EU Prospectus Regulation: Listing Act changes relevant to debt capital markets

8 October 2024

The Council of the EU adopted the Listing Act package this morning, paving the way for its publication in the Official Journal later in Q4 2024.

One part of the package (the **Listing Regulation**) will amend the EU Prospectus Regulation **(EUPR).** This briefing highlights the changes relevant to debt capital markets.

Some changes will come into effect once the Listing Regulation is published in the Official Journal. Other changes have a 15- or 18-month lead-in time. There's a transitional period which will allow prospectuses approved up to 18 months after the date that the Listing Regulation comes into force to be governed by EUPR as it was at the time of the approval.

INITIAL CHANGES

The **requirement to rank the most material risk factors will be replaced** by a requirement to list the most material risk factors in each category in a manner consistent with the issuer's assessment of the materiality of those risk factors based on the probability of their occurrence and the expected magnitude of their negative impact. EUPR will provide that generic/disclaimer-type risk factors shouldn't be included (aligned with ESMA's existing Guidelines).

Prospectuses need only be provided electronically (on request and free of charge).

Supplements to a base prospectus for new annual or interim financial information published during the 12-month validity period for that base prospectus won't be needed. That information can be **incorporated by reference** instead. Sustainability reports included in management reports may also be incorporated by reference.

A **"*new type of security*"** in respect of which the relevant information hasn't already been included in the base prospectus **cannot be introduced via a supplement** unless it's necessary to use a supplement in that manner to comply with capital requirements. **ESMA must publish guidelines** within 18 months on what constitutes a "new type of security".

The **exemption** for offers of securities to the public with a total consideration in the EU of < €1,000,000 (calculated over a 12-month period) will be **removed**.

The **existing fungible securities exemption will be amended**, and a **new fungible securities exemption** will be introduced to benefit issuers issuing securities that are fungible with securities already admitted to trading on a regulated market or SME growth market.

The exemption for **issuances of debt securities by a credit institution** in a continuous or repeated manner over 12 months will be amended to increase the total aggregated consideration threshold from < €75 million to €150 million.

Existing equivalence provisions will be amended to make it easier for third country issuers to access EU markets.

Walkaway rights will be made permanent. Where relevant, they'll be extended from 2 to 3 days.

15-MONTH LEAD-IN TIME

A **new EU Follow-on Prospectus** will replace the simplified disclosure regime for secondary issuances under EUPR (viewed as being "*too prescriptive and close too close to that of a standard prospectus to make a significant difference*"). It will also replace EU Recovery Prospectuses.

A **new EU Growth Prospectus** will replace the current EU Growth Prospectus (again because the existing format is seen to be too prescriptive and too close to the requirements of a standard prospectus).

18-MONTH LEAD-IN TIME

The **Member State discretion to set an exemption threshold** for public offers of securities anywhere between €1,000,000 and €8,000,000 will be **replaced** (the current Irish threshold is €5,000,000). **There will be a principal threshold of €12,000,000** (calculated over 12 months) below which a public offer will be exempt from the obligation to publish a prospectus (if the offer doesn't need to be passported). **Member States will have discretion to reduce that threshold from €12,000,000 to €5,000,000.**

The format and sequence of information in a prospectus will be standardised. More detail will be included in Commission delegated acts. ESMA must develop technical standards on "*the template and layout of prospectuses…the font size and style…depending on the type of prospectus and the type of investors targeted*" and guidelines on comprehensibility and the use of plain language. Issuers will be allowed to present or summarise information in the prospectus summary in the form of charts, graphs or tables. **Unlike equity securities, there will not be a page limit for a debt securities prospectus.**

Debt securities advertised as taking ESG factors into account or as pursuing ESG objectives will require ESG disclosures. Commission delegated acts will setting out the information to be included. Where the issuer has aligned with the EU Green Bond Standard (**EU GBS**), the prospectus can incorporate the EU GBS factsheet by reference. Where a bond is issued under the EU GBS optional disclosure regime (i.e. marketed as environmentally sustainable, or a sustainability-linked bond with environmental key performance indicators) the prospectus will need to include the relevant information required under the EU GBS framework. The Commission delegated acts will also include the requirements for prospectuses that aren't linked to the EU GBS Regulation.