Deutsches Aktieninstitut

Facilitating capital market finance by using current opportunities of access to information

What has already been published does not need to be part of a prospectus

Position of Deutsches Aktieninstitut e.V. [TransparencyReg. No.: 38064081304-25] on the EU Commission's Consultation Document "Review of the Prospectus Directive", 13 May 2015.

Acronyms used for Directives and Regulations:

Prospectus Directive	=	Directive 2003/71/EC in its latest version
Prospectus Regulation	=	Regulation (EC) No 809/2004 in its latest version
Transparency Directive	=	Directive 2004/109/EC in its latest version
Accounting Directive	=	Directive 2013/34/EC in its latest version
Market Abuse Regulation	=	Regulation (EC) No 596/2014

Although the Market Abuse Regulation will only enter into force in July 2016, Deutsches Aktieninstitut took only this regulation and not the Market Abuse Directive 2003/6/EC into account because it will be into force before the Prospectus Directive becomes changed.

Summary

Question 2: Costs of prospectuses (s. page 4).

Prospectuses are long and difficult to read, even the summary. Preparing a prospectus is expensive, requires a lot of time and is burdensome.

Banks, lawyers and auditors are involved in the writing of prospectuses. Beside these external costs, also internal efforts and costs arise. Costs can hinder issuers from preparing a prospectus because of their amount. The writing of a prospectus requires a lot of time and therefore the time before a security can be sold to the market is prolonged (time to market) which is why preparing a prospectus is often a hindrance to the use of beneficial circumstances of capital markets. To use a "window of opportunity" requires the ability of issuers to act swiftly, especially in capital increases of shares. Corporate issuers try to avoid the preparing of a prospectus by using thresholds or other exemptions as often as possible. But these possibilities are limited. For debt issuances many corporate issuers use base prospectuses to simplify the necessary drafting of the prospectus. However, the use of base prospectuses has been significantly limited.

Detailed information about the costs of prospectuses is hardly to provide. Every single issue, and every single issuer have its own conditions which influence the price of the prospectus and is therefore depending on the individual case. Hence, Deutsches Aktieninstitut can only provide average figures, compiled from different opinions of German lawyers and issuers.

Thereby, please take into account that banks also take part at the preparation of prospectuses. However, their costs are not specific relatable the prospectuses because they are included in the bank fees. These bank fees are usually calculated as a percentage part of the gross proceeds, received for the individual issue. Like the audit costs, the amount of bank fees primarily depend on the probability of default. As higher the risk is, so higher is the fee or audit cost.

Accordingly, the costs of prospectuses amount to:

- IPO prospectuses;
    - **sum external costs** EUR 1,706,500 EUR; audit costs: EUR 1 Mio.; legal fees EUR 700,000; competent authorities' fees EUR 6,500;
    - **Bank fees** amount between 0,5% to 2% of the gross proceeds.
- Stand-alone non-equity prospectuses (secondary issuance):
    - **sum external costs** EUR 125,000; audit costs EUR 45,000; legal fees EUR 75,000; competent authorities' fees 6,500; **internal costs:** EUR 50,000, respectively 1-2 months FTE[1];
    - **bank fees** are about 20-25 basis points for investmentgrade issuers and 30-35 basis points for subinvestmentgrade issuers;
    - **in the case of an initial bond offering** – if not already shares are admitted to trading on a regulated market – audit costs can amount to EUR 600,000;
- Base prospectuses:
    - **sum external costs:** EUR 117,500; audit costs EUR 50,000; legal fees EUR 52,500; competent authorities' fees EUR 15,000; **internal costs** EUR 45,000, respectively 2 months FTE;
- Annual update of base prospectus:
    - **sum external costs** EUR 55,000; i.a. legal fees EUR 25,000; competent authorities' fees EUR 6.500; **internal costs** for annual update 1 month FTE;
- In the case of base prospectus, costs of single tranche:
    - **sum external costs** EUR 12,000; i.a. legal fees EUR 7,500;
    - **bank fees** 0,25% to 1% of gross proceeds;
- Supplements
    - legal fees EUR 5,300; competent authorities' fees EUR 84;
- Deutsches Aktieninstitut estimates that 50% of the total costs would reduce if the obligation to prepare a prospectus were repealed. But, this also depends on the specific situation. The reduce might be higher in the case of well-known issuers with repeated issuances and might be lower for initial offerings.

[1] Full time employee (FTE).

To get an impression about the average of the total costs of a whole issue process, the EU Commission might evaluate the data about the estimated total expenses, usually disclosed in the securities notes in the case of public offers.

Furthermore, notwithstanding these high costs and efforts, prospectuses are hardly read by investors, which is understandable. Retail investors trust the available information on the internet and/or their bank advisors. Institutional investors base their investment decisions on an evaluation of publicly available information and on recommendations of analysts. Investors are glad if someone offers them only a reduced selection of information from which the investor can choose the relevant data.

! As a result, preparing a Prospectus Directive compliant prospectus is often without real benefit for investors. Consequently, the prospectus regime has to change.

In the opinion of Deutsches Aktieninstitut, capital market finance of non-financial companies can be fostered in the following proposed manner.

Summarising its position, Deutsches Aktieninstitut is recommending:

1. To change the Prospectus Regime not only the Prospectus Directive but also the Prospectus Regulation has to become subject of the change. Thus, the EU Commission should draft a new annex of the Prospectus Regulation which approaches so called “secondary issuances”.

2. This Annex should require that prospectuses for such secondary issuances should only contain information with regard to the securities notes (terms and conditions) and some information with regard to the issuer. This reduced prospectus should not contain information which has already been published/disclosed by other European provisions such as the Transparency Directive, Accounting Directive, Market Abuse Regulation (such already published information is usually related to the issuer – commonly contained in the registration document – , i.a. its financial position, corporate governance etc.).

3. It should not be necessary to incorporate such information by reference.

4. Regarding changes of information which has already been published, the reduced prospectus should only contain information with regard to significant changes in recent developments, outlook and investments. To obtain a clear and legal certain rule, the grade of significance should pursue the grade of significance of the obligation to disclose inside information.

5. Any information equired by the Prospectus Regime should be assessed regarding the question whether it really meets the benchmark in Art. 5, 16 Prospectus Directive – the necessity for the decision of the investor.

6. What is not content of the prospectus should also not be content of the prospectus liabilty. The liability systems of other European provisions such as the Transparency Directive, the Accounting Directive and the Market Abuse Regulation for inaccurate or misleading information are sufficient to provide maintain a high level of investor protection.

7. The provision of Art. 16 Prospectus Directive, the right to withdraw, should be suspended if the Market Abuse Regulation is applicable, to give a clear difference between primary and secondary market obligations.

→ As a result, in the case of so called “secondary issuances”, the issuer only has to publish a prospectus containing the terms and conditions and significant changes of information which have already been published in other statements or reports.

In the event of not following this approach, Deutsches Aktieninstitut recommends at least the following points:

1. The incorporation by reference-mechanism should be kept flexible. A restrict approach would be burdensome and impede the attractiveness of capital market finance. The issuer should incorporate any document approved by a NCA or filed with it, even on a voluntary basis and should not be restricted to documents published due to the Transparency Directive. In the latter case, quarterly reports could not be incorporated anylonger.

2. A clear distinction between primary and secondary market obligations is necessary. The provision in Art. 16 Prospectus Directive, the right to withdraw, should be suspended if the Market Abuse Regulation is applicable.

Beside these points, Deutsches Aktieninstitut recommends:

1. The obligation to publish a prospectus in the mere case of an application for admission to trading should be repealead if it concerns a secondary issuance. This prospectus usually does not enable any investor to make an investment decision.

2. The obligation to prepare a prospectus should not be extended to the “admission” to trading on a MTF.

3. The exemption thresholds for secondary isssuances should be increased to 20%. Especially smaller investors need cheap opportunities to fund capital. A capital increase should therefore be faciliated.

4. Enhance the EU passporting and notification-system. NCAs of the host Member State must not be allowed to require additional information and confirmations beside the requirements of the prospectus regime.

5. Foster the electronic publication of prospectuses and the acccess to information relevant for investors by integration a prospectus databank in the European Electronic Access Point-System.

1 Which information should be provided by a prospectus?

Question 8: Should a prospectus lifted or mitigated for any subsequent secondary issuances of the same securities – Yes.

Question 24 b: Do you see possibilities to better streamline the disclosure requirements of Prospectus Directive and the Transparency Directive? – Yes.

Question 25: Could the obligation to disclose an inside information substitute the requirement to publish a supplement in order to streamline the disclosure requirements between Market Abuse Directive (Regulation in future) and Prospectus Directive? – Yes.

Question 26: Do you see possibilities to better streamline the disclosure requirements of the Market Abuse Directive (Regulation in future) and the Prospectus Directive? – Yes.

1.1 The current approach

According to Art. 5, 16 Prospectus Directive, the prospectus shall contain all information which […] 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.

The objective of this article is to provide the investor with a complete set of information required in only one document (with exemptions in respect to base prospectus and tripartite documents). As a result, while the aim to provide all information which is theoretically in the best interest of the investor, prospectuses have a length of many hundred pages. This length makes it unpractical for anyone to read the prospectus, especially retail investors. The lack of utility is already explained above.

In 2003, when the EU Commission decided that there is a need of a single document, the Transparency Directive from 2004 had not been in force and the Market Abuse Directive had been enacted only shortly before, but had not yet been transposed at this time. In addition, the access to internet and websites for

full information about issuers and their securities was not common and not possible as it is today. Since 2003 and especially in the aftermath of the financial crisis the obligations of the market abuse and transparency rules were strengthened and the obligations regarding disclosure of information for issuers of securities which are admitted to trading on regulated markets have increased to a great extent. Because of the availability in the internet every investor nowadays – in contrast to 2003 – has access to these increased amount of information.

Hence, Deutsches Aktieninstitut has the view that the approach of Art. 5, 16 is no longer state of the art and may not be necessary to protect consumers and investors. The objective should only be that the investor shall have access to all relevant information but it should not be mandatory to include such information in a prospectus as long as the relevant information is already available for investors. Due to its availability, already published information should not be copied and repeated in a prospectus. Only information, which is not already required by other provisions and is relevant for the investor should be published in a prospectus.

To identify which information still has to be in the prospectus, (1.2) the different obligations of the different Directives, Regulations and other provisions have to be analysed and compared by the EU Commission. The annexes of the Prospectus Regulation can serve as a guideline which information could be relevant. (1.3) The remaining information has to be analysed for its relevance for the consumer and investor. Benchmark is Art. 5, 16 Prospectus Directive. (1.4) Finally, it has to be analysed whether investor protection could suffer if the prospectus would only contain information which has not already been published due to other obligations. This analyse has to focus on the question whether the issuer remains liable for the published information.

1.2 Comparison of data contained in reports, financial statements and other publications

The Transparency Directive is only applicable if the issuer`s securities have been admitted to trading on a regulated market which is why the following comparison does not consider the situation of an Initial Public Offering (IPO). It is focused on so called “secondary issuances” like capital increases and bond issuances, when the issuer has his shares or bonds already admitted to trading on a regulated market. In this case, the Transparency Directive is already applicable and requires the publication of much information.

1.2.1 Information in Registration Documents

The Annexes I and IV comprise provisions for the registration document of issuances. Much information has to be mentioned in both share and debt/bond prospectuses. To this belongs information about the administrative, management and supervisory bodies, their board practices, major shareholders, the organisational structure, historical financial statements, corresponding selected financial information, statutory auditors, historical information about the issuer, related party transactions and risk factors with regard to the issuer.

All of this information is also repeated to be published periodically in the financial statements, their notes or the management report. For instance, data of corporate governance like details about the administrative, management and supervisory bodies and their board practices is subject to the corporate governance statement in Art. 20 and Art. 29 Accounting Directive. The issuer's role within a group is explained in its financial statements. Since the opinion of the statutory auditors has to be published together with the financial statement and the management report, names and addresses of the issuer's auditors are also available. Related Party Transactions are subject to i.a. Art. 28 Accounting Directive. Risk factors with regard to the issuer are already contained in the management reports.

Not published due to other obligations is information specifically referring to changes since the last (interim) financial statement or management report. This might be, for instance, trend information and outlook (e.g. item 8.1. and 8.2., Annex IV PR).

Furthermore, there are a couple of provisions which differ between the different obligations. For instance, the items 2.2. of annexes I and IV Prospectus Regulation require details if auditors have resigned, been removed or not been re-appointed.

1.2.2 Information in Securities Notes

Information required by annexes concerning the securities notes, especially their terms and conditions in the case of debt securities, are usually not already mentioned in other statements or reports because it is only related to the single issue. This belongs also to the information about risk factors with regard to the securities which is also not required by other obligations.

1.3 The relevance of the remaining information

1.3.1 Information referring to changes

According to the experiences of Deutsches Aktieninstitut, investors are only interested in changes in recent developments, outlook and investments. Any prospectus for "secondary issuances", independently whether following Deutsches Aktieninstitut's approach, should therefore only contain information about such changes.

Grade of Significance?

In addition, the question when information has a grade of relevance which requires the information to be included in the prospectus, should be answered by comparing the required level of relevance in the Market Abuse Regulation.

Information which is contained in the latest management report could have changed in the meantime (so called trend information). However, it is not necessary to make them in principle subject to a prospectus in the case of "secondary issuances". If this change is relevant for the investor it fulfils the conditions of an inside information, too, and has to be published under the specific provisions of the Market Abuse Regulation.

According to Art. 7(1)(a) of the Market Abuse Regulation inside information is an 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 or on the price or related derivative financial instruments.

Pursuant to Art. 7(4) of this Regulation significant effect shall be information a reasonable investor would be likely to use as part of the basis of his or her investment decision. Art. 7(4) Market Abuse Regulation is therefore focused on the same objective as Art. 5, 16 Prospectus Directive. As long as the investor has access to the management report and there was no change in the meantime which may have a significant effect on the price, there is no additional new information that might be seen as being relevant for the investor's decision. If it were relevant, the issuer would have to disclose it due to the Market Abuse Regulation.

As a result,

the prospectus should only contain changes in recent developments, outlook and investments which are of such relevance.

1.3.2 Other information

Information required by the annexes concerning the securities notes have to become reviewed, whether they are necessary for the investor's investment decision. The most important information are the terms and conditions of debt securities.

1.4 Impact on investor protection

In the opinion of Deutsches Aktieninstitut, information which is not included in a prospectus does not need to be subject to the prospectus liability. The compensation claims for inaccurate or misleading information provided by the Transparency Directive, the Market Abuse Regulation and Accounting Directive are sufficient for the purpose of investor protection.

Art. 25 Prospectus Directive comprises the sanctions. According to paragraph 1, there have to be appropriate administrative measures or administrative sanctions against the persons responsible, if provisions are not complied with. Paragraph 1 is of no impact on the national civil liability regime. Paragraph 2 comprises the naming and shaming principle.

E.g. only paragraph 2 sets a clear legal consequence. Paragraph 1 gives no indication on what the legal consequence has to be in the event of not complying with the provisions of the Prospectus Directive.

Hence, the Prospectus Directive, in combination with the Prospectus Regulation, only describes what is deemed to be relevant for the investor's decision in the opinion of the EU legislator and what, therefore, should be content of a prospectus. But, these rules do not set detailed standards for the question of liability and sanctions.

Regarding the legal consequences, it is only necessary that legal consequences exist for breaches. The Transparency Directive provides a detailed sanction system in its articles 28, 28a, 28b, 28c and 29. Regarding the Market Abuse Regulation, it is article 23 and articles 30 to 34. The Accounting Directive comprises its sanctions in article 33 and 51. All of them are more specific than the provision in Art. 25(1) and offer appropriate investor protection rights.

In addition, there are national civil liability regimes which provide legal remedies against infringements of obligations.

Consequently, investor protection does not suffer, if already published information is only subject to the liability and sanction system of the relevant regulatory regime which requires them.

1.5 Special case: Supplements and the right to withdraw

Pursuant to Art. 16(1) Prospectus Directive, every significant new factor, material mistake or inaccuracy relating to information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement.

According to paragraph 2, in the case of a public offer, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances, provided that the new factor, mistake or inaccuracy referred to in paragraph 1 arose before the final closing of the offer to the public and the delivery of the securities.

The right to withdraw is a specific legal consequence of the Prospectus Directive. But, in particular in the case of secondary issuances, this right should not be applicable.

1.5.1.1 The application of the right to withdraw in the phase of secondary trading

According to Art. 16 Prospectus Directive, supplements have to be published between the time when the prospectus is approved and the final closing of the offer to the public or, as it may be, during the time when trading on a regulated market begins, whichever occurs later.

Because of the expression “whichever occurs later”, the point when a public offer ends can be uncertain. Does the public offer continue or even arise when the intermediary banks offer the new bonds to their investors? At this time, the bonds are already issued and already traded. Market Abuse Regulation and Transparency Directive – both typical laws of secondary markets – meet the provisions of the Prospectus Directive, a primary market law. In this case, the above mentioned conflict of supplements and inside information disclosure occurs.

1.5.2 Solution of the conflict between the right to withdraw and specific secondary market rules such as the disclosure of inside information

When new information is deemed to be capable to affect the assessment of securities, in almost every case, it fulfils the criteria of an inside information and therefore the requirements of Art. 17 Market Abuse Regulation. Hence, the issuer has to publish a supplement and to disclose the inside information.

However, these two disclosure obligations are contradictory. A supplement has to be approved within seven days by a NCA[2]. In principle the inside information has to be disclosed as soon as possible. However, the disclosure of an inside information might be delayed if several conditions are met. Supplements cannot be delayed. This could result in a situation where the issuer wants to delay the disclosure of an inside information but cannot do it because of the obligation to publish a supplement, especially in case the company is a frequent issuer.

Therefore, the issuer usually will do both publish the supplement and disclose the inside information. However, while the inside information got disclosed immediately, the supplement has to be approved with the consequence of the right to withdraw for the investors.

As a result, the investor may notice the disclosure of inside information and can subscribe for securities of the issuer. After approval (usually a working day or two later) the supplement will be published. In the next two following days, the investor has the right to withdraw, independently of whether the new information was material for him and independently of whether he has already noticed the disclosed inside information before he took the decision to invest. Hence, with the disclosure of inside information the investor can speculate on the development of the securities price.

! To avoid this contradictory provisions, Art. 16 Prospectus Directive should be suspended in principle, if the rules of the Market Abuse Regulation are applicable. With this distinction a clear difference between primary and secondary market obligations would exist. Only changes of the terms and conditions should result in a supplement of the prospectus.

[2] Abbreviation for national competent authority / competent authority of the home Member State.

1.6 Conclusion: The future prospectus should only contain information not already covered by other publications already provided to the public and significant changes thereof.

Considering that investors usually do not read the prospectus due to its size and considering that the preparation of a prospectus is very burdensome and expensive for the issuer, providing all information in the prospectus has not achieved its goal. If only very few people read the content of a prospectus, the provision of setting up one is disproportionate. Please also note that due to the incorporation by reference-system, many prospectuses only reference important information (e.g. financial statements) anyhow and therefore investors already have to review documents outside prospectuses. In addition, today, in contrast to the circumstances in 2003, investors have easy access to all relevant information via the internet.

As a result, if prospectuses should only contain information not already published, reading prospectuses would become more attractive, reduce legal and economic burdens for issuer and investor protection would not suffer.

Publishing a reduced document would avoid double reporting of the same information and would shorten the “time-to-market” duration. The latter would be a material benefit for corporates because it enables them to use beneficial market circumstances in a much shorter time (window of opportunity). This will support capital market financing of corporate issuers.

! Deutsches Aktieninstitut therefore recommends to draft a new annex for such secondary issuances. The content should be (1) securities related information (which has the EU Commission proofed of its necessity for the investor’s decision), including the terms and conditions, and (2) changes to already published information with regard to recent developments, outlook and investments which are of significance like required by Art. 17 Market Abuse Regulation.

In regard to IPO prospectuses, the required information by the annexes should only proofed of its necessity for the investor’s decision.

But, new issuers, who have parent undertaking as a guarantor, should also fall under the scope of the reduced prospectus because not their financial position is relevant for the investor but the financial position of the guarantor.

2 Limiting the length of prospectuses

Question 29: Would you support a introducing a maximum length to the prospectus? – No.

Question 30: Alternatively, are there specific sections which could be made subject to rules limiting excessive lengths? – Not necessary.

Deutsches Aktieninstitut strongly objects the limitation of the prospectus as such or specific sections of the prospectus. According to the requirements it remains the issuer's responsibility to include all information necessary. A limitation would trigger material prospectus liability risks for issuers. Issuers need the freedom to include whatever they deem material or necessary to inform their investors.

In any case, a limit is not necessary. If the EU Commission follows Deutsches Aktieninstitut's approach as described in chapter 1, prospectuses will become much shorter.

3 Thresholds and proportionate disclosure regime

Question 4: Should the exemption thresholds be adjusted?
- the 5 Mio. € threshold of Art. 1(2)(h): - Yes to 20 Mio. €.
- the 75 Mio. € threshold of Art. 1(2)(j): - No opinion.
- the 150 persons threshold of Art. 3(2)(b): - Yes, to 500 persons.
- the 100.000 threshold of Art. 3(2)(c)&(d): - No.

Question 15: Is the 100.000 € exemption detrimental to liquidity in corporate bond makets? – No.

Question 9: How should Art. 4(2)(a) be amended? – The 10% threshold should be raised to (at least) 20%.

Question 16: Has the proportionate disclosure regime of Art. 7(2)(e)&(g) improved efficiency? – No.

Question 17: Use of the proportionate disclosure regime in practise:
a) for rights issues – No.
b) for SMEs – No.
c) for issues by credit institutions – No opinion.

Question 18: Modification of proportionate disclosure regime needed? – Yes, in the in chapter 1 described manner but applicable for all issuances, if the Transparency Directive is already applicable.

Question 19: Extension of the proportionate disclosure regime – Yes, in the in chapter 1 described manner but applicable for all issuances, if the Transparency Directive is already applicable.

3.1 Thresholds of Art. 1 and 3

In the opinion of Deutsches Aktieninstitut the threshold should be adjusted to give smaller companies more opportunities for growth without the burden of a prospectus. Consulting different law firms, Deutsches Aktieninstitut found out that almost every company tries to not reach the thresholds because of the high costs. As growth of (especially smaller) companies is one of the goals of the Capital Market Union, Deutsches Aktieninstitut recommends to adjust the thresholds in the above mentioned manner. The proposed figures are the result of discussions on European level with our associated partners like EuropeanIssuers.

3.2 Impact of the 100,000 € threshold on liquidity in corporate bond markets

Deutsches Aktieninstituts wants to remind, that the 100,000 € threshold did not cause the lack of liquidity in corporate bond markets. The market for securities with a minimum denomination of 100,000 is dominated and run by institutional investors. These investors are able to inform themselves regarding the issuers. Most issuers of these securities are subject to secondary market transparency according to the Transparency Directive anyhow, due to the listing of their stock or other debt issues on a regulated market. This is why the 100,000 € exemption is justified.

Regarding the lack of liquidity in corporate bond markets, Deutsches Aktieninstitut has repeatedly pointed to the dangers of negative interferences between the different laws of the regulatory framework, and we continue to believe this subject is not given the necessary attention. With regard to the stated interest in fostering liquidity in EU bond markets, the Commission has to understand that some of the new rules being implemented for Basel III through CRD/CRR IV are highly counterproductive to this objective. The interplay of higher capital requirements with new requirements like Liquidity- or Leverage Ratio is leading broker/dealer banks to massively reduce inventories on their trading books, which in return is resulting in lower liquidity in bond markets which can be observed across all sectors. In our opinion this is certainly a significant obstacle to EU bond markets, and not the degree of individuality of issues being traded. We would strongly recommend to analyze if there are ways to change some of the settings in CRD/CRR or on Pillars 2 and 3 to revive secondary market trading. A further regulatory obstacle is the currently developing EU framework on bank structural reform, as it might prohibit many (so-called “core”-) banks to perform market-making activities, which are also crucial to liquidity. Market-making should not be subject to mandatory institutional separation.

In a nutshell: Liquidity in corporate bond markets depends on the ability of banks and large institutional investors to hold inventory, and to engage in market-making activities at an acceptable cost. The ultra low interest rate environment further contributes to this problem as investors holding bonds with a higher coupon than the current interest rates most likely do not sell these bonds. Thus, an additional supply factor has been weakened in the past years.

3.3 Threshold of Art. 4(1)(d)

Regarding thresholds for the issuance of shares in the event of capital increases, in the opinion of Deutsches Aktieninstitut, independently of whether shares are only offered to existing shareholders or to the public, there should be only a Secondary Issuance Document. This should mention the use of proceeds and give other information only related to this special issuance (justification s. above). Alternatively, the document mentioned in Art. 4(1)(d) could be used as an adequate standard.

In the case of the EU Commission not being convinced to follow this approach, Deutsches Aktieninstitut recommends to raise the threshold in Art. 4(2)(a) Prospectus Directive to 20 or 30%. In its experience, every corporate tries to avoid the obligation of a prospectus because of its costs and efforts. Capital increase is, especially for smaller investors, necessary to develop. With the increase of the threshold and/or by only publishing an SID or a document like at issuances of shares as dividends the corporates might use the opportunity of capital market finance to a greater extent.

3.4 Proportionate Regime

According to the experience of Deutsches Aktieninstitut, the proportionate regime for rights issues is not used because of uncertainties regarding the question of liability. That forces the issuers to prepare a “full prospectus”.

4 The incorporation by reference-mechanism

Question 23: Should the provision of Art. 11 (incorporation by reference) be recalibrated to more flexibility? – Yes. But this is only necessary, if the prospectus has still to mention what is already published due to obligations of the Transparency Directive etc.

Question 24 a): Should documents which were already published/filed under the Transparency Directive no longer need to be subject to incorporation by reference? – Yes. For justification see chapter 1.

Question 24 b): Do you see possibilities to better streamline the disclosure requirements of Prospectus Directive and the Transparency Directive? – Yes. For justification see chapter 1.

Question 50: Identify any modification to the Directive which could add flexibility to the prospectus framework and facilitate the raising of equity or debt by companies? – Yes.

Question 51: Can you identify any incoherence? – Yes.

4.1 Background

In accordance with Art. 11 Prospectus Directive information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the NCA or filed with it.

Art. 28 Prospectus Regulation specifies this provision by giving an indicative list in its first paragraph. Therefore, in particular, information contained in annual and interim financial information, documents prepared on the occasion of a specific transaction such as a merger or de-merger, audit reports and financial statements, memorandum and articles of association, earlier approved and published prospectuses and/or base prospectuses, regulated information and circulars to security holders might be incorporated by reference.

4.2 Difference to approach of Deutsches Aktieninstitut as described in chapter 1

By incorporating information as mentioned in financial statements they become part of the prospectus and are still subject to its liability. In addition, the issuer has also to disclose supplements to cover changes of incorporated information, for instance, the change of a director. When new information is assessed as capable to affect the assessment of securities, in almost every case, it also fulfils the criteria of an inside information and therefore the requirements of Art. 17 Market Abuse Regulation (justification s. above).

4.3 Conclusion: The incorporation by reference-mechanism should not be maintained for information already published due to other obligations

This result is again the idea of Art. 16 Prospectus Directive. It can be solved by reducing the incorporation by reference-mechanism and by allowing that information which has already been published and accessible for the investor has not to be included in prospectuses. As shown above, investor protection will not suffer. With the approach of Deutsches Aktieninstitut incorporating information is not necessary.

4.4 Alternative: Adjust the incorporation by reference-mechanism

If the EU Commission doesn't follow the opinion of Deutsches Aktieninstitut, it should alternatively adjust the incorporation by reference-mechanism.

4.4.1 Solving the conflict of supplements and inside information disclosure

According to Art. 16 Prospectus Directive, supplements have to be published between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later. Because of the above mentioned reasons, the expression "whichever occurs later" could arise conflicts between typical

secondary market and primary market rules like the obligation of supplements and of the disclosure of inside information.

By insertion of a clear distinction between primary and secondary market obligations, this conflict would be solved. Deutsches Aktieninstitut therefore has the view that the wording should be adjusted to “whichever occurs earlier”.

Alternatively, the EU Commission should define the terms primary and secondary market and public offer to ensure legal certainty.

4.4.2 A more flexible approach would be useful

To facilitate the issuance of securities the incorporation by reference-mechanism should at least remain as flexible as it is today. The idea of ESMA in its Consultation Paper of December 2014[3] to exclude information which is not required by the Prospectus or the Transparency Directive would confine the advantages of the incorporation by reference-mechanism.

Please note, that according to the recent amendment of the Transparency Directive quarterly reports are not required anymore but might be required by stock exchanges (e.g. Prime Standard on the Frankfurt Stock Exchange). Hence, ESMA had the view that information in quarterly reports must not be incorporated by reference. This approach would lead to the wired situation, that the prospectus regulation in item 20.6.1. of annex I or item 13.5.1. of annex IV requires published quarterly financial statements but the issuer is not allowed to incorporate them which is why the issuer has to include the whole report in its prospectus. This would result in the extension of the length of the prospectus.

However, in the opinion of Deutsches Aktieninstitut, since these items of the Prospectus Regulation require quarterly reports and in accordance with Art. 7 Prospectus Directive the Prospectus Regulation only describes what the Prospectus Directive requires, quarterly reports are documents filed with NCAs in accordance with the Prospectus Directive and therefore fulfil the requirement of Art. 11 Prospectus Directive.

! To avoid legal uncertainty and to facilitate the issuance of securities, the EU Commission should give a clear direction with regard to Art. 11 by deleting the words “in accordance with this Directive or Directive 2004/109/EC.” It should only matter if the NCA allowed the filling with it or approved it.

[3] Consultation Paper „Draft Regulatory Technical Standards on prospectus related issues under the Omnibus II Directive”, ESMA/2014/1186, 24 September 2014.

5 Facilitate the base prospectus regime

The base prospectus regime is a facilitation for bond issuers. However, in the opinion of Deutsches Aktieninstitut there are some provisions which have to be adjusted to make the base prospectus regime more efficient and to reduce costs and efforts to prepare prospectuses.

5.1 Summaries

Question 27: Is there a need to reassess the rules regarding the summary of prospectuses? – Yes, regarding the concept of key information and its usefulness for retail investors.

Question 28: How should the overlap between of information disclosed in the KID due to of the PRIIPS Regulation and in the summary be addressed? – No opinion.

Question 40: Changes to the base prospectus facility? – Other.

According to Art. 24(2), (4) and (3) Prospectus Regulation there shall be a summary in the base prospectus and of the individual issuer as annex to the final terms. The mandatory order of the summaries do not make the summary easy to analyse and to comprehend. The issuers should have more flexibility to prepare the summary in a more comprehensible form.

Regarding the PRIIPS Regulation: As long as non-financial companies usually do not fall under the scope of this regulation, Deutsches Aktieninstitut has no opinion on that question. A KID for shares and common corporate bonds is not useful which is why it should stay out of the scope.

5.2 Final terms

Especially Annex XX has to be reviewed. It is more complicating than facilitating, if, for instance, according to item 5.2.1. of Annex V, the various categories of potential investors to which the securities are offered have to already be mentioned in the base prospectus. This information is only necessary at the time of the issuance of the securities. Therefore it should be qualified as category C. Risk factors, item 2.1. of annex V, should also only be explained at the time of the real issuance because only then an assessment is reasonable regarding which risk factors exist and to what extent they might influence the development of the security.

6 Prospectuses for the admission to trading

Question 1: Should a prospectus be necessary for:
- admission to trading on a regulated market – Yes, in the case of IPOs/IBOs, but not in the case of secondary issuances.
- an offer of securities – (see chapter 1) Yes;
- should a different treatment should be granted to the two purposes – Yes, where differences are justified.

In the event of private placed securities, sometimes the issuer applies for the admission to trade the securities on a regulated market afterwards. Currently, a prospectus is necessary. However, the investors already subscribed for the securities and the securities are already traded on the secondary market. Therefore, the prospectus cannot facilitate the investor's decision about the investment. The investors have already decided about it.

! However, if the issuer's shares or a bond is not also already admitted to trading on a regulated market, the requirement of a prospectus is comprehensible because periodically published information about the issuer are missing. But, in the case of secondary issuances, such information are periodically published due to obligations of the Transparency or Accounting Directive and the Market Abuse Regulation etc. In this cases a prospectuses for a mere application for admission to trading should not be necessary. In the case of bonds the publication of the terms and conditions are sufficient.

This should especially apply to the situation of debt securities with a denomination per unit above EUR 100,000. Such debt securities are dedicated to wholesale/institutional investors. According to Art. 3(2)(d) Prospectus Directive no prospectus has to be prepared for offers of these securities. But, in the case of a mere listing of such securities, a prospectus has to be prepared. This is inconsistent and should be repealed respectively the exemption should be extended to listing prospectuses for securities with a denomination per unit above EUR 100,000. Also in this case, the publication of the terms and conditions are sufficient.

7 Prospectuses for MTFs

Question 11: Should a prospectus be required when securities are "admitted" to trading on an MTF? – No.

Question 12: - Gap, because we refuse the requirement of a prospectus for MTFs.

The prospectus requirement for the admission to trading on an MTF shall remain unregulated. While the MTF itself may require prospectuses for the admission to a specific segment, an MTF being an unregulated market for Prospectus Directive purposes shall remain unregulated. Issuers have the choice to apply for the admission on a regulated or a non-regulated market. Regulators cannot remove this freedom from issuers. In case the requirement of the Prospectus Directive is extended to admission on MTFs, issuers will no longer use MTFs. Once required to provide prospectuses they may also apply for listing on a regulated market. Issuers will then try for admission on markets that remain unregulated. There is no requirement for investor or consumer protection. Some regulated investors may require a listing on the regulated market anyhow. Other investors are insofar protected as a public offering still requires a prospectus.

8 EU Passporting and notifications

Question 3: Are the additional costs of preparing a prospectus in conformity with EU rules and getting it approved are outweighed by the benefit of the passport attached to it? – Yes.

Question 33: Are you aware of material differences in the way NCAs conduct the approval procedures? – Yes.

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

Question 39 b): Could the notification procedure be simplified? – No opinion.

Deutsches Aktieninstitut is strongly supportive of the EU Passporting- and notification-system. In its opinion, only a few changes have to be made.

Recently, the UK authority demanded, in a case of notification, an explanation that the issuer complied with the sanctions imposed against Russia. The UK authority was the only authority in the EU which requested this information.

This is again the idea of the EU Passporting-System in which the approval of one NCA should be mandatory for other NCAs. Deutsches Aktieninstitut recommends to avoid such special requests of only one NCA.

9 Dual regime for the determination of the home Member State

Question 42: Should the dual regime for the determination of the home Member State for non-equity securities with a denomination above 1,000 € be amended? – No, status quo should be maintained.

In the view of Deutsches Aktieninstitut issuers value the freedom to choose the Member State where their prospectus is submitted for approval. This allows them to file the prospectus with the NCA that has specific expertise in the relevant area and which has efficient review procedures in place. An obligation for issuers to file their prospectus for approval in the Member State where they have their registered office would increase the time-to-market for many issuers in countries whose NCAs are less specialised in the relevant area. Other issuers may opt to set up specific issuances vehicles in countries whose NCAs are known to be particularly efficient. This would prolong the issuance process and would be more costly for those issuers.

10 Electronic publication

Question 43: Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed? - No opinion.

Question 44: Should a single, integrated EU filing system for all prospectuses produced? – Yes.

Question 45: What should be essential features of such a filing system to ensure its success? – See below.

Deutsches Aktieninstitut supports the idea of only electronic publication. This approach meets our argumentation because of the permanent accessibility of information in the internet. But, as long as the availability through the internet is in any case mandatory, Deutsches Aktieninstitut has no opinion on question 43.

In addition, Deutsches Aktieninstitut recommends to consider to combine a European databank for prospectuses with the European Electronic Access Point, which has to be founded due to Art. 21a Transparency Directive. From our perspective in this manner, the investor has access to all relevant information and has not to switch between different databanks. The integration of a prospectus databank in the EEAP would enhance the access to relevant information without many additional costs.

Contact

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Case Id: fe8f5bc4-a504-4767-a471-2008b17b1eb7

Public consultation on the review of the Prospectus Directive

Fields marked with * are mandatory.

Introduction

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

Two key objectives underpin the Directive:

- **Investor and consumer protection**. A prospectus is a standardised document which, in an easily analysable and comprehensible form, should contain all information which is necessary to enable investors to make an informed assessment of the issuer and the securities offered or admitted to trading on a regulated market.
- **Market efficiency**. A prospectus aims at facilitating the widest possible access to capital markets by companies across the EU. The Directive sought to achieve this through requiring a common form and content of the prospectus and introducing an EU wide passport: a prospectus approved by the competent authority of one Member State should be valid for the entire Union without additional scrutiny by the authorities of other Member States.

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

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

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

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

Shortcomings of the Directive and objectives of the review

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

The objective of the review of the Directive is to reform and reshape the current prospectus regime in order to make it easier for companies to raise capital throughout the EU and to lower the associated costs, while maintaining effective levels of consumer and investor protection.

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

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

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

More information:

- on this consultation

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

1. Information about you

*Are you replying as:

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

*Name of your organisation:

Deutsches Aktieninstitut e.V.

Contact email address:

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

@ lehnen@dai.de

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

- ◉ Yes
- ○ No

*If so, please indicate your Register ID number:

38064081304-25

*Type of organisation:

- ○ Academic institution
- ○ Consultancy, law firm
- ◉ Industry association
- ○ Non-governmental organisation
- ○ Trade union
- ○ Company, SME, micro-enterprise, sole trader
- ○ Consumer organisation
- ○ Media
- ○ Think tank
- ○ Other

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

- ○ Austria
- ○ Belgium
- ○ Bulgaria
- ○ Croatia
- ○ Cyprus
- ○ Czech Republic
- ○ Denmark
- ○ Estonia
- ○ Finland
- ○ France
- ◉ Germany
- ○ Greece
- ○ Hungary
- ○ Iceland
- ○ Ireland
- ○ Italy
- ○ Latvia
- ○ Liechtenstein
- ○ Lithuania
- ○ Luxembourg
- ○ Malta
- ○ Norway
- ○ Poland
- ○ Portugal
- ○ Romania
- ○ Slovakia
- ○ Slovenia
- ○ Spain

- ○ Sweden
- ○ Switzerland
- ○ The Netherlands
- ○ United Kingdom
- ○ Other country

*Field of activity or sector (*if applicable*):
at least 1 choice(s)

- ☐ Accounting
- ☐ Auditing
- ☐ Banking (issuing-finance department)
- ☐ Banking (investment department)
- ☐ Credit rating agencies
- ☐ Insurance
- ☐ Pension provision
- ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Social entrepreneurship
- ☑ Other
- ☐ Not applicable

*Please specify your activity field(s) or sector(s):

Capital market interests of non-financial issuers.

Important

notice on the publication of responses

*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- ◉ Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- ○ No, I do not want my response to be published

2. Your opinion

I .

I n t r o d u c t i o n

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

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

- ☑ Admission to trading on a regulated market
- ☑ An offer of securities to the public
- ☑ Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public)
- ☑ Other
- ☐ Don't know / no opinion

Please describe which different treatment should be granted to the two purposes:
1,000 character(s) maximum

A full prospectus should be necessary for both the first admission to trading on a regulated market and the first offer of securities. In the case of "secondary issuances", e.g. at least the issuer's shares are already admitted to trading on a regulated market, a prospectus for the mere application for admission to trading is not necessary and should repealed (detailed explainations in chapter 1 and chapter 6 of the position of Deutsches Aktieninstitut, send to FISMA on the 13 May 2015).

Please describe what other possible reasons why a prospectus is necessary:

Additional comments on the principle whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public:

1,000 character(s) maximum

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

a) Please estimate the cost of producing a prospectus (between how many euros and how many euros for a total consideration of how many euros):

	Minimum cost (in €)	Maximum cost (in €)	For a total consideration of (in €)
Equity prospectus			
Non-equity prospectus			*125,000*
Base prospectus			*117,500*
Initial public offer (IPO) prospectus			*1,706,500*
Don't know (add an X in the next three fields)			

Additional comments on the cost of producing a prospectus:

1,000 character(s) maximum

Please see pages 5,6 7 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

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

1,000 character(s) maximum

Please see pages 5,6 7 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

Please specify which fraction of the costs above would be incurred anyway (in %):

50 %

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

1,000 character(s) maximum

Please see pages 5,6 7 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

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

1,000 character(s) maximum

Please see chapter 8 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

II.
Issues for discussion

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

A. When a prospectus is needed

A1. Adjusting the current exemption thresholds

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

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

- (●) Yes, from EUR 5 000 000 to more
- ( ) No
- ( ) Don't know / no opinion

Please specify from EUR 5 000 000 up to how many euros:

20000000 €

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

1,000 character(s) maximum

Please see chapter 3 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- ( ) Yes, from EUR 75 000 000 to more
- ( ) No
- (●) Don't know / no opinion

Please justify your answer on the EUR 75 000 000 threshold:

1,000 character(s) maximum

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

- (●) Yes, from 150 persons to more
- ( ) No
- ( ) Don't know / no opinion

Please
specify from 150 persons up to how many persons:

500 persons

Please
justify your answer on the 150 persons threshold:

1,000 character(s) maximum

Please see chapter 3 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

Please
justify your answer on the EUR 100 000 threshold:

1,000 character(s) maximum

Please see chapter 3 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- ◉ Yes
- ○ No
- ○ Other areas
- ○ Don't know / no opinion

Please
justify your answer on whether more harmonisation be beneficial:

1,000 character(s) maximum

Please see chapter 3 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

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

1,000 character(s) maximum

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

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

Please
justify your answer on possible other area:

1,000 character(s) maximum

A2.
Creating an exemption for "secondary issuances" under certain conditions

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

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

Please justify your answer on the possible mitigation of the obligation to draw up a prospectus:
1,000 character(s) maximum

Please see chapter 1 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

Please specify to what extent the 10% threshold should be raised:
20 %

Please justify your answer on the amendment of Article 4(2):
1,000 character(s) maximum

Please see chapter 3 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

Please justify your answer on the convenience of having a timeframe for the exemption:
1,000 character(s) maximum

Please see chapter 1 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015. The Approach of Deutsches Aktieninstitut does not foresee the need of timeframe.

A3.
Extending the prospectus to admission to trading on an MTF

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

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

Please justify your answer on whether a prospectus should be required when securities are admitted to trading on an MTF:
1,000 character(s) maximum

Please see chapter 7 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

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

1,000 character(s) maximum

Please see chapter 7 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

A4.
Exemption of prospectus for certain types of closed-ended alternative investment funds (AIFs)

13. Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF) and European venture capital funds (EuVECA) of the closed-ended type and marketed to non-professional investors be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document?

- ○ Yes, such an exemption would not affect investor/consumer protection in a significant way
- ○ No, such an exemption would affect investor/consumer protection
- ◉ Don't know / no opinion

Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds:

1,000 character(s) maximum

A5.
Extending the exemption for employee share schemes

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

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

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

1,000 character(s) maximum

A6.
Balancing the favourable treatment of issuers of debt securities with a high denomination per unit with liquidity on the debt markets

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

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

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

1,000 character(s) maximum

Please see chapter 3.2 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

1,000 character(s) maximum

B.
The information a prospectus should contain

B1. Proportionate disclosure regime

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

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

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

1,000 character(s) maximum

Please see chapter 3.4 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

a) Proportionate regime for rights issues

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

Please justify your answer on the proportionate regime for rights issues:

1,000 character(s) maximum

Please see chapter 3.4 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

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

1,000 character(s) maximum

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

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

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

1,000 character(s) maximum

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

a) Proportionate regime for rights issues:

1,000 character(s) maximum

The approach of Deutsches Aktieninstitut already recommends a proportionate regime.

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

1,000 character(s) maximum

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

1,000 character(s) maximum

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

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

Please specify which other possibilities:

1,000 character(s) maximum

The approach of Deutsches Aktieninstitut already recommends a proportionate regime. Please see chapter 1 and 3 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

1,000 character(s) maximum

B2. Creating a bespoke regime for companies admitted to trading on SME growth markets

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

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

Please justify your answer on the possible alignment of "company with reduced market capitalisation" (Article 2(1)(t)) with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000:

1,000 character(s) maximum

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

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

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

1,000 character(s) maximum

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

2,000 character(s) maximum

Please see chapter 1 and 3 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015. The Approach of Deutsches Aktieninstitut should be applicable to all issuers and would facilitate the requirements of the Prospectus Regime for all issuers to an acceptable level.

B3.
Making the "incorporation by reference" mechanism more flexible and assessing the need for supplements in case of parallel disclosure of inside information

23. Should the provision of Article 11 (incorporation by reference) be recalibrated in order to achieve more flexibility?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

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

1,000 character(s) maximum

Please see chapter 4 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

1,000 character(s) maximum

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

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

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

1,000 character(s) maximum

Please see chapter 4 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

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

1,000 character(s) maximum

Please see chapter 1 and 10 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- (●) Yes
- ( ) No

- ○ Don't know / no opinion

Please justify your whether the above-mentioned obligation could substitute the requirement in the Prospectus Directive to publish a supplement according to Article 17 without jeopardising investor protection in order to streamline the disclosure requirements between Market Abuse Directive and Prospectus Directive:

1,000 character(s) maximum

Please see chapter 1.4 and 1.5 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

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

1,000 character(s) maximum

Please see chapter 1 and especially 1.4 and 1.5 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

B4.
Reassessing the objectives of the prospectus summary and addressing possible overlaps with the key information document required under the PRIIPs Regulation

27. Is there a need to reassess the rules regarding the summary of the prospectus?

- ☐ Yes, regarding the concept of key information and its usefulness for retail investors
- ☐ Yes, regarding the comparability of the summaries of similar securities
- ☑ Yes, regarding the interaction with final terms in base prospectuses
- ☑ No
- ☐ Don't know / no opinion

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

1,000 character(s) maximum

Please see chapter 5 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

1,000 character(s) maximum

Please see chapter 5 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- ○ By providing that information already featured in the KID need not be duplicated in the prospectus summary
- ○ By eliminating the prospectus summary for those securities
- ○ By aligning the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation, in order to minimise costs and promote comparability of products
- ○ Other
- ◉ Don't know / no opinion

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

1,000 character(s) maximum

The members of Deutsches Aktieninstitut are usually not subject to the PRIIPS Regulation.

B5.
Imposing a length limit to prospectuses

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

- ○ Yes, it should be defined by a maximum number of pages
- ○ Yes, it should be defined using other criteria
- ◉ No
- ○ Don't know / no opinion

Please justify your answer on the possible introduction of a maximum length to the prospectus:

1,000 character(s) maximum

Please see chapter 2 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

1,000 character(s) maximum

The approach of Deutsches Aktieninstitut will already lead to reduced prospectuses. Are limitiation of the length is therefore not necessary. Please see chapter 1 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

B6.
Liability and sanctions

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

	Yes	No	No opinion
The overall civil liability regime of Article 6	○	○	○
The specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)	○	○	○
The sanctions regime of Article 25	○	○	○

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

1,000 character(s) maximum

Please see chapter 1 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

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

If you have identified problems relating to multi-jurisdiction (cross-border) liability, please give details:

1,000 character(s) maximum

The liability is uncertain in the cases of cross-border offerings.

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

1,000 character(s) maximum

C.
How prospectuses are approved

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

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

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

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

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

1,000 character(s) maximum

Please see chapter 8 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

1,000 character(s) maximum

34. Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion

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

1,000 character(s) maximum

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

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion

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

1,000 character(s) maximum

36. Would it be conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, under the premise that no legally binding purchase or subscription would take place until the prospectus is approved?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion

Please justify your answer on the possibility to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version:

1,000 character(s) maximum

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

- (●) review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)
- ( ) review only a sample of prospectuses ex ante (risk-based approach)
- ( ) review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)

- review only a sample of prospectuses ex post (risk-based approach)
- Other
- Don't know / no opinion

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

1,000 character(s) maximum

This is a result of the approach of Deutsches Aktieninstitut. Please see chapter 1 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

38. Should the decision to admit securities to trading on a regulated market (including, where applicable, to the official listing as currently provided under the Listing Directive), be more closely aligned with the approval of the prospectus and the right to passport?

- Yes
- No
- (•) Don't know / no opinion

Please explain your reasoning and the benefits (if any) this could bring to issuers:

1,000 character(s) maximum

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

- (•) Yes
- No
- Don't know / no opinion

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

1,000 character(s) maximum

Please see chapter 8 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

1,000 character(s) maximum

Please see chapter 8 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- Yes
- No
- (•) Don't know / no opinion

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

1,000 character(s) maximum

C2.
Extending the base prospectus facility

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

a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed:

- I support

○ I do not support

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

1,000 character(s) maximum

b) The validity of the base prospectus should be extended beyond one year:

○ I support
○ I do not support

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

1,000 character(s) maximum

c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA:

○ I support
○ I do not support

Please justify your answer on whether or not you support the possibility for the Directive to clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA:

1,000 character(s) maximum

d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs:

○ I support
○ I do not support

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

1,000 character(s) maximum

e) The base prospectus facility should remain unchanged:

◉ I support
○ I do not support

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

1,000 character(s) maximum

in principle, but with an reduced content. Please see chapter 1 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

1,000 character(s) maximum

Please see chapter 5 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

41. How is the "tripartite regime" (Articles 5 (3) and 12) used in practice and how could it be improved to offer more flexibility to issuers?
1,000 character(s) maximum

C4.
Reviewing the determination of the home Member State for issues of non-equity securities

42. Should the dual regime for the determination of the home Member State for non-equity securities featured in Article 2(1)(m)(ii) be amended?

- (●) No, status quo should be maintained
- ( ) Yes, issuers should be allowed to choose their home Member State even for non-equity securities with a denomination per unit below EUR 1 000
- ( ) Yes, the freedom to choose the home Member State for non-equity securities with a denomination per unit above EUR 1 000 (and for certain non-equity hybrid securities) should be revoked

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

Please see chapter 9 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

C5.
Moving to an all-electronic system for the filing and publication of prospectuses

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

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion

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

44. Should a single, integrated EU filing system for all prospectuses produced in the EU be created?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

Please give your views on the main benefits (added value for issuers and investors) and drawbacks (costs) of the creation of a single, integrated EU filing system for all prospectuses produced in the EU?
1,000 character(s) maximum

A prospectus databank should be integrated in the EEAP. Please see chapter 10 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

45. What should be the essential features of such a filing system to ensure its success?
1,000 character(s) maximum

A prospectus databank should be integrated in the EEAP. Please see chapter 10 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

C6.
Equivalence of third-country prospectus regimes

46. Would you support the creation of an equivalence regime in the Union for third country prospectus regimes?

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

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

1,000 character(s) maximum

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

- ○ Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18
- ○ Such a prospectus should be approved by the Home Member State under Article 13
- ○ Other
- ◉ Don't know / no opinion

Please justify your answer on how a prospectus prepared by a third country issuer in accordance with its legislation should be handled by the competent authority of the Home Member State:

1,000 character(s) maximum

III.

Final questions

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

a) "Offer of securities to the public"?

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

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

1,000 character(s) maximum

To give legal certainty about the term.

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

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

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

1,000 character(s) maximum

A first step is to suspend Art. 16 Prospectus Directive if the Market Abuse Regulation is applicable. Please see chapter 1.4 and 1.5 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- ○ No, legal certainty is ensured
- ○ Yes, the following should be clarified:
- ○ Don't know / no opinion

Please justify your answer on whether there are other areas or concepts in the Directive that would benefit from further clarification?:

1,000 character(s) maximum

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

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

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

1,000 character(s) maximum

Please see chapter 1 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

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

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion

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

1,000 character(s) maximum

The incoherence between the obligation of Art. 16 Prospectus Directive and Art. 17 Market Abuse Regulation and the exemption of debt securities with a denomination above EUR 100,000 but only in regard to the offer and not the mere admission to trading. Please see chapter 1 and 6 of the position of Deutsches Aktieninstitut, send to FISMA on 13 May 2015.

3. Additional information

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

150513 Position of Deutsches Aktieninstitut to the consultation of the Prospectus Directive.pdf

Useful links

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

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

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

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

Contact

fisma-prospectus-consultation@ec.europa.eu