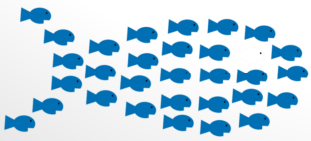
BETTER FINANCE FOR ALL

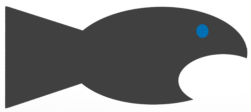
The European Federation of Financial Services Users
Fédération Européenne des Usagers des Services Financiers

Better Finance Response to the Review of the European Commission Consultation on the Prospectus Directive

13 May 2015

ID number in Transparency Register: 24633926420-79





The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

BETTER FINANCE FOR ALL
The European Federation of Financial Services Users
Fédération Européenne des Usagers des Services Financiers

Questionnaire Consultation Review of Prospectus Directive

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

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

Yes, the principle is of course still valid, if not the main criterion for investor protection. It is however important to recognise that information disclosure per se is not tackling panacea to resolve information asymmetries between financial institutions/intermediaries and investors. Most importantly, information disclosure is not effective at dealing with conflicts of interest between financial institutions/ intermediaries and investors.

Extensive and complex information disclosure is used to shift responsibility from firms to consumers. We would not argue with the need for consumers to read key information and answer questions honestly, but there is an unacceptable view in some sectors of the industry that complex and potentially detrimental products can be widely promoted, provided they are transparent through good disclosure. This is accompanied by an expectation that consumers can, and should, acquire the skills, knowledge and understanding required to deal with this complexity and choice, which places an unreasonable burden on the consumer and is not an approach adopted by other industry sectors.

It should be clear that the prospectus does not serve its primary aim anymore: providing in an easily analysable and comprehensible form all information necessary to enable investors to make an informed assessment of the issuer and the securities offered or admitted to trading on a market. The prospectus has become a document of, in some cases, a couple of hundreds of pages which is not used by investors as it is unformatted/not standardised, written in legal jargon instead of plain English. It is prepared by lawyers for lawyers and therefore serves rather as an instrument to release out of liability than as information tool for investors. It is also not comparable to KIDs for other investment products.

While standardised disclosure is still in a process of development and experimentation, it should be taken into account the need to reduce the number of elements disclosed, to make the disclosures easier to read, to offer the disclosures at times when they are most useful and reduce the cognitive costs of information processing.

The Commission has tried to achieve this with the summary prospectus. However, this document is currently actually useless, and has to be read in conjunction with the remainder of the prospectus. A major problem is that the summary prospectus is not standardized, not comparable, that there is currently no liability attached and that it still consists of sometimes up to 25 pages.

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

Better Finance therefore proposes to thoroughly improve the summary prospectus, in order to be thoroughly improved from its current state. Currently, the summary prospectus is of appalling quality: it is written in legal language, not formatted, not comparable, written in non-intelligible legal verbiage and not always including key information[1], etc. The summary prospectus should provide the investor with an overview of all the material risks associated with a certain investment decision. It is the responsibility of the issuer to judge the materiality of the risks associated and to make sure that the summary prospectus provides a true and fair view. The issuer should be liable on the basis of this revised summary prospectus. The length should be limited to 5 pages (instead of up to 25 pages in some instances).

Better Finance fully supports the development of risk labels for financial products which indicates the risk level of savings and investment products in a highly standardized format. It is intended to enable retail clients to gain an initial insight into the risk associated with such products. Furthermore, Better Finance believes that, ideally, the obligation to draw up a prospectus should be mandatory for all offers and admissions to trading, except for certain secondary offerings and offers exclusively to qualified investors. Instead of narrowing the scope of the Directive, Better Finance supports an extension of the proportionate disclosure regime and incorporation by reference in order to alleviate administrative burdens for certain issuers and offers.

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

If a prospectus contains all information which is necessary to enable investors to make an informed assessment of the issuer and the securities offered or admitted to trading on a regulated market, the answer should be negative.

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

a) Please estimate the cost of producing the following prospectus

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

Better Finance does not have the necessary knowledge to answer this question. Nevertheless, Better Finance generally believes that enhancing investor protection cannot be rejected by invoking undesirable increased administrative costs. In particular, the alignment of the summary

[1] Better Finance can provide examples, including the summary prospectus of a fixed rate bond that does not even disclose the interest rate of the bond.

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

prospectus to the principles underlying those of the KID (Key Information Document) for other substitutable investment products should lower the costs for issuers as it will be shorter and standardised, and will greatly facilitate the communication and marketing of securities.

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

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

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

Better Finance does not have the necessary knowledge to answer this question. Nevertheless, Better Finance generally believes that enhancing investor protection cannot be rejected by invoking undesirable increased administrative costs.

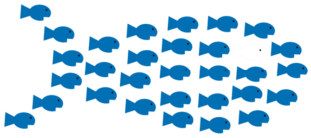
(3) Bearing in mind that the prospectus, once approved by the home competent authority, enables an issuer to raise financing across all EU capital markets simultaneously, are the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority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

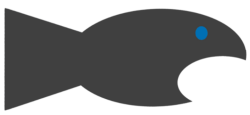
Better Finance strongly believes that the advantages of having an EU prospectus regime, whereby the same disclosure standards are applied across the EU and whereby a prospectus, once approved by the home competent authority, enables an issuer to raise financing across the whole EU, clearly outweigh the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

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

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

No. Ideally, the threshold should be brought to zero (i.e. the exemption should be deleted). This does not mean that disclosure requirements should be the same for each offer of securities, regardless of the total consideration. Instead, a proportionate disclosure regime should be applied whereby the disclosure requirements are based on the degree of risk of not recovering





The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

one's initial investment at maturity and the total value of securities owned by the investor at the end of the offer.

In any case, the threshold should not be adjusted upwardly.

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

No. Ideally, the threshold should be brought to zero (i.e. the exemption should be deleted).In that case, requirements on the information that must be provided can however be less stringent (i.e. proportionate) for offers with a total consideration below EUR 75 000 000. In any case, the threshold should not be adjusted upwardly. The benefits that such an upward adjustment provides to issuers do not outweigh the negative effects it has on individual investors.

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

No. Ideally, the threshold should be brought to zero (i.e. the exemption should be deleted). Better Finance finds it is illogical and dangerous that any offer of securities addressed to a number of natural or legal persons per Member State below the number of 150 persons, other than qualified investors or relatives, would be exempted from the requirement to produce a prospectus. In this respect, it is also important that the Commission looks at how to deal with the 'retailisation' of products that were initially only sold to qualified investors. The effects of the removal of this exemption could be mitigated by making it easier for individual investors to qualify as 'qualified investor'. In any case, Better Finance believes that the threshold should not be adjusted upwardly. The benefits that such an upward adjustment provides to issuers do not outweigh the negative effects it has on individual investors.

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

Yes, up from EUR 100 000 with no upper limit, the denomination per unit does not tell us anything about the professionalism of the investor. However, requirements on the information that should be provided can be less stringent (i.e. proportionate) for offers with a denomination per unit above a certain value. In any case, Better Finance believes that the threshold should not be adjusted downwardly. The benefits that such a downward adjustment provides to issuers do not outweigh the negative effects it has on individual investors.

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

Yes, in order to move to a genuine European capital market, Better Finance supports maximum harmonization when it comes to prospectus rules. Convergence of disclosure requirements in EU Member States would be beneficial to the safety and soundness of the financial markets, would contribute to ensuring the same level of consumer protection and would help creating a level playing field for financial service providers. A full harmonisation at EU level would therefore be

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

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 (Market efficiency).

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

Yes, Better Finance believes that the Commission should look at the following non-transferable securities when analysing the appropriate range of securities: closed-end funds, structured products and embedded derivatives, money-market instruments and derivatives.

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

No, Better Finance believes that a prospectus should be drawn up with each type of offer or admission to trading (except for, in some instance, secondary issuances (see Q8), and for offers exclusively to qualified investors (see Q 4(c)). Better Finance supports an extension of the proportionate disclosure regime and incorporation by reference in order to alleviate administrative burdens for certain offers/issuers.

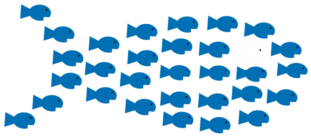
(8) Do you agree that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, providing relevant information updates are made available by the issuer?

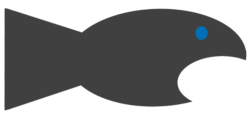
Yes, as a prospectus has already been published with the IPO, Better Finance believes it is not necessary to publish a new one if the secondary offering takes place within 3 years after IPO and does not involve more than 10% of the shares that have already been issued. However, in any case, relevant information updates should be made available and the summary prospectus updated. And if any (positive or negative) material changes have taken place that might have an impact on the (individual) investor's investment decision or meet the standard of price-sensitive information, a new prospectus should nevertheless be published and approved ex ante.

A proportionate disclosure regime might be applied to this new prospectus and incorporation by reference should be facilitated.

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

No amendment. In case of secondary issuances representing more than 50% of the shares, a prospectus should be published.





The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

(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?

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

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

Yes, on all MTFs. Better Finance sees no reason to make a distinction between MTFs (and other alternative trading venues such as SIs) and regulated markets when it comes to the obligation to publish a prospectus, since we believe that there should be no discrimination between trading venues. Individual investors that want to have access to MTFs should obtain the same information regarding the issuer, the offer and the securities as on regulated markets. The rules should moreover be harmonized across the EU.

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

No, whether a proportionate disclosure regime applies or not should not depend on the type of market the securities are offered to the public or admitted to trading, but on the type of issuer or the type of offer.

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

A proportionate disclosure regime could be applied and, insofar as information is equal, incorporation by reference may be used.

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

We consider that this depends on whether employees of non-EU private companies can be expected to have the knowledge necessary to decide whether to invest without having the

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

ability to obtain a prospectus. Better Finance highly doubts whether this is the case in most instances, even in case of EU private companies.

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

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

If you have answered yes, do you think that:

a) the EUR100 000 threshold should be lowered?

No, see justification above Q15

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

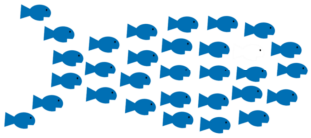
No, a proportionate disclosure regime should apply to issuers of debt securities with a denomination per unit of above EUR 100 000.

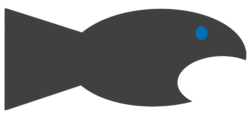
c) the EUR 100 000 threshold should be removed altogether and the current exemptions should be granted to all debt issuers, regardless of the denomination per unit of their debt securities?

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

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

Better Finance is supportive of a proportionate disclosure regime, in particular for companies with a reduced (small) market capitalization.





The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

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

a) Proportionate regime for rights issues

Don't know/no opinion

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

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

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

Don't know/no opinion

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

a) Proportionate regime for rights issues

Textbox: [ ]

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

See Q17b

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

Textbox: [ ]

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

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

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

(20) Should the definition of "company with reduced market capitalisation" (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000?

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

A capitalisation limit of EUR 500 million would be more appropriate to limit administrative burden for small cap SMEs.

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

Yes, 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. A thoroughly improved summary prospectus s advocated for by Better finance for many years now will help as well (see reply to Q27).

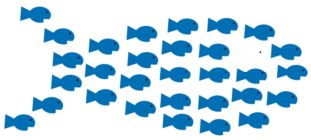
(22) Please describe the minimum elements needed of the simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market.

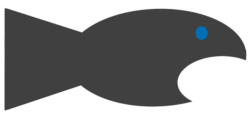
An amended proportionate disclosure regime should be applied to SMEs and companies with reduced market capitalisation, regardless of whether they are offered or admitted to trading on regulated markets, MTFs (including SME growth markets) or other market venues.

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

Better Finance believes that incorporation by reference should be facilitated in order to lower the administrative burden for issuers that have to comply with different sets of partially overlapping disclosure requirements, for SMEs/companies with reduced market capitalisation as well as secondary offers that fall within the scope of the Directive. To ensure this does not go at the expense of investor protection, the documents that are referred to should be accessible at the same location (e.g. website, database) as the prospectus. Moreover, we believe that there should be a minimum storage period that could be aligned with the limitation period for liability claims, in order to help investors in case something goes wrong and they intend to claim damages. Using references should not be allowed in revised summary prospectus.

(24) a) Should documents which were already published/filed under the Transparency





The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

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

No, all the information that is necessary for individual investors to make informed investment decisions should be easily accessible and be included or referred to, in the prospectus. One cannot assume that potential investors have anyhow access and thus knowledge of the contents of the documents that have been published under the Transparency Directive.

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

Don't know/No opinion

(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?

No, in these circumstances, a supplement to the prospectus should always be provided by the issuer and approved by the competent authority.

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

Don't know/No opinion

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

a) Yes, regarding the concept of key information and its usefulness for individual investors
b) Yes, regarding the comparability of the summaries of similar securities and other substitutable investment products.

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

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

Currently, the summary prospectus is of an appalling quality:

- it is written in legal language, not intelligible for the vast majority of individual investors;
- it is not formatted;
- not comparable from one another;
- can be very long (more than 10 pages)
- not always including the key information (like the interest rate for a fixed rate bond SP).

Better Finance therefore proposes to thoroughly improve the summary prospectus. The summary prospectus should, read on its own, provide the investor with an overview of all the key information 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 summary prospectus. The length should be limited to 5 pages.

The Summary Prospectus – if it is to be of any use to investors – must become:

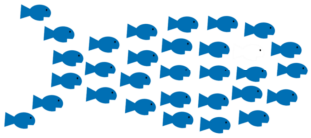
- single format (comparable)
- short (if not it will not be read)
- in layman's terms
- fully detachable from the main prospectus
- same legal liability status as the KID for UCITS funds (see the UCITS IV Directive).

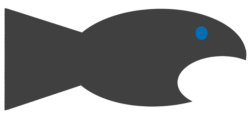
Value-enhancing measures should moreover include a requirement for an adequate readability of the (summary) prospectus accompanied by the introduction of a risk-weighting model that shows (potential) investors the probability of risk occurrence and the risk impact.

Better Finance fully supports the development of risk labels for financial products which indicates the risk level of savings and investment products in a highly standardized format. It is intended to enable retail clients to gain an initial insight into the risk associated with such products.

(28) For those securities falling under the scope of both the packaged retail and insurance-based investment products (PRIIPS) Regulation8, how should the overlap of information required to be disclosed in the key investor document (KID) and in the prospectus summary, be addressed?

Other: Incorporation by reference. Better Finance is not asking to duplicate the summary information requirements from issuers: in that case, the PRIIPs KID should validly serve as the summary prospectus as well.





The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

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

No. As the Commission itself stated in the consultation document, by introducing a maximum length issuers will be tempted to put information in supplements. Better Finance proposes to improve the summary prospectus. This document should, read on its own, provide the investor with an overview of all the material risks associated with a certain investment decision. The information provided and risks addressed, should be arranged by the issuer to the level of importance. The length of the revised summary prospectus should be limited to 5 pages and it should have civil liability attached, like the UCITS KID.

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

Yes, Better Finance believes a length limit of five pages should be applied to the revised summary prospectus. However, in order to prevent issuers from having to omit necessary information, the competent authority should be able, under strict circumstances, to allow for a longer summary prospectus. However, the extended summary prospectus should never exceed 10 pages.

(31) Do you believe the liability and sanctions regimes the Directive provides for are adequate? If not, how could they be improved? Yes, No or No opinion

- ***the overall civil liability regime of Article 6****:* No
- ***the specific civil liability regime for prospectus summaries of Article 5(2)(d):*** No (see Q27) ***and Article 6(2)***
- ***the sanctions regime of Article 25:*** No

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

Don't know/no opinion

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

Don't know/no opinion

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

Yes, Better Finance supports maximum harmonisation in this respect.

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

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

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

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

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

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

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

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

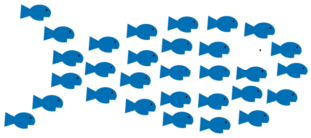
Risk-based approach can lead to supervisory gambling. Ex-post can lead to problems. What if information essential to investor decision has been omitted? The preferred option is therefore to review all prospectuses ex ante.

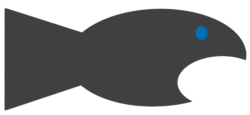
(38) Should the decision to admit securities to trading on a regulated market (including, where applicable, to the official listing as currently provided under the Listing Directive), be more closely aligned with the approval of the prospectus and the right to passport? Please explain your reasoning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

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

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

Don't know/no opinion





The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

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

No, not as long as there is not sufficient harmonization of approval and scrutiny.

(40) Please indicate if you would support the following changes or clarifications to the base prospectus facility. Please explain your reasoning and provide supporting arguments:
(I support, I do not support and justify)

a) ***The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed:*** I do not support
b) ***The validity of the base prospectus should be extended beyond one year:*** I do not support
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***
d) ***document has already been filed and approved by the NCA:*** I do not support
e) ***Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs:*** I do not support
f) ***The base prospectus facility should remain:*** I do not support
g) ***Other (please specify)***

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

Better Finance believes that the tripartite regime should be abolished. The prospectus should be a single document of which the different components are approved simultaneously and by the same competent authority. In addition, all relevant information and documents should be published in a centralised manner on the issuer's company website.

But the summary prospectus should be fully detachable from the main prospectus to facilitate its dissemination to retail distributors and to individual investors.

(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? If so, how?

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. The home Member State should always be prescribed by law.

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

(43) Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed (deletion of Article 14(2)(a) and (b), while retaining Article 14(7), i.e. a paper version could still be obtained upon request and free of charge)?

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

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

Yes. This could increase accessibility, also comparability. However, it should be complementary to the obligation of issuers to publish the prospectus on, for example, their own website. It should further more be clear to the investor that the authority managing the platform (e.g. ESMA) does not guarantee the correctness of the information provided in the prospectus.

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

Accessibility, comparability and transparency.

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

(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)?

b) Such a prospectus should be approved by the Home Member State under Article 13 to ensure high level of investor protection,

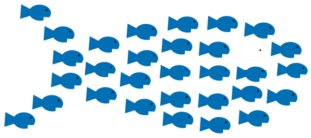
(48) Is there a need for the following terms to be (better) defined, and if so, how:

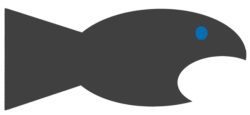
a) "offer of securities to the public"

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

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

Don't know/no opinion





The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu

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

Don't know/no opinion

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

Better Finance insists on the importance to revise the summary prospectus, and promotes comparability with other pre-contractual disclosure documents for substitutive retail investment products. The length of the summary prospectus should be limited to 10 pages (instead of 25).

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

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

The biggest weakness of the current Prospectus Directive is that neither the Full nor the Summary prospectuses are readable for investors, individual ones in particular. Especially, the summary one is totally useless in its current form for investors.

The European Federation of Financial Services Users
76, rue du Lombard, 1000 Brussels - Belgium
Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66
E-mail: info@betterfinance.eu - http://www.betterfinance.eu