

EU LISTING ACT - KEY CHANGES FOR DEBT CAPITAL MARKETS

Introduction

On 14 November 2024, a package of reforms known as the EU Listing Act (the “EU Listing Act”) was published in the EU Official Journal. The EU Listing Act is aimed at making the EU public capital markets more attractive for EU companies and at encouraging companies of all sizes to list on European stock exchanges.

The package comprises a [Regulation](#) amending the EU Prospectus Regulation, the EU Market Abuse Regulation, EU MiFIR and a [Directive](#) amending EU MiFID II and repealing the EU Listing Directive. It also introduces a new [Directive](#) on multiple vote share structures.

The changes to the EU Prospectus Regulation and EU Market Abuse Regulation will be of particular interest to issuers of debt securities and are summarised further below.

For details of how the changes will impact the equity capital markets, see our separate [briefing](#).

Overall effect

Overall, the changes under the EU Listing Act represent targeted refinements to the existing regime for issuers of debt capital markets instruments. The immediate change of note is the additional flexibility afforded to debt programme issuers to incorporate future financial information by reference. The expansion of the existing prospectus exemptions, particularly for fungible issuances, will also apply as soon as the EU Listing Act enters into force. However, whether these exemptions will be of practical use remains to be seen.

Meanwhile, the UK prospectus regime is also due to be reformed in the coming year, with some changes similar to those under the EU Listing Act, such as allowing incorporation of future financials, expansion of the fungible securities exemption and voluntary disclosure requirements for ESG bonds (see our [briefing](#) which covers the UK prospectus regime reforms in further detail). The UK is also expected to make refinements to the UK Market Abuse Regulation in due course.

The EU Listing Act package of reforms is a part of the Capital Markets Union 2020 Action Plan and aims to improve access to capital markets.

Overall, the DCM related changes under the EU Listing Act represent targeted refinements to the existing prospectus and market abuse regimes with some useful new provisions for debt issuers.

The changes will be implemented on a staggered basis with some changes applying when the Act enters into force on 4 December 2024, and others applying 15 or 18 months thereafter (see our timeline below).

Key changes to the EU Prospectus Regulation

• *Incorporation of future financials*

Issuers will not be required to publish a supplement to a base prospectus in order to update annual or interim financial information if it is within the 12-month validity period for base prospectuses. Issuers may continue to publish supplements voluntarily for this purpose if they wish to do so.

• *Incorporation by reference*

The list of documents that can be incorporated by reference has been widened to include, amongst other things, sustainability reports included in management reports and the short form summary document required for some of the fungible exemptions referred to below.

• *Prospectus Disclosure Requirements for ESG Bonds*

There will be prospectus disclosure requirements for bonds advertised as considering ESG factors or pursuing ESG objectives (“ESG Bonds”) with the Commission empowered to adopt delegated acts setting out further detail (see *ESMA Consultation on EU Prospectus Regime* below).

• *Standardising Prospectuses*

The format and sequence of information in a prospectus is to be standardised with the Commission empowered to

adopt delegated acts setting out further detail (see *ESMA Consultation on EU Prospectus Regime* below).

The European Securities and Markets Authority (“ESMA”) is also empowered to develop draft implementing technical standards to specify the template and layout of prospectuses and guidelines on comprehensibility and on the use of plain language to ensure that the information provided is concise, clear and user friendly.

- **Supplements cannot be used to introduce a new type of security**

Supplements to a base prospectus will not be permitted to introduce “a new type of security” for which the relevant information has not already been included in that base prospectus. Some regulators have previously issued guidance to the effect that supplements should not be used for this purpose and the inclusion of the requirement in the EU Listing Act will harmonise these rules. ESMA is expected to provide further guidance in Q1 2025.

- **Expansion of existing prospectus exemptions**

A number of exemptions from the requirement to publish a prospectus have been expanded although it may be that these changes have little practical impact on existing practice as the current exemptions have not been widely utilised for various reasons. For example, MTN programme frameworks already allow for fungible issuances to be conducted relatively easily - as a result there has been little need to rely on the fungible securities exemption to date.

Fungible securities exemption: The exemption from the obligation to publish a prospectus where fungible securities are admitted to trading and they represent, over a period of 12 months, less than 20 per cent. of the securities already admitted to trading has been expanded with the threshold increased to 30 per cent. and offers of securities to the public also included, provided the issuer files and publishes a “summary document” with the home National Competent Authority (“NCA”) and meets certain other requirements.

New fungible securities exemption: There is also a new exemption for both public offers and admissions to trading which would apply to companies issuing securities fungible with securities already admitted to trading on a regulated market or SME growth market if the original issue has been admitted to trading for at least 18 months, the issuer files and publishes the summary document referred to above and certain other requirements are met. There is no percentage cap for this exemption.

Exemption for shares resulting from conversion or exchange: The 20 per cent. threshold in the exemption from the obligation to publish a prospectus for the admission to trading of shares resulting from the conversion or exchange of other securities is increased to 30 per cent.

- **New simplified disclosure documents and other changes**

EU Follow-on and EU Growth issuance prospectuses: The EU Listing Act simplifies disclosure with the introduction of a new EU Follow-on prospectus and EU Growth issuance prospectus.

Third country equivalence: NCAs will no longer have to assess non-EU approved prospectuses for equivalence with EU disclosure standards. Instead, the Commission will adopt delegated acts granting equivalence in accordance with general criteria.

Other changes include the extension of walkaway rights from 2 days to 3 days, certain risk factor clarifications, relaxation of the rules relating to Universal Registration Documents and removing the requirement to provide paper copies of prospectuses to investors on request. These changes are discussed in further detail in our previous EU Listing Act [briefing](#).

ESMA Consultation on EU Prospectus Regime

Several provisions in the EU Listing Act require the Commission to adopt delegated acts (see above). Therefore, in June 2024, the Commission requested technical advice from ESMA. In October 2024, ESMA published a [consultation paper](#) on the content and format of prospectuses (the “**Consultation Paper**”), which included proposed changes to Commission Delegated Regulation (EU) 2019/980 (the “**EU PR Delegated Regulation**”). Key points to note include:

Disclosure requirements for ESG Bonds: The Commission’s request for advice asked ESMA to develop a building block of additional information to be included in a prospectus for ESG Bonds (including use of proceeds bonds and sustainability-linked bonds aligned with market-based principles and green bonds issued pursuant to the EU Green Bond Standard (“**EU GBS**”)).

ESMA proposes to include a definition for use of proceeds bonds and sustainability-linked bonds in the EU PR Delegated Regulation as well as a building block (a new Annex 21) setting out detailed disclosure requirements. Annex 21 is based on ESMA’s existing guidance [Statement](#) on sustainability disclosure in prospectuses on the basis that the statement provides a good basis for ‘light touch’ and ‘proportionate’ disclosure requirements. However, in some cases Annex 21 goes further than the ESMA statement (for example, (1) a requirement to disclose whether post issuance information will be published rather than a recommendation to do so, and (2) where an ESG Bond is advertised as complying with a taxonomy or market standard, the prospectus must unequivocally state how the criteria in the taxonomy or market standard are met and that they are significant in relation to the ESG features or objective of the bonds).

In relation to ESG Bond issuances using the base prospectus format, Annex 21 specifies what disclosure must be set out in the base prospectus and what can be included as in the final terms.

In relation to the EU GBS, ESMA wishes to minimise overlapping disclosure requirements in the EU GBS and EU Prospectus Regulation. Therefore, ESMA proposes that the requirement for relevant information from the EU GBS factsheet to be incorporated by reference into the prospectus, and the optional disclosures from the voluntary templates set out in the EU GBS to be included in the prospectus can satisfy the requirements under Annex 21.

To allow flexibility, ESMA also proposes to allow EU GB factsheet information as well as information to be disclosed under the EU GBS optional disclosure regime to be incorporated by reference into final terms.

A single disclosure framework for debt securities: ESMA proposes a single disclosure framework for debt securities (merging the existing disclosure annexes for retail and wholesale debt securities). However, certain disclosure requirements such as the requirement to produce a summary will continue to apply to retail securities only. In addition, the disclosure annexes are to be reorganised to align with the EU growth prospectuses annexes.

Historical Financial Information: ESMA proposes that the requirement for audited financial information for standard debt prospectuses should be reduced from two financial years to one financial year.

NCA scrutiny and approval: ESMA proposes to give NCAs the power to require additional disclosure in relation to a new type of product (for example crypto-assets), transaction or issuer that is insufficiently covered by existing disclosure requirements under the EU Prospectus Regulation. ESMA also proposes to harmonise certain timeframes relating to the scrutiny and approval of prospectuses by NCAs.

The deadline for feedback on the Consultation Paper is 31 December 2024, with ESMA’s final advice to the Commission due in the second half of 2025.

Key changes to the EU Market Abuse Regulation

The EU Listing Act makes several changes to the EU Market Abuse Regulation including providing further clarity on disclosure of inside information. In particular, immediate disclosure of inside information will no longer apply to intermediate steps in a protracted processes (i.e. issuer will not need to announce the information until the final step in the process is taken). In addition, the circumstances in which an issuer can delay disclosure of inside information will become more specific. However, these changes will apply only from 5 June 2026. The changes are discussed in further detail in our ECM briefing.

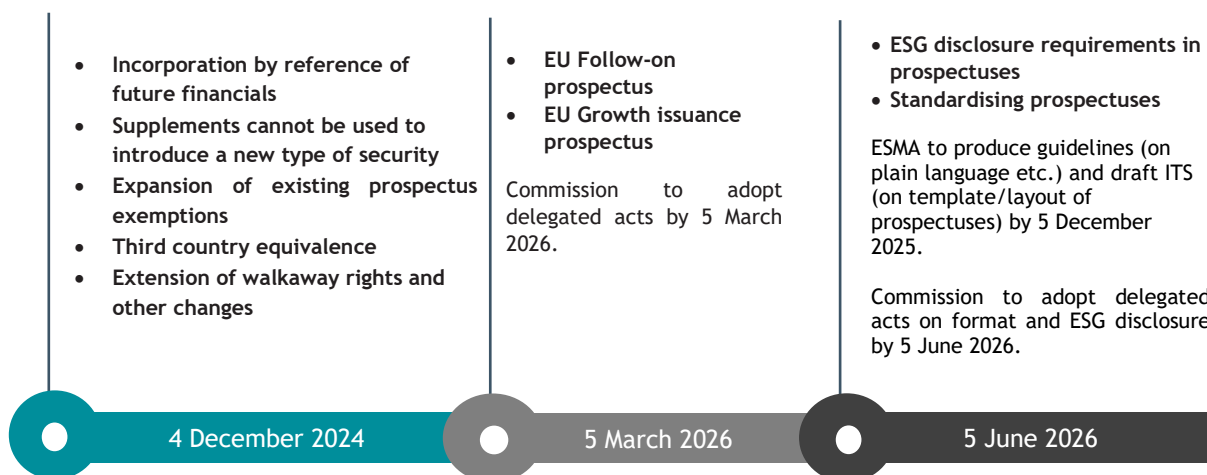
Another key point to note is that the market soundings regime is clarified to be an optional safe harbour and not a mandatory procedural requirement. This change applies when the EU Listing Act enters into force on 4 December 2024.

Timing

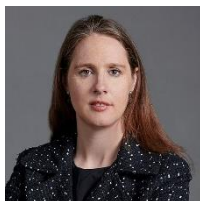
The changes will be implemented on a staggered basis with some changes applying when the EU Listing Act comes into force (4 December 2024) and others applying from 5 March 2026 or 5 June 2026 (see our timeline below).

The EU Listing Act contains transitional provisions which allow, until the end of their validity, prospectuses approved until 4 June 2026 to be governed by the EU Prospectus Regulation that is in force at the time of approval. This ‘grandfathering’ of prospectuses and the staggered implementation of the EU Listing Act means that the full impact of the changes will not be felt for some time, however, debt issuers should take note of the changes that will apply in December 2024 and prepare for those to come.

Timeline of EU Listing Act changes (EU Prospectus Regulation)



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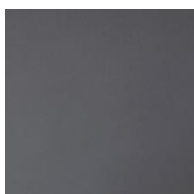
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