

EACT Response – ESMA Consultation on Prospectus Supplements under Listing Act

Representing the European economy, the EACT brings together 14,000 corporate treasury professionals active in 22 countries and working for around 6,500 individual non-financial companies. Corporate treasurers are the finance professionals of the real economy.

EACT welcomes the opportunity to respond to ESMA's Consultation on the draft guidelines on supplements which introduce new securities to a base prospectus.

Regarding ESMA's proposals, our members have strong reservations in relation to ESMA's proposal to go beyond the text of the Prospectus Regulation by stating that "new types of security features" would require the establishment of a base prospectus. The Prospectus Regulation does not prohibit the use of a supplement each time new features are added to securities that are governed by a base prospectus, but only when a new type of security is introduced.

Harmonisation must follow the objective of simplification. Since the use of supplements causes no major concern for the market, has not been misused, and provides the market and investors with all the required information, harmonisation should aim to align with the most flexible and efficient national practices. As some NCAs currently accept that supplements are used to include new features for existing types of securities (and not to introduce new types of securities), it would go against the Listing Act's objectives of burden reduction and access to capital to prohibit such common practice for no added benefit to the market.

Regarding use-of-proceeds bonds, such as social, green (including EuGB) and sustainable bonds, and with regards to sustainability-linked bonds (SLBs), it would be excessively costly without any real benefit for the market if issuers wishing to issue such bonds cannot do so through a supplement. Prohibiting a supplement in such circumstances constitutes a barrier to the issuance of sustainable bonds, which already obliges issuers to prepare important documentation.

We draw ESMA's attention to the fact that the publication of a base prospectus is more than ten times more expensive and significantly longer, 7-9 weeks on average for a base prospectus compared to 3-7 working days for a supplement, which can mean missing market windows. Any restriction to current practice in this respect therefore has extremely significant consequences in terms of the economics of issuing programs.