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## The Swedish Government and the Swedish authorities' common answer to the consultation on a review of the Prospectus Directive

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Stockholm, 13 May 2015

**Ministry of Finance**

**Finansinspektionen**

**Sveriges Riksbank**

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## **Executive summary**

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Sweden believes that the original objective of the Prospectus Directive is still valid. A prospectus is needed in order to ensure adequate information to the investor, and in our view even more so today due to an increasingly complex financial market. There are however areas which can be assessed in order to minimise administrative burden and maintain a proportionate balance between investor protection and market efficiency.

Sweden does not believe that more harmonisation is needed concerning the exemption thresholds. Market sizes as well as proportionality concerns must be taken into consideration, and hence the minimum harmonisation level of the Directive should be maintained.

The obligation of drawing up a full-blown prospectus for subsequent secondary issuances of the same securities could be reduced or dropped. Sweden would also like to see a deeper analysis and assessment of whether the prospectus requirement should apply to MTFs.

The proportionate disclosure regime works well, facilitates SME financing and should be kept as is.

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

Sweden deems the core principles of the Prospectus Directive as still valid, in fact, even more so today due to an increasingly complex financial environment. The balance must be maintained between a high level of investor protection (thus ensuring a high degree of accurate information) and an efficient fully capitalised European and global financial market which does not impose undue administrative burdens on firms seeking capital. It is also of great importance that trust and confidence in a well-functioning regulatory scheme remains intact.

Although the distribution channels may differ, the aim of admitting securities to a regulated market or making an offer to the public is the same, namely financing on the capital markets. Introducing different rules might not only prove ineffective – it does not necessarily mitigate administrative burden or increase access to finance and hence the scope for the Prospectus Directive should be maintained.

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

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

- equity prospectus: approx. 43 000 – 118 000 EUR
- non-equity prospectus: approx. 11 000 – 32 000 EUR
- base prospectus: approx. 22 000 – 54 000 EUR
- initial public offer (IPO) prospectus: approx. 108 000 – 753 000 EUR

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

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

*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?*

N/A

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

Sweden supports EU-legislation on a minimum harmonisation level encouraging cross border investments as well as the potential to further enhance and ease the process of financing cross borders.

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

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

Yes, from EUR 5 000 000 to EUR [enter monetary figure]

**No**

Don't know/no opinion

Sweden supports EU-legislation on a minimum harmonisation level encouraging cross border investments as well as the potential to further enhance and ease the process of financing cross border.

Consideration must be taken to the size of the respective market in each Member State as well as to proportionality concerns. Hence the need for minimum harmonisation to be maintained.

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

Yes, from EUR 75 000 000 to EUR [enter monetary figure]

**No**

Don't know/no opinion

Consideration must be taken to the size of the respective market in each Member State as well as proportionality concerns. Increasing the threshold is not envisaged.

In our view, it is more appropriate to adjust the information requirements in the Prospectus Directive and thus enhance their efficiency.

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

- Yes, from 150 persons to [enter figure] persons

- **No;**

- Don't know/no opinion

Consideration must be taken to the size of the respective market in each Member State as well as to proportionality concerns. Increasing the threshold is not envisaged.

It is in our view, it is more appropriate to adjust the information requirements in the Prospectus Directive and thus enhance their efficiency.

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

- Yes, from EUR 100 000 to EUR [enter monetary figure]

- **No**

- Don't know/no opinion

Consideration must be taken to the size of the respective market in each Member State as well as to proportionality concerns. Increasing the threshold is not envisaged.

In our view, it is more appropriate to adjust the information requirements in the Prospectus Directive and thus enhance their efficiency.

For further details on the Swedish position within this question, please see our answer on question (15).

**(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

It must be kept in mind that market sizes vary between Member States.

Consideration must be given to market size as well as to proportionality concerns, and hence the minimum harmonisation level of the Directive should be maintained. Categories of companies are defined very differently in the various Member States.

Also, the option for Member States to adjust the exemption threshold of the Directive to local circumstances (in Sweden to 2.5 MEUR) works well. Sweden has no evidence that there is a need for increasing the threshold.

Given this, Sweden would like to see the that flexibility of article 1p2(h) remain intact.

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

Yes [text box]

**No**

Other areas:

Don't know/no opinion

Sweden believes that the current scope of the Directive is proportionate and justified. As the prospectus brand is quite well established, changing the scope of the Directive might have unforeseen and unnecessary consequences and might cause further regulatory burden, which does not serve the purpose of the Directive. Another justification to keep the status quo is to maintain investor confidence which in turn is important for firms' access to financing.

Transferable securities are the main financial instruments accessible to both non-professional and professional investors. Non-transferable securities, instruments not traded or readily available on secondary markets, are mainly traded between professional investors where the need for investor protection is less pressing.

**(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 [text box]

No

Other areas:

Don't know/no opinion

N/A

**A. When a prospectus is needed.**

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

**Yes**

No

Don't know/no opinion

Sweden considers that the burden of drawing up a full-blown prospectus is not proportionate for subsequent secondary issuances of the same securities. From an investor protection point of view it is hard to see a need for a full-blown prospectus when the same securities already are traded on a regulated market. This is especially given that the requirements in a new full blown prospectus will focus on company-specific information in the registration document (annex I of the Prospectus Regulation). Such information should, from a secondary market perspective, already be considered as being available to the market through requirements within the Transparency Directive and the Market Abuse Directive. Therefore investors in most cases should be considered sufficiently informed through those regulations.

Having this in mind, Sweden would suggest (i) dropping the obligation to produce a prospectus when shares from subsequent/secondary issuances are admitted to trading on a regulated market, (ii) increasing the threshold or (iii) at least adjusting the information requirement of such a prospectus.

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

The 10% threshold should be raised to [enter figure] %

**The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued**

No amendment

Don't know/no opinion

*(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?*

[ ] years

**There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)**

Don't know/no opinion

There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago). We believe that the rationale for a reduction of the burden of drawing up a full-blown prospectus is still valid considering the requirements in the Transparency Directive and the Market Abuse Directive, even though the IPO (initial public offering) prospectus was drawn up a long time ago.

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

Yes, on all MTFs

Yes, but only on those MTFs registered as SME growth markets.

No

**Don't know/no opinion**

There are many aspects Sweden opines the Commission should take into consideration when assessing a need for a requirement to draw up a prospectus when securities are admitted to trading on an MTF.

The main purpose of a prospectus is to provide potential investors with adequate and correct information prior to making an investment decision. Whether or not to require a prospectus when securities are admitted to trading on an MTF is mainly a balance between two aspects: the information an investor needs and the costs of producing a prospectus for companies (i.e. administrative burden which can limit access to sources of funding).

The most important argument in favour of requiring a prospectus when securities are admitted to trading on an MTF is the investor protection aspect. Companies trading on an MTF are by definition associated with higher risk, which might – in combination with the absence of requirements on information disclosure on a regular basis – motivate the need to produce a prospectus.

In addition, with the coming MiFID II framework, MTFs will be more aligned with regulated markets from a regulatory standpoint and should therefore logically be treated the same way, also with regards to the requirement to draw up a prospectus.

Another important argument in favour of requiring a prospectus when securities are admitted to trading on an MTF is to harmonise with the requirement to draw up a prospectus when making an offer to the public. It is currently hard to see as to why these two instances – offers to the public and admission to trading – should be treated differently.

On the other hand, there could be significant cost increases for SMEs related to a default requirement to draw up prospectuses for securities admitted to trading on an MTF. If the aim of the Capital Markets Union is to facilitate SME financing, this could be a step in the opposite direction.

The original aim of establishing MTFs was to have a minimum regulation on transparency and enough information for investors, but still be a simpler form of trading platform than a regulated market.

Also, most MTFs already require an information or investment memorandum before securities are admitted to trading on an MTF. There are currently strong incentives

for MTFs to maintain these rules when it comes to providing information. If the MTF does not, there is the risk of reducing the MTF brand value by having too many traded enterprises failing.

Lastly, Sweden believes that MTFs registered as “SME growth markets” should not be given a harsher regulatory treatment than regular MTFs. As specified in MiFID II/MiFiR, SME growth markets should reduce the administrative burden of SMEs even further and thus facilitate access to finance for start-up’s. If, for example, a prospectus would be required on an SME Growth Market and not on an MTF, many of the distinct advantages of the SME Growth Market would disappear.

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

**Yes, the amended regime should apply to all MTFs**

Yes, the unamended regime should apply to all MTFs

Yes, the amended regime should apply but not to those MTFs registered as SME growth markets

Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets

Yes, the amended regime should apply but only to those MTFs registered as SME growth markets

Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets

No

Don't know/no opinion

If prospectuses will be required by default when securities are admitted to trading on an MTF, Sweden would prefer applying the proportionate disclosure regime (PDR) to all MTFs.

MTFs were created with the aim of providing a less strict trading platform, as compared to regulated markets. Given that aim, the PDR should indeed apply to

MTFs as the difference between MTFs and regulated markets would otherwise become even smaller.

It is in general difficult to comment on the SME growth markets, as there currently are none. In the future, when they do exist, Sweden would not like to see a harsher regulatory treatment of SME growth markets as compared to regular MTFs. As specified in MiFID II/MiFiR, SME growth markets should reduce the administrative burden of SME companies rather than increase them.

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

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

There is a difference between the objectives as well as the disclosure requirements in the above mentioned regulations. Due to the difference in the purpose of the regulations as well as the category of investors it is aimed at, Sweden does not believe in exempting the obligation to provide a prospectus.

The purpose of the Prospectus Directive is to guarantee minimum information standards when a company is offering transferable securities to the public or prior to being admitted to trading on a regulated market – to non-professional as well as to professional investors.

The ELTIF, EuVECA and EuSEF regulations main aim is to facilitate investments in targeted sectors using an EU brand name for alternative investment funds; a fund regulation targeting a limited group of investors.

The PRIIPs key information document is a cross sectorial consumer protection easy-to-read information standard aimed at non-professional investors, which does not for example include information about the company business model or financials of the company.

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

Yes

No

Don't know/no opinion

N/A

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

Yes

**No**

Don't know/no opinion

According to Eurostat, the corporate bond market in the euro area has increased from €22 to €68 billion since the onset of the crisis (2014 data). Whilst this could mean that liquidity has increased, it must also be kept in mind that a larger market means more reasons to make sure that liquidity is present even in times of financial distress.

Even though a lower threshold of the exemption for wholesale offers could increase the number of players in the market, this might only have a limited effect on liquidity. Lowering the threshold would in our opinion have very limited effect on the secondary market unless it is lowered significantly. Any measures must however be weighed against the reduction of information and consumer/investor protection this inevitably means.

When the exemption threshold was revised (2012) from €50 000 to €100 000, it was argued that this was a suitable way to separate professional and non-professional investors. We consider this argument still valid, and would like the current threshold to remain.

It should also be pointed out that the time elapsed since 2012 might not be sufficient when it comes to evaluating the threshold. Therefore, another evaluation of the threshold might be appropriate in the future – but we do not think the time is ripe just yet.

## **B. The information a prospectus should contain**

**(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

In Sweden, the proportionate disclosure regime (PDR) is used rather frequently for SME companies. Sweden continues to remain positive to the main idea of the PDR, i.e. that there should be proportionality between the company size and the cost of producing a prospectus. It is important, however, for investors to recognize that SMEs in general are associated with a higher degree of risk and sometimes with fewer requirements to disclose information.

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

**a)** *Proportionate regime for rights issues*

Yes

**No**

Don't know/no opinion

The use of the proportionate disclosure regime (PDR) for rights issues is very limited in the Swedish market. The reason for this is particularly the ESMA Q&A 90 which states that after the closing of the subscription period for a rights issue which is not fully subscribed, any subsequent offer should be drawn up according to annex I-III of the Prospectus Regulation and the PDR for rights issues is not applicable. In Sweden there is an established market practice to offer the remaining part of the right issue,

which is not fully subscribed, to the public. Hence, the PDR for right issues cannot be applied.

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

**Yes**

No

Don't know/no opinion

The wider use of the PDR for small and medium size companies in the Swedish market can probably be explained by the exemption threshold in article 1(2)(h) is set to 2,5 MEUR and the specific characteristics of the Swedish market.

**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

The exemption for this PDR has not been implemented in Sweden.

**(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**

N/A

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

N/A

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

N/A

**(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

A PDR should take into account whether the company in question is already affected by other information requirements (e.g. through the Transparency Directive). The PDR could apply by default to companies traded on an MTF, in the event that issuance on MTFs are brought into the scope of the Prospectus Directive (see question 11).

**(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

Raising the capitalisation limit to EUR 200 000 could be beneficial as aligning definitions across financial regulations could ease understanding and administrative burden for companies. The current capitalisation requirement in the Prospectus Directive also comes from the amendment in December 2010 which should be updated accordingly.

*(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

It is in general hard to comment on the SME growth markets, as there currently are none. Sweden therefore believes this question to be a bit premature, and we think that this question should be addressed at a later stage. For the time being, Sweden does not consider the creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to the SME growth market as necessary, given that they are covered by the PDR.

Once SME growth markets have been up and running a significant period of time, Sweden would support an evaluation of whether a simplified prospectus for those companies might be motivated.

*(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.*

N/A

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

Yes

No

Don't know/no opinion

In general, Sweden has a positive view of the incorporation by reference mechanism as it improves the readability of the prospectus and reduces the costs of the drafting of the prospectus. However, we think that a clarification of the scope of the mechanism and the relation between the Transparency Directive and the Prospectus Directive is necessary. It's not clear whether the current Prospectus legislation on this matter allows voluntary filing of documents that may be incorporated by reference, or if you can only incorporate previously approved and registered documents, i.e. prospectuses. It is our opinion that voluntary filings of documents should be allowed, but not without boundaries. The revision in this aspect should therefore in our opinion focus on creating clarity regarding the type of documents that can be incorporated by reference and how the voluntary filing should be carried out.

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

Yes

**No**

Don't know/No opinion

Considering the limited burden for issuers to incorporate required documents by reference in prospectuses, Sweden does not see a great need for exemption of documents which have already been published/filed under the Transparency Directive.

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

Yes

No

Don't know/No opinion

N/A

*(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

In our opinion article 17(1) of the Market Abuse Regulation and article 17 of the Prospectus Directive have different aims, which don't necessarily overlap each other. The objective with a revision of supplements should be to create a more effective way to bring new information in relation to the prospectus to the market, or to amend existing published information. From a regulatory standpoint the revision should focus on how the new information is presented, especially in relation to the information in the original document. We also see a need for clarification regarding when an obligation to publish a supplement is triggered.

Besides this, we think it would be beneficial to revisit the extent to which supplements may be used to include additional, or amend existing, information in the securities note. This question is especially relevant when it comes to the possibility to modify existing pay-offs in or add additional pay-offs to an approved base prospectus by way of a supplement. It should also be considered that a possibility to modify existing pay-offs in or add additional pay-offs could be achieved in an effective way if the

application of a "tripartite regime" according Articles 5 (3) and (12) should be extended to include base prospectuses. Also, see our answer to question 41.

**(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

Textbox [justification]

N/A

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

- a) Yes, regarding the concept of key information and its usefulness for retail investors
- b) Yes, regarding the comparability of the summaries of similar securities
- c) Yes, regarding the interaction with final terms in base prospectuses
- d) No.
- e) Don't know/no opinion

N/A

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

- a) By providing that information already featured in the KID need not be duplicated in the prospectus summary. Please indicate which redundant information would be concerned: [textbox]
- b) By eliminating the prospectus summary for those securities.

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

**d) Other: keep both as is**

e) Don't know/no opinion

The KID and the prospectus summary are aimed at different target groups and have different purposes. Whereas the KID is more retail investor oriented, the prospectus summary is aimed at providing all categories of investors with adequate and correct information. Due to the two very different aims, Sweden would prefer that the potentially overlapping information should remain as is.

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

Yes, it should be defined by a maximum number of pages and the maximum should be [ figure] pages

Yes, it should be defined using other criteria, for instance: [textbox]

**No**

Don't know/no opinion

Sweden's view of the length of a prospectus is that this is closely connected to the types of securities offered, and therefore a formal constraint on the length might prove impractical and harmful.

An increased focus on comprehensibility could work as a safeguard against overly long and complicated prospectuses.

**(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?*

N/A

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

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

N/A

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

Yes

No

Don't know/no opinion

N/A

### **C. How prospectuses are approved**

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

**Yes**

No

Don't know/no opinion

Sweden acknowledges that there are material differences in the way national competent authorities (NCAs) assess the completeness, consistency and comprehensibility of the prospectus. However, we don't believe that a coherent process can be achieved by the inclusion of additional layers of regulation. Rather, the focus should be on creating a more coherent approach regarding the application of the more general principles of the prospectus approval process, i.e. that the prospectus is complete and that the information provided is coherent and comprehensible. In this aspect the recently initiated ESMA peer-review regarding prospectuses can be a step in the right direction to achieve this goal.

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

Yes

No

Don't know/no opinion

N/A

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

Yes

**No**

Don't know/no opinion

Sweden currently has not seen a need to make the approval procedure more transparent to the public. We consider that a sufficient amount of information is available on the website of the Swedish NCA.

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

Yes

**No**

Don't know/no opinion

Sweden does not see an obvious need for issuers to use a not yet approved prospectus for marketing activities towards the public during the approval process, beyond what is consistent with Article 15 of the Prospectus Directive.

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

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

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

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

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

e) Other

f) Don't know/no opinion

Rather than reducing the number of prospectuses scrutinised by the NCA, Sweden believes in streamlining and reducing the information to be scrutinised. This relates to our answers on e.g. questions (8)-(10), (11)-(12) and (23)-(25).

Sweden considers that ex-ante scrutiny of the prospectus is a cornerstone of the Prospectus Directive and a transition towards an ex-post scrutiny process would need careful consideration regarding the design of effective supervisory powers and resources to be able to maintain an adequate investor protection.

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

Yes

No

Don't know/no opinion

N/A

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

**Yes**

No

Don't know/no opinion

In our opinion, the EU passporting mechanism works well with limited burden on NCAs and issuers. We see no immediate need to change the regime.

**(b)** *Could the notification procedure set out in Article 18, between NCAs of home and host Member States be simplified (e.g. limited to the issuer merely stipulating in*

*which Member States the offer should be valid, without any involvement from NCAs), without compromising investor protection?*

Yes

**No**

Don't know/no opinion

In general, Sweden supports simplification of the notification procedure to limit the administrative burden on NCAs. However, we acknowledge the need and benefit for authorities from a supervisory perspective to have an overview of the offers taking place in their respective jurisdiction.

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

	I support	I do not support	Justify
a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed		Not Supportive	An obvious need for extending the base prospectus regime has not been noticed.
b) The validity of the base prospectus should be extended beyond one year	Please indicate the appropriate validity length: [12-24 months]		We acknowledge that the base prospectus time of validity becomes increasingly impractical towards the end of that period. A

			possible way forward is to extend the validity period under the offer period for specific final terms which been filed under a valid base prospectus. This would allow an offer to continue for up to a 12-month period after final terms have been filed under the valid base prospectus..
c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA	Yes		See Question 41
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			
e) The base prospectus facility should remain unchanged			
f) Other (please specify)			

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

It would from a Swedish perspective be beneficial to reassess if the appliance of the "tripartite regime" according to Articles 5 (3) and 12) should be extended to include base prospectuses. We consider that the possibility to draw up base prospectus as a tripartite document would increase the flexibility of the base prospectus format and may also contribute to issues such as comprehensibility and readability of base prospectuses.

Besides this, we think that an extension of tripartite regime to base prospectuses would be beneficial and greatly increase the flexibility for issuers. This question is especially relevant considering the uncertainty regarding to what extent supplement can be used to modify existing pay-offs in or add additional pay-offs to an approved base prospectus, and relates to our answer on question 25.

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

a) No, status quo should be maintained.

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

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

N/A

**(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

Sweden is a strong advocate for increasing the digitalisation in the financial markets, for reasons of effectiveness and less administrative burden as well as building a sustainable future.

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

Yes

No

**Don't know/no opinion**

Sweden needs to understand the purpose of a single integrated EU filing system before answering this question. There are obviously costs related to creating a system like this, but what exactly are the advantages?

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

N/A

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

Yes

No

Don't know/no opinion

N/A

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

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

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

c) Don't know/no opinion

N/A

**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

N/A

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

Yes

No

Don't know/no opinion

N/A

**(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

N/A

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

Yes

No

Don't know/no opinion

N/A

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

Yes

No

Don't know/no opinion

N/A