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The Listing Act – Easier access to EU capital markets

Part 1 – Changes to the Prospectus Regulation



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Background

On 24 April 2024, the EU Parliament adopted the EU Listing Act. The Listing Act is part of a package of measures aiming to further develop the Capital Markets Union. The purpose of the Capital Markets Union is to enable companies to diversify their funding and access funding sources other than bank lending, to help them grow and to adapt their financing structure when maturing.

The Listing Act package introduces reforms to make EU public capital markets more attractive for companies to seek a listing and stay listed by alleviating and making more proportionate the requirements that apply both at the moment of listing and when a company is already listed.

The reform consists in targeted amendments to:

- EU Regulation 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the **Prospectus Regulation**);
- EU Regulation 596/2014 on market abuse (the **Market Abuse Regulation**); and
- EU Directive 2014/65 on markets in financial instruments (**MiFID II**) and EU Regulation 600/2014 on markets in financial instruments (**MiFIR**).

A new Directive on multiple vote share structures has also been adopted. Additionally, Directive 2001/34 on the admission of securities to official stock exchange listing and on information to be published on those securities is repealed (the **Listing Directive**).

While one of the expressed purposes of the Listing Act is to facilitate access to capital for small and medium-sized enterprises, the scope is more general, and all listed companies and companies seeking a listing are concerned by the reform.

This briefing is part of a series of briefing in three parts covering the Listing Act. This Part 1 of the series provides an overview of the most important changes to the Prospectus Regulation, which are materialised in a Regulation amending Regulation (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises. Part 2 will analyse the changes made to the Market Abuse Regulation and MiFID 2 and Part 3 will discuss the key features of the new directive on multiple-vote share structures.

Key insights

- The announced goal of the Listing Act is to make it easier and cheaper for companies to list securities. This is achieved by simplifying and streamlining the listing process.
- Generally, changes to the **Prospectus Regulation** aim to address the obstacles stemming from the length, complexity and high cost of the prospectus documentation and the length of the scrutiny and approval process.
- More specifically:
 - The Listing Act provides for **additional exemptions and expansion of existing exemptions to prospectus requirements**.
 - Lightened documentation requirements and **further standardisation** of prospectuses are put in place to make listing documentation easier to read and compare, and to avoid unnecessarily detailed contents.
 - New types of documents are introduced (**Annex IX document**, EU Follow-On prospectus and EU Growth issuance prospectus).
 - The **IPO offer period is shortened**.

1. Exemptions to the obligation to publish a prospectus

The Listing Act introduces new exemptions to the obligation to publish a prospectus, as well as expansion of existing exemptions.

A. Broadening of exempt secondary issuances and new Annex IX Document

First, a new exemption is provided for the *public offer* of securities fungible with securities already admitted on a regulated market or an SME growth market provided they represent over a twelve-month period, **less than 30%** of the existing securities already admitted to trading on the same market. This exemption is available to the extent the issuer is not subject to an insolvency proceeding or a restructuring.

A new short-form document, set out in Annex IX to the revised Prospectus Regulation (an **Annex IX Document**) must be filed (but not approved) with the national competent authority of the home Member State (the **NCA**). It is made available to the public at the same time it is filed.

Previously, there was only an exemption for the *admission to trading* of fungible securities and the threshold was 20%. This threshold is also **increased to 30%**. In other words, there is now a 30% threshold applicable both to public offers and admissions to trading.

Likewise, the 20% threshold exemption for the admission to trading of shares resulting from the conversion or exchange of other securities or from the exercise of the right conferred by other securities is **increased to 30%**.

These exemptions are likely to facilitate capital increases in listed companies even though they remain subject to applicable corporate approvals.

In addition, there is a new exemption applicable regardless of their size to *offerings* and *admissions to trading* of fungible securities when the original securities have been **admitted to trading continuously for at least 18 months** on a regulated market or an SME growth market, to the extent (i) the new securities are not issued in connection with a takeover, merger, or division, and (ii) the issuer is not under an insolvency or restructuring procedure. In such case as well, the issuer files and publishes an Annex IX Document with its NCA (but such document does not need to be approved). In conjunction with the introduction of this new exemption, the existing article 1(5) (j) admission to trading exemption for securities already admitted to trading on another EEA regulated market is abrogated.

The Annex IX Document has a maximum length of 11 sides of A4-sized paper. Besides information about the relevant issuance / offer, the securities and the risks, it includes a statement of continuous compliance with reporting and disclosure obligations applicable to the issuer under Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (the **Transparency Directive**), the Market Abuse Directive and the MiFID II Commission Delegated Regulation.

It remains to be seen whether these new exemptions will be used frequently, especially for larger transactions or transactions in which non-EU markets are involved and which may require more detailed documentation.

B. Small offers

The threshold of the existing prospectus exemption for offers of securities with a small total consideration is amended:

- The current consideration threshold of EUR 1 million below which the Prospectus Regulation does not apply is removed.
- A harmonised threshold of **EUR 12 million** over 12 months is put in place and becomes the general threshold.
- Previously, Member States had the option to exempt public offers with a total consideration of less than EUR 8 million over 12 months. This optional *de minimis* threshold has been decreased to EUR 5 million.

In other words, offers of securities to the public with an aggregated consideration in the EU of less than EUR 12,000,000 will be exempted from the obligation to publish a prospectus (except if offered cross-border) unless the relevant Member State decides to derogate to this principle and only exempt offers with an aggregate consideration in the EU of less than EUR 5 million.

In case the exemption applies, Member States may require an issuer to file and make available to the public a summary or national document (to the extent the level of information is equivalent or lower to that of a summary).

C. Credit institutions

Initially, the Prospectus Regulation exempted credit institutions from the obligation to publish a prospectus in the case of an *offer* or *admission to trading* on a regulated market of certain non-equity securities issued in a continuous or repeated manner up to an aggregate consideration of EUR 75 million over a period of 12 months. As part of the Capital Markets Recovery Package, the threshold had been increased to **EUR 150 million** to support fundraising through capital markets of issuers, including credit institutions. Such increase now becomes permanent.

Table 1 - Exemptions to prospectus requirements under the Prospectus Regulation after the changes introduced by the Listing Act (high level overview for illustration purpose only - additional conditions apply)

Offers to the public	Admissions to trading on a regulated market
• Qualified investors • Fewer than 150 persons per Member State, other than qualified investors • Securities whose denomination per unit amounts to at least EUR 100,000 • Securities addressed to investors who acquire securities for a total consideration of at least EUR 100,000	
• Fungible securities (with an Annex IX document) • Securities fungible with securities already admitted to trading representing, over a period of 12 months, less than 30% of the number of securities already admitted to trading • Securities fungible with securities that have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities	
	• Shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that the resulting shares represent, over a period of 12 months, less than 30% of the number of shares of the same class already admitted to trading • Securities resulting from the conversion or exchange of other securities, own funds, or eligible liabilities by a resolution authority
• Total aggregated consideration in the Union for the securities offered is less than EUR 12,000,000 per issuer or offeror calculated over a period of 12 months. (National exemptions possible when consideration is less than EUR 5,000,000 per issuer or offeror calculated over a period of 12 months)	

- Shares issued in **substitution** for shares of the same class, if the issuing of such new shares does not involve **any** increase in the issued capital
- **Securities** offered in connection with a **takeover** by means of an exchange offer (requirement to make an information document available)
- **Securities** offered, allotted or to be allotted in connection with a **merger or division** (requirement to make an information document available)
- **Dividends** paid out to existing shareholders in the form of shares (requirement to make an information document available)
- Securities offered, allotted or to be allotted to existing or former **directors or employees** (requirement to make an information document available)
- Non-equity securities issued in a continuous or repeated manner by a **credit institution**, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities: (i) are not subordinated, convertible or exchangeable; and (ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument
- **Offers** from **crowdfunding service providers** under a certain threshold

2. EU Follow-on Prospectus

The current secondary issuance regime which already provides for a simplified disclosure has been considered as being too prescriptive and too close to a standard prospectus. On this basis, the regime is abrogated and replaced by a new EU Follow-on prospectus.

Such EU Follow-on prospectus will be available, for offerings and admissions to trading on a regulated market, to several categories of issuers who have **securities already admitted to trading** on a regulated market or SME growth market for 18 months.

However, issuers who have only non-equity securities admitted to trading on a regulated market or an SME growth market should not be allowed to draw up an EU Follow-on prospectus for the admission to trading on a regulated market since investors need the full information of a prospectus to take an informed decision.

A 50-page limit will apply to the EU Follow-on prospectuses that relate to shares.

3. EU Growth Issuance Prospectus

The EU Growth prospectus becomes subject to lighter requirements to make the listing documentation for SMEs even less complex and burdensome. The regime applies amongst others to **SMEs or issuers with securities admitted or to be admitted to trading on SME growth markets** (unless they have securities admitted to trading on a regulated market). It also applies to issuers where the total aggregated consideration in the EU for the securities offered to the public is less than **EUR 50 million** over a period of 12 months (provided they have no securities listed on a regulated market or an MTF and have an average number of employees during the previous financial year of up to 499).

A 75-page limit will apply to the EU Growth issuance prospectuses that relate to shares.

4. Page limitation and standardisation

A **300 A4 page limit** is introduced for prospectuses relating to shares or transferable securities equivalent to shares with a view to reduce wordiness and boilerplate wording and over-disclosure.

The limit does not include the summary, the information incorporated by reference, including a universal registration document (**URD**) approved by or filed with an NCA, information included in a URD that is used as a constituent part of a

prospectus, and additional information to be provided in case of a company with a complex financial history or that has made a significant financial commitment or in the case of significant gross change. Such limit is not applicable to bonds on the basis that there can be a broad range of different instruments, including complex ones.

Likewise, issuers who seek admission to trading on a regulated market in the EU and simultaneously offer or privately place securities with investors in a third country, where an offering document is prepared under law, rule, or market practice, are not bound by the page limit or the standardised sequence as they would otherwise have to prepare several documents. In practice, this may reduce the relevance of the page limitation.

While the page limit may improve the quality of disclosure by removing unnecessary information, it may also be challenging to comply with for prospectuses concerning complex transactions and entities with complex businesses. A balance will need to be found to ensure prospectuses contain sufficient disclosure on the contemplated transaction and associated risks, to ensure the prospectus is easily understandable, and to avoid liability for material misstatement or omission of material information. It is to be noted that ESMA will also develop guidelines on comprehensibility and the use of plain language in prospectuses.

Conversely, the maximum length of the prospectus summary (seven pages) has been extended to one additional page of A4 per guarantor (to the extent that the additional pages are dedicated to the description of the guarantors). This is a helpful change.

The Listing Act also introduces further standardisation, and a Delegated Act is expected to specify the standardised sequence, template, and layout of prospectuses. Such rules will not apply to URDs.

Finally, ESG considerations have been added in several provisions. The summary shall now include (where applicable) a statement that the company has identified environmental issues as a material risk factor and, when the issuer is subject to Article 8 of Regulation 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (the **Taxonomy Regulation**), a statement as to whether the issuer's activities are associated with economic activities that qualify as environmentally sustainable. Furthermore, for the public offering or listing of equity securities on a regulated market the prospectus should incorporate by reference or include the information set out in the management and consolidated management reports, which include the sustainability reporting, as required by Directive 2013/34/EU of the European Parliament and of the Council (the **Accounting Directive**, which includes the amendments made thereto pursuant to the Corporate Sustainability Reporting Directive (**CSRD**)), for the periods covered by the historical financial information. The EU Commission will be formulating level 2 acts in relation to sustainability disclosures, taking into account the sustainability reporting required under the Transparency Directive and CSRD.

Table 2 - Overview of page limitations under the Prospectus Regulation after the changes introduced by the Listing Act

Document	Number of sides of A4 paper
Prospectus (shares)	300 pages
Prospectus Summary	7 pages (1 additional page per guarantor)
Follow-on prospectus (shares)	50 pages
EU Growth prospectus (shares)	75 pages
Annex IX Document	11 pages

5. Incorporation by reference and updated financial information

Contrary to what was provided in the EU Commission's proposal, the Listing Act did **not** introduce a **mandatory** regime for incorporation by reference.

The Prospectus Regulation now, however, includes a statement that information that is not to be included in a prospectus may still be incorporated by reference on a voluntary basis under certain conditions.

In addition, there will be no requirement to publish a supplement for updating annual or interim financial information incorporated by reference into a base prospectus that is still valid. This is a very welcome change. Publishing a supplement on a voluntary basis nevertheless remains possible and might be relevant if additional developments need to be mentioned.

6. Supplements

It is clarified that Supplements cannot be used to introduce a **new type of security** to a base prospectus, unless doing so would be necessary to comply with capital requirements. ESMA will develop guidelines to specify this rule.

The **withdrawal right** period in case of publication of a supplement has been extended from two working days to three working days. The three-working-day period had been introduced as a temporary measure during the COVID-19 crisis. Note that the withdrawal right applicable where the final offer price or amount of securities to be offered to the public cannot be included in the prospectus has also been extended to three working days after the final offer price or amount of securities to be offered to the public has been filed.

Finally, the provisions relating to financial intermediaries contacting investors when a supplement is published have been revised to lighten their administrative burden (contact by electronic means).

7. Risk factors

A new provision has been added to the Prospectus Regulation, according to which a prospectus shall not contain risk factors that are generic, that only serve as disclaimers or that do not give a clear picture of the specific risk factors that investors are to be aware of. This takes into account some of the recommendations made by ESMA in its guidelines on risk factors under the Prospectus Regulation.

The requirement to rank risk factors by mentioning the most material first is replaced by a requirement to list, in each category of risks, the most material risk factors in a manner which is consistent with the assessment undertaken by the issuer of their materiality based on the probability of their occurrence and the expected magnitude of their negative impact. This change will likely not materially change the ordering of risk factors in prospectuses.

8. Other changes

There are also some other miscellaneous changes worth noting:

- The **IPO reading period for retail offerings is shortened from 6 trading days to 3 trading days**. This allows swift book-building processes without excluding retail investors and aims to reduce market risk exposure duration.
- **Language requirements** for equity and retail denomination debt prospectuses become more flexible. In addition, with respect to domestic issuances, prospectuses (except the summary) may be drawn in a language customary in the sphere of international finance instead, as is the case currently, of the language(s) selected by the NCA but Member States may derogate to this new rule.
- NCAs must notify the issuer, the offeror or the person asking for admission to trading on a regulated market of the reason for not reaching a decision within the mandatory time limit. The authority shall also inform ESMA and ESMA will make public on a yearly basis an aggregate report on the **compliance of NCAs**. Member States shall also ensure that appropriate measures are in place to address such failures.

As is currently the case, such failure to take a decision is not deemed to constitute approval of the application.

The general principle remains that authorities must inform the issuer, the offeror or the person asking for admission to trading on a regulated market within 10 working days of the submission of the draft prospectus (provided it meets the standards of completeness, comprehensibility, and consistency necessary for its approval changes or supplementary information are not needed). Such period being extended to 20 working days for debut issuers (i.e., where the offer to the public or listing involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public). The review period is, however, reduced to 7 working days for the EU Follow-on prospectus unless the issuer seeks an admission to trading on a regulated market of securities fungible with securities that have been admitted to trading on an SME growth market continuously for at least the last 18 months preceding the admission to trading of securities.

- There will **no** longer be a requirement to provide **hard-copy prospectuses** upon request of investors.
- **New approach to equivalence** would allow issuers to file an equivalent third country prospectus with an NCA (rather than have it approved) under certain conditions (including language requirements). This mechanism shall only apply to the extent the EU Commission has adopted an implementing act determining that the legal and supervisory framework of a third country ensures that a prospectus drawn up in accordance with the national law of that third country complies with legally binding requirements which are equivalent to that of the Prospectus Regulation. The general equivalency has been expanded to encompass provisions on liability, validity of the prospectus, risk factors, scrutiny, approval, and publication.
- **Subsequent filing of URD without approval already after one year.** Furthermore, it is clearly stated that the frequent issuer status will be obtained after one year allowing for a reduction of the prospectus review period to 5 working days.

9. Entry into force

Generally, amendments to the Prospectus Regulation will enter into force on the 20th day following publication (which has not yet taken place). They will be directly applicable in Member States and do not require implementation. By exception, the entry into force of certain (significant) provisions is delayed and will not take place before the second half of 2025.

- Provisions concerning the EU Growth issuance prospectus and the Follow-on prospectus will enter into force 15 months after the Regulation enters into force.
- Certain provisions regarding standardisation of documents (including the 300-page limit) of the prospectus and language for offers and admissions concerning a single Member State will apply 18 months after the Regulation enters into force. The same is true for the provisions regarding the new “small offer” prospectus exemption (harmonised EUR 12,000,000 threshold).

There is also a grandfathering regime pursuant to which prospectuses approved before 18 months minus one day from the date of entry into force of the Regulation shall continue to be governed by the provisions of the previous Regulation until the end of their validity. A similar regime applies for secondary issuances and EU Growth prospectuses, but the grandfathering period is limited to 15 months minus one day from the date of entry into force of the Regulation.

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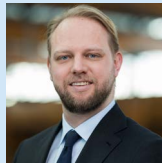
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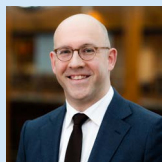
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