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# Changes to the Prospectus Regulation made by the EU Listing Act

**The EU Listing Act has been adopted introducing, among others, changes to the Prospectus Regulation.**

Legal flash – Capital Markets

November 20, 2024



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## Key aspects

- The EU Listing Act package reforms introduce significant changes to the Prospectus Regulation, aiming to simplify and reduce the costs of accessing capital markets, particularly for SMEs.
- Key changes include, amongst other changes, expanded exemptions from the requirement to publish a prospectus, standardized and simplified prospectus formats, and new regimes for the EU Follow-on Prospectus and EU Growth Issuance Prospectus.
- ESG disclosure requirements are introduced in line with EU sustainability objectives.
- The changes are expected to facilitate greater access to capital and enhance investor confidence in the EU capital markets.



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## Background

On October 8, 2024, the European Council adopted [Regulation \(EU\) 2024/2809](#) (the “**Listing Act Regulation**”) which, among other things, reviews Regulation (EU) 2017/1129 (the “**Prospectus Regulation**”).

The Listing Act Regulation, as discussed in our post [I The European Council Approves the EU Listing Act](#), is part of the EU Listing Act package, aiming at further developing the Capital Markets Union (“**CMU**”).<sup>1</sup> Its purpose is to make public capital markets more attractive and accessible for companies, particularly small and medium-sized enterprises (“**SMEs**”), thereby diversifying funding sources beyond bank lending.

The Listing Act Regulation introduces changes to the Prospectus Regulation, which is currently seen as a lengthy, complex, and expensive process.

While the Listing Act Regulation will enter into force on December 4, 2024, some provisions will not apply until March 5, 2026, or June 5, 2026, as they require additional guidance or Level 2 measures.

The amendments cover various aspects of the prospectus regime, such as exemptions, format and content, risk factors, language, third country equivalence, and introduces new sustainability disclosures. They also revise the regime for secondary issuances by introducing the EU Follow-on Prospectus and amends the regime of the EU Growth Prospectus by replacing it with the EU Growth Issuance Prospectus, which are intended to simplify and reduce the costs of secondary issuances and SME issuances, respectively.

In this legal flash, we explain the main changes that the Listing Act Regulation introduces to the Prospectus Regulation and how they will affect the listing and offering of securities, particularly for SMEs. We also assess whether these changes will achieve the objectives of the Capital Markets Union. We do not purport to cover all the changes the Listing Act Regulation makes to the Prospectus Regulation, but only the ones we deem most relevant.

For the purposes of this legal flash, the Prospectus Regulation as amended by the Listing Act Regulation shall be referred to as the “**New Prospectus Regulation**”.

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## Main changes to the Prospectus Regulation introduced by the Listing Act Regulation

### Exemptions from Publishing a Prospectus

In accordance with the Prospectus Regulation, unless an exemption applies, an issuer is required

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<sup>1</sup> The capital markets union (CMU) is a plan to create a single market for capital. The aim is to get money – investments and savings – flowing across the EU so that it can benefit consumers, investors and companies, regardless of where they are located. See [here](#).



to publish a prospectus where (i) it either offers securities to the public or (ii) it intends to have its securities admitted to trading on a regulated market. The need to prepare and publish a prospectus is perceived, especially to SMEs, as a costly and lengthy process which acts as a disincentive to funding in the capital markets.

The New Prospectus Regulation seeks to facilitate access to the capital markets by expanding the exemptions to the need to publish a prospectus.

In relation to (i) offers of securities to the public:

- **Exemption threshold.** The New Prospectus Regulation introduces a more flexible, dual-threshold system for exemptions from the requirement to publish a prospectus. Under this system, offers of securities to the public with a total consideration in the Union of less than €12 million over a 12-month period are exempt from the prospectus requirement (from €8 million previously). Furthermore, Member States are granted the discretion to exempt offers with a total consideration of less than €5 million over the same period (from €1 million previously). Additionally, for credit institutions issuing non-equity securities continuously or repeatedly, the exemption threshold has been raised from €75 million to €150 million.
- **Fungible securities.** The New Prospectus Regulation introduces two key exemptions from the requirement to publish a prospectus in relation to **offers** of fungible securities, marking a significant shift from the Prospectus Regulation that did not provide such exemptions.
  1. In relation to an **offer of securities** to be admitted to trading on a regulated market or an SME growth market and that are fungible with securities already admitted to trading on the same market, provided: (a) the securities represent, over a **12-month** period, less than 30% of the securities already admitted to trading on the same market; (b) the issuer is not undergoing restructuring or insolvency proceedings; and (c) a document containing the general information outlined in Annex IX must be filed and made publicly available. Please note, the national competent authority does not need to approve such document.
  2. The second exemption is even broader, with no size limit, in relation to an **offer of securities** that are fungible with securities that have been admitted to trading on a regulated market or SME growth market for at least the previous **18 months**. Similarly to the first exemption, this is contingent upon: (a) the issuer not being subject to insolvency proceedings or a restructuring; (b) the securities not being issued in connection with a takeover via an exchange offer, a merger, or a division; and (c) the Annex IX document being filed.

In relation to (ii) admission to trading on a regulated market:

- **Exemption threshold.** Similarly to the exemption for public offers of securities, the threshold for exemption from publishing a prospectus for non-equity securities of credit institutions admitted to trading on a regulated market has been increased from a total aggregated consideration in the Union of €75 million to €150 million per institution over a 12-month period.



### > Fungible securities.

- Under the Prospectus Regulation, a prospectus was not necessary if the securities being admitted were fungible with those already trading on the same market, provided they constituted less than 20% of the existing securities over a 12-month period. The New Prospectus Regulation raises this threshold to 30%, thereby easing the regulatory burden.
- In relation to shares resulting from the conversion or exchange of other securities, or from the exercise of rights conferred by other securities, where the resulting shares are fungible with those already admitted to trading on the same regulated market, the New Prospectus Regulation increases from 20% to 30% of shares of the same class already admitted over a 12-month period, the threshold for the admission of shares to trading on regulated markets without the need for a prospectus.
- As mentioned above, the same exemption in relation to securities fungible with securities that have been admitted to trading on a regulated market or SME growth market for at least the previous 18 months is, subject to the conditions described in para. 2 above, expanded to admissions to trading on the regulated market.

These changes will become immediately applicable on the New Prospectus Regulation coming into force on December 4, 2024.

### Standardization and Simplification of Prospectus Format and Content

The New Prospectus Regulation introduces several changes aimed at simplifying and standardizing the format and content of the Prospectus.

- > **Standardized form.** Firstly, in relation to the requirement that information in a prospectus be easily analyzable, concise, and comprehensible, the New Prospectus Regulation now mandates that the prospectus be in a standardized format with information presented in a standardized sequence. For prospectuses related to shares, for example, the document is limited to a maximum of 300 A4-sized pages, excluding the summary, information incorporated by reference, additional information for issuers with a complex financial history, and in relation to the information to be provided in case of significant gross changes. Universal Registration Documents (“URDs”) are exempt from these standard format, sequence, and page number requirements. The European Securities and Markets Authority (ESMA) has been given the mandate to publish relevant guidelines and technical standards to this end.
- > **Summaries.** Secondly, in terms of the content of the summary, the amendments prescribe the order of information and warnings to be included.
- > **URDs.** Thirdly, regarding the approval process for URDs, the requirement to have a URD approved by the national competent authority for two consecutive years has been reduced to one financial year.

While these changes aim to streamline the process and make prospectuses more investor-friendly, there is a risk that the prescribed format and page limits could in certain circumstances



negatively impact issuers. The page number and format constraints may complicate the drafting of a prospectus as issuers need to give investors the full picture, ensure regulatory compliance and protect themselves against liability.

### Documents incorporated by reference

In accordance with the new regime, issuers will be able to incorporate future new annual or interim financial information during the 12-month life of the prospectus without the need to submit a supplement. The removal of this requirement is expected to be positively received by issuers looking to reduce costs. However, issuers should still evaluate on a case-by-case basis whether additional disclosures are necessary overall, such as in relation to "no material adverse change" statements.

### Walk away rights

Where a prospectus relates to an offer of securities to the public and investors have agreed to purchase or subscribe the securities before the issuer publishes a supplement, these investors have a right to withdraw from their purchase within 3 working days after the publication of the supplement (from 2 working days previously).

### IPO offer period

While the Prospectus Regulation prescribed an offer period of 6 days in relation to an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the New Prospectus Regulation reduces the offer period for IPOs to 3 working days.

### Introduction of the EU Follow-on Prospectus

The Prospectus Regulation currently allows companies that have been trading on a regulated market or an SME growth market for at least 18 months to create a simpler prospectus for secondary issuances. However, it is argued that the current simplified prospectus is still too detailed and similar to a standard prospectus, which doesn't help much for companies already trading on these markets and following regular disclosure rules. To make the listing documents easier to understand and to protect investors while reducing costs for companies, the New Prospectus Regulation introduces a new, more efficient EU Follow-on Prospectus for these secondary issuances.

- **Scope:** The Eu Follow-on Prospectus can be used by issuers, that already have equity securities admitted to trading on a regulated market or SME growth market and whose securities have been admitted to trading on a regulated market or SME growth market continuously for at least 18 months.
- **Content and format:** The EU Follow-on Prospectus needs to balance a light regime for issuers while protecting investors. When it relates to equity securities, it should include at the beginning an easier-to-read summary that helps retail investors understand the key information.

For the EU Follow-on Prospectus to be an easily comparable harmonized document across different countries of the Union, its format should be standardized for both equity and non-



equity securities and the information is to be presented in a standard order. It should include comprehensive information about the issuer's financial performance, prospects, and growth strategy, including any significant changes since the last financial year. It must also detail essential information about the securities being offered.

For shares, the prospectus is limited to a maximum of 50 A4-sized pages, excluding the summary, information incorporated by reference, and any additional details required for issuers with complex financial histories or significant financial changes.

### New EU Growth Issuance Prospectus regime

As mentioned, one of the main goals of the CMU is helping SMEs access public markets in the EU and find funding sources other than bank loans, allowing them to grow and expand. However, the cost of creating a prospectus can discourage SMEs from offering their securities to the public, given that their offers are usually small in size. The existing EU Growth Prospectus, introduced by the Prospectus Regulation, which is a simpler prospectus designed for SMEs is still perceived as too detailed and similar to a standard prospectus. The New Prospectus Regulation introduces a new simpler regime, the EU Growth Issuance Prospectus with the objective of further simplifying the listing process for SMEs, helping them save even more.

- **Scope:** The EU Growth Issuance Prospectus is intended for SMEs, issuers on SME growth markets and issuers where the total aggregate consideration in the Union for the securities offered to the public is less than €50 million provided, they have no securities issued on a multi-lateral trading facility and average number of employees of 499 or less.
- **Content and format:** Similarly to the EU Follow-on Prospectus, when it relates to equity securities, the EU Growth Issuance Prospectus should include at the beginning an easier-to-read summary that helps retail investors understand the key information.

For the EU Growth Issuance Prospectus to be an easily comparable harmonized document across different countries of the Union, its format should be standardized for both equity and non-equity securities and the information is to be presented in a standard order. It should include comprehensive information about the issuer's financial performance, prospects, and growth strategy, including any significant changes since the last financial year. It must also detail essential information about the securities being offered.

For shares, the prospectus is limited to a maximum of 75 A4-sized pages, excluding the summary, information incorporated by reference, and any additional details required for issuers with complex financial histories or significant financial changes.

Both the EU Follow-on Prospectus and the EU Growth Prospectus shall be available from March 5, 2026 allowing time for level 2 measures to be adopted.

### Language and Third-Country Equivalence

- **Language.** The New Prospectus regulation provides more flexibility in the language requirements for prospectuses. Under the current regime, where the securities were issued/traded in one Member State only, issuers have to draft the prospectus in the language





accepted by the national competent authority (“NCA”) of that Member State, and where securities were offered/traded in more Member States, the issuer could choose between a language accepted by the NCA of those Member States or English and the summary had to be made available in the official language of each Member State (or another language accepted by that Member State) in which the securities were being offered/traded. Under the New Prospectus Regulation, the issuer has the flexibility to choose between the language accepted by the relevant home Member State or English, independently to whether it is offering/trading the securities in more Member States.

- **Third-country equivalence.** For third-country issuers, under the old regime, the NCA of the home Member State could approve a prospectus drawn up in accordance with the laws of a third country issuer if (i) the information requirements imposed by that third country laws are equivalent to the requirements under the Prospectus Regulation and (ii) the NCA of the home Member State has in place cooperation arrangements with the supervisory authorities of the third country issuer.

Under the new regime, a third country issuer can offer securities to the public in the Union or seek admission to trading on a regulated market in the Union after publishing a prospectus approved by a third country supervisory authority, provided the third country prospectus (a) meets the language requirements, (b) the issuer in disseminating information in the Union complies with advertising requirements, and (c) cooperation arrangements are in place with the relevant supervisory authority of the third country issuer. If all the conditions are met, the third country issuer will have rights and obligations under the supervision of the home Member State.

These changes aim to simplify and provide more flexibility for issuers while ensuring adequate oversight and alignment with international standards.

### Enhanced ESG Disclosures

In line with the EU objectives of diverting capital towards sustainable economic activities to achieve the European Climate Law objectives, the Listing Act Regulation introduces new requirements for environmental, social, and governance (“ESG”) disclosures into the Prospectus Regulation.

- Issuers of equity securities are now required to incorporate by reference into their prospectus their management and consolidated management reports, including the sustainability report.
- Debt securities must disclose whether their securities are advertised as considering ESG factors or pursuing ESG objectives and if they do, the Commission will set out specific schedules detailing the ESG-related information to be included in the prospectus, in line with the Accounting Directive<sup>2</sup> or, where applicable, the European Green Bond Standard<sup>3</sup>. In relation to European Green Bonds issued under the European Green Bond Standard, the information contained in the European Green Bond factsheet must be incorporated by reference into the prospectus. Bonds marketed as environmentally sustainable or

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<sup>2</sup> Directive 2013/34/EU

<sup>3</sup> Regulation (EU) 2023/2631. For more information on the EU Green Bond Standard please refer to our Legal Flash [“The EU Parliament and the Council approve the EU Green Bonds Regulation”](#)



sustainability-linked must include the relevant optional disclosures from the European Green Bond Standard, provided the issuer has opted into those disclosures (please refer to our Legal Flash “The EU Parliament and the Council approve the EU Green Bonds Regulation” for further information on the EU Green Bond Standard).

- Issuers subject to Article 8 of the EU Taxonomy Regulation<sup>4</sup> must include a statement in the prospectus summary on whether their activities align with the definition of sustainable economic activities under the EU Taxonomy Regulation.
- Equity issuers must disclose in the prospectus whether they are required to provide sustainability reporting and the related assurance opinion, in accordance with the Transparency Directive<sup>5</sup> and the Accounting Directive.
- Finally, the Listing Act Regulation replaces Annexes I to V of the Prospectus Regulation with its own annexes, requiring equity offerings to include or reference management reports that incorporate sustainability reporting according to relevant EU directives.

The new requirements relating to ESG will apply from June 5, 2026 leaving time for the Commission to create Level 2 measures on ESG content schedule.

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## Application and grandfathering

As we have seen that depending on whether Level 2 measures are required some of the features of the New Prospectus Regulation will apply either from December 4, 2024, or from March 5, 2026 or June 5, 2026.

Prospectuses approved before 18 months minus one day from the date of entry into force of the Listing Act Regulation shall continue to be governed until the end of their validity by the version of the Prospectus Regulation in force on the day of their approval. Except for EU Follow-on Prospectuses and EU Growth Prospectuses where the applicable grandfathering deadline shall be before 15 months minus one day from the date of entry into force of the Listing Act Regulation.

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## Impact on Listing and Offering of Securities by SMEs

The changes introduced by the Listing Act Regulation to the Prospectus Regulation are expected to have a significant impact on the listing and offering of securities, particularly for SMEs.

Firstly, the expansion of exemptions from the requirement to produce a prospectus provides greater flexibility and reduces the regulatory burden on issuers. This is particularly beneficial for SMEs, which often face higher relative costs in meeting regulatory requirements.

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<sup>4</sup> Article 8 requires companies covered by Directive 2014/95 (the Non-Financial Reporting Directive) to disclose information on the extent of their involvement in activities aligned with the EU Taxonomy Regulation in their non-financial statements. For more information on the Taxonomy Regulation please refer to our Legal Flash “[New developments in green taxonomy](#)”.

<sup>5</sup> Directive 2004/109/EC





Secondly, the introduction of new regimes, such as the EU Follow-on Prospectus and the EU Growth Issuance Prospectus, offers innovative frameworks that cater specifically to the needs of growing companies. These regimes are designed to streamline the process and make it more cost-effective for businesses to raise capital.

Moreover, the increased flexibility in language requirements and the provision allowing third-country issuers to use approved prospectuses should facilitate cross-border offerings and thereby attract a wider range of issuers and investors to EU capital markets. This, in turn, will enhance market liquidity and integration within the EU.

In conclusion, the reforms brought about by the Listing Act Regulation align well with the overarching goals of the CMU by fostering a more inclusive and efficient capital market environment.

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For additional information, please contact our [Knowledge and Innovation Group](#) lawyers or your regular contact person at Cuatrecasas.

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