

OBSTACLES TO JOINING THE IOSCO MOU



**EMERGING MARKETS COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

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EXECUTIVE SUMMARY

The IOSCO EMC has undertaken a fact finding exercise in order to determine what, for EMCmembers, are the main obstacles to becoming an IOSCO MOU signatory and what possible measures could be taken in order to become these obstacles. For the purpose of this exercise a questionnaire was completed by 32 members, as illustrated in the table below.

Table 1

Jurisdiction	IOSCO Member Agency
1. Algeria	Commission d'organisation et de surveillance des opérations de bourse
2. Argentina	Comisión Nacional de Valores
3. The Bahamas	Securities Commission of the Bahamas
4. Bosnia and Herzegovina	Securities Commission of the Federation of Bosnia and Herzegovina
5. Bulgaria	Financial Supervision Commission
6. Chile	Superintendencia de Valores y Seguros
7. Chinese Taipei	Financial Supervisory Commission
8. Costa Rica	Superintendencia General de Valores
9. Croatia	Croatian Financial Services Supervisory Agency
10. Czech Republic	Czech National Bank
11. Ghana	Securities and Exchange Commission
12. Hungary	Hungarian Financial Supervisory Authority
13. Indonesia	Indonesian Capital Market and Financial Institutions Supervisory Agency
14. Israel	Israel Securities Authority
15. Jordan	Jordan Securities Commission
16. Kenya	Capital Markets Authority
17. Korea	Financial Supervisory Commission / Financial Supervisory Service
18. Lithuania	Lithuanian Securities Commission
19. Malaysia	Securities Commission
20. Morocco	Conseil déontologique des valeurs mobilières
21. Nigeria	Securities and Exchange Commission
22. Sultanate of Oman	Capital Market Authority
23. Panama	Comisión Nacional de Valores
24. Poland	Polish Financial Supervision Authority

25. Romania	Romanian National Securities Commission
26. Slovak Republic	The National Bank of Slovakia
27. Slovenia	Securities Market Agency
28. South Africa	Financial Services Board
29. Tanzania	Capital Markets and Securities Authority
30. Thailand	Securities and Exchange Commission
31. Turkey	Capital Markets Board
32. Uganda	Capital Markets Authority

Overall, respondents judge the MOU and procedures surrounding it in a positive manner. They do, however, have several suggestions on how to increase the number of MOU signatories.

All respondents indicated that international cooperation and exchange of information among securities regulators is an important part of their activities, with a majority of the regulators placing international affairs among their priorities.

In general, respondents are satisfied with the way in which they cooperate with their international counterparts.

A small number of jurisdictions rarely exchange information with their international counterparts. It should be emphasized that the fact that some regulators only have limited experience with international cooperation does not negatively influence their familiarity with the text of the IOSCO MOU and its appendices. All EMC members who took part in this survey are acquainted with the agreement in question. Also, the majority is familiar with the screening procedure.

As regards the screening procedure, those who have not yet gone through the screening process are not willing to assess it, as they do not feel competent to do so. Most of the other jurisdictions find the screening procedure transparent and objective and do not feel there is a need to simplify it. Respondents indicate that the most difficult element of the screening procedure lies in preparing the application. Only a few jurisdictions find cooperation with VT and Screening Group the most difficult.

The results of the survey reveal that the inability to meet the IOSCO MOU requirements is the greatest impediment to joining the MOU. Some jurisdictions also raised other issues such as

a lack of (or limited) international cooperation or the presence of an alternative basis for information sharing (mainly bilateral MoUs). Nevertheless, the majority of respondents consider submitting their applications to become signatory to the IOSCO MOU in the near future. Only one authority has not taken the decision to join the MOU yet since this jurisdiction is presently seeking direction from their policymakers.

The EMC members were also asked to assess tools supporting the implementation of the IOSCO MOU which are currently available to the IOSCO members. As the most effective were indicated the IOSCO Training Programs, FAQs and responses to the questionnaire of the current IOSCO MOU signatories posted on the IOSCO web site. Additionally, some respondents find informal consultations and assistance of the General Secretariat very helpful.

Finally, in their responses the respondents emphasized the importance of continuous training addressed not only at future applicants but also at those who have already become signatories to the IOSCO MOU or are listed in Appendix B. Seminar Training Programs should focus on the MOU matters, including both implementation and use of the MOU.

BACKGROUND

(a) Mandate on obstacles in joining MOU

In spite of IOSCO's new Strategic Direction stating that by 1 January 2010 all IOSCO members should be a signatory to the IOSCO MOU (either under the terms of Appendix A or B), only a small number of EMC members have applied to become MOU signatory (only 35 out of 80 EMC members submitted their applications). Therefore, it seems imperative that steps are taken towards encouraging EMC members to apply to become MOU signatory. For this reason the EMC decided to analyse the obstacles to joining the IOSCO MOU.

The members of the EMC Working Group on Enforcement and Exchange of Information (see table 1) were asked to complete the questionnaire and on the basis of their responses the analysis in this report was prepared.

(b) Purpose of the project

The purpose of this report is:

- determining how important the international cooperation and information sharing are in the view of the EMC members;
- exploring to what extent EMC members are familiar with the MOU and screening procedure;
- assessing tools supporting implementation of the IOSCO MOU which are currently available;
- identifying most frequent impediments in joining MOU by the EMC members; and
- developing new approaches to encourage IOSCO members to apply to become a signatory to the IOSCO MOU.

(c) The project

The questionnaire on the obstacles to joining the MOU was issued in July 2006. The members were asked to respond by 15 August 2006. 35 Responses were provided.

The objective of the questionnaire was to learn the views of EMC members on the importance they attach to international cooperation among securities regulators and on the MOU as well as on the effectiveness of the tools supporting implementation of the MOU which are currently available. At the same time, the questionnaire was aimed at identifying the most important obstacles discouraging members from applying to become signatory to the IOSCO MOU.

ANALYSIS & FINDINGS

I. Importance of international cooperation and information sharing among securities regulators.

Number of requests received annually

Almost all respondents consider international cooperation and exchange of information among securities regulators a very important aspect of their activities. Most of them have experience in information sharing with other regulators. In most cases the number of requests received is between 6 to 15 per year (figure 1). Only four jurisdictions receive more than 50 requests per year. Two jurisdictions did not receive any requests.

The number of requests received annually is stable in 13 jurisdictions (figure 2). 18 Respondents noted an increase in the number of requests they receive per year. In one country the number of requests received annually is decreasing.

Figure 1

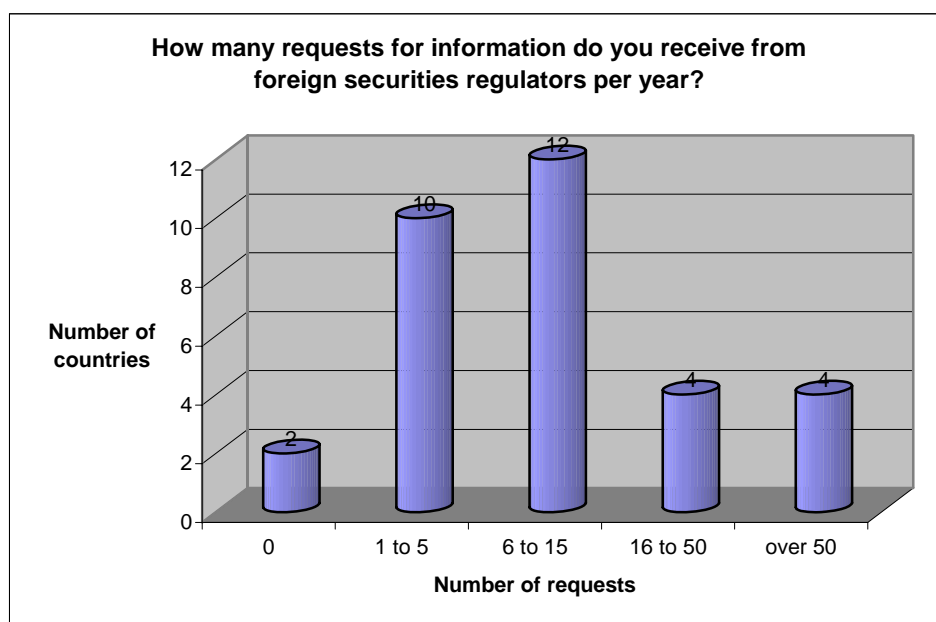
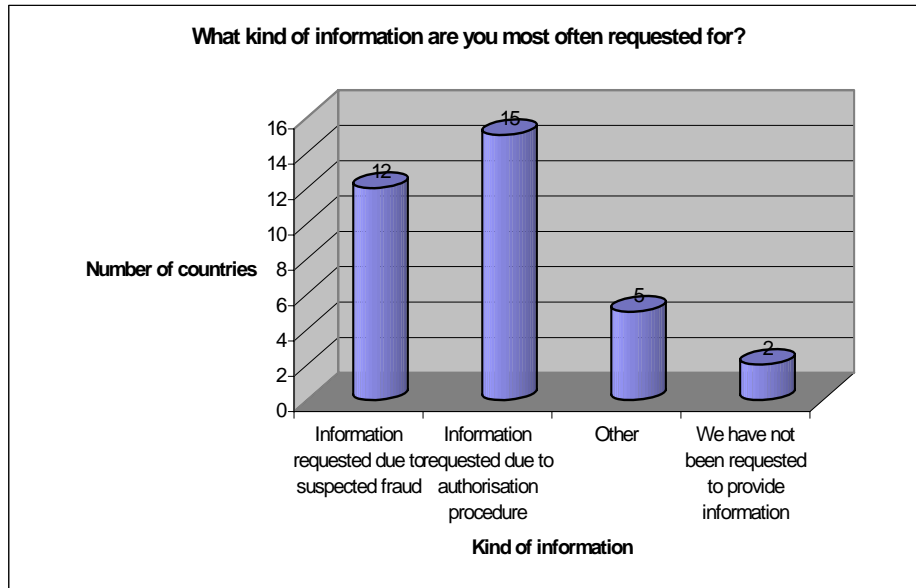


Figure 2



Number of requests made annually

The number of requests made by the jurisdictions that completed the questionnaire ranges from 6 to 15 per year (figure 3). Two jurisdictions make over 50 requests per year. The majority of respondents noted an increase in the number of requests they make per year (figure 4). An exception are two jurisdictions where this number decreases. In ten authorities the number of requests annually received is stable (figure 4)

Figure 3

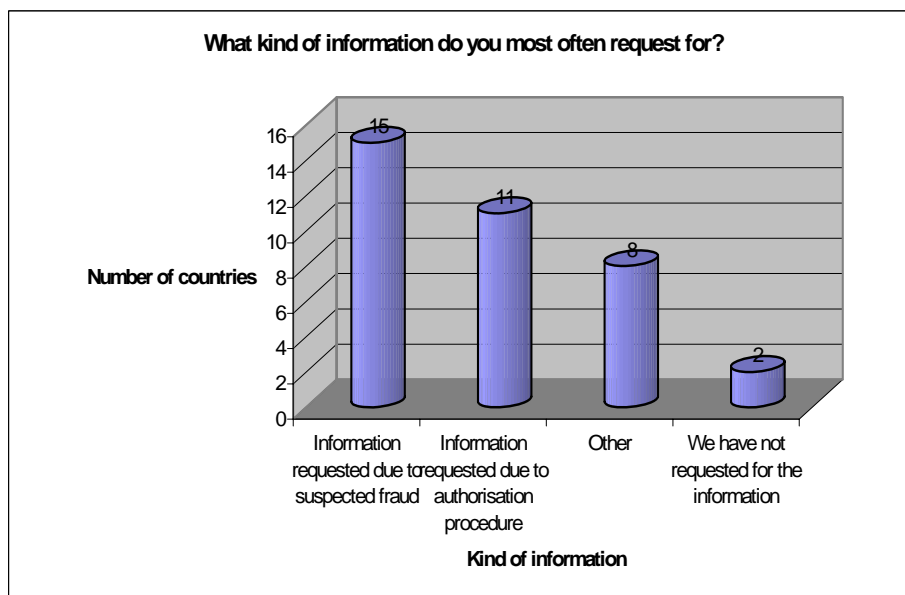
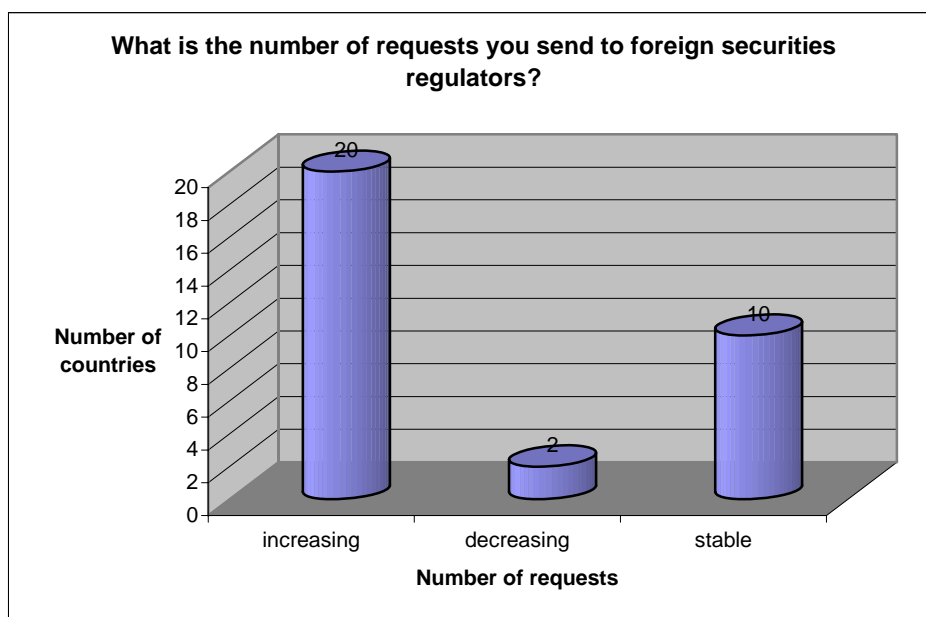


Figure 4



The kind of information that is exchanged

Usually, regulators exchange information in cases of suspected fraud or when they are conducting an authorisation procedure with cross-border elements (figure 5 and 6). However, other types of information are exchanged between authorities such as:

- information related to rules and regulations,
- information on beneficial ownership of stocks,
- information dealing with the background of licensees and the compliance of licensees with securities laws and regulations.

Two jurisdictions have never been requested for information and two have never requested for it.

Figure 5

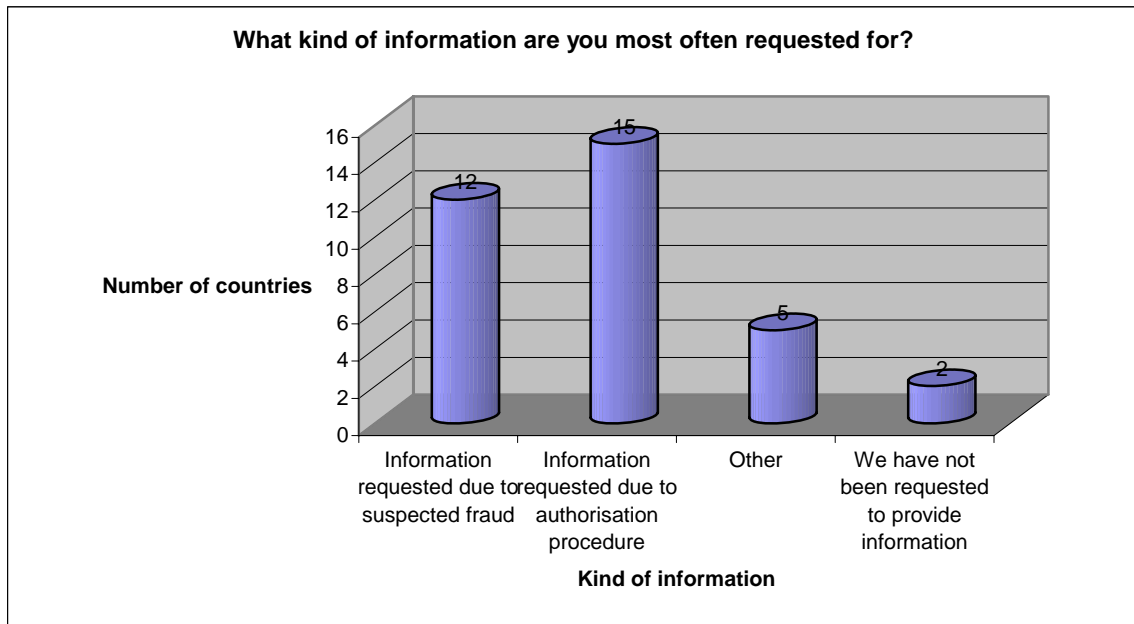
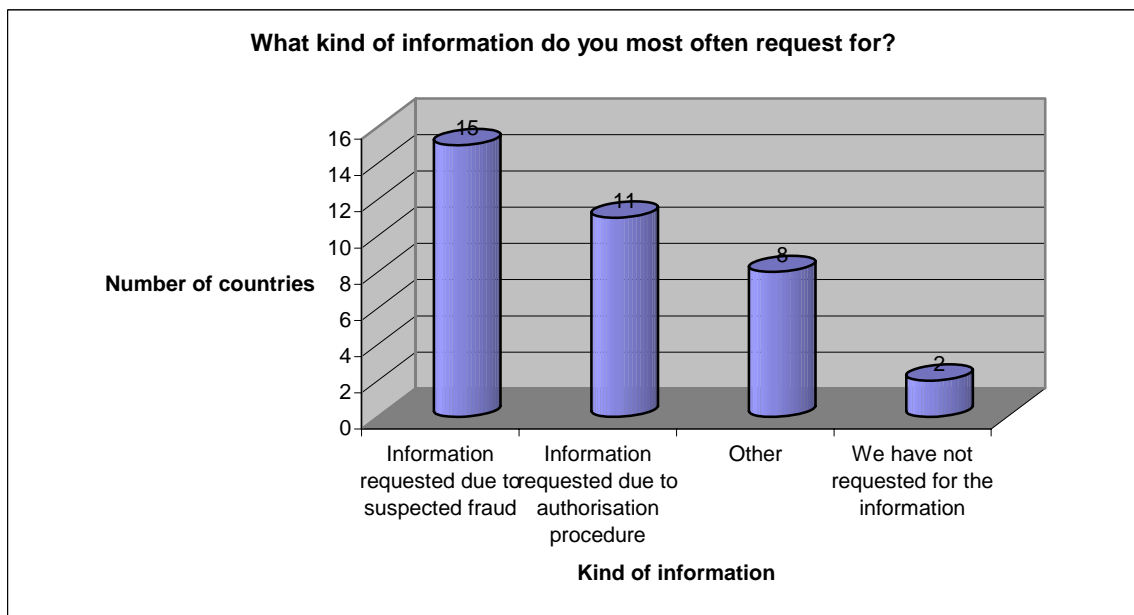


Figure 6

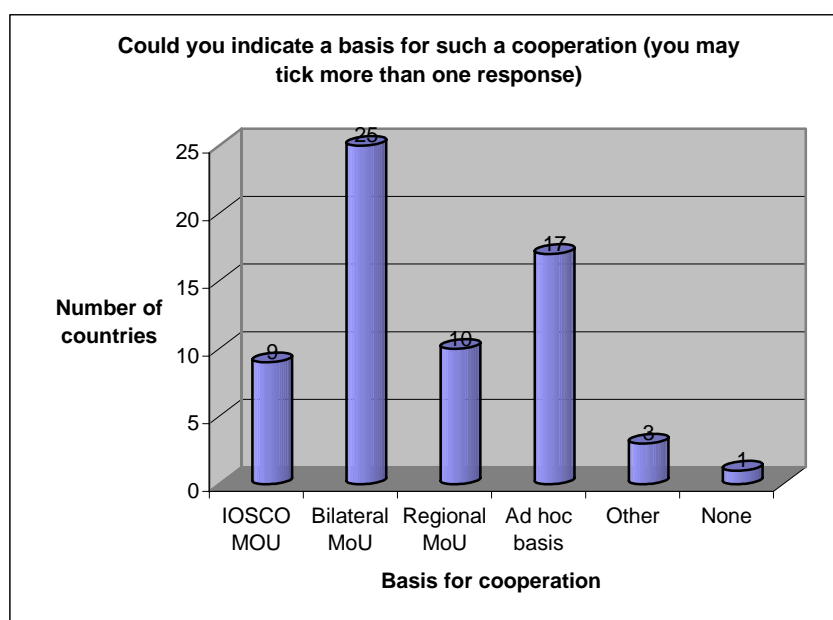


Legal basis for information exchange

The respondents indicate that the most common legal bases for international cooperation are bilateral Memoranda of Understanding (figure 7). Some jurisdictions also mentioned regional MoUs as a basis for such cooperation – EASRA for East-African jurisdictions, CISNA for South-African jurisdictions and CESR for European Union ones.

Since only nine of the respondents are signatories to the IOSCO MOU, the MOU was indicated as a basis for information sharing in their cases only. In addition, many regulators exchange information on ad hoc basis.

Figure 7



Rating of international cooperation

23 Jurisdictions find their international cooperation efforts satisfactory since they are able to obtain requested information within a reasonable period of time and since the information that they receive is mostly useful (figure 8). However, several jurisdictions are not completely satisfied with the way their international cooperation efforts take place. For this they cite the following 2 reasons:

- Delays in receiving the assistance or the receipt of irrelevant responses;
- Authorities not having the legal power to share non-public information regarding

banking records, shareholders and other information.

Figure 8



II. Assessment of the IOSCO MOU.

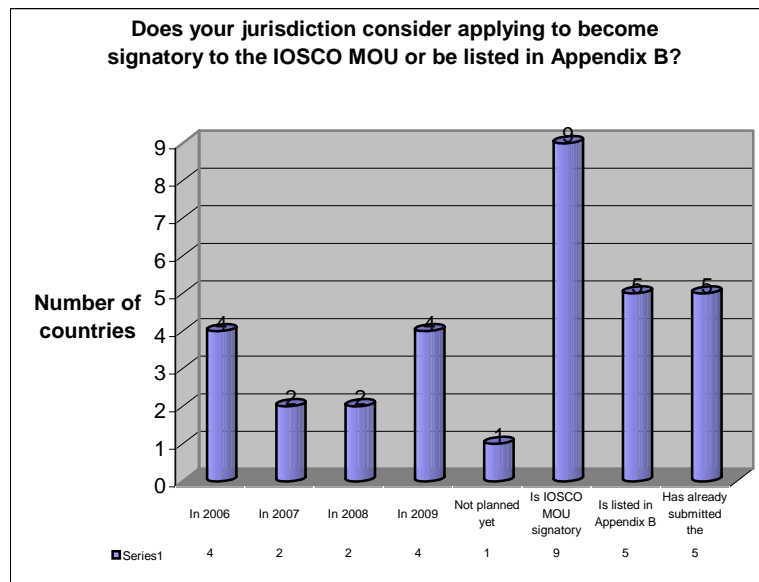
All regulators which responded to the questionnaire are familiar with the text of the IOSCO MOU and its appendices. Moreover, all of them consider the IOSCO MOU an effective mechanism in exchange of information.

III. Interest in joining the IOSCO MOU.

When asked if their jurisdiction was considering becoming a MOU signatory, nine respondents indicate that they are already signatories to the IOSCO MOU (figure 9). Five respondents are listed in the IOSCO MOU Appendix B. Another five have submitted their applications to join MOU. Four respondents plan to submit their applications in 2006, two of them in 2007 and another two in 2008. Four jurisdictions intend to apply to become signatory to the IOSCO MOU in 2009.

One authority indicates that it has not decided yet when it will submit its application to join the MOU since the jurisdiction is presently seeking direction from its policymakers.

Figure 9



IV. Tools supporting the implementation of the IOSCO MOU.

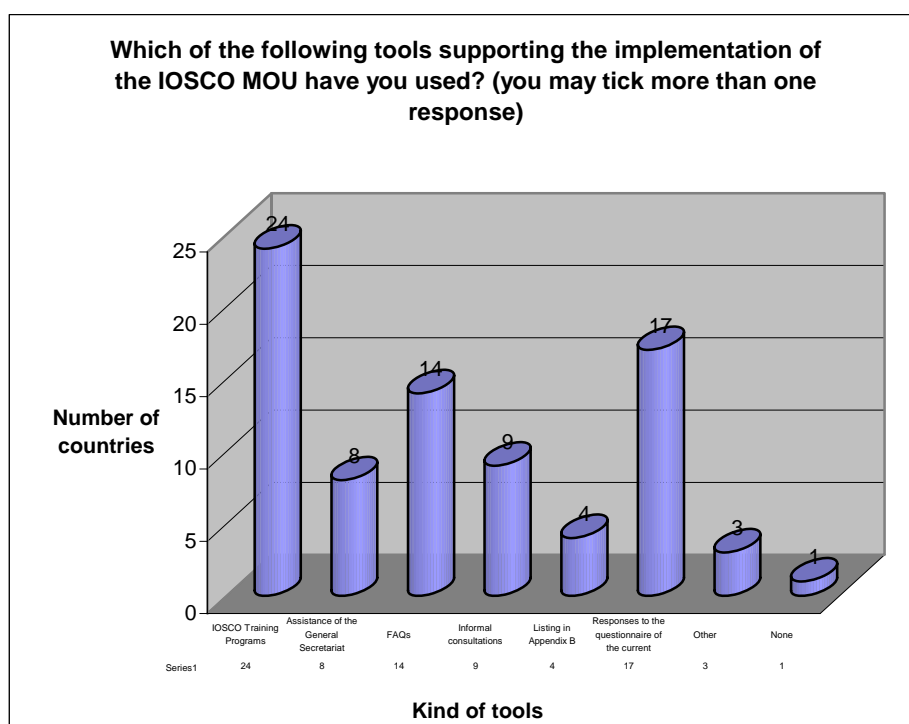
Tools assisting in implementation MOU used

All respondents, except one, have used at least one tool supporting the implementation of the IOSCO MOU (figure 9). The tools most frequently listed are the IOSCO Training Programs (24 responses). The second most often used tool are responses to the questionnaire of the current IOSCO MOU signatories posted on the IOSCO web site (17 responses)¹. Also mentioned were Frequently Asked Questions (“FAQ” - 14 responses), but also informal consultations (9 responses).

One member did not use any tool supporting the implementation of the IOSCO MOU since when it was applying to become an MOU signatory (2003) there were very few tools available to applicants. They obtained sufficient knowledge during the drafting of the MOU and Co-chairing the Screening Group.

¹ The respondents were allowed to tick more than one response.

figure 9



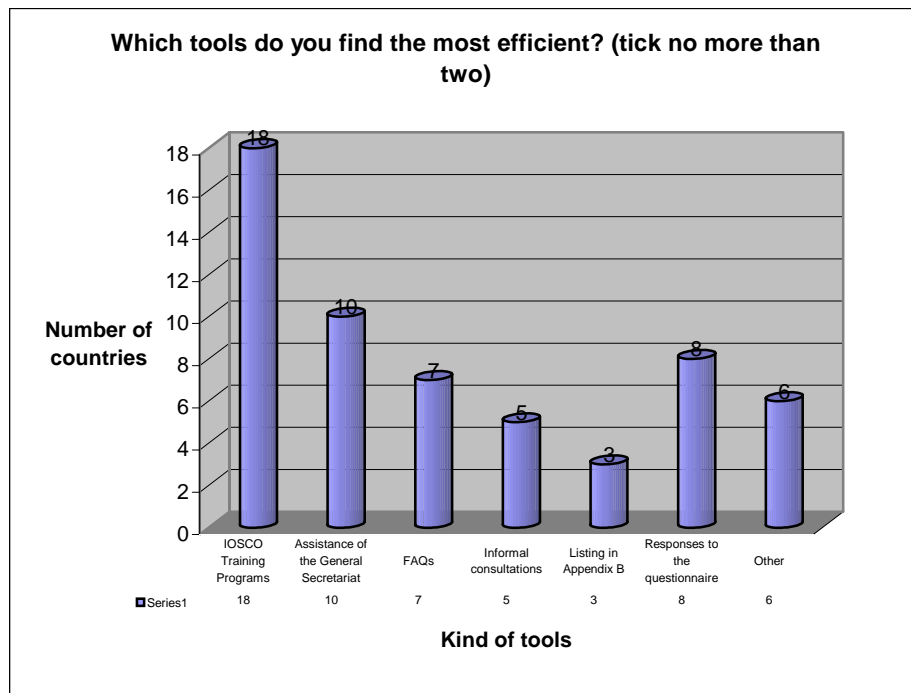
As to the effectiveness of the possible tools, eighteen respondents indicated that the IOSCO Training Programs are the most effective tool supporting implementation of the IOSCO MOU (figure 10). Ten regulators found assistance of the General Secretariat the most effective tool. Also listed were FAQs (7 responses) and responses to the questionnaire of the current IOSCO MOU signatories posted on the IOSCO web site (8 eight responses).

Some jurisdictions highlight other tools which they find the most effective i.e. consultant assistance on self assessments of legislation, technical assistance from the FIRST Initiative and Commonwealth Secretariat, the program “Advice on achieving compliance with IOSCO MOU”, consultations with the verification teams (“VT”), and the use of external consultancies which allows jurisdictions to focus on specific challenges that they face during the screening process to give adequate opportunity to tackle identified issues before lodging the application with IOSCO.

EMC members were also asked to suggest any new tools which could support implementation of the IOSCO MOU. The following suggestions were made:

- continuous training to members that have already become signatories to the IOSCO MOU;
- special seminars on the implementation of the IOSCO MOU;
- more frequent training programs on each step of the application process;
- the posting on the IOSCO web site of more detailed information on the screening procedure to improve the understanding of this procedure, including e.g. an average duration of the screening procedure, experiences of applicants etc.;
- the posting on the IOSCO web site of a document describing the screening procedure in a simple manner;
- publishing on the IOSCO web site a screening procedure map and checklist to assist regulators in the screening process;
- increased involvement of the IOSCO Regional Committees in encouraging regulators to apply to become signatories to the IOSCO MOU and in providing assistance to regulators;
- accepting jurisdictions for a specified period of time and working with them closely in order to modify and amend their systems and regulation within this period of time;
- official IOSCO visits to accompany local regulators to meet with local authorities and industry representatives in order to explain the importance of the IOSCO MOU.

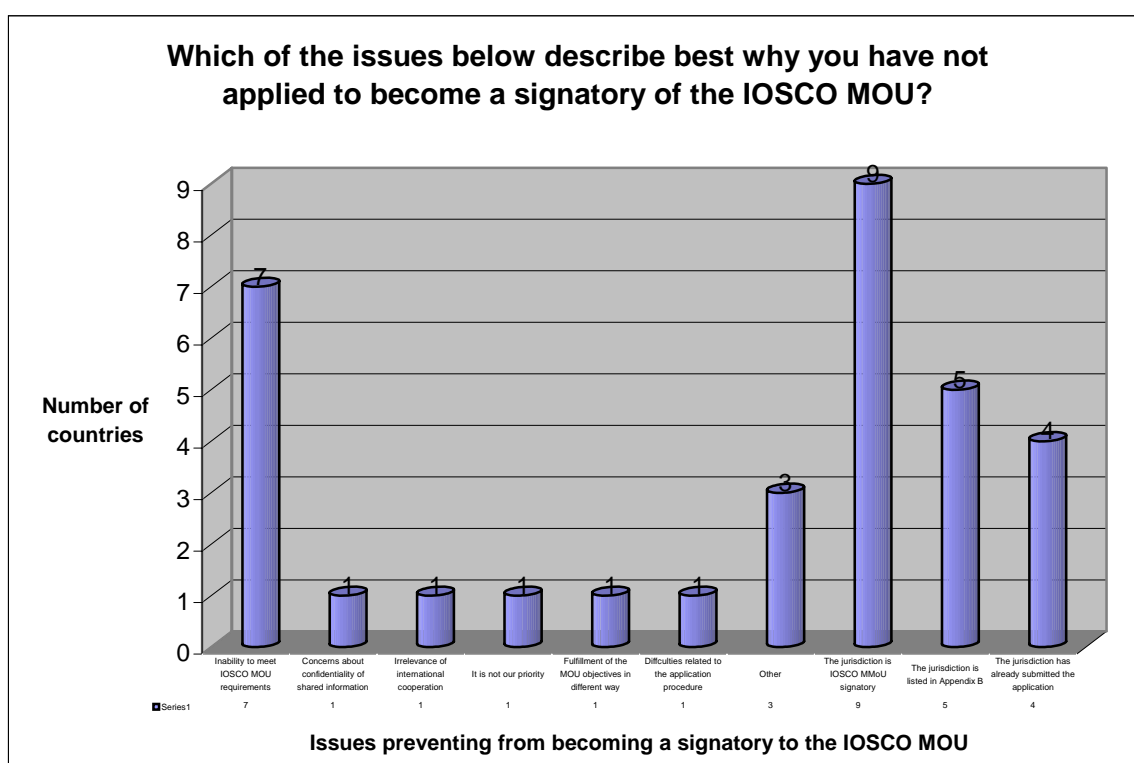
Figure 10



V. Obstacles to joining the IOSCO MOU.

There are different reasons why some jurisdictions have not applied to become signatory to the IOSCO MOU. However, the most important impediment is the inability to meet the IOSCO MOU requirements (figure 11). This reason was indicated by seven jurisdictions. In addition, two jurisdictions indicated that international cooperation is irrelevant for them due to the lack of cross border activity. One jurisdiction achieves the IOSCO MOU objectives in a different way i.e. through the signing of bilateral agreements. For another jurisdiction, joining the MOU was not a priority before. However, this jurisdiction has now completed the IOSCO Self Assessment Methodology. Another authority has not yet assessed domestic legislation to determine compliance with the MOU requirement. Other obstacles to joining the MOU that are listed are concerns about confidentiality of shared information and difficulties related to the application procedure.

Figure 11



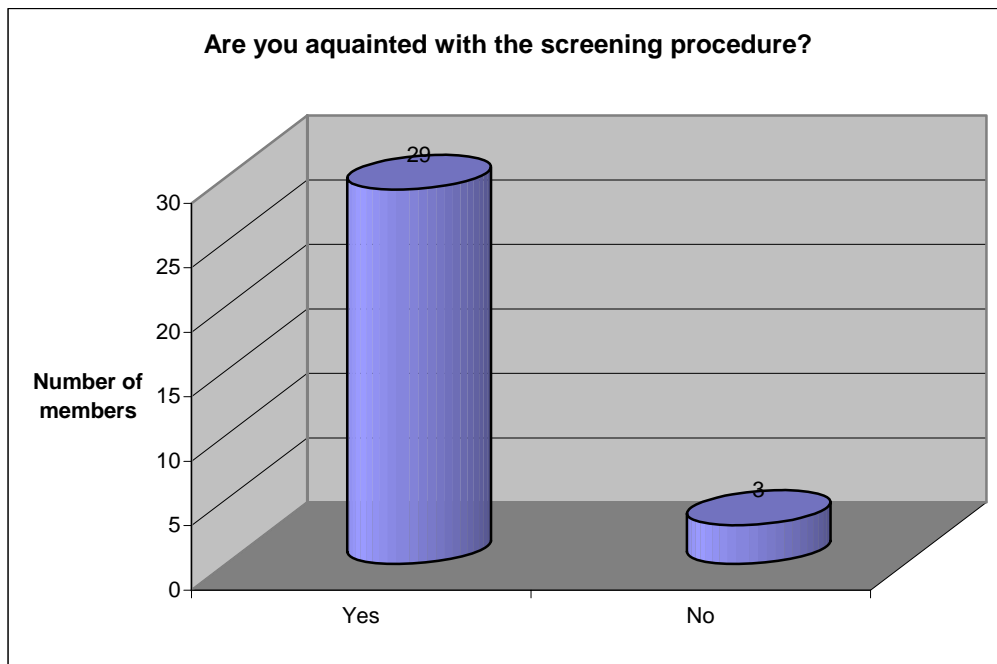
VI. Assessment of the screening procedure.

The EMC members were also asked to share their thoughts on the screening procedure.

Knowledge of the screening procedure

Three jurisdictions state that they have very little knowledge about the screening procedure. Although two of them have already attended a number of seminars and workshops devoted to IOSCO MOU matters and the screening procedure itself, they do not feel competent to assess the screening procedure until they go through it. Another authority, which has already submitted its application to become MOU signatory, would be more willing to share its view on the screening process when it is completed in relation to their application.

Figure 12



Assessment of the procedure

29 jurisdictions are familiar with the screening procedure and most of them find it transparent and objective (figure 13). They are not of the opinion that the screening procedure should be simplified. In contrast to this, one jurisdiction does not find the screening procedure transparent and objective as it feels that the results of the procedure depend on the VT which analyses the specific case.

Four jurisdictions believe that the screening procedure should be simplified by asking shorter questions and explaining their implications as well as possible (figure 14). They also propose to reduce overlapping reviewing procedures (an application of a member country needs to go through the review of several groups: VT, Screening Group, Decision-Making Group) and to unify them into one group. In the opinion of one jurisdiction the procedure could be simplified by shortening the length of the procedure.

Figure 13

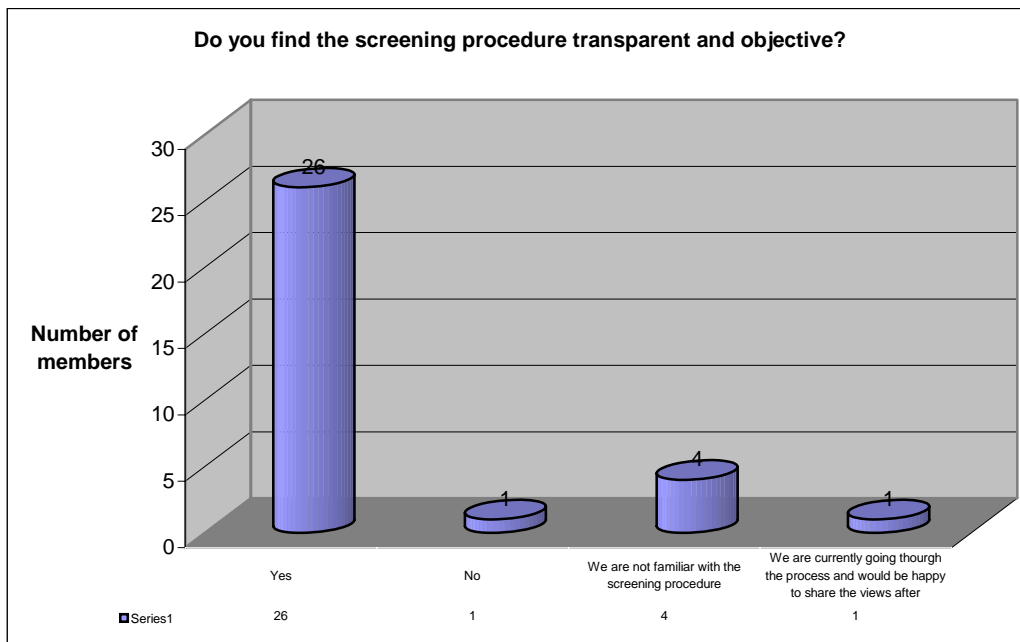
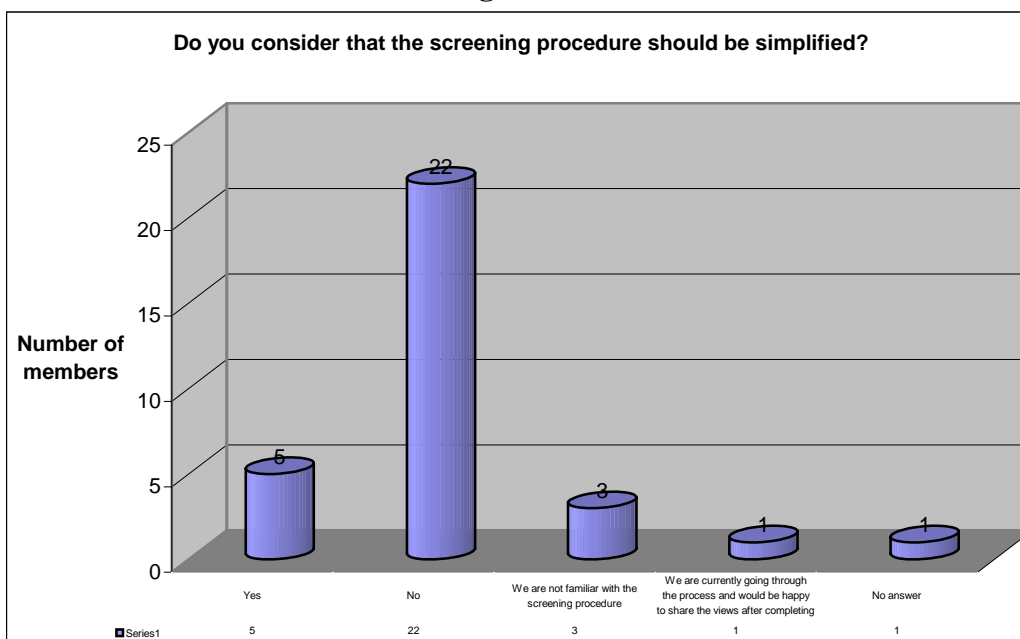
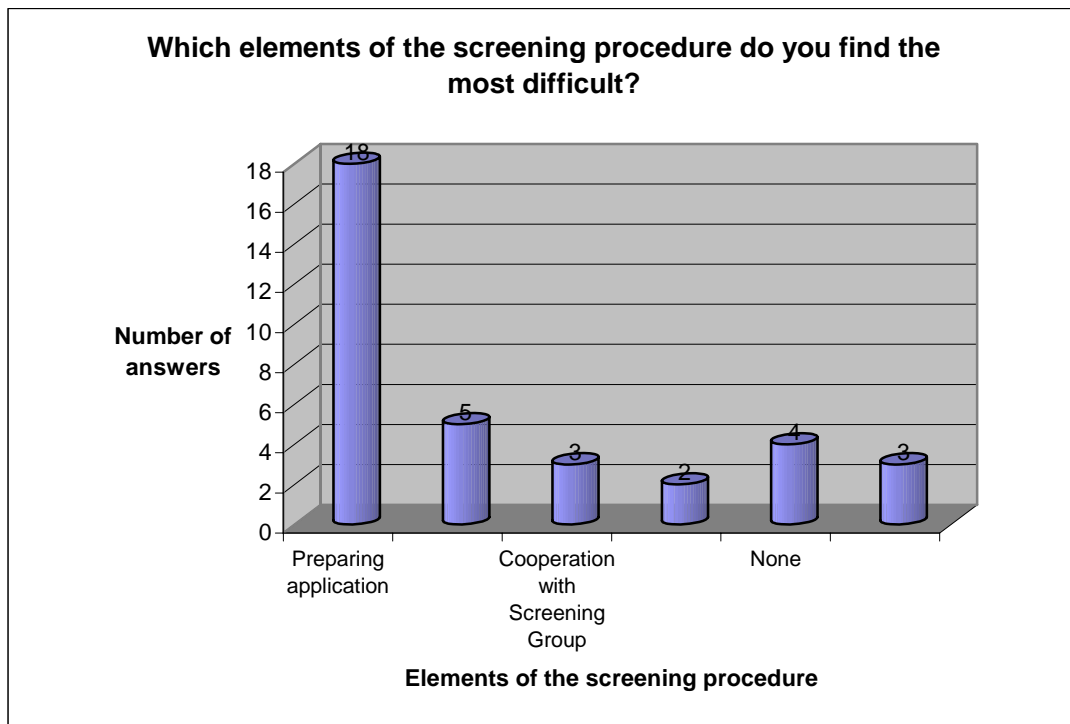


figure 14



As regards different phases in the screening procedure, eighteen respondents indicate that preparing the application is the most difficult element of the screening procedure (figure 15). Five authorities find cooperation with VT and three cooperation with Screening Group most difficult. The rest of the EMC members who responded to the questionnaire, especially those who have little experience with the screening procedure, state that they will be able to answer this question after having gone through the screening process.

Figure 15



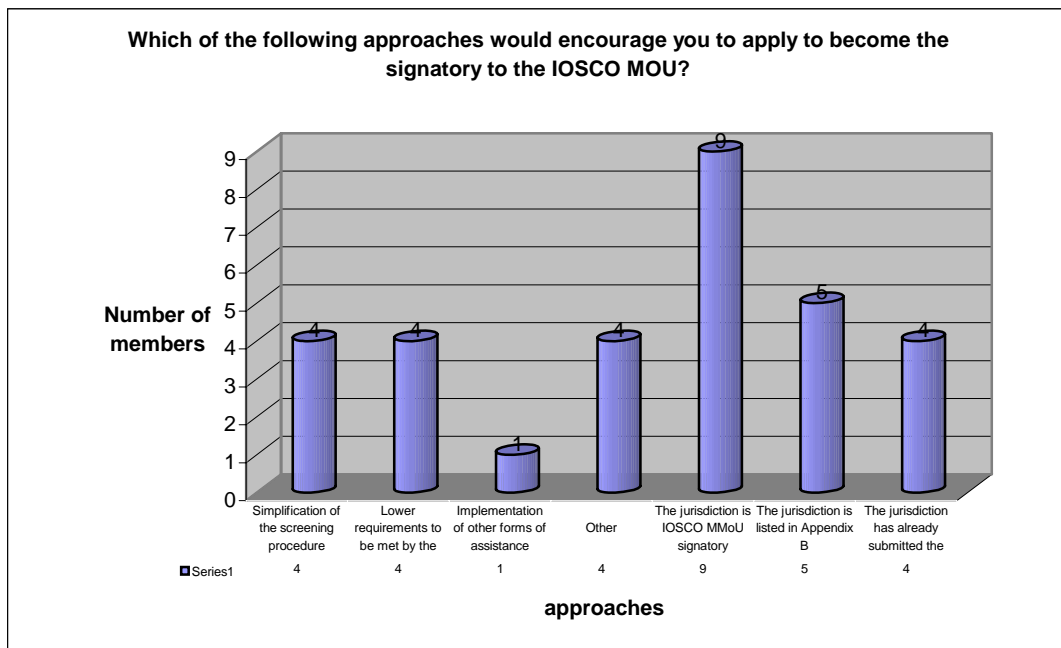
VII. Approaches towards increasing the number of signatories.

Most of the regulators responded that they were MOU signatory, were listed in Appendix B, had already submitted their application or had an intention to do so.

They make a number of suggestions which would, according to some respondents, encourage regulators to become a signatory to the MOU. These are:

- lower requirements to be met by the applicants;
- implementation of other forms of assistance provided to the applicants;
- simplification of the screening procedure by having a more straightforward procedure for examining applications instead of having various levels;
- ensuring more technical assistance and funding for comprehensive IOSCO Principles Self Assessment Programs.

Figure 16



SUMMARY & CONCLUSION

On the basis of the survey it can be concluded that becoming a signatory to the IOSCO MOU is a priority for most EMC members. All respondents, apart from one jurisdiction which has not decided yet, plan to submit their applications to become signatory to the IOSCO MOU by 2009. At the same time, all survey participants understand the importance of the international cooperation and exchange of information among securities regulators and most of them place cross-border activity among their priorities.

It appears that most respondents are well aware of the text of the MOU and its appendices, as well as with the screening procedure. They consider the screening procedure objective and transparent and, therefore, in the opinion of the majority of respondents there is no need for it to be simplified.

The most difficult element of the screening process according to the regulators is preparing an application. A few respondents indicate that the cooperation with the VT and the Screening Group is the most difficult.

The respondents note that the greatest obstacle in joining MOU is the inability to meet MOU requirements. Some jurisdictions have not taken steps to join the IOSCO MOU so far, since they have fulfilled MOU objectives in different way e.g. through signing bilateral MoUs. Two jurisdictions have indicated that they see no added value in joining the MOU due to the limited scope of their cross-border activity.

The tools supporting implementation of the MOU which are currently available to the IOSCO members generally meet their needs. The respondents view the IOSCO Training Programs as the most effective tool. However, they emphasise the need of increasing the number of such training programs which address MOU related issues. Next to the screening procedure and the use of the MOU the training programs should focus on the application to the MOU. In this light workshops on this matter could be arranged where future applicants could get practical guidance on how to complete the questionnaire, what problems may occur and how to solve such problems. In addition, it was suggested that the role of Regional Committees in encouraging regulators to join the MOU and providing assistance to them should increase.