statements for the last 3 financial years (I, 20.1) • Statement on where the interim financial information may be obtained, instead of producing it (I, 20.6)	• Business overview (I,6) focused on the last two fiscal years only (instead of three) • Statement on where the audited financial statements for the last 2 financial years may be obtained, instead of producing the audited financial statements for the last 3 financial years (I, 20.1) • Statement on where the interim financial information may be obtained, instead of producing it (I, 20.6) • Removal of the additional items: ▪ Selected financial information (I, 3) ▪ Property, plants, equipment (I, 8) ▪ Operating and financial review (I, 9) ▪ Capital resources (I, 10) ▪ R&D, patents and licenses (I, 11) ▪ Conflicts of interests (I, 14.2) ▪ Remuneration and benefits (I, 15) ▪ Pro forma financial information (I, 20.2) ▪ Documents on display (I, 24)
The proposed alleviations should remove at least 7 additional items out of the 25 figuring in the current share registration document.	

[107] Based on the comparison of the disclosure requirements provided under Annex XXV *vis-à-vis* Annex I, PR

[108] Based on the envisaged content of the share registration document and taking into account the current information requirements of certain MTFs (AIM Rules for Companies, OMX First North Nordic Rulebook, MAB Circular 5/2010) in their admission documents when the offer of does not qualify as offer to the public for the purpose of the PD.

Table 19: Disclosure requirements in Regulated Markets and MTFs

Regulated markets (Prospectus regime)	First North	AIM	MAB
Registration Document (Annex I, Prospectus Regulation)			
1. PERSON RESPONSIBLE	✓	✓	✓
2. STATUTORY AUDITORS	X	✓	✓
3. SELECTED FINANCIAL INFORMATION	X	X	X
4. RISK FACTORS	✓	✓	✓
5.1 History and development of the issuer	X	✓	✓
5.2 Investments	X	✓	✓
6. BUSINESS OVERVIEW	✓	✓	✓
7. ORGANIZATIONAL STRUCTURE	✓	✓	✓
8. PROPERTY, PLANTS AND EQUIPMENT	X	X	X
9.1 OPERATING AND FINANCIAL REVIEW – Financial conditions	X	X	X
9.2 OPERATING AND FINANCIAL REVIEW – Operating results	X	X	X
10. CAPITAL RESOURCES	X	X	X
11. RESEARCH & DEVELOPMENT, PATENTS AND LICENSES	X	X	✓
12. TREND INFORMATION	✓	✓	✓
13. PROFIT FORECASTS AND ESTIMATES	X	✓	✓
14.1 ADMINISTRATIVE, MANAGEMENT, SUPERVISORY BODIES	✓	✓	✓
14.2 Conflicts of interests	X	X	X
15. REMUNERATION AND BENEFITS	✓	X	✓
16. BOARD PRACTICES	X	✓	X
17. EMPLOYEES	✓	✓	✓
18. MAJOR SHAREHOLDERS	✓	✓	✓
19. RELATED PARTY TRANSACTIONS	✓	✓	✓
20.1 Historical financial information	✓	✓	✓
20.2 Pro forma financial information	X	X	X
20.3 Financial statements	X	✓	X
20.4 Auditing of historical annual financial information	X	✓	✓
20.5 Age of latest financial information	✓	✓	X
20.6 Interim and other financial information	✓	✓	X
20.7 Dividend policy	X	✓	✓
20.8 Legal and arbitration proceedings	✓	✓	✓
20.9 Significant change in issuer's financial and trading position	X	✓	X
21.1 Share capital	✓	✓	X
21.2 Memorandum ad Articles of Association	✓	✓	X
22. MATERIAL CONTRACTS	✓	✓	X
23. THIRD PARTY INFORMATION& STATEMENT	X	✓	✓
24. DOCUMENTS ON DISPLAY	X	X	X
25. INFORMATION ON HOLDINGS	X	✓	✓
Symbols explanation ✓ Information to be disclosed under MTFs' admission documents at the same level of disclosure as under the PR X Information not required under MTFs' admission documents but required under the PR			

Note: Disclosure requirements on regulated markets reflect the requirements of the Prospectus Directive; disclosure requirements on MTFs are based on the respective admission documents.
* MTFs: 1) AIM – Alternative Investment Market (http://www.londonstockexchange.com)
2) MAB – Mercado Alternativo Bursatil (http://www.armabex.com)
3) Nasdaq OMX First North (http://www.nasdaqomx.com)

Regulated markets (Prospectus Directive)	First North	AIM	MAB
Securities Note (Annex III, Prospectus Regulation)			
1. PERSONS RESPONSIBLE	✓	✓	✓
2. RISK FACTORS	✓	✓	X
3.1 Working capital Statement	✓	X	X
3.2 Capitalisation and indebtedness	✓	X	X
3.3 Interest of natural and legal persons involved in the issue/offer	X	X	X
3.4 Reasons for the offer and use of proceeds	✓	✓	✓
3. INFORMATION CONCERNING SECURITIES OFFERED/ADMITTED	✓	✓	✓
5.1 Conditions, statistics, timetable and action required to apply for offer	X	X	✓
5.2 Plan of distribution and allotment	X	X	X
5.3 Pricing	X	X	X
5.4 Placing and underwriting	X	X	X
6. ADMISSION TO TRADING AND DEALING ARRANGEMENTS	✓	X	✓
7. SELLING SECURITIES HOLDERS	X	✓	X
8. EXPENSE OF THE ISSUE/OFFER	X	✓	X
9. DILUTION	X	✓	X
10. ADDITIONAL INFORMATION	X	✓	X
Symbols explanation ✓ Information to be disclosed under MTFs' admission documents at the same level of disclosure as under the PR X Information not required under MTFs' admission documents but required under the PR			

Note: Disclosure requirements on regulated markets reflect the requirements of the Prospectus Directive; disclosure requirements on MTFs are based on the respective admission documents.
* MTFs:1) AIM – Alternative Investment Market (http://www.londonstockexchange.com)
2) MAB – Mercado Alternativo Bursatil (http://www.armabex.com)
3) Nasdaq OMX First North (http://www.nasdaqomx.com)

Table 20: Analysis of issuers by market capitalisation by trading venue

	Euronext's Alternext (FR, NL, BE, PT)*	Cyprus ECM	Prague START (CZ)	*DB Entry Standard ** (DE)*	First North (SE, DK, IS, FI)	MAB (ES)	ISDX (UK)	AIM (UK)	ATHEX (EL)	ISE ESM (IE)	AIM Italia (IT)	Warsaw New Connect (PL)	Total
Issuers above €200m at 31st December 2013	*4*	1	1	*9*	2	1	2	97	0	9	0	1	**127**
Issuers below €200m at 31st December 2013	*165*	9	0	*165*	133	22	100	965	14	16	36	444	**2069**
Total	***169***	**10**	**1**	***174***	**135**	**23**	**102**	**1062**	**14**	**25**	**36**	**445**	**2196**
Median MV at 31st December 2013	***21.0***	**39.5**	**698.8**	**20.3**	**10.3**	**19.3**	**1.9**	**24.8**	**8.2**	**91.0**	**19.3**	**1.9**	
Issuers above €200m at 31st December 2012	*3*	1	na	*10*	3	0	3	83	0	5	0	4	**112**
Issuers below €200m at 31st December 2012	*163*	9	na	*153*	122	21	135	997	13	17	17	425	**2072**
Total	***166***	**10**	**na**	***163***	**125**	**21**	**138**	**1080**	**13**	**22**	**17**	**429**	**2184**
Issuers above €200m at 31st December 2011	*2*	1	na	*8*	1	0	4	84	0	4	0	1	**105**
Issuers below €200m at 31st December 2011	*157*	8	na	*144*	132	17	155	1040	13	17	14	350	**2047**
Total	***159***	**9**	**na**	**152**	**133**	**17**	**159**	**1124**	**13**	**21**	**14**	**351**	**2152**

Source: Europe Economics, Data-gathering and cost-benefit analysis of MiFID II, Level 2 — Draft Final Study, 7 May 2015.

Table 21: Total market capitalisation by trading venue (€bn)

	Euronext's Alternext (FR, NL, BE, PT)	Cyprus ECM	PRAGUE START (CZ)	*DB Entry Standard (DE)*	First North (SE, DK, IS, FI)	MAB (ES)	ISDX (UK)	AIM (UK)	ATHEX (EL)	ISE ESM (IE)	AIM Italia (IT)	Warsaw New Connect (PL)	Total
Total MV at 31st December 2013	7.8	0.6	0.7	58.4	4.0	1.2	2.6	90.8	0.1	63.3	1.1	2.7	233.4
Total MV at 31st December 2012	5.9	0.6	na	60.2	3.2	0.5	2.7	75.5	0.1	29.1	0.5	2.7	181.1
Total MV at 31st December 2011	5.2	0.5	na	50.8	2.6	0.4	3.3	74.3	0.2	37.8	0.3	1.9	177.4

Source: Europe Economics, Data-gathering and cost-benefit analysis of MiFID II, Level 2 — Draft Final Study, 7 May 2015.

Table 22: 2013 trading turnover by trading venue (€mn)

	Euronext's Alternext (FR, NL, BE, PT)	Cyprus ECM	Prague START (CZ)	*DB Entry Standard((DE)*	First North (SE, DK, IS, FI)	MAB (ES)	ISDX (UK)	AIM (UK)	ATHEX (EL)	ISE ESM (IE)	AIM Italia (IT)	Warsaw New Connect (PL)	Total
Trading turnover 2013	14,632	1	na	8,340	313	na	na	38,007	1	na	160	225	61,679
2013 trading as % of 2013 MV	187%	0%	na	14%	8%	na	na	42%	1%	na	14%	8%	26%

Source: Europe Economics, Data-gathering and cost-benefit analysis of MiFID II, Level 2 — Draft Final Study, 7 May 2015.