EC Proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading

AMAFI's proposed amendments

On 30 November 2015, the **European Commission has published a "*Proposal*** *for a regulation of the European Parliament and of the Council* ***on the prospectus*** *to be published when securities are offered to the public or admitted to trading"* (the Proposal). As part of the EC Capital Markets Union action plan, the purpose of the Proposal is to improve access to finance for companies, particularly small and medium-sized companies, by making it easier for them to raise funding when issuing shares or debt and to simplify information for investors.

Association française des marchés financiers **(AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions

Accordingly, AMAFI is paying close attention to progress in the Capital Markets Union (CMU) initiative which has led to the publication of a Green Paper – *Building a Capital Markets Union* – with accompanying proposals aimed at revising the Prospectus Directive and establishing a European framework for simple, transparent and standardised securitisation. Keen to provide its contribution to this vitally important initiative, AMAFI has therefore responded to the three consultations launched in connection therewith, including the consultation of May 2015 on the review of the Prospectus Directive.

Consequently, AMAFI has welcomed the Proposal which, as a whole, constitutes a positive move towards the objective set by the European Commission. However, in order to move even closer towards such objective, AMAFI believes that certain amendments should be made to the initial text. This is why, having particularly in mind the upcoming parliamentary debates, AMAFI would like to propose **19 amendments to the Proposal, 10 of which are considered as a priority**.

AMAFI ■ 13, rue Auber ■ 75009 Paris ■ France
Phone: +33 1 53 83 00 70 ■ Fax: +33 1 53 83 00 83 ■ http://www.amafi.fr ■ E-mail: info@amafi.fr ■ Twitter: @AMAFI_FR

Priority Amendments

AMAFI has identified 9 articles of the Proposal as well as a recital which, in its view, should, as priority, be modified to ensure that the objective of the Prospectus Regulation is achieved, allowing a better access to finance, for all companies, particularly SMEs. The proposed amendments in this regard being all considered as very important, they are presented in the order of the articles to which they refer.

(1) Amendment 1 and 2: Article 1: Purpose and scope

- AMAFI would like to have the former "wholesale" exemption (for issues of non-equity securities with a denomination per unit of at least EUR 100,000€) reinserted as it believes that the deletion of this exemption, on the one hand, will not achieve its intended purpose of improving the debt market liquidity and increasing retail investment in debt products and on the other hand, it will unnecessarily increase the burden and costs of wholesale issues **(Article 1 (3) new subparagh (d))**;

- AMAFI believes that, when two or more offers are made during the same 12 month period, the proposed exemption (for offer of securities of less than EUR 500,000) should be calculated, for the second or subsequent offers by reference to the amount effectively subscribed in the context of the preceding offer(s) made during the same 12 month period rather than to the amount offered during that period. This is very important for SMEs which need to raise capital periodically but do not always have the amounts offered fully subscribed. The purpose of the proposed amendment is not to change the basic rule in effect for the exemption (less than EUR 500,000 over a 12 month period). It is just to adapt this rule to the needs of SMEs **(Article 1(3) new subparagraph(e))**;

- AMAFI approves the increased percentage (from 10 to 20%) for the exemption relating to the admission to trading of equity securities already admitted to trading on the same regulated market. For non-equity securities however, this limit of 20% should be removed as long as the fungible securities are issued during the same 12 month period following the first issuance, on the basis on the initial prospectus. It is therefore proposed to distinguish equity securities from non-equity securities to which slightly different rules, reflecting differences that exist between the two markets, should be applied **(Article 1(4)(a))**;

- AMAFI believes strongly that the proposed limits (20% over a period of 12 months) for the exemption relating to the admission to trading of shares resulting from the conversion or exchange of other securities should be deleted. Requiring a prospectus beyond these limits would serve no useful purpose (the conversion most of the time takes place during the last year, several years after the issuance of the convertible security and has no informative value for the market which has already integrated the impact of the future conversion). It would also make this specific exemption (in **Article 1 (4) (b)**) incoherent and different from the other specific exemptions set in subparagraphs (c) to (h), none of which is subject to a limit in time or amount (the only limit being in the "general" exemption of (a));

- Finally, in order to avoid any misunderstanding regarding the various exemptions set in **Article 1 (4)**, AMAFI proposes to insert a sentence setting out clearly that all the exemptions are standalone. This was confirmed by ESMA in its Questions and Answers Document on Prospectuses (Answer to Question 32) but inserting this principle directly in the Regulation seems preferable from a legal standpoint. It is proposed to use ESMA's words to that effect.

(2) Amendment 3: Article 2 (Definitions) and Article 15 (Minimum disclosure regime for SMEs)

➢ AMAFI considers that not only SMEs but also mid-sized companies with a market capitalisation of up to EUR 1 billion should benefit from an easier access to capital markets funding allowing them to grow and reach their full potential without disproportionate costs. This is why it proposes to create a new category of "mid-cap enterprises", with a market capitalisation between EUR 200 million up to EUR 1 billion, which would benefit from the minimum disclosure regime envisaged for SMEs in Article 15.

AMAFI therefore strongly supports the proposals relating to this matter contained in Mr. De Backer draft report in Amendments n°13, 14, 15, 16, 39, 49, 89, 90, 93 and 94.

(3) Amendment 4: Article 3: Obligation to publish a prospectus and exemption

➢ AMAFI is strongly opposed to the national option given to Member States to set a higher exemption threshold (EUR 10,000,000) for domestic offers. This is in total contradiction with the objective set by the European Commission to build a Capital Markets Union with a harmonized set of rules concerning the prospectus. It can only create additional complexity and a lack of level playing field detrimental to certain Member States. Therefore, this option should be removed.

(4) Amendment 6, 7 and 8: Article 7: The prospectus summary

➢ If AMAFI fully understands the general objective pursued in proposing new rules regarding the prospectus summary, it considers nevertheless that several of them are overly prescriptive and do not take into account the constraints linked to certain types of issues. This is particularly the case of the limit to 6 pages, irrespective of the complexity of the matter which may vary considerably from one situation to another. The limitation of the risks, particularly those specific to the issuer, to five risks only is also unrealistic. These excessive constraints could result in the information given being misleading for the investor. It could also raise further and unjustified liability concerns for the issuers. For these reasons, AMAFI proposes to remove the 6 page limit and the limitation to 5 risks factors.

(5) Amendment 13: Article 16: Risk factors

➢ AMAFI is strongly opposed to the requirement to categorize the risk factors in 3 distinct categories according to their relative materiality and based on the issuer's assessment of the probability of their occurrence and the expected magnitude of their negative impact. This is unrealistic and the categorization which necessarily implies a subjective appreciation could be misleading for the investor and give rise to unjustified liability for the issuer.

(6) Amendment 17: Article 47: Entry into force and application

➢ In order to ensure that all parties concerned (the issuers, financial intermediaries and the supervisory authorities) will have sufficient time to implement operationally the new rules, it seems very important that the 12 month period set for the entry into force of the new

Regulation start at the earliest from the moment the level 2 measures, which will cover a lot of very important aspects of this Regulation, have been approved by the European Commission.

(7) Amendment 19: Recital (14): Restricted circle of investors

- AMAFI sees no interest but possibly certain risks in maintaining Recital (14) which, unexpectedly, introduces a subjective notion in the concept of "restricted circle of investors". This subjective reference which serves no useful purpose and could only have a negative effect should be removed.

Other Amendments

The amendments proposed in this category are important in AMAFI's view, even though, they could be considered as being less essential than the 9 amendments detailed above. It is not proposed to detail here the reasons why these other 9 amendments are proposed. However a justification for each of them – to which it should be referred - is set after each proposal.

- **Amendment 5:** Article 6: The prospectus (removal for the "succinct" requirement)
- **Amendment 9:** Article 8: The base prospectus (on going public offers)
- **Amendment 10:** Article 9: The universal registration document (URD) (clarification needed regarding the benefit of the fast track approval process)
- **Amendment 11:** Article 10: Prospectuses consisting of separate documents (no prior approval of the URD after three years)
- **Amendment 12:** New article covering the issuance of a range of similar securities having different underlying parameters
- **Amendment 14:** Article 18: Incorporation by reference (to include any specified future regulated information)
- **Amendment 15:** Article 22: Supplement to the prospectus (removal of "without undue delay", inclusion of pay-offs, customs indices or underlying conditions)
- **Amendment 16:** Article 26: Offers of securities made under a prospectus drawn up in accordance with this Regulation (no third country representative)
- **Amendment 18:** New article covering tax issues

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

Proposal for a regulation COM(2015)583 final – 2015/0268 (COD)

Amendment 1

Article 1
Purpose and scope

Regulation proposal	*Amendment [by Parliament]*
3. This Regulation shall not apply to any of the following types of offers of securities to the public: (a) an offer of securities addressed solely to qualified investors; (b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer; (d) an offer of securities with a total consideration in the Union of less than EUR 500 000, which shall be calculated over a period of 12 months; (…)	3. This Regulation shall not apply to any of the following types of offers of securities to the public: (a) an offer of securities addressed solely to qualified investors; (b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer; **(d) an offer of securities whose denomination per unit amounts to at least EUR 100,000;** **(e)** an offer of securities with a total consideration in the Union of less than EUR 500 000, which shall be calculated over a period of 12 months. **In case two or more offers are made during the same 12 month period, the amounts which may be offered without prospectus after the first offer shall be calculated by deducting from EUR 500 000 the amount(s) effectively subscribed in the context of the preceding offer(s) made during the same period.** (…)

Explanation

The current prospectus exemption for offers of (bond) securities having a denomination per amount of at least EUR 100,000 should be maintained. Indeed, requiring the drafting of a prospectus or a summary for wholesale issues (together with the application of retail disclosure for wholesale issues):
- would be useless for wholesale investors as the latter have sufficient knowledge and experience to understand the risk linked to such issues;
- would be unlikely to achieve the intended purposes of improving debt market's liquidity (since wholesale investors already have a crucial role in this market) or increasing the investment choice for retail investors (since other reasons, such as pricing and liability under national consumer regulation, may explain why issuers may still continue targeting wholesale investors only);
- would entail additional and unnecessary burdens and costs for issuers and, consequently, may lead to wholesale issuers seeking admission to non-EEA or unregulated markets and issuing under other prospectus exemptions. Moreover, this exemption is under the issuer's control (bearing in mind its responsibility on the whole chain of distribution) and that can be hardwired in the final terms unlike other exemptions, notably (c) covering the minimum total consideration of EUR 100,000, which are not entirely under the issuer's control.
Besides, based on the prospectus exemption for investors who acquire securities for a total consideration of at least EUR 100,000 per investor (ref. article 1.3c), we are concerned that the contemplated rule may trigger the requirement to draw-up a prospectus when reselling the debt securities to retail investors.
For the calculation of the EUR 500,000 threshold, in case this amount is not fully subscribed in the context of a first offer and in case a second (or possibly third offer) is made during the same 12 month period, the exempted amount should be calculated, for those subsequent offers, taking into account the amount effectively subscribed, rather than to the amount offered, in the context of the offer(s) that were made previously during the same 12 month period. For instance if EUR 400,000 were offered but only EUR 300,000 were effectively subscribed in the context of the first offer, the amount "available" (without prospectus) for a second offer during the same 12 month period should be EUR 200,000 rather than EUR 100,000. This is particularly important for SMEs (and mid-cap enterprises – Please see our Amendment 3) for two reasons: (i) because it should be made easier for them and less costly to raise capital to finance their development and (ii) because in reality, it does happen to SMEs and mid-cap enterprises (but generally not to large caps) that when they call for capital, the amount they call for is not entirely subscribed. Hence the need, if a second or more calls are needed during the same 12 month period, to determine the amount which may be offered without a prospectus, by reference to the amount effectively subscribed (rather than offered) during the previous offers that took place during the same 12 month period. The purpose of this modification is not to change the basic rule in effect for the exemption (less than EUR 500,000 over a 12 month period). It is just to adapt this rule to the needs of SMEs and mid-cap enterprises.

Amendment 2

Article 1
Purpose and scope

Regulation proposal	*Amendment [by Parliament]*
4. This Regulation shall not apply to the admission to trading on a regulated market of any of the following:	4. This Regulation shall not apply to the admission to trading on a regulated market of any of the following:
(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 per cent of the number of securities already admitted to trading on the same regulated market;	(a) **(i)** securities fungible with **equity** securities already admitted to trading on the same regulated market**,** provided that they represent, over a period of 12 months, less than 20 per cent of the number of securities already admitted to trading on the same regulated market or **(ii) securities fungible with non-equity securities already admitted to trading on the same regulated market, if such fungible securities are issued during a period of 12 months from the first issuance;**
(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 per cent of the number of shares of the same class already admitted to trading on the same regulated market. Where a prospectus was drawn up in accordance with either this Regulation or Directive 2003/71/EC upon the offer to the public or admission to trading of the securities giving access to the shares, or where the securities giving access to the shares were issued before the entry into force of this Regulation, this Regulation shall not apply to the admission to trading on a regulated market of the resulting shares irrespective of their proportion in relation to the number of shares of the same class already admitted to trading on the same regulated market.	(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, ~~provided that the resulting shares represent, over a period of 12 months, less than 20 per cent of the number of shares of the same class already admitted to trading on the same regulated market. Where a prospectus was drawn up in accordance with either this Regulation or Directive 2003/71/EC upon the offer to the public or admission to trading of the securities giving access to the shares, or where the securities giving access to the shares were issued before the entry into force of this Regulation, this Regulation shall not apply to the admission to trading on a regulated market of the resulting shares irrespective of their proportion in relation to the number of shares of the same class already admitted to trading on the same regulated market~~.
(…)	(...)

(h) securities already admitted to trading another regulated market, on the following conditions: (i) (...) (v) that the person seeking the admission (...).pursuant to his ongoing disclosure obligations is available.	(h) securities already admitted to trading another regulated market, on the following conditions: (i)(...) (v) that the person seeking the admission.(...).pursuant to his ongoing disclosure obligations is available. **All the exemptions in Article 1 (4) are standalone and therefore if one of them applies, there is no requirement to publish a prospectus.**

Explanation

The new prospectus exemption for the admission to trading on a regulated market of securities fungible with securities already admitted to trading on the same market) is positive and addresses a former request of financial intermediaries.
Nevertheless, we consider that:
- Concerning (a) we have distinguished two cases : (i) equity securities and (ii) non-equity securities, (i) regarding equity securities, it is important that issuers who already have equity securities admitted to trading and are therefore already subject to the obligations of the Transparency Directive be allowed at any time in the future to have fungible equity securities admitted to trading without prospectus, within the proposed limit of 20% over a period of twelve months (ii) regarding non-equity securities, the 20 % limit should be removed as long as the fungible securities are issued during the period of 12 months following the first issuance. Indeed, the relevant prospectus still remains valid during this 12-month-period (subject to any required supplement, if any) and, consequently, there is no need for investors to obtain a new prospectus during this time;
- Concerning (b), the 20 % limit and the 12 month-period should be removed as (i) such further admission of shares (which usually takes place after the expiry of the 12 month-period) is a purely technical and automatic one, which do not involve any consequences (in terms of rights, notably) for the investors, and (ii) the draw up of a prospectus in such case would have no informative value for the market and would thus represent a useless additional administrative burden for issuers.
Finally, to avoid any misunderstanding, it would be useful to insert in the Regulation the clarification given by ESMA in its Answer to Question 32 of its document entitled: "Questions and Answers – Prospectuses – 23rd updated version – December 2015". We suggest using exactly the same terms to state clearly that all the exemptions in this Article are standalone.

Amendment 3

Article 2 (Definitions) and Article 15 (Minimum disclosure regime for SMEs)

Regulation proposal	*Amendment [by Parliament]*
Article 2 1. For the purpose of this Regulation, the following definitions shall apply: (a) (…) (b) (…) (c) (…) (d) (…) (e) (…) (f) "small and medium-sized enterprises ("SMEs") means either: - (…) - (…)	**Article 2** 1. For the purpose of this Regulation, the following definitions shall apply: (a) (…) (b) (…) (c) (…) (d) (…) (e) (…) (f) "small and medium-sized enterprises ("SMEs") means either: - (…) - (…) (fa) **"mid-cap enterprises" means companies that have an average market capitalization of between EUR 200 million and EUR 1 billion on the basis of end year quotes for the previous three calendar years**
Regulation proposal	*Amendment [by Parliament]*
Article 15 **Minimum disclosure regime for SMEs** 1. SMEs may choose to draw up a prospectus under the minimum disclosure regime for SMEs in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market. (….)	**Article 15** **Minimum disclosure regime for SMEs and mid-cap entreprises** 1. SMEs **and mid-cap enterprises** may choose to draw up a prospectus under the minimum disclosure regime for SMEs in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market. (….)

Explanation

To reflect the reality of mid-sized companies which should also benefit from an easier access to capital markets funding in order to be able to grow and reach their full potential and should be able to raise funds at costs that are not disproportionately high, it is important (i) to create a new category of "mid-cap enterprises" i.e. companies with a market capitalization of up to EUR 1 billion (i.e. above EUR 200 million up to EUR 1 billion) and (ii) to give such "mid-cap enterprises" the benefit of the "Minimum disclosure regime" envisaged for SMEs in Article 15.
For these reasons, AMAFI strongly supports the proposals relating to this matter contained in Mr. De Backer draft report in Amendments n°13, 14, 15, 16, 39, 49, 89, 90, 93 and 94 (which, beyond the proposals set out above in relation to Article 2 and 15, would also necessitate the inclusion of different recitals and modifications to other Articles of the Regulation as proposed in such Amendments).

Amendment 4

Article 3
Obligation to publish a prospectus and exemption

Regulation proposal	*Amendment [by Parliament]*
1. Securities shall not be offered to the public in the Union without prior publication of a prospectus.	1. Securities shall not be offered to the public in the Union without prior publication of a prospectus.
2. A Member State may exempt offers of securities to the public from the prospectus requirement of paragraph 1 provided that: (a) the offer is made only in that Member State, and (b) the total consideration of the offer is less than a monetary amount calculated over a period of 12 months, which shall not exceed EUR 10 000 000. Member States shall notify the Commission and ESMA of the exercise of the option under this paragraph, including the consideration of the offer chosen below which the exemption for domestic offers applies.	~~2. A Member State may exempt offers of securities to the public from the prospectus requirement of paragraph 1 provided that:~~ ~~(a) the offer is made only in that Member State, and~~ ~~(b) the total consideration of the offer is less than a monetary amount calculated over a period of 12 months, which shall not exceed EUR 10 000 000.~~ ~~Member States shall notify the Commission and ESMA of the exercise of the option under this paragraph, including the consideration of the offer chosen below which the exemption for domestic offers applies.~~
3. Securities shall not be admitted to trading on a regulated market situated or operating within the Union without prior publication of a prospectus.	~~3~~**2**. Securities shall not be admitted to trading on a regulated market situated or operating within the Union without prior publication of a prospectus.

Explanation

The national option given to Member States to set a higher exemption threshold for domestic offers is in total contradiction with the objective set by the Commission to build a Capital Markets Union with a harmonized set of rules concerning the prospectus. The disparity of regimes which is likely to result from the exercise of this option will create unnecessary complexities and a lack of level playing field between Member States which will favour certain countries to the detriment of others.
For these reasons, we strongly believe that this option should be removed.

Amendment 5

Article 6
The prospectus

Regulation proposal	*Amendment [by Parliament]*
1. Without prejudice to Article 14(2) and Article 17(2), the prospectus shall contain the information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. That information shall be presented in an easily analysable, succinct and comprehensible form.	1. Without prejudice to Article 14(2) and Article 17(2), the prospectus shall contain the information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. That information shall be presented in an easily analysable~~, succinct~~ and comprehensible form.

Explanation

We consider that the requirement for the prospectus to be "succinct" should be removed.
The terms "easily analysable and comprehensible" (in the same sentence) are in our opinion sufficient to ensure that prospectuses will not be unnecessary long and, consequently, the term "succinct" does not provide for any additional protection for investors.
Besides, this term "succinct" may even be non-compliant with the level of detail necessary to provide proper disclosure for investors and, as such, may be considered as contradictory with the obligations imposed on the issuer by the first sentence of this paragraph.

Amendment 6

Article 7
The prospectus summary

Regulation proposal	*Amendment [by Parliament]*
1. The prospectus shall include a summary providing the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered or admitted to trading on a regulated market, and that, when read together with the other parts of the prospectus, aids investors when considering whether to invest in such securities.	1. The prospectus shall include a summary providing the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered or admitted to trading on a regulated market, and that, when read together with the other parts of the prospectus, aids investors when considering whether to invest in such securities. **However, there shall be no requirement to provide a summary in the following cases:** **(a) where the prospectus relates to the admission to trading on a regulated market of non-equity securities offered solely to qualified investors;** **(b) where there is an offer of securities whose denomination per unit amounts at least to EUR 100,000;** **(c) where there is an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100,000 per investor, for each separate offer.**

Explanation

The requirement to draw-up a prospectus summary for all issues of debt securities to be admitted to trading on a regulated market should be removed. Indeed, we consider that the Prospectus Regulation should not require the preparation of a summary in cases where securities are offered only to qualified investors, since this summary will be of no benefit to qualified investors who have sufficient knowledge and experience to understand the rationale and risks of their contemplated investment. Issuers should therefore not be subject to unnecessary additional costs and administrative burdens in that regard.
The same exemption should apply to offers of securities with a minimum denomination of EUR 100,000 and those for a minimum total consideration of EUR 100,000 per investor.

Amendment 7

Article 7
The prospectus summary

Regulation proposal	*Amendment [by Parliament]*
3. The summary shall be drawn up as a short document written in a concise manner and of a maximum of six sides of A4-sized paper when printed. It shall: (a) be presented and laid out in a way that is easy to read, using characters of readable size; (b) be written in a language and a style that facilitate the understanding of the information, in particular, in language that is clear, non-technical, succinct and comprehensible. 4. The summary shall be made up of the following four sections: (a) an introduction containing warnings; (b) key information on the issuer, the offeror or the person asking for admission; (c) key information on the securities; (d) key information on the offer itself and/or the admission to trading. (…) 6. The section referred to in point (b) of paragraph 4 shall contain the following information: (…) (c) under a sub-section titled "What are the key risks that are specific to the issuer?" a brief description of no more than five of the most material risk factors specific to the issuer contained in the category of highest materiality according to Article 16	3. The summary ~~shall be drawn up as a short document written in a concise manner and of a maximum of six sides of A4-sized paper when printed. It~~ shall: (a) be presented and laid out in a way that is easy to read, using characters of readable size; (b) be written in a language and a style that facilitate the understanding of the information, in particular, in language that is clear, non-technical, succinct and comprehensible. 4. The summary shall be made up of the following four sections: (a) an introduction containing warnings; (b) key information on the issuer, the offeror or the person asking for admission; (c) key information on the securities; (d) key information on the offer itself and/or the admission to trading. (…) 6. The section referred to in point (b) of paragraph 4 shall contain the following information: (…) (c) under a sub-section titled "What are the key risks that are specific to the issuer?" a brief description of **a limited number of the risks specific to the issuer which the issuer regards as its principal risks** ~~no more than five of the most material risk factors specific to the issuer contained in the category of highest materiality~~ according to Article 16

7. The section referred to in point c) of paragraph 4 shall contain the following information: (…) (d) under a sub-section titled "What are the key risks that are specific to the securities?" a brief description of no more than five of the most material risk factors specific to the securities, contained in the category of highest materiality according to Article 16.	7. The section referred to in point c) of paragraph 4 shall contain the following information: (…) (d) under a sub-section titled "What are the key risks that are specific to the securities?" a brief description of **a limited number of the risks specific to the securities which the issuer regards as the principal risks relating to the securities** ~~no more than five of the most material risk factors specific to the securities, contained in the category of highest materiality~~ according to Article 16.

Explanation

We are strongly opposed to (a) the limitation of the summary to 6 pages and (b) the limitation in that summary of the number of risk factors to 5 of the most material ones. This is particularly true for the risks specific to the issuer.
Indeed, we consider that these rules proposed by the Commission:
- are overly prescriptive,
- do not address the constraints linked to certain types of issues – and, notably, pose very significant practical challenges in cases where the prospectus includes hundreds of pages,
- may negatively impact investor protection (it may result in the summary becoming involuntarily misleading for the investor when read together with the other parts of the prospectus) and
- may raise further (and unjustified) liability concerns for the issuers (since the choice of 5 material risk factors is subjective and the limitation to 6 pages may render the summary misleading for the investors when read with the other parts of the prospectus).
If however the proposal of the Commission to limit to 6 pages the length of the prospectus summary is retained, we consider that the review of what is at present included in Appendix XXII of the Commission Regulation n° 809 / 2004 (setting out the disclosure requirements in the prospectus summaries)(and is likely to be included in future delegated acts) would be necessary in order to restrict the required scope of information. Otherwise, issuers will not be able to comply with the proposed limit of 6 pages.

Amendment 8

Article 7
The prospectus summary

Regulation proposal	*Amendment [by Parliament]*
8. The section referred to in point c) of paragraph 4 shall contain the following information: (…) Where a key information document is required to be prepared under Regulation (EU) No 1286/2014 of the European Parliament and of the Council[21], the issuer, the offeror or the person asking for admission may substitute the content set out in this paragraph with the information set out in points (b) to (i) of Article 8(3) of Regulation (EU) No 1286/2014. In that case and where a single summary covers several securities which differ only in some very limited details, such as the issue price or maturity date, according to the last subparagraph of Article 8(8), the length limit set out in paragraph 3 shall be extended by 3 additional sides of A4-sized paper for each additional security.	7. The section referred to in point c) of paragraph 4 shall contain the following information: (…) Where a key information document is required to be prepared under Regulation (EU) No 1286/2014 of the European Parliament and of the Council[21], the issuer, the offeror or the person asking for admission may substitute the content set out in this paragraph with the information set out in points (b) to (i) of Article 8(3) of Regulation (EU) No 1286/2014. **In this case, the regular update of the key information document will not create any requirement for the issuer, the offeror or the person asking for admission, to update the content of the prospectus summary.** In that case and where a single summary covers several securities which differ only in some very limited details, such as the issue price or maturity date, according to the last subparagraph of Article 8(8), the length limit set out in paragraph 3 shall be extended by 3 additional sides of A4-sized paper for each additional security.

Explanation

The opportunity offered for the issuer of securities falling within the scope of both Prospectus and PRIIPS regulations to replace the "securities" section of the summary with the content of the "Key Information Document" (KID) required under PRIIPS is positive.
However, we suggest to insert additional provisions in paragraph 7 in order to ensure that an issuer who decides to use the content of the KID instead of the relevant elements of the "securities" section of the summary will not be required to update the summary, in whole or in part, when the KID is updated (which is compulsory at least once a year). Moreover, an annual update would be costly for issuers and manufacturers of debt securities.

Amendment 9

Article 8
The base prospectus

Regulation proposal	*Amendment [by Parliament]*
10. An offer to the public may continue after the expiration of the base prospectus under which it was commenced provided that a succeeding base prospectus is approved no later than the last day of validity of the previous base prospectus. The final terms of such an offer shall contain a prominent warning on their first page indicating the last day of validity of the previous base prospectus and where the succeeding base prospectus will be published. The succeeding base prospectus shall include or incorporate by reference the form of the final terms from the initial base prospectus and refer to the final terms which are relevant for the continuing offer. (…)	10. An offer to the public may continue after the expiration of the base prospectus under which it was commenced provided that a succeeding base prospectus is approved no later than the last day of validity of the previous base prospectus. The final terms of such an offer shall contain a prominent warning on their first page indicating the last day of validity of the previous base prospectus and where the succeeding base prospectus will be published. The succeeding base prospectus shall ~~include or incorporate by reference the form of the final terms from the initial base prospectus and~~ refer to ~~the~~ **and list the information necessary to identify the** final terms which are relevant for the continuing offer. (…)

Explanation

The acknowledgement of the need for issuers to continue an offer of securities to the public (i.e. the "on-going public offer" mechanism) upon expiration of the validity period of the initial base prospectus without having to issue new final terms is positive.
However, we suggest amending slightly the last sentence of the paragraph 10 in order to clarify this idea for all parties (issuers, investors, market participants and supervisory authorities) and to ensure its applicability. Precisely, we suggest deleting the notion of "incorporation by reference" of the "form of the final terms". Indeed, including the "form" of final terms would be irrelevant. The simple listing of the main details of the relevant final terms (i.e. name, underlying product and ISIN code) pertaining to the on-going public offers is sufficient to ensure an adequate investors' information.

Amendment 10

Article 9
The universal registration document

Regulation proposal	*Amendment [by Parliament]*
(...) 11. An issuer fulfilling the conditions described in the first or second subparagraph of paragraph 2 or in paragraph 3 shall have the status of frequent issuer and shall benefit from the faster approval process described in Article 19(5), provided that:	11. An issuer fulfilling the conditions described in ~~the first or~~ second subparagraph of paragraph 2 or in paragraph 3 shall have the status of frequent issuer. ~~and~~ **A frequent issuer as well as an issuer which has submitted a universal registration document for approval in compliance with the first subparagraph of paragraph 2 and subsequently filed the approved universal registration document** shall benefit from the faster approval process described in Article 19(5), provided that: .

Explanation

The status of frequent issuer is defined in this paragraph, not only by reference to "the second subparagraph of paragraph 2" (which sets the principle that after an URD has been approved before its filing, for 3 consecutive years, it may be filed without prior approval), but also by reference to "the first subparagraph of paragraph 2" (which sets the principle that an URD may be drawn and submitted each year for prior approval to the competent authority).
As a result of this double reference, there is an uncertainty as to the moment where the status of frequent issuer, giving right to benefit from the faster approval process, is acquired: is that at the end of the 3 year period (i.e. after an URD has been approved and then filed for 3 consecutive years) or is it as soon as one URD has been approved and filed (i.e. after just one year)?
This uncertainty should be clarified. On the one hand, logically, the status of frequent issuer should only be given to issuers which, after 3 consecutive years of filing an approved URD, are given the right to file an URD without prior approval. On the other hand, we are in favour of giving the benefit of the faster approval process as soon as one URD has been approved and filed.
If this interpretation is retained, then the status of frequent issuer should be linked to the possibility to file an URD without prior approval after 3 consecutive years but the faster approval process should benefit not only the frequent issuers but also any issuer which has filed only one URD.
The proposed amendment reflects this proposal. It seems a bit complex but does clarify an important point of uncertainty as to the moment where the status of frequent issuer is acquired and the prerogatives of such status.

Amendment 11

Article 10
Prospectuses consisting of separate documents

Regulation proposal	*Amendment [by Parliament]*
(...) 2. An issuer which already has a universal registration document approved by the competent authority shall be required to draw up only the securities note and the summary when securities are offered to the public or admitted to trading on a regulated market. In that case, the securities note, the summary and all amendments to the universal registration document filed since the approval of the universal registration document shall be subject to a separate approval. Where an issuer has filed a universal registration document without approval, the entire documentation, including amendments to the universal registration document, shall be subject to approval, notwithstanding the fact that these documents remain separate. The universal registration document, amended in accordance with paragraphs 7 or 9 of Article 9, accompanied by the securities note and the summary shall constitute a prospectus, once approved by the competent authority.	(...) 2. An issuer which already has a universal registration document approved by the competent authority **or which has filed a universal registration document without prior approval** shall be required to draw up only the securities note and the summary when securities are offered to the public or admitted to trading on a regulated market. In that case, the securities note, the summary and all amendments to the universal registration document filed since the approval of the universal registration document shall be subject to a separate approval. ~~Where an issuer has filed a universal registration document without approval, the entire documentation, including amendments to the universal registration document, shall be subject to approval, notwithstanding the fact that these documents remain separate.~~ The universal registration document, amended in accordance with paragraphs 7 or 9 of Article 9, accompanied by the securities note and the summary shall constitute a prospectus, once approved by the competent authority.

Explanation

We approve the mechanism set in Article 9 whereby, subject to strict conditions, an issuer who has had a universal registration document approved by the competent authority every financial year for three consecutive years, may subsequently file such a document without prior approval, even though, we regret that the proposal does not go as far as setting a mechanism of ex-post control for those issuers, comparable to the Well Known Seasoned Issuer (WKSI) system put in place by the SEC.
At the very least, the mechanism proposed in Article 9 should allow the issuers which, after three years, have been allowed to file a universal registration document without approval, to use such document as part a prospectus without having to subject it to approval.

Amendment 12

[New] Article 15 bis
Minimum disclosure regime for the issuance of a range of similar securities having different underlying parameters

Regulation proposal	*Amendment [by Parliament]*
(New article)	**1. Issuers who offer a range of similar securities having different underlying parameters are entitled to draw up a prospectus under the minimum disclosure regime.** **2. The Commission shall adopt delegated acts in accordance with Article 42 to specify the reduced information to be included in the schedules applicable under the minimum disclosure regime.**

Explanation

We consider that some listed products (e.g. warrants, notes, certificates) issued among a large range of products with the same economic mechanisms but different parameters (for example, a range of call warrants having different underlying shares) are solely purchased on the secondary market. It is worth noting that, for these products, the issuer draws up a generic marketing documentation for a specific range and provides continuous bid and offer prices on the relevant markets.
For these products, we consider that the notion of "public offering" is inadequate. Should this notion be applicable, it would trigger (i) the extension of the offer period until the maturity date of the product and (ii) an automatic renewal of the final terms / summary constraints, without any benefit for investors, who are already adequately protected through other regulations such as MIFID 2 and PRIIPS.
Consequently, we advise to set-up a "proportionate regime" for those types of generic products in the same way as it is provided for by the proposed new regulation for SMEs or secondary issuances.

Amendment 13

Article 16
Risk factors

Regulation proposal	*Amendment [by Parliament]*
1. The risk factors featured in a prospectus shall be limited to risks which are specific to the issuer and/or the securities and are material for taking an informed investment decision, as corroborated by the content of the registration document and the securities note. They shall be allocated across a maximum of three distinct categories which shall differentiate them by their relative materiality based on the issuer's assessment of the probability of their occurrence and the expected magnitude of their negative impact.	1. The risk factors featured in a prospectus shall be limited to risks which are specific to the issuer and/or the securities and are material for taking an informed investment decision, as corroborated by the content of the registration document and the securities note. ~~They shall be allocated across a maximum of three distinct categories which shall differentiate them by their relative materiality based on the issuer's assessment of the probability of their occurrence and the expected magnitude of their negative impact.~~

Explanation

We strongly oppose the requirement to categorize the risk factors in 3 distinct categories according to their relative materiality and based on the issuer's assessment of the probability of their occurrence and the expected magnitude of their negative impact.
Indeed, this categorization may negatively impact the investor's own assessment of the risks (and may therefore negatively impact its own protection) as such a categorization by the issuer would be subjective and may (involuntarily) be misleading for the investor.
Besides, this constraint may expose the issuer to an increased and undue risk of liability as the estimation of the materiality of such risk factors will be very difficult to assess and is subjective by nature. Investors may therefore be incentivized to launch legal actions based only on the fact that (i) too rigid rules are not complied with (for example, if a risk factor classified as "low risk" occurs) or (ii) that an offer is made in a non-EEA market (US, for example) without similar disclosure rules or including a disclosure document with additional information on risks.

Amendment 14

Article 18
Incorporation by reference

Regulation proposal	*Amendment [by Parliament]*
1. Information may be incorporated by reference in a prospectus where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 25 and where it is contained in one of the following documents: a) documents which have been approved by the competent authority of the home Member State, or filed with it, in accordance with this Regulation; b) documents referred to in points (f) and (g) of Article 1(3) and points (d) and (e) of Article 1(4); c) regulated information as defined in point (l) of Article 2(1); d) annual and interim financial information; e) audit reports and financial statements; f) management reports as defined in Article 19 of Directive 2013/34/EU of the European Parliament and of the Council; g) corporate governance statements as defined in Article 20 of Directive 2013/34/EU; h) [remuneration reports as defined in Article [X] of [*revised Shareholders Rights Directive*] i) memorandum and articles of association. Such information shall be the most recent available to the issuer.	1. Information may be incorporated by reference in a prospectus where it ~~is has been previously or simultaneously~~ published electronically~~,~~ drawn up in a language fulfilling the requirements of Article 25 and where it is contained in one of the following documents: a) documents which have been approved by the competent authority of the home Member State, or filed with it, in accordance with this Regulation; b) documents referred to in points (f) and (g) of Article 1(3) and points (d) and (e) of Article 1(4); c) regulated information as defined in point (l) of Article 2(1); d) annual and interim financial information; e) audit reports and financial statements; f) management reports as defined in Article 19 of Directive 2013/34/EU of the European Parliament and of the Council; g) corporate governance statements as defined in Article 20 of Directive 2013/34/EU; h) [remuneration reports as defined in Article [X] of [*revised Shareholders Rights Directive*] i) memorandum and articles of association. Such information shall be the most recent available to the issuer.

Explanation

We consider that the incorporation by reference of any specified future "regulated" information made available to the public, and in particular information disclosed under the Market Abuse and the Transparency Directives, should also be allowed.
This opportunity would not have any negative impact on the public and investors' information. Besides, it would facilitate the preparation of the prospectus by the issuer and lower its administrative burdens and costs.

Amendment 15

Article 22
Supplements to the prospectus

Regulation proposal	*Amendment [by Parliament]*
1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which may affect 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 the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay. (…)	1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which may affect 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 the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus. ~~without undue delay~~ **Issuers shall be entitled to update or add by way of supplement to the prospectus any terms, conditions, information or references, such as, but not limited to, pay-offs, custom indices or underlying conditions .** (…)

Explanation

We consider that the provisions of paragraph 1 "without undue delay" should be removed. Indeed, while it is legitimate to request from issuers to mention in a supplement to the Prospectus the significant new factors, material mistakes or inaccuracies referred to in this paragraph, the obligation to do so "without undue delay" is too subjective and may open grounds to unnecessary legal issues / unjustified claims.
Besides, we suggest to include in this article the opportunity for the issuer to provide for in a supplement to the prospectus any updated or additional pay-offs, new custom indices or underlying conditions to an approved base prospectus, which will enable frequent issuers to take into account (on a reasonable regular basis) product and index innovations – without having any negative impact on investors' protection. Otherwise, issuers may be precluded from offering products or making changes which may be beneficial to investors until the yearly update.

Amendment 16

Article 26
Offers of securities or admission to trading made under a prospectus drawn up in accordance with this Regulation

Regulation proposal	*Amendment [by Parliament]*
(…) 2. The third country issuer shall designate a representative established in its home Member State, among the entities which are subject to and supervised under EU financial services regulation, on the basis of an authorisation. The third country issuer shall notify the competent authority of the identity and contact details of its representative. 3. The representative shall be the contact point of the third country issuer in the Union for the purposes of this Regulation, through which any official correspondence with the competent authority shall take place. The representative shall, together with the third country issuer, be responsible for ensuring compliance of the prospectus with the requirements of this Regulation, in accordance with Chapters VII and VIII of this Regulation, towards the competent authority of the home Member State.	(…) 2. ~~The third country issuer shall designate a representative established in its home Member State, among the entities which are subject to and supervised under EU financial services regulation, on the basis of an authorisation. The third country issuer shall notify the competent authority of the identity and contact details of its representative.~~ 3. ~~The representative shall be the contact point of the third country issuer in the Union for the purposes of this Regulation, through which any official correspondence with the competent authority shall take place. The representative shall, together with the third country issuer, be responsible for ensuring compliance of the prospectus with the requirements of this Regulation, in accordance with Chapters VII and VIII of this Regulation, towards the competent authority of the home Member State.~~

Explanation

The new proposed requirement imposed on third country issuers to designate a representative established in their home Member State, who shall (among others) be responsible for ensuring compliance of the prospectus with the requirements under the new Prospectus regulation should be removed for the following reasons: (i) it is unclear as to its rationale; (ii) it would not increase investor protection, and (iii) last but not least, it would increase costs and the potential liability imposed on third country issuers, and therefore may render EU capital markets less attractive for third country issuers.
If these paragraphs are not deleted, the last sentence of paragraph 3 of this article should be removed in order to ensure that such representative would act only as a contact point without being required to ensure compliance of the prospectus with the new Prospectus Regulation.

Amendment 17

Article 47
Entry into force and application

Regulation proposal	*Amendment [by Parliament]*
2. It shall apply from [enter date 12 months after entry into force].	2. It shall apply from [enter date 12 months after **the approval by the Commission of the regulatory technical standards to be proposed by ESMA].** ~~entry into force~~].

Explanation

We consider that there is a risk that the 12 month period referred to in this paragraph 2 be shortened due to potential delays in the transmission by ESMA to the Commission of its RTS (and in the subsequent approval of these RTS by the Commission).
Therefore, in order to ensure that all parties concerned (issuers, financial intermediaries and the supervisory authorities) will have sufficient time to implement operationally the new regulation, we propose to postpone the date of application of the future regulation until 12 months after the approval by the Commission of the RTS provided by ESMA.
Should this proposal not be retained, we would propose to extend the 12 month delay set out in this paragraph to 24 months.

Amendment 18

[New] Article [--]
Tax

Regulation proposal	*Amendment [by Parliament]*
[Recital] (39) By nature, information on taxes on the income from the securities in a prospectus can only be generic, adding little informational value for the individual investor. Since such information must cover not only the country of registered office of the issuer but also the countries where the offer is being made or admission to trading is being sought, where a prospectus is passported, it is costly to produce and might hamper cross-border offers. Therefore a prospectus should only contain a warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities. However, the prospectus should still contain appropriate information on taxation where the proposed investment entails a specific tax regime, for instance in the case of investments in securities granting investors a favourable tax treatment.	**[*Please add article corresponding to this recital.*]**

Explanation

We welcome the content of Recital (39) of the proposed Regulation regarding the replacement of the current tax disclosure in the prospectus by a warning that the tax legislation of both the issuer's and the investor's Member States may have an impact on the income received from the securities.
In order to ensure legal certainty to this rule, we propose to include it in an additional article of the contemplated Prospectus Regulation.

Amendment 19

Recital (14)
Restricted circle of investors

Regulation proposal	*Amendment [by Parliament]*
(...) (14) Where an offer of securities is addressed exclusively to a restricted circle of investors who are not qualified investors, drawing up a prospectus represents a disproportionate burden in view of the small number of persons targeted by the offer, those no prospectus should be required. This should apply for example to an offer addressed to relatives or personal acquaintances of the managers of a company. (…)	(...) (14) Where an offer of securities is addressed exclusively to a restricted circle of investors who are not qualified investors, drawing up a prospectus represents a disproportionate burden in view of the small number of persons targeted by the offer, those no prospectus should be required. ~~This should apply for example to an offer addressed to relatives or personal acquaintances of the managers of a company.~~

Explanation

The notion of "restricted circle of investors", which is used for the definition of one case of exemption from the obligation to draw a prospectus, is an objective notion which should be defined solely by reference to a number of persons. This objective notion exists in the 2003 Prospectus Directive (Article 3(2)(b)) and is proposed in the same terms in Article 1(3)(b)of the Proposed Regulation.
We do not see therefore the interest of introducing, in Recital (14), the subjective notion of "relatives or personal acquaintances of the managers of the company". First of all, the insertion of this subjective notion in a recital but not in the text of the Regulation itself may create confusion and doubt as to the intent of the European legislator. Secondly, we are strongly opposed to having a subjective appreciation of what is a "restricted circle of investors". Such a subjective notion existed in France until 2005 and has then been removed (and replaced by a purely objective notion) since it was recognised by all, including the competent authority, that such notion generated a lot of insecurity for all parties concerned.
For the sake of legal certainty and predictability, we propose therefore to delete the last sentence of Recital (14).