Brussels, 12 April 2016

EACB position regarding on the proposal for a Regulation to revise the European Prospectus regime

March 2016

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 30 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,200 locally operating banks and 67,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 205 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 81 million members and 805,000 employees and have a total average market share of about 20%.

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Introduction- Key points

The European Association of co-operative Banks (EACB) welcomes the Commission's proposal to review the Prospectus Regime as an important step to building a Capital Markets Union. The EACB strongly supports the objectives of the proposal to improve certain requirements in order to alleviate the burden for companies which draw up a prospectus (especially SMEs) and to make the prospectus a more valuable information tool for potential investors. At the same time, further alignment of the prospectus rules with other EU disclosure rules (e.g. the Transparency Directive and the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs)) could indeed enhance the efficiency of the prospectus.

Indeed, the members of EACB consider that the draft Prospectus Regulation will create a more efficient framework and contribute to a more coherent approach across the European Union. However, we consider that some further improvements would be desirable to make it easier for firms to fulfil their administrative obligations, but in a way that investors are still well informed about the products they are investing in.

Please find our detailed comments below.

Specific Remarks

1. Securities with a denomination per unit of at least EUR 100 000/ wholesale exemption

The current existing framework i.e. Directive 2003/71/EC provides in Article 3(2) 1 d) for an exemption from the obligation to publish a prospectus in the case of a public offer of securities with a denomination per unit of at least EUR 100 000. The rational behind this exemption is that it was considered that private or retail investors (who were the primary focus of the investor protection provisions of the prospectus regime) were less likely to invest in high-denomination debt (and in fact, this exemption is commonly known as the "wholesale exemption"). The existing framework is based on the principle that investors investing in these volumes do not need a prospectus to make their decision.

In the new proposal this exemption for public offers of non-equity securities with a denomination per unit of at least EUR 100 000 is abolished. The reason given for this change is the will to increase the number of bonds available to retail investors by encouraging the issuance of debt securities with lower denominations.

However, we do not believe that abolishing the EUR 100 000 denomination exemption would achieve this objective for the following reasons:

- The rational behind the threshold distinguishing between retail and wholesale offers when non-equity securities are admitted to trading on a regulated market remain still valid. High denominations will continue to be used in particular by wholesale issuers who chose high denomination of at least EUR 100 000 because they target their offering to wholesale investors only. Denominations per unit of at least EUR 100 000 might simply make an investment for inexperienced investors very unlikely. This practice will not change as a consequence of the abolition of the so-called wholesale exemption.

- The increase of the number of bonds available to retail investors and the liquidity in the corporate bond markets is not a result of the denominations of the securities, but a

result of efficient market making activities. The participation of market makers remain critical in supporting liquidity and the overall functioning of the secondary markets in addition to the size of issuance. As long as a market for such denominations or minimum selling prices is available - which indicated the successful placement of securities under this prospectus exception - the liquidity of the relevant product cannot be considered adversely affected.

The removal of the existing exemption for non-equity securities with a denomination per unit of at least EUR 100 000 will not only miss the target of achieving lower denominations, it will at the same time negatively affect the efficient operation of the EU wholesale markets for debt securities – which currently function well- by eliminating the lasting separation from the retail markets provided by this exemption. Abolition of this dual regime will lead to an increase of the costs and administrative burden of the issuers, making financing via capital markets more expensive. A well functioning wholesale bond market is a prerequisite for a successfully CMU. Moreover, a retail market for debt securities cannot and should not be developed at the detriment of the wholesale market.

In addition, the current Prospectus rules provide that where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100 000 these are also exempted from the requirement to provide the summary of the prospectus (Article 5(2) of Directive 2003/71/EC). This exemption is relevant for debt securities which are targeted at professional investors who do not require the same amount of information in a prospectus as retail investors. This exemption has also been abolished in the new proposal. This would increase costs and complicate wholesale offers without any added value.

The wholesale exemption allows the banks to offer securities throughout the EU, without the passporting requirement or the translation of the prospectus summary. As this type of cross-border offering is in line with the overall goals of the CMU and for the reasons explained above we strongly believe that the wholesale exemption should be re-introduced.

For the same order of considerations, we oppose to the proposal (Amendment 33) envisaged in the draft Report of the Committee on Economic and Monetary Affairs (ECON) to delete Article 1(3)(c) of the EC Proposal (which is also provided in Article 3(2)(c) of the currently applicable Prospectus Directive 2003/71/EC) for the 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. Consequently, we cannot support

2. Threshold for small credit institutions

With Article 1(2) i) of the proposal, the EU Commission still recognizes that – when it comes to smaller credit institutions – a proportionate prospectus regime is required. The provision was originally created in order to exempt smaller credit institutions from the requirement to produce a prospectus. Since the current prospectus regime has been in force, practice has shown that small banks practically cannot benefit from this exemption either, as the EUR 75 000 000 limit is too low:

Since the total value of bonds issued by them is often only slightly higher than the said limit, implementation of this provision meant that smaller credit institutions in may Member States faced having to produce prospectuses for their bonds for the first time. The complexity, considerable time and significant costs involved in the production of a prospectus has affected

the volumes of bond issuance of our co-operative banks – especially some smaller ones- which have clearly rolled back their volume of issuances. A significant increase in the limit would be consistent with the declared objectives behind the review of the Prospectus Directive, i.e. reducing bureaucracy, inefficiencies and administrative burden. We therefore recommend raising the threshold in order to enable smaller credit institutions to access and to provide access to capital markets in times of low interest rates and increased regulatory requirements, in particular regarding capital ratios. In this context, the role of small credit institutions (that are supporting local economy granting loans to SMEs) for financial stability in times of crises should be mentioned. Furthermore, it is worth pointing out that a higher bond's issue, due to the proposal to increase the limits of exemption, could be useful to achieve another goal: the stability of the small banks financial system. In this way, a barrier to transform the short term funding (volatile) into medium and long term funding (stable), should be eliminated with the benefits of strengthening the financial system as a whole. The ability to choose from a wide range of different issuers would also be in the interests of investors or, moreover, the financial market in general. Moreover, the fact that credit institutions, unlike other issuers, are subject to prudential supervision and several disclosure requirements about financial data, balance sheet and risk policies already widely available to the public should be taken into account.

Typically, the small credit institutions have an average size of single issue of nearly 15 mln EUR. We would like to note that taking as an example a typical cooperative bank in one member state with an estimated average total asset of around 1.5 billion EURO for non- equity (bond) size issuance between 100 and 200 million Euro per year the costs of producing a prospectus affect the economic returns of the bank, e.g. these costs represent 30% of the revenues from reception and transmission of orders. Thus, we consider that the total costs of producing a prospectus seem to be disproportionate taking into account the scale and complexity of the issuer.

Therefore, this exemption should be extended by raising the total consideration for securities offered to less than EUR 150 000 000, calculated over a period of 12 months. Such threshold would be more proportionate, striking an appropriate balance between the effective investor protection and the reduction of administrative burden.

In case it is decided not to increase the thresholds, we would propose that for public offers with a total consideration below 150 000 000 the issuer should draw up and publish a more proportionate disclosure as a summary document (e.g. KID), rather than an "ordinary" or base prospectus, that illustrates the key information regarding the issuer and in order to provide the features of financial products offered, the main risks and costs associated and other relevant and key information.

3. Exemption of offers directed to fewer than 150 persons

We note that – in our view- the 150 persons provided in Article 1 (3) (b) threshold is too low and as such could have a negative material impact on the market efficiency since this threshold may hinder market participants from refinancing in the market. This is particularly the case of smaller issuers addressing retail investors. If for example the denomination is small and the maximum amount of investment per person is capped it might be almost impossible for this market participant to refinance without preparing a prospectus. Since the costs for a prospectus are high a prospectus might be too costly compared to the benefits. Moreover, this threshold also covers the mere offer of these issues even if an investment has not yet been made and/or is not concluded in the end and thus this threshold may be exceeded without raising a relevant amount of money. We would thus propose to raise this threshold at 500 persons.

With this in mind we totally support the proposal (Amendment 32) envisaged in the draft Report of the Committee on Economic and Monetary Affairs (ECON).

4. Offers of securities with a consideration below EUR 500 000

We welcome the proposal (Amendment 34) envisaged in the draft Report of the ECON to raise the threshold in Article 1 (3) (d) to EUR 1.000.000 considering that the costs for a prospectus are disproportionate for an issue of that volume and that this increase support the aim of the European Commission to facilitate banks' lending to SMEs.

5. Offers to existing shareholders of shares for a capital increase

When reviewing the existing prospectus regime, inclusion of an exemption from the prospectus requirement covering offers addressed solely to existing shareholders to subscribe to new shares for a capital increase would be desirable. However, we understand that in the context of the draft Prospectus Regulation these offers fall under the minimum disclosure regime. A prospectus would still have to be prepared and approved by the competent authority. Yet the shareholders who are invited to subscribe to the new issue will have no need for the information in the prospectus: they have already invested in the type of share in question. With this in mind, an exemption from the scope for such cases would help to achieve the objective of making equity financing more flexible without reducing investor protection in any way.

6. The universal registration document (URD)

The EACB very much welcomes the introduction of the universal registration document (URD), as provided in the Article 9 of the proposal. The URD is indeed a promising starting point for improving the EU issuer disclosure regime both for issuers and for investors looking for easy access to exhaustive information on an issuer of securities. The URD could in this respect be an important ingredient of more efficient EU capital markets. This will largely depend on how easily the information in the registration document can be integrated into existing and new issuance prospectuses.

Indeed, in its current form, the URD falls short of what it could really achieve.

The first important point in this respect is that the URD and also its amendments should be usable in prospectuses without further approval steps contrary to Article 9 (10) and 10 (2) of the EC proposal. The privilege for frequent issuers to modify the URD by simply filing amendments instead of being required to follow the approval process for supplements as provided in Article 22 becomes meaningless if the resulting amended URD cannot be directly used for prospectuses without further approvals. Due to the fact that the benefit of only filing a URD (instead of having it approved before it is published) is safeguarded with a post-filing review, allowing the inclusion of the URD and its amendments in prospectuses without further approvals should not be too ambitious.

The second crucial point is that changes to the URD must automatically become part of all related prospectuses. We understand that the URD is developed to become the exhaustive, central document with the most recent information on the issuer. By using it to replace periodic disclosure (in annual and half-yearly financial reports) under the Transparency Directive and possibly ongoing ad hoc disclosure under MAR, the URD should also be the only source of issuer disclosure that securities investors are referred to when provided with a prospectus. To simplify prospectus processes for frequent issuers, it is important to allow a dynamic reference to the

latest URD in the prospectus. This would also avoid the distortion in the availability of information in the primary and secondary markets caused by the time lag between the update of an URD and a supplement to each individual prospectus. To achieve this, dynamic incorporation by reference of the most recent version of the URD must be allowed. With these changes, regular updating of issuer disclosure could become a centralised workflow that is separate from prospectus management. That would be a substantial contribution to the CMU by way of increased efficiency of issuance processes on a pan-European level.

The third point is that a URD approved in one Member State needs to be available with its full functionality in any other Member State, subject to the limits of the language regime. This is not only a matter of efficiency, but also very important to ensure the consistency of issuer disclosure across the EU. One way to achieve this would be to extend the passporting mechanism to registration documents; another could be to simply let the URD be filed with the relevant competent authority of the other Member States, while at the same time discouraging a duplicative review by these competent authorities.

Where the conditions under Art. 22(1) are met, the relevant changes to the information in the URD could trigger a withdrawal right under all relevant prospectuses, as if a supplement to the relevant prospectuses had been published at the same time.

Furthermore, it should be made clear that the provisions of Article 9 are equally applicable to non-listed frequent issuers. There should be no discrimination with regard to the legal form of the issuer. Article 9 should be applicable to all capital market-oriented entities, irrespective the condition of listed company, such as credit institutions. Indeed, the latter are "frequent issuers" by definition, considering that their main and continuously funding is represented by issuance of securities. We consider the focus of the current provisions on listed issuers not justified.

7. Presentation of Risk factors

The EACB agrees with the objective of preventing lengthy, incomprehensible risk factor sections in prospectuses. However, prescribing under Article 16 of the proposal that risk factors need to be allocated across a maximum of three distinct categories according to their materiality is not neither suitable nor appropriate to address the issue, as risk factors do not become any shorter or more readable simply because they are sorted into two or three categories.

The EACB strongly disapproves with the proposed approach as highly problematic for the following reasons:

Establishing two or even three different categories forces issuers to draw an artificial line between different risk factors that may not be far apart from each other in terms of materiality. The categorisation can be a subjective exercise , or have a debateable outcome, as there will always be grey areas.

Limiting the risks and highlighting selected risks could give the impression to investors of fewer risks than actually potentially occurring. In addition, a grouping of certain risk factors in a category that may lead the reader to believe that the subsequent risk factors might be of lower probability and/or magnitude would induce the prospectus reader to stop reading the further risk factors, as "they are only of smaller risk anyway". The whole allocation procedure and the idea of using mitigating language for lower categories may be dangerous for investors. They may be induced not to read all relevant risk factors and to focus on the ones in the first category instead.

Furthermore, issuers are also exposed to additional and unnecessary liability risk for potentially wrong allocations to the different categories. Indeed, the prospectus could even be considered misleading if a risk factor that was categorised as a lower risk materialises and causes substantial damage.

Finally, for issuers that access both the EU and the U.S. capital markets and need to align their disclosure, particularly regarding the risk factors, in these two markets, this categorisation requirement, which is unknown in the U.S. markets, will cause a divergence between their EU and the U.S. disclosure.

A new requirement for the presentation of the risk factors is also not necessary for several reasons:

- The prospectus summary already offers an executive summary of the risks, presenting key risks in a concise manner; anyone interested in more details should then be allowed to turn to the main prospectus for an exhaustive description of all risk factors. (With regard to the risk factors in the summary, we also refer, however, to our comments on Article 7(6)(c) and (7)(d) in section 8 below).
- At the same time, the prospectus is by definition a liability shield and naturally leads to an exhaustive description of all relevant risk factors. Issuers are already strongly incentivised to create a complete and comprehensible prospectus.
- Competent authorities already today have the option of refusing to approve a prospectus whose risk factors are not presented in a comprehensible manner. The categorisation of risk factors is not necessary to address identified deficiencies in specific prospectuses.
- Today, issuers have and use the opportunity to specify the degree of materiality within the risk factors themselves. This is a more suitable and differentiated tool than allocating risk factors to two or three categories.
- Some risks are appropriately described by generic wording, as they are of a general nature but nevertheless material to the assessment of the investment.

In addition, the categorisation would also raise the question whether a prospectus supplement is required if the issuer comes to assess a specific risk as belonging to another category than originally presented at the time of approval of the prospectus. A lack of clarity on this point will most likely lead to the issuer supplementing the prospectus more frequent to be on the safe side and therefore an increase of both costs as well as the administrative burden on the issuer.

For all these reasons, we consider that the proposed requirement to allocate all risk to a maximum of three categories should be abandoned.

For the same reasons we cannot support Amendment 67 envisaged in the draft Report of the Committee on Economic and Monetary Affairs (ECON) which introduces in Article 7(4) a reference to performance scenario. We strongly disapprove that position because it is –in our view- in contrast with the idea of simplification. Indicatively, we refer to the Italian study of CONSOB (National Commission for Listed Companies and the Stock Exchange) performed in collaboration with Marche Polytechnic University (UNIVPM) which has shown that the performance scenarios are not useful for the purpose of simplification information for retail investors[1].

8. Summary

[1] http://www.consob.it/mainen/documenti/english/papers/wp82.html?symblink=/mainen/consob/publications/papers/index.html

Article 7(6)(c) and Article 7(7)(d) of the Commission's proposal limit the number of risk factors that should be presented in the summary to five. That will force issuers not only to set verifiable criteria to decide on a maximum of three risk categories as provided in Article 16 of the draft Commission proposal (see above our concerns under 5) but also to select five key risks for the summary based on their of probability of occurrence. The suggested approach will put restrictions on the possibility of an issuer to describe the risk factors as it considers appropriate. It remains vague if ESMA will define such a method on Level 3 and who would be liable for such a method if another, less probable risk determined and not contained in the five key risks materialises. In addition, the categorisation would again raise the question whether a supplement is required if the issuer comes to assess a specific risk as belonging to another category than originally assessed during the validity of the prospectus.

Art 7 (3) caps the size of the Summary with six A4 pages when printed, whilst the listing of the headings in Art. 7 alone requires 2 pages. As already extensively discussed in the past, requiring a maximum amount of pages (or words) for the Summary of the Prospectus is counter-productive, as it does not take into account the complexities of the issuer and/or the securities. Especially given the purpose of the Summary to present "key information investors need to understand the nature and the risks of the issuer […] and the securities" (Art 7 (1)), a strict cap undermines the whole purpose of the Summary. A strict cap could also lead to extensively abbreviated descriptions that would not be in the investor's best interest. If the idea of a cap is maintained, it should be defined as a percentage of the whole prospectus, as this would be better reflect an issuer's or security's complexities.

We welcome the general option provided for in Article 7(7) of the proposal of substituting the summarised description of the securities with the Key Information Document (KID) for packaged products under PRIIPs Regulation. This option only has any real added value for issuers, however, if parts of the key information document required under the PRIIPs Regulation can be adopted without any further modifications. According to the wording, such an approach does not appear unequivocally possible, as Article 7(7) of the proposal calls for a differently formatted key information section than that under the PRIIPs Regulation. We therefore request clarification on this point or interpretation of "may substitute the content set out in this paragraph" in such a way that issuers may also deviate in this respect from the formatting requirements.

9. Base prospectus

We welcome the improvements presented in Article 8 of the draft Prospectus Regulation regarding base prospectuses, including the reintroduction of the " tripartite base prospectus" and the availability of base prospectuses for all types of non-equity securities. All improvements to the base prospectus regime directly lead to a more efficient issuance process for frequent issuers. They also help those corporate issuers that issue less frequently, but maintain such a platform for the moment they need to quickly enter the market.

However, certain modifications as envisaged in the EC Proposal for a Prospectus Regulation could – in our view- be detrimental to the efficiency of the base prospectus regime and should be reconsidered:

- Article 8(2)(a) of the EC proposal requires the base prospectus to contain a list of the information that will be included in the final terms. This requirement could, in practice, prove quite burdensome to issuers without really adding value for investors. Today, the base prospectus only needs to contain an indication of the information that will be included in the final terms (Article 22 (5) (1) of Degelated Regulation No 809/2004). Requiring a list of the information would, however, require creating another reference list showing all the items that are included in the final terms again. This would make the base prospectus longer and less comprehensible, and at the same time more complex

and costly without any apparent benefit to the investor. We would therefore recommend returning to the current wording that simply requires for an "*indication on the information that will be included in the final terms".*

- Article 8(4) of the proposal introduces stricter timing for the publication of final terms. Instead of "as soon as practicable upon the making of a public offer and, where possible, before the beginning of the public offer" under the current rules, according to the draft Prospectus Regulation the issuer would have to make the final terms available to the public "as soon as practicable before the beginning of the public offer". A key advantage of the base prospectus is allowing the issuer to begin a public offer on the basis of the approved base prospectus, while the completed final terms are provided as soon as possible thereafter. Having to prepare and distribute the final terms before the beginning of the offer would reduce the flexibility of the instrument, without providing investors with information they do not already receive otherwise. We would recommend to introduce the current wording to EC proposal Prospectus Regulation i.e. "*as soon as practicable upon the making of a public offer and, where possible, before the beginning of the public offer".*
- Article 8(10) states that "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". In order to ensure the continuity of offers and to facilitate the opportunities either to raise capital or to strenghten the funding, it might be useful to allow issuers to continue the offer after the expiration of the base prospectus *"provided that an application for prospectus approval has been presented no later than the last day of validity of the previous base prospectus."*
- Article 22 of the draft Prospectus Regulation establishes the requirement to publish supplements without undue delay. This is a sensible approach for standard prospectuses, but not for those base prospectuses that are less frequently used. Many months may pass between the approval of a base prospectus and first issuance thereunder. Issuers should not be forced to continuously supplement their base prospectuses even when these are not used. It would therefore be more appropriate to *require the publication of a supplement for a base prospectus only before the beginning of the next offering or admission of the relevant securitis to trading on a regulated market.*

In addition, we would propose an additional modification regarding the base prospectus regime. As long as the supplement does not introduce new securities that are governed by a different Annex of the Level 2 Prospectus Regulation, it should be possible to include new products in a base prospectus through supplements. The right of the competent authority under the proposed rules to request a consolidated version of the prospectus as supplemented addresses any concern about the comprehensibility of a specific supplement. This change would simplify the base prospectus regime and make issuances in the European capital markets even more efficient.

10. Notification

We understand that, in the case of a base prospectus, a summary only has to be drawn up when the final terms are approved or filed and that the summary it must be specific to the individual issue (Article 8(7)). However, it is important to provide further clarification on the notification process (Article 24) and the use of language (Article 25) regarding base prospectus.

In particular, we would consider that further legal certainty is needed on how notification of base prospectuses to EU host Member States is going to take place. The proposed Article 24 and its unclear distinction between stand-alone and base prospectus could possibly create situations that are dealt with differently in different Member States. It must be avoided that a

base prospectus and the respective annual reports are required to be translated for the notification by host Member States. This would result in very high transaction costs and will deter issuers from placing their products cross borders, which would jeopardise and even contradict the CMU political objective of stimulating cross-border capital flows within the EU.

11. Minimum disclosure regime for secondary issuances

We welcome the approach to set minimum disclosure requirements for secondary issuances as envisaged in Article 14 of the draft Prospectus Regulation and as it will be further specified in Level 2 legislation.
In this respect, we would like to point out that issuers without listed equity, such as co-operative banks, are unable to benefit from the minimum disclosure regime in Article 14(1)(b). All options of Article 14 should be applicable to all capital market-oriented entities, such as credit institutions, irrespective the condition of listed company. We consider that the limitation of this lighter disclosure regime to listed equity issuers is disproportionate and unjustifiable.

12. Publication of the prospectus

Article 20(6) provides for a new way of publication by ESMA. We welcome such an additional manner of prospectus publication, which would undoubtedly be helpful for investors and would contribute to the CMU objectives. In order to avoid unnecessary costs, and in line with other similar storage obligations for issuers, we would like to suggest using already existing infrastructure like OAM or European electronic access point (EEAP) pursuant to the Transparency Directive.

Article 20(4), as well as Article 6(4)(b) of the delegated Regulation, stipulate that access to the prospectus will not be subject to (among other things) "the acceptance of a disclaimer limiting legal liability". Such provision must not, however, prevent issuers, offerors and financial intermediaries from installing so-called "SEC blockers" on their websites, which a reader has to confirm before obtaining access to a prospectus. This should ensure that only persons from countries in which a public offering is taking place obtain access to the prospectus in order to prevent triggering a public offering in countries where no prospectus has been published.

Moreover, we would propose to similar solution to the current Prospectus Directive (Article Article 14 (2) (e)) and add to Article 20(2) that when the prospectus, shall be deemed available to the public also when published in *electronic form at the website of the competent authority of the home Member State or of ESMA.*

In addition, when it comes to prospectus publication, we take a critical view of the approach that all prospectuses approved are to remain publicly available for at least ten years on the websites specified in Article 20(7). Alignment in this respect with civil limitation rules in the relevant Member States or equalisation with the publicity period to the maturity of the securities offered would be more appropriate.

13. Greater degree of harmonisation on certain points

The EACB is of the opinion that the proposed Prospectus regime will contribute to a more coherent approach across the EEA, reducing fragmentation at national level and reducing the scope for differences in national legislation. However – in order to ensure a European coherent approach – a greater degree of harmonisation would be favourable. In particular, further harmonisation throughout the European Union would be needed on the following key points:

a) *Need for harmonisation for offerings below EUR 10 000 000*

Article 3(2) of the proposal gives Member States the option of exempting offers of securities with a total consideration up to an amount of EUR 10 000 000 from the prospectus requirement provided that certain conditions are met. We have reservations towards leaving this point to the discretion of Member States. And though Article 3(2) applies only to offers made in a single Member State (not to cross-border offers), this is not a purely national matter. We see a danger that giving Member States this option will make it impossible to create a level playing field. Advantages occurring from such freedom of choice are not repaid by the disadvantage of inconsistency between EU Member States and the effect of regulatory arbitrage that would derive from it.

We would therefore suggest removing the option from Article 3(2) and replacing it with a general exemption from the prospectus requirement, thus establishing a consistent regime across all member states. This is the only way to ensure that small and medium-sized companies throughout the EU will be able to benefit from the EUR 10 000 000 threshold by not having the expense of producing and publishing prospectuses.

Moreover, considering the total costs of producing a prospectus, we deem that it would make sense to raise the threshold to at least 20 million euros to support the aim of the European Commission to facilitate SMEs cost-effective access to the capital market. Therefore, we fully support the proposal (Amendment 54) envisaged in the draft Report of the ECON.

b) *Less discretion for Member States for the supervision of marketing materials and warning signs*

The proposal does not amend any of the existing provisions in respect of advertisements for public offerings of securities (article 21 of the proposal). Issuer and underwriters are often confronted with varying expectations and differences between national competent authorities as to the minimum requirements that have to be met in respect of advertisements (minimum content, presentation, communication method, etc.). This is often cited as a source of additional costs for issuers and a cause of delays in the process of offering securities in another Member State. The same applies for warning signs. The EACB would call for a harmonised and standardised approach to (exemption) warnings and other requirements of offering materials throughout the EEA.

c) *Streamlining the requirements regarding the approval process.*

European consistency in the requirements regarding the approval and publication process of prospectuses and supplements (including the approval period, necessary date of publication, date of entry into force) between EU Member States should be pursued in order to improve the effectiveness of a single market within the EU. The same stands for the translation & language requirements. A consistent approach through Europe is necessary.

14. Some further clarifications in the text

We consider that the following clarifications are necessary to ensure legal certainty:

- the term "class of securities" (Article 14 Par. 1(c)) needs further specification - also considering other pieces of legislation (e.g. MiFID)
- the term "searchable electronic format" used in Art. 18 should be defined in more detail
- The term "written agreement" in Article 5 needs further specification (e.g. technical standards) regarding form.
- in case of continuous issues we ask for a clarification in Art. 17 that the reporting of the maximum price and the maximum volume of the issue should be sufficient for the final

terms (to avoid the extensive information on all effective prices and the final volume of the issue ex-post).

15. Date of application

Recent experience with the establishment of Level 2 legislation (e.g. in respect of MiFID II/MiFIR, MAR, CSDR, PRIIPs, etc.) shows that timetables are difficult to adhere to. European legislators have reasonable problems finalising the vast amount of Level 2 legislation in the envisaged timelines, which causes problems not only for them but especially for those subject to the new legislation.

In order to ease the pressure on European legislators and to give issuers enough time to implement the new Level 2 legislation in their processes, we would strongly recommend a dynamic date of application, which should be 12 months after the entry into force of Level 2 legislation. Article 47(2) of the proposal should be modified accordingly. Alternatively, the proposed Level 1 Prospectus Regulation should only apply 24 months after its entry into force.

Moreover, regarding Regulatory Technical Standards (RTS) and Implementing Technical Standards, we are of the opinion that these should be narrowed to absolutely necessary content.

Contact:

The EACB trusts that its comments will be taken into account.

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