The Association of Corporate Treasurers

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Comments in response to *review of the Prospectus Directive.*

EU Director General Financial Stability, Financial Services and Capital Markets Union**,** 18 February 2015

May 2015

The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the back of these comments and on our website www.treasurers.org.

Contact details are also at the back of these comments.

We canvas the opinion of our members through seminars and conferences, our monthly e-newsletter to members and others, *The Treasurer magazine*, topic-specific working groups and our Policy and Technical Committee.

General

The ACT welcomes the opportunity to comment on this matter.

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The ACT has 4,500 members employed predominantly within the EU and 86% FTSE 100 companies employ our members. Members' employers are generally medium to large enterprises with access to bank funding and capital markets. Many of our members' employers already issue debt in the regulated markets with debt often held by insurance company and pension funds which tend to buy to hold. Some members also issue into private placement markets. Our responses below reflect this issuer population.

Our answers are included in text boxes below and are sequentially referenced.

I. Introduction

(1) Is the principle, whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public, still valid? In principle, should a prospectus be necessary for:

✓	(i)	Admission to trading on a regulated market
✓	(ii)	An offer of securities to the public
	(iii)	Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public)
	(iv)	Other
	(v)	Don't know / no opinion

Additional comments on the principle whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public:

ACT/1.1: We believe the requirement for a Prospectus remains valid for issuance on a regulated market or to the public. Once securities are admitted they are accessible to the public to purchase and information is required appropriate to making an investment.

ACT/1.2: Differing types of financial security require differing information about the security and this is already provided for in the current consolidated Regulation (EC/809/2004). The enterprise information, and the need for risk analysis, remains the same however issued to the public and investors need a consistent quality and content for information.

ACT/1.3: We believe the phrase "An offer of securities to the public" is intended to refer to an offer for admission whether an issue of new securities or a "tap", and is not intended to catch a secondary market sale and this should be clarified.

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

a) **Please estimate the cost of producing the following prospectus (between how many euros and how many euros for a total consideration of how many euros):**

	Minimum cost (in €)	Maximum cost (in €)	For a total consideration of (in €)
Equity prospectus			
Non-equity prospectus			
Base prospectus			
Initial public offer (IPO) prospectus			
Don't know (add an X in the next three fields)			

Additional comments on the cost of producing a prospectus:

ACT/1.4: The ACT is not a financial adviser or an issuer and cannot answer this question other than to observe that cost is only one factor for issuers amongst the resource required for verification and disclosure, and the exposure to loss of control over a company that issuing debt and equity securities involves.

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

	Share in the total costs (in %)
Issuer's internal costs	X
Audit costs	X
Legal fees	X
Competent authorities' fees	X
Other costs (please specify which)	X
Don't know (add an X in the next three fields)	

Additional comments on the share in the total costs of a prospectus:

ACT/1.5: The ACT is not a financial adviser or an issuer and cannot answer this question other than to observe that cost is only one factor for issuers amongst the resource required for verification and disclosure, and the exposure to loss of control over a company that issuing debt and equity securities involves.

c) **What fraction of the costs indicated above would be incurred by an issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law?**

✓	(i)	Yes, a percentage of the costs above would be incurred anyway
	(ii)	No
	(iii)	Don't know / no opinion

Please specify which fraction of the costs above would be incurred anyway (in %):

?	%

Additional comments on the fraction of the costs indicated above that would be incurred by an issuer anyway:

ACT/1.6: In the absence of a requirement for a prospectus, remaining costs of issuance would include, inter alia, due diligence fees (accounting, tax, and legal), agents or trustees, listing or filing fees, and paying agent fees. Total fees will depend on the disclosure requirements of each issuer, the securities to be issued, and the domicile. Costs internal to the issuer include internal due diligence, writing and reviewing information documents, costs of establishing and maintaining contacts with investors and likely investors and general oversight of the issuance process.

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

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

Additional comments on the possibility that additional costs are outweighed by the benefit of the passport attached to the prospectus:

ACT/1.7: If there were a true single capital market, the answer to this question would be yes. At present, however, the Prospectus drawn under the Directive may be capable of use pan-EU but:

- Ideally a single Prospectus should be capable of being used pan-EU to issue and sell securities but domestic exchanges apply their own rules in addition to the Directive's requirements and so the passport Prospectus is only one part of issuing on a regulated exchange outside of the issuer's home state; and
- the "real economy" activity of the enterprise may operate within one member states' domestic regulation and this may not be in the same form as that of another state's investor thereby leading to investor uncertainty or confusion over risk; and
- the language of the Prospectus can be "language that is customary in the sphere of international finance" but domestic nuances of operation and commercial regulation may be difficult to translate accurately.

II. ISSUES FOR DISCUSSION

A. When a prospectus is needed

A.1. Adjusting the current exemption thresholds

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

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

	(i)	Yes, from EUR 5 000 000 to more
✓	(ii)	No
	(iii)	Don't know / no opinion

Please specify from EUR 5 000 000 up to how many euros:

N/A	€

ACT/2.1: The question for an issuer is not threshold but whether it wishes to commence funding from the public and/or through a regulated market. UK NFCs have access to bank and private placement funding where the borrower can explain its business case to a small number of credit analysts and with less disclosure than a Prospectus with its accompanying validation burden which may be more appropriate to developing businesses. Ownership may affect funding decisions: companies privately or closely held are unlikely to want unfamiliar third party equity investors or uncertainty over debt holders' identity. The nature of the business and its ownership can also drive the funding decision. We note in our response to the CMU Green Paper, launched with this consultation, that attitudes to external shareholding and to types of debt vary through the EU though, over time, evidence from practices elsewhere in the Union, experience and education may reduce these differences.

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

	(i)	Yes, from EUR 75 000 000 to more
✓	(ii)	No
	(iii)	Don't know / no opinion

Please specify from EUR 75 000 000 up to how many euros:

N/A	€

Please justify your answer on the EUR 75 000 000 threshold:

ACT/2.2: This would appear to be a material threshold already for a credit institution.

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

	(i)	Yes, from 150 persons to more
✓	(ii)	No

	(iii)	Don't know / no opinion

Please specify from 150 persons up to how many persons:

N/A	persons

Please justify your answer on the 150 persons threshold:

ACT/2.3: We can identify no reason to change this number but we do not see that raising the number would reduce issuer cost or resource.

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

	(i)	Yes, from EUR 100 000 to more
✓	(ii)	No
	(iii)	Don't know / no opinion

Please specify from EUR 100 000 up to how many euros:

	€See comment

ACT/2.4: We believe the limit is too high and question whether it is required. Its use has been to define the degree of disclosure required on the belief that retail investors require more disclosure than HNWIs and institutional investors.

We believe the issue at question is whether the retail investors can understand the risks whether in a full or reduced Prospectus, and whether in fact they read the Prospectus. We believe retail consumer protection is best managed at their point of access to markets where a broker should be making the decision as to whether they are professional or non-professional investors.

The limit also creates problems for Wealth Managers who are not managing single investments in round € 100 000 and are required to buy debt into stock to allocate smaller amounts to clients, for example where a client wants to hold € 250 000 of a particular stock or to divide a €300,000 bond portfolio among 13 unrelated issuers' paper to achieve reasonable diversification.

(5) Would more harmonisation be beneficial in areas currently left to Member States discretion, such as the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000?

✓	(i)	Yes
	(ii)	No
	(iii)	Other areas
	(iv)	Don't know / no opinion

ACT/2.5: Differences in requirements between Member States (MS) do mean that there is not a single market for issues of the size considered here. However, attitudes in various MS among investors and issuers – and in society in general – do vary. Accordingly, especially for these small issues, the better approach would be for the Commission to educate and to encourage movement over time towards what can be seen to work, or to work better, rather than to require uniformity in a particular period.

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

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

ACT/2.6: Expanding the definition would bring short term securities within the Prospectus Directive and it is unlikely the cost of so doing would allow the resulting market to meet the issuer requirement.

Maintenance of such markets is Important the purposes of liquidity management.

We note that there is the question as to whether securities are really transferable in a market sense. The markets already discern between real publicly traded instruments and those traded between small pools of professional specialist investors, typically through the deal size. They also recognise that some instruments are almost totally illiquid, needing to be viewed as being held to maturity and able to be used for (investor) liquidity purposes by use in reverse repos/secured borrowing only, i.e. not by transfer or negotiating early settlement by the issuer.

(7) Can you identify any other area where the scope of the Directive should be revised and if so how? Could other types of offers and admissions to trading be carried out without a prospectus without reducing consumer protection?

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

Please specify what other area:

ACT/2.7: CMU is only likely to occur if there is standardisation of the full suite of documentation and disclosure required to access EU regulated markets thereby enabling capital to move freely where required.

We believe, as noted in the response to question 4(d) above, that removal of the € 100 000 threshold removes a distinction for disclosure reasons only where the concern about small investor protection is better addressed under the existing MIFID and its regulations.

Consideration could be given to enabling domestic parallel regimes which would in particular facilitate the retail bond market where investors do rely more on their understanding of the issuers' commercial role and position than the prospectus. Over the years, education and seeing what works or works better will permit encouragement of better practice and a practice of convergence that ultimately may allow uniformity.

A.2. Creating an exemption for "secondary issuances" under certain conditions

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

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

Please justify your answer on the possible mitigation of the obligation to draw up a prospectus:

ACT/2.8: First we note the use of the terms "offer" and "issuance" in the question. Secondary offers by other than the issuer, i e secondary trading, should be outside the scope of the Prospectus Directive.

The security specific annexes can be included by reference providing the issuer is meeting listing requirements (financial statements are being published and these now contain an updated business description).

More generally, we believe that provided such information is genuinely easily available, it is not appropriate that rules call for repetition by an issuer whose securities are already listed. Making information available digitally greatly facilitates this.

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

	(i)	The 10% threshold should be raised
✓	(ii)	The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued
	(iii)	No amendment
	(iv)	Don't know / no opinion

Please specify to what extent the 10% threshold should be raised:

0	%

Please justify your answer on the amendment of Article 4(2):

ACT/2.9: For the reason in our response to question 8 above, there is no need for a limit providing the issuer is already meeting listing requirements (financial statements are being published because these now contain an updated business description.

(10) If the exemption for secondary issuances were to be made conditional to a fullblown prospectus having been approved within a certain period of time, which timeframe would be appropriate?

✓	(i)	One or several years
	(ii)	There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)
	(iii)	Don't know / no opinion

Please specify the length of the ideal timeframe (in years):

3	years

Please justify your answer on the convenience of having a timeframe for the exemption

ACT/2.10: A timeframe is required to prompt investors to check the security retains the same risk profile, both within its market, and relevant to the issuer which may evolve away from that at first issue. Most regimes require public data is refreshed at least annually but this is subject to them being published to meet listing requirements.

A.3. Extending the prospectus to admission to trading on an MTF

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

	(i)	Yes, on all MTFs
	(ii)	Yes, but only on those MTFs registered as SME growth markets
✓	(iii)	No
	(iv)	Don't know / no opinion

Please justify your answer on whether a prospectus should be required when securities are admitted to trading on an MTF:

ACT/2.11: The MTF is a market for issuers who require a more flexible regime: for example where the issuer requires more flexible accounting standards than required for a listed exchange. The MTF is thereby an alternate to such regulated markets.

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

	(i)	Yes, the amended regime should apply to all MTFs
	(ii)	Yes, the unamended regime should apply to all MTFs
	(iii)	Yes, the amended regime should apply but not to those MTFs registered as SME growth markets
	(iv)	Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets
	(v)	Yes, the amended regime should apply but only to those MTFs registered as SME growth markets
	(vi)	Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets
✓	(vii)	No
	(viii)	Don't know / no opinion

Please justify your answer on the possible application of the proportionate disclosure regime:

ACT/2.12: We regard the MTF market as a discreet market form the listed, regulated markets.

A.4. Exemption of prospectus for certain types of closed-ended alternative investment funds (AIFs)

(13) Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF) and European venture capital funds (EuVECA)f the closed-ended type and marketed to non-professional investors, be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document?

	(i)	Yes, such an exemption would not affect investor/consumer protection in a significant way
	(ii)	No, such an exemption would affect investor/consumer protection
✓	(iii)	Don't know / no opinion

A.5. Extending the exemption for employee share schemes

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

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

A.6. Balancing the favourable treatment of issuers of debt securities with a high denomination per unit, with liquidity on the debt markets

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

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

If so, what targeted changes could be made to address this without reducing investor protection?

Please justify your answer on whether the system of exemptions may be detrimental to liquidity in corporate bond markets:

ACT/2.13: The limit is an arbitrary barrier to smaller investors accessing markets, and can be obstructive where higher value investors do not want to invest in round € 100 000: for example € 250 000 or where an investor is seeking diversity within a small portfolio.

a) Do you then think that the EUR 100 000 threshold should be lowered?

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

Please specify to which amount (in euro) the EUR 100 000 threshold should be lowered:

0	€

Please justify your answer on whether the EUR 100 000 threshold should be lowered:

ACT/2.14: High denominations exclude retail investors from a whole asset class, which is less risky than equity, which latter retail investors can buy with no advice or information. Retail investors probably don't read or understand prospectuses, so retail investor protection should come from retail investors having to buy in the primary market after advice from a suitably qualified intermediary, or primary offers being restricted to QIBs, HNWI, elective professional clients, etc.

(b) Do you then think that some or all of the favourable treatments granted to the above issuers should be removed?

✓	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

Please indicate to what extent the favourable treatments granted to the above issuers should be removed:

ACT/2.15a: We prefer to answer both "yes" and "no".
We do not think that there is any real benefit to retail investors from the different treatment. Accordingly we would consider applying the "wholesale" "favourable treatments" to all issues – in that sense totally removing the "favourableness" of the treatment.
We would not consider removing the "favourable treatment" as such.

Please justify your answer on whether the favourable treatments granted to the above issuers should be removed:

ACT/2.15b: Removing the favourable treatments granted to issuers with denominations greater then € 100 000 would increase the PD burdens, and increase costs unless the removal of the "favourable treatment" was by its extension to all

(c) Do you then think that the EUR 100 000 threshold should be removed altogether and the current exemptions should be granted to all debt issuers, regardless of the denomination per unit of their debt securities?

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

Please justify your answer on whether the EUR 100 000 threshold should be removed altogether and the current exemptions should be granted to all debt issuers, regardless of the denomination per unit of their debt securities:

ACT/2.16: High denominations exclude retail investors from a whole asset class, which is less risky than equity, which secondary retail investors can buy with no advice or information. Retail investors probably don't read or understand prospectuses, so retail investor protection should come from retail investors having to buy in the primary market after advice from a suitably qualified intermediary, and primary offers otherwise being restricted to QIBs, HNWI, (elective) professionals, etc.

B. The information a prospectus should contain

B.1. Proportionate disclosure regime

(16) In your view, has the proportionate disclosure regime (Article 7(2)(e) and (g)) met its original purpose to improve efficiency and to take account of the size of issuers? If not, why?

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your answer on whether the proportionate disclosure regime has met its original purpose:

(17) Is the proportionate disclosure regime (Article 7(2)(e) and (g)) used in practice, and if not what are the reasons? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your answer on the proportionate regime for rights issues

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

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your answer on the proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation:

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

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your answer on the proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC:

(18) Should the proportionate disclosure regime be modified to improve its efficiency, and how? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues: No comment

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation: No comment

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC: No comment

(19) If the proportionate disclosure regime were to be extended, to whom should it be extended?

	(i)	To types of issuers or issues not yet covered
	(ii)	To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive
	(iii)	Other
✓	(iv)	Don't know / no opinion

*[***Please specify which types of issuers or issues not yet covered:**

Please specify which admissions of securities to trading on an MTF:

Please specify which other possibilities:

Please justify your answer on to whom the proportionate disclosure regime should be extended: No comment

B.2. Creating a bespoke regime for companies admitted to trading on SME growth markets

(20) **Should the definition of "company with reduced market capitalisation" (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000?**

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

Please justify your answer on the possible alignment of "company with reduced market capitalisation" (Article 2(1)(t)) with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000:

ACT/2.17: Alignment is reasonable to remove confusion over terminology.

(21) Would you support the creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market, in order to facilitate their access to capital market financing?

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

Please justify your answer on the possible creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market:

ACT/2.18: The higher risk profile of SMEs and companies with reduced market capitalisation justifies disclosure standards that are as high as for issuers listed on regulated markets. However described and regulated, the concern is contaminating traded markets with security issues by firms in complex and/or high-risk start up industries which are beyond the comprehension of many retail and ordinary financial investors.

We agree some form of "new" market would facilitate SME development by bringing together specialist investors (experienced or willing to make the effort) and such enterprises in a market which is clearly labelled as higher risk. However, ultimately the enterprise must be prepared to publish standard market level information in order to progress into standard markets.

(22) Please describe the minimum elements needed of the simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market.

ACT/2.19: No comment

B.3. Making the "incorporation by reference" mechanism more flexible and assessing the need for supplements in case of parallel disclosure of inside information

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

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

Please, indicate how this could be achieved (in particular, indicate which documents should be allowed to be incorporated by reference):

ACT/2.20: It is important that investors are readily aware of the location and means of access of documents incorporated by reference. Any document which is to be so incorporated must be capable of retrieval through a free to the user public access website (and also by postal access, for a fee to a hard copy). The issuer or would be issuer should meet the charges of the relevant website and the documents should not be removable in case the issuer failed. Documents are those appropriate to meet listing requirements (financial statements now contain an updated business description).

Please justify your answer on the possible recalibration of the provision of Article 11 (incorporation by reference) in order to achieve more flexibility:

ACT/2.21: No change – Article 11 refers to the competent authority which we would expect to remain the listing authority and therefore that with which the documents would be filed.

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

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

Please justify your answer on whether documents which were already published/filed under the Transparency Directive should no longer need to be subject to incorporation by reference in the prospectus:

ACT/2.22: This could only work if the documents required under the Transparency Directive are the same as those filed under the listing rules. This is essential because these incorporate risk factors, business description in the annual report and accounts. The question and note above imply each potential investor is aware of the documents filed under the Transparency Directive. It is unreasonable to assume that investors other than professional investors will be aware of the requirements of the Transparency Directive.

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

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your whether you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive: No comment

(25) Article 6(1) Market Abuse Directive obliges issuers of financial instruments to inform the public as soon as possible of inside information which directly concerns the said issuers; the inside information has to be made public by the issuer in a manner which enables fast access and complete, correct and timely assessment of the information by the public. Could this obligation substitute the requirement in the Prospectus Directive to publish a supplement according to Article 17 without jeopardising investor protection in order to streamline the disclosure requirements between Market Abuse Directive and Prospectus Directive?

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

Please justify your whether the above-mentioned obligation could substitute the requirement in the Prospectus Directive to publish a supplement according to Article 17 without jeopardising investor protection in order to streamline the disclosure requirements between Market Abuse Directive and Prospectus Directive:

ACT/2.23: Article 17 covers "new factors, material mistakes or inaccuracies and hence the requirement to publish an amendment. Insider information describes information beyond the scope of the Article 17 definition, for example an impending take-over offer, and to require more immediately available publication.

(26) **Do you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive?**

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your whether you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive: No comment

B.4. Reassessing the objectives of the prospectus summary and addressing possible overlaps with the key information document required under the PRIIPs Regulation

(27) Is there a need to reassess the rules regarding the summary of the prospectus?

	(i)	Yes, regarding the concept of key information and its usefulness for retail investors
	(ii)	Yes, regarding the comparability of the summaries of similar securities
	(iii)	Yes, regarding the interaction with final terms in base prospectuses
	(iv)	No
✓	(v)	Don't know / no opinion

Please provide suggestions for re-assessment of the concept of key information and its usefulness for retail investors: No comment

(28) For those securities falling under the scope of both the packaged retail and insurance-based investment products (PRIIPS) Regulation8, how should the overlap of information required to be disclosed in the key investor document (KID) and in the prospectus summary, be addressed?

	(i)	By providing that information already featured in the KID need not be duplicated in the prospectus summary
	(ii)	By eliminating the prospectus summary for those securities
	(iii)	By aligning the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation, in order to minimise costs and promote comparability of products
	(iv)	Other
✓	(v)	Don't know / no opinion

Please indicate which redundant information would be concerned: No comment

*[***Please specify which other ways you would consider to addressing the overlap of information required to be disclosed:** Not applicable

Please justify your answer on the possible ways to address the overlap of information required to be disclosed: No comment

B.5. Imposing a length limit to prospectuses

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

	(i)	Yes, it should be defined by a maximum number of pages
	(ii)	Yes, it should be defined using other criteria
✓	(iii)	No
	(iv)	Don't know / no opinion

What should be the maximum number of pages?

N/A	pages

What other criteria could be used to set the maximum length of the prospectus:

No comment

(30) Alternatively, are there specific sections of the prospectus which could be made subject to rules limiting excessive lengths? How should such limitations be spelled out?

No comment

B.6. Liability and sanctions

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

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

If not, how could they be improved?

Please justify your answer on the adequacy of the liability and sanctions regimes the Directive provides for:

ACT/2.24: Neither Article 6 nor 5 require that penalties are proportionate and could be related to the scale of the issue so that investors in each jurisdiction understand the scale of risk undertaken by the issue promoters and the degree of confidence they can draw from them.

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

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

If you have identified problems relating to multi-jurisdiction (cross-border) liability, please give details:

ACT/2.25: Inconsistent application. For example the mis-match between the market structure inferred from the PD and the actual regulated markets for example in London where there is listed and un-listed equity, but listed debt. It would appear to be appropriate to seek standardisation of the markets and a fit between them and the PD before proceeding further.

C. How prospectuses are approved

C.1. Streamlining further the approval process of prospectuses by national competent authorities (NCAs)

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

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

If you aware of material differences, please provide examples/evidence:

The UK FCA has a different interpretation of the "easily analysable and comprehensible" requirement for issues of securities offered to retail investors.

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

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

If you think there is a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs, please specify in which regard: No comment

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

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

If you think the scrutiny and approval procedure should be made more transparent to the public, please indicate how this should be achieved: No comment

Please justify your answer on the opportunity to make the scrutiny and approval procedure more transparent to the public: No comment

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

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

If you think it is conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, please provide details on how this could be achieved: Not applicable
Please justify your answer on the possibility to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version:

ACT/2.26: UK practice is that issuers, through their authorised persons, (for example, as investor roadshows) already can undertake marketing activities before the prospectus is approved and we do not believe there is a requirement for amendment.

We have not identified this as a problem elsewhere but the question implies there are some EU markets where this is not allowed.

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

✓	(i)	review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)
	(ii)	review only a sample of prospectuses ex ante (risk-based approach)
	(iii)	review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)
	(iv)	review only a sample of prospectuses ex post (risk-based approach)
	(v)	Other
	(vi)	Don't know / no opinion

Please describe the possible consequences of your favoured approach, in particular in terms of market efficiency and invest protection:

ACT/2.27: Accepted the risk based approach is more cost efficient but ensuring a Prospectus is complete remains an important risk control and is no more burdensome than the KYC requirement on banks.

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

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

Please explain your reasoning and the benefits (if any) this could bring to issuers:

ACT/2.28: Aligning and conforming processes is important to simplify processes, and to make them more transparent to potential users providing these processes are consistent across all EU members.

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

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

What improvements could be made to the EU passporting mechanism of prospectuses? Not applicable.
Please justify your answer on whether the EU passporting mechanism of prospectuses is functioning in an efficient way: No comment

(b) Could the notification procedure set out in Article 18, between NCAs of home and host Member States be simplified (e.g. limited to the issuer merely stipulating in which Member States the offer should be valid, without any involvement from NCAs), without compromising investor protection?

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your answer on whether the notification procedure set out in Article 18 between NCAs of home and host Member States could be simplified: Not applicable.

C.2. Extending the base prospectus facility

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

a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed:

	(i)	I support
✓	(ii)	I do not support

Please justify your answer on whether or not you support the possibility for the use of the base prospectus facility to be allowed for all types of issuers and issues, and for the limitations of Article 5(4)(a) and (b) to be removed:

ACT/2.29: A base prospectus is appropriate where the issuer intends to issue a series of debt relying on common information about the issuer: for example, a Medium Term Note programme. It is therefore difficult to understand how this is applicable to "all types of ….issues".

b) The validity of the base prospectus should be extended beyond one year:

	(i)	I support
✓	(ii)	I do not support

Please indicate the appropriate validity length:

	months

Please justify your answer on whether or not you support the possibility for the validity of the base prospectus to be extended beyond one year:

ACT/2.30: Greater than a year would rely on stale business data – and if it is not stale, that is itself news.

c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA:

✓	(i)	I support
	(ii)	I do not support

Please justify your answer on whether or not you support the possibility for the Directive to clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA:

ACT/2.31: Appears valid but only if the NCA's process ensures that existing equity and non-equity investors have a means of being aware that the registration is progressing to an offer.

d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs:

✓	(i)	I support
	(ii)	I do not support

Please justify your answer on whether it should be possible for the components of a tripartite prospectus to be approved by different NCAs:

ACT/2.32: It should not matter which NCA approves which part providing all are accessible to investors.

e) **The base prospectus facility should remain unchanged:**

✓	(i)	I support
	(ii)	I do not support

Please justify your answer on whether the base prospectus facility should remain unchanged: No comment

f) Other possible changes or clarifications to the base prospectus facility (please specify):

ACT/2.33: We recommend allowing more extensive use of supplements for primary offers to non-retail investors.

C.3. The separate approval of the registration document, the securities note and the summary note ("tripartite regime")

(41) How is the "tripartite regime" (Articles 5 (3) and 12) used in practice and how could it be improved to offer more flexibility to issuers? No comment

C.4. Reviewing the determination of the home Member State for issues of non-equity securities.

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

	(i)	No, status quo should be maintained
✓	(ii)	Yes, issuers should be allowed to choose their home Member State even for non-equity securities with a denomination per unit below EUR 1 000
	(iii)	Yes, the freedom to choose the home Member State for non-equity securities with a denomination per unit above EUR 1 000 (and for certain non-equity hybrid securities) should be revoked

Please explain how this dual regime should be amended:

ACT/2.34: Selection of a member state for issue enables non-equity security sales to be tailored to regional investors. The lower denomination unit may increase administration costs but this a cost factor for the issuer to assess.

C.5. Moving to an all-electronic system for the filing and publication of prospectuses

(43) Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed (deletion of Article 14(2)(a) and (b), while retaining Article 14(7), i.e. a paper version could still be obtained upon request and free of charge)?

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

Please justify your answer on the possible supression of the options to publish a prospectus in a printed form and to be inserted in a newspaper:

ACT/2.35: This should be an option for local exchanges and a factor an issuer would consider when identifying both its target investors and NCA. However, it should be a basic principle that prospectus documents should be freely available digitally on a publicly accessible website paid for by the issuer (and not deletable if the (would be) issuer fails).

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

✓	(i)	Yes
	(ii)	No
	(iii)	Don't know / no opinion

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

ACT/2.36: It would give investors of, for example, EMTNs a single place to look for prospectuses, supplements, regulatory filings, rather than having to figure out which website(s) to go to.

(45) What should be the essential features of such a filing system to ensure its success? No comment

C.6. Equivalence of third-country prospectus regimes

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

	(i)	Yes
✓	(ii)	No
	(iii)	Don't know / no opinion

Please describe on which essential principles the creation of an equivalence regime in the Union for third country prospectus regimes should be based:

ACT/2.37: We should encourage non EU businesses to come into the EU while not enabling them to make use of EU facilities, which we have worked to create as transparent and effective, if they do not meet equivalent standards. Reciprocal recognition similarly would be good to have but should not be a bar.

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

	(i)	Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18
✓	(ii)	Such a prospectus should be approved by the Home Member State under Article 13
	(iii)	Other
	(iv)	Don't know / no opinion

Please specify in which other way should a prospectus prepared by a third country issuer in accordance with its legislation be handled by the competent authority of the Home Member State defined in Article 2(1)(m)(iii): Not applicable

Final questions:

(48) Is there a need for the following terms to be (better) defined, and if so, how:

a) "Offer of securities to the public"?

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your answer on the need for "offer of securities to the public" to be better defined: Not applicable

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

	(i)	Yes
	(ii)	No
✓	(iii)	Don't know / no opinion

Please justify your answer on the need for "offer of securities to the public" to be defined: Not applicable

(49) Are there other areas or concepts in the Directive that would benefit from further clarification?

	(i)	No, legal certainty is ensured
	(ii)	Yes, the following should be clarified:
✓	(iii)	Don't know / no opinion

What according to you should still be clarified: Not applicable

Please justify your answer on whether there are other areas or concepts in the Directive that would benefit from further clarification?: Not applicable

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

	(i)	No, legal certainty is ensured
	(ii)	Yes, the following should be clarified:
✓	(iii)	Don't know / no opinion

Please explain your reasoning and provide supporting arguments for other possible modification to the Directive which could add flexibility to the prospectus framework: Not applicable

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

	(i)	No, legal certainty is ensured
	(ii)	Yes, the following should be clarified:
✓	(iii)	Don't know / no opinion

Please explain your reasoning and provide supporting arguments for identifying incoherence(s) in the current Directive's provisions: Not applicable

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