

MAYER|BROWN

**KNOW-HOW SERIES:
EU LISTING ACT**





OVERVIEW OF WEBINAR TOPICS

Part I

- I. Main changes to the Prospectus Regulation by the EU Listing Act (other than ESG)
- II. ESMA Consultation Paper of 28 October 2024 (other than ESG)
- III. News in relation to incorporation by reference and new supplement regime

Part II

- I. Main changes to the Prospectus Regulation by the EU Listing Act in respect of ESG
- II. ESMA Consultation Paper of 28 October 2024 in respect of ESG
- III. New prospectus exemptions
- IV. EU Follow-on prospectus and EU Growth issuance prospectus
- V. Main changes to MAR by the EU Listing Act



01

BACKGROUND OF EU LISTING ACT AND TIMELINE

BACKGROUND (1/4)

Background

- EU capital markets remain fragmented and underdeveloped in size
- Many EU companies find it too burdensome to get listed on stock exchanges

Aims and Objectives of EU Capital Markets Union generally, and Listing Act specifically

- make public markets more attractive for EU companies and **facilitate access to capital for SMEs**
- introduce technical adjustments to EU rulebook that **reduce issuers' regulatory and compliance costs** and
- streamline **listing process** and enhance **legal clarity**, while ensuring appropriate level of investor protection and market integrity



BACKGROUND (2/4)

The EU Listing Act introduces measures to facilitate further development of EU capital markets in following areas:

- amends **Prospectus Regulation** (making it easier and cheaper for companies to get listed)
- amends **Market Abuse Regulation** (MAR) (providing greater legal clarity about what information needs to be disclosed by companies and reinforcing supervisory cooperation between market authorities)
- amends **Markets in Financial Instruments Regulation** (MiFIR)
- amends **MiFID II** and repeals **Listing Directive**
- introduces new directive on **multiple-vote share structures** (allowing SMEs to use multiple-vote share structures in conjunction with first MTF listing)



BACKGROUND (3/4)

In addition, European Commission has introduced measures to facilitate further development of EU capital markets in following areas:

Clearing

- Regulation amends European Market Infrastructure Regulation (EMIR), Capital Requirements Regulation (CRR) and Money Market Funds (MMF) Regulation
- Directive amends Capital Requirements Directive (CRD), Investment Firm Directive (IFD), and Directive on Undertakings for Collective Investment in Transferable Securities (UCITS)

Corporate Insolvency

- New Insolvency Directive harmonising legal provisions related to insolvency proceedings



BACKGROUND (4/4)

Expected benefits:

- For **companies**
 - Significant **cost reductions**
 - Estimated € 67 million savings per year from simpler prospectus rules
 - Estimated € 100 million per year from lower compliance costs for listed companies
- Enhanced visibility for **SMEs**
- Easier navigation of corporate information for **investors**





TIMELINE (1/2)

- On 8 October 2024, Commission formally adopted the EU Listing Act
- On 28 October 2024, ESMA published a Consultation Paper on draft technical advice, with a deadline for comments of 31 December 2024
- On 14 November 2024, the EU Listing Act was published in EU Official Journal: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202402809
- Amendments will generally enter into force on 5 December 2024, and some:
- *On 5 March 2026:*
 - Provisions on new Follow-on and EU Growth issuance prospectuses
- *On 5 June 2026:*
 - Revisions to PR exemptions based on offer size
 - PR prospectus and summary standardisation provisions
 - PR sustainability-related revisions
 - PR prospectus language changes
 - New MAR regime on public disclosure of inside information on protracted processes



TIMELINE (2/2)

By 5 December 2025:

- ESMA to submit to Commission draft implementing technical standards (ITS) with template and layout of prospectuses and summaries, including font size and style (Article 6(7)-(8) and 7(14)-(15) PR)

By 31 December 2025:

- Commission to present report to EU Parliament and Council, assessing if prospectus liability requires further harmonisation (Article 48 (2a) PR)

By 5 March 2026:

- Commission to adopt delegated acts regarding standardised format and reduced content for new EU Follow-on and EU Growth issuance prospectuses (Articles 14a(8) and 15a(8) PR)

By 5 June 2026:

- Commission to adopt delegated acts regarding standardised format, sequence and minimum information schedules (including for URDs) (Article 13 PR)
- ESMA to develop guidelines on when supplements introduce **new type of security** (Article 23(8) PR)
- Commission also to adopt (after ESMA consultation) **delegated acts** with additional criteria and overall timeframe for prospectus scrutiny (Article 20 (11) PR)



NEW ARTICLE 48a – TRANSITIONAL PROVISIONS

Prospectuses approved before end of transition period (4 June 2026, and 4 March 2026 for simplified secondary issuance and EU Growth prospectuses) will still be governed by existing PR provisions until end of their validity

'Article 48a

Transitional provisions

1. Prospectuses approved until 4 June 2026 shall continue to be governed until the end of their validity by the version of this Regulation in force on the day of their approval.
2. By way of derogation from paragraph 1, prospectuses approved in accordance with Article 14 until 4 March 2026 shall continue to be governed by that Article until the end of their validity.
3. By way of derogation from paragraph 1, prospectuses approved in accordance with Article 15 until 4 March 2026 shall continue to be governed by that Article until the end of their validity.'

The image features a background of blurred stacks of coins. Overlaid on this is a financial candlestick chart with teal and pink bars. A yellow trend line and a dashed blue line are also visible. Numerical values are scattered across the chart area.

02

AMENDMENTS TO PROSPECTUS REGULATION

MORE STANDARDISED PROSPECTUS REQUIREMENTS FOR PRIMARY ISSUANCES

- New **standardised format and sequence of disclosure** (effective 5 June 2026) for
 - prospectus (specifics to be set out in delegated acts) (Article 6 PR) and
 - summary (prescribed order of information, increase of maximum length by up to three pages where there are multiple guarantors and use of charts, graphs or tables) (Article 7 PR)
- By way of derogation, information included in **universal registration document** may be included without regard to standardised format (Article 6(2) PR)
- The same applies when securities are to be admitted to trading on a:
 - **regulated market in the Union**, and
 - are **simultaneously** offered to or privately placed with **investors in a third country** where an offering document is prepared under law, rule or market practice (Article 6(6) PR)
- In addition, plain language guidelines by ESMA and new implementing technical standard on the format and layout are planned



MORE STREAMLINED PROSPECTUS REQUIREMENTS

- **Historic financial information** required: **two years** for equity and **one** year for non-equity (Annexes I and II of the amended PR) (effective 5 June 2026), shorter for new prospectus types (effective 5 March 2026)
- Investors cannot request prospectus **paper copies** (Article 21(11) PR)
- Prospectuses can be prepared in **English only**, except for summary and subject to opt-out if used in a single Member State (Article 27(1) PR)
- IPO: Minimum **period** between publication of prospectus and end of **offer three working** days (Article 21(1) PR)
- **300-page** limit for **IPO prospectuses** (not applicable to non-equity) (Article 6(4) PR) (effective 5 June 2026)





ESMA CONSULTATION PAPER OF 28 OCTOBER 2024

- New Art. 13 Prospectus Regulation as background of Consultation Paper
- Main content:
 - Focus on format and content of prospectuses (other than EU Follow-on prospectus)
 - Detailed focus on ESG information and linkage to new EuGB Regulation (new Article 21a and new Annex 21)
 - New approach for additional disclosure requirements based on other non applicable disclosure annexes (new Article 21b)
 - Some new timelines for approval process (maximum approval period) (new Article 14)



ESMA CONSULTATION PAPER OF 28 OCTOBER 2024 – MAIN CHANGES TO FORMAT AND CONTENT (FOCUS ON NON-EQUITY SECURITIES)

Format

- “Standard” (base) prospectuses (registration document and securities notes, including tripartite prospectuses) for equity and non-equity securities have to follow order specified in new Annexes I to III of the amended PR (**Mandatory Sequence of information**) (Articles 22 and 23 of Delegated Regulation)
- **New:** short introductory sections – separated from warnings and disclaimers

Content

- Proposal to use only one uniform disclosure Annex for each of the registration documents and securities notes for non-equity securities
- Proposal to merge Annexes 6/7 and 14/15 and aligned (reduced) to current EU Growth prospectus annexes



ESMA CONSULTATION PAPER OF 28 OCTOBER 2024 – MAIN CHANGES TO FORMAT AND CONTENT (FOCUS ON NON-EQUITY SECURITIES)

Content (cont'd)

- New uniform Annex 6
 - Small changes to current wholesale minimum disclosure regime
 - EU Listing Act adjustments to risk disclosure and the covered periods of financial statements
 - Optional ESG disclosures for issuers in line with CSRD
 - For retail issues, some disclosure items have been deleted (see next slide as reference); in principle, retail standard has been aligned to existing wholesale standard
- New uniform Annex 13
 - Small changes to wholesale minimum disclosure regime
 - New Annex 13 uses the “use of proceeds” language of (ex) Annex 14
 - Inclusion of cross-references to Guarantor, Derivatives and ESG disclosure annexes



ESMA CONSULTATION PAPER OF 28 OCTOBER 2024 – LIST OF RETAIL RELIEF MEASURES IN NEW ANNEX 6

- Removal of requirement to provide information on:
 - meaning of ratings
 - significant new products or activities of the issuer
 - issuer’s principal markets
 - material changes in the issuer’s borrowing and funding structure
 - expected financing of the issuer’s activities
 - trends, uncertainties, demands, commitments or events that may have a material effect on the issuer’s prospects
 - statutory auditors
 - share capital
 - articles of association



STREAMLINED RISK FACTORS

- Risk factors (Article 16 PR) to be limited to those that are **specific to issuer** and to **securities**, and **material** for making informed investment decision, as corroborated by prospectus content
- **No generic risk factors**, those that only serve as disclaimers or do not give sufficiently clear picture of specific risk factors of which investors are to be aware
- The assessment of the **materiality of the risk factors** may be disclosed, using a **qualitative scale** of low, medium or high, at the discretion of the issuer, offeror or person requesting admission to trading on a regulated market
- The **most material risk factors** in each category must be presented in an order consistent with this assessment
- Issuers who have identified environmental issues as a material risk factor must disclose this in summaries

INCORPORATION BY REFERENCE

Article 19 para (1) (a) – (h), as revised:

Article 19

Incorporation by reference

1. Information ~~that is to be included in a prospectus pursuant to this Regulation and to the delegated acts adopted on the basis of it,~~ may be incorporated by reference in ~~a~~ that prospectus where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the following documents:

- (a) documents which have been approved by, ~~or filed with,~~ a competent authority, ~~or filed with it,~~ in accordance with this Regulation, ~~including a universal registration document or any sections thereof of Directive 2003/71/EC;~~
- (b) ~~the documents referred to in points (f) to (i) of Article 1(4), first subparagraph, points (da), (db) and (f) to (i), and points (e) to (h) and point (j)(v) of the first subparagraph of Article 1(5), first subparagraph, points (ba) and (c) to (h);~~
- (c) regulated information;
- (d) annual and interim financial information;
- (e) audit reports and financial statements;
- (f) management reports as referred to in Chapter 5 ~~and 6~~ of Directive 2013/34/EU ~~including, where applicable, the sustainability reporting of the European Parliament and of the Council~~ ¹⁸;
- (g) corporate governance statements as referred to in Article 20 of Directive 2013/34/EU;
- (h) reports on the determination of the value of an asset or a company;

Article 19, new para. 1a:

1a. Information that is not to be included in a prospectus may still be incorporated by reference in that prospectus on a voluntary basis, where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the documents referred to in paragraph 1, first subparagraph.

SUPPLEMENTS TO REFLECT NEW FINANCIAL INFORMATION WHICH IS INCORPORATED BY REFERENCE NO LONGER REQUIRED

Article 19, new para. 1b:

1b. An issuer, an offeror or a person asking for admission to trading on a regulated market shall not be required to publish a supplement pursuant to Article 23(1) for new annual or interim financial information published when a base prospectus is still valid under Article 12(1). Where that new annual or interim financial information is published electronically, it may be incorporated by reference in the base prospectus in accordance with paragraph (1)(d). However, an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to voluntarily publish a supplement for such information.

Preamble:

- (43) To remove unnecessary costs and burdens and to increase the efficiency and effectiveness of the incorporation into the prospectus of information by reference, it should be clarified that companies should not be required to publish a supplement for new annual or interim financial information in a base prospectus which is still valid, contrary to the situations specified in Delegated Regulation (EU) 2019/979. It should instead be possible for the new annual or interim financial information to be incorporated by reference in the base prospectus, provided that the requirements for incorporation by reference, such as electronic publication and language requirements, are fulfilled. However, companies should be allowed to voluntarily publish such information in a supplement.

CHANGES TO SUPPLEMENT REQUIREMENTS (1/2)

- Supplements (Article 23 PR) to base prospectuses must not be used to introduce **new type of security** for which necessary information has not been included in base prospectus unless necessary to comply with capital requirements under EU law or national law transposing EU law
- **ESMA** within **by 5 June 2026 to develop guidelines** specifying circumstances in which supplement is to be considered to introduce new type of security, *e.g.* whether only entirely new financial products or mere tweaks within existing financial product would count



CHANGES TO SUPPLEMENT REQUIREMENTS (2/2)

- Amendment makes permanent previously temporary change that extended from two to **three working days** period within which investors may **withdraw their subscriptions** for securities after issuers publish supplement
- Clarification of which investors financial intermediaries must **contact** when **supplement** is published and extension of deadline to contact those investors from publication day of supplement to end of following working day
- Amendment clarifies that, if supplement is published, financial intermediary is required to inform only those investors who are its clients and agreed to be **contacted by electronic means**





SIMPLIFICATION OF UNIVERSAL REGISTRATION DOCUMENT REGIME

- Frequent issuer status after **one year** of approval instead of two (Article 9(2) PR)
- Can be prepared in English only
- ESMA Consultation Paper—limited proposed changes to URD Annex

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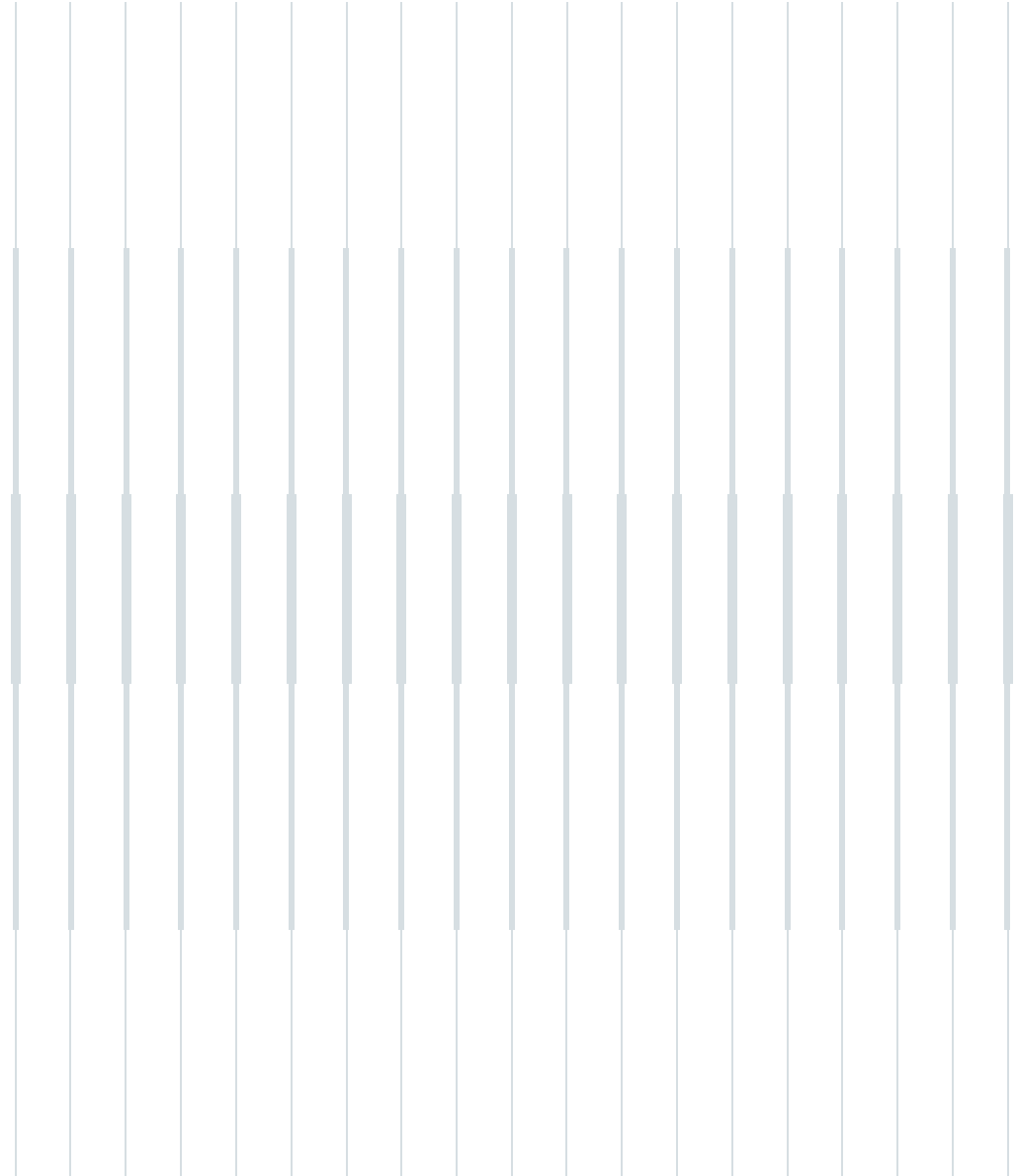
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The team consists of experienced lawyers as well as young, ambitious and inquisitive talents. This also makes it clear to the clients how important it is to the partners to provide well founded training for the up and coming talent. In addition, all team members are incredibly friendly, so working together is a lot of fun, even beyond the technical side

THE LEGAL 500 DEUTSCHLAND (Client)





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