

## EU Listing Act: Key changes for DCM

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14 November 2024

The EU Listing Act package of reforms (the “**Act**”) has been published in the EU Official Journal (“**OJ**”) today (14 November 2024).

The Act includes a Regulation which amends the EU Prospectus Regulation and the EU Market Abuse Regulation (“**MAR**”). Please find the final text [here](#).

A key objective of the Act is streamlining the listing process (and on-going regulatory burden) for issuers in the EU, to support the competitiveness of EU capital markets. However, changes that will impact DCM practice are incremental rather than revolutionary.

We summarise below the most relevant changes for DCM.

### Prospectus Regulation

#### Exemptions from the requirement to publish a prospectus:

- The 20% threshold for fungible issues (to be admitted to trading on the same regulated market) without a new prospectus has been **raised to 30%**. This has also been **extended to public offers** (subject to certain conditions and requiring issuers to file a short-form document with a maximum length of 11 pages following new Annex IX).
- A **new exemption** is introduced for fungible issues (**without a threshold/size limit**) already admitted to trading continuously **on any regulated market** (or SME growth market) in the EU for the previous **18 months** preceding the tap offering or admission. Again, this requires publication of a short-form disclosure document following Annex IX.

Compare these to the current proposal in the UK (under the Public Offer and Admission to Trading Regulations) to raise the prospectus exemption for secondary offerings and admissions to trading on a regulated market to 75%. The UK proposal (which is still under consultation) does not have a similar requirement for a short-form disclosure document in any case.

Historically these exemptions for fungible issues have not been used widely in the debt market due to the prevalence of the base prospectus format.

- The **€1M threshold** for offers to the public below which no prospectus is required has been **removed**, with the total consideration exemption being increased from €8M to €12M.

## Prospectus disclosure requirements

- Format of prospectuses to be further standardised, and information will be required to be disclosed in a standardised format
- Further delegated acts to be published (within 18 months) will specify the template and layout of prospectuses

## ESG content requirements

- Future delegated acts will take into account whether debt securities are advertised as considering ESG factors or pursuing ESG objectives (this will take the form of new disclosure annexes to be developed within 18 months)
- New prospectus content requirements will also be developed for **EU Green Bonds**, building on the requirements under the EuGB Regulation (e.g. on incorporation of “relevant information” contained in the EuGB factsheet and the relevant optional disclosures for issuers “opting in” under the EuGB Regulation). Again, this will follow within 18 months, so after the date of application of the EuGB Regulation on 21 December 2024 (and potentially after the first issuances that apply the new label).
- Similarly in the UK, the FCA are proposing the introduction of certain disclosure requirements for sustainable bonds.

## Base prospectuses

- **Incorporation by reference of future financial information:** issuers will not be required to publish a supplement (but may still do so voluntarily) for new annual or interim **financial information** published when the base prospectus is still within its 12-month validity period. See our [note](#) for more detailed information on relevant considerations for market participants.
- In an attempt to promote further supervisory convergence, the Act clarifies that a supplement to a base prospectus shall not be used to introduce a **new type of security** for which the necessary information has not been included in that base prospectus. Further ESMA guidelines will follow within 18 months.

## Delegated Acts

As discussed above, implementation of many aspects of the Act is dependent on the publication of delegated acts which still need to be developed. To this end, ESMA published a [consultation paper](#) (28 October 2024) in respect of the standardised format and sequence of prospectuses and proposed changes to [disclosure annexes](#). This includes a new building block in relation to debt securities advertised as considering ESG factors or pursuing ESG objectives (including where issued pursuant to the EU GB Regulation).

For more information on the ESG aspects and interaction between the EU GB Regulation and the Act see our client note [ESMA CP on amendments to EU Prospectus regime – ESG proposals](#).

In addition, ESMA has pared down the “standard” disclosure annexes. This includes combining the wholesale and retail annexes for non-equity securities, using the current wholesale disclosure annexes

as the starting point. The non-equity security annex has also been updated to reflect that only one year's historical financial information (instead of two) need be included in a prospectus.

The deadline for response is 31 December 2024. ESMA expects to deliver a final version of its technical advice to the Commission in the second quarter of 2025.

## MAR

### Disclosure of inside information

- The Act amends the requirement to disclose intermediate steps in a protracted processes so that issuers only need to disclose inside information to the market as soon as possible after the **final event or circumstance** in a protracted process has occurred.
- The Commission may provide further detail regarding final events or circumstances in protracted processes and the timing which would trigger the disclosure obligation.
- This does not amend the prohibition on insider dealing, creating a divergence between treatment of inside information at different stages in a protracted process.

### Market sounding regime

- Clarification that the market soundings regime is a **safe harbour** from the offence of unlawful disclosure (and not a mandatory procedural requirement) is provided, reflecting market consensus.

## Timing

Timing	Provisions
Entry into force / 4 December 2024	<ul style="list-style-type: none"> <li>— Prospectus Regulation: New exemptions to the requirement to publish a prospectus</li> <li>— Prospectus Regulation: Incorporation by reference of future financial information.</li> <li>— MAR: clarification to market soundings regime.</li> </ul>
5 June 2026	<ul style="list-style-type: none"> <li>— Prospectus Regulation: provisions related to standardised format and sequence of the prospectus and ESG disclosure.</li> <li>— MAR: provisions related to protracted process and delay in the disclosure of inside information.</li> </ul>

Importantly for issuers with MTN programmes, transitional provisions provide that prospectuses approved until 4 June 2026 shall continue to be governed by the version of the Regulation in force of the day of their approval until the end of their validity.

In the UK, the detailed rules applicable to prospectuses under the Public Offer and Admissions to Trading Regulations are currently subject to consultation and are expected to apply from late 2H 2025.

## Further Resources

For a more detailed overview (covering ECM as well as DCM) see [Unlocking opportunities: The EU Listing Act explained](#).

For our note on the incorporation by reference of future financial information see [here](#).