

ESMA Final Report on changes to EU Prospectus regime by the Listing Act



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Introduction

On 8 October 2024, the Council of the European Union adopted the **Listing Act**, a regulation that introduces amendments to several legislative instruments, including the Prospectus Regulation (EU) 2017/1129. Although the Listing Act officially came into force on 4 December 2024, most of its amendments to the Prospectus Regulation are scheduled to become effective on 5 June 2026.

Recap: Key changes to Prospectus Regulation made by the Listing Act

The Listing Act is designed to simplify and streamline access to public capital markets in the EU. Key changes to the Prospectus Regulation made by Listing Act include the following:

Exemptions from prospectus requirements

- **Public offerings of up to 30 %** (previously 20 %) of securities fungible with those already admitted to trading on the same regulated market or SME growth market within a 12-month period, provided the issuer is not undergoing restructuring or insolvency proceedings and a short summary document (maximum 11 pages) is filed with the competent authority (filing only, no approval required).
- **Admissions to trading of up to 30 %** (previously 20 %) of securities fungible with those already listed on the same regulated market within a 12-month period.
- **Offerings or admissions of securities fungible** with those that have been continuously admitted to trading for at least 18 months on a regulated market, provided that the issuance is not related to a takeover, merger, or division, the issuer is not subject to restructuring or insolvency, and a summary document (maximum 11 pages) is filed with the competent authority (filing only, no approval required).
- **Offerings of debt securities by credit institutions**, issued on a continuous or repeated basis, are exempt if the total consideration in the EU does not exceed €150 million (previously €75 million) over a 12-month period per institution.
- Offerings of securities with **total consideration <€12 million** over a 12-month period are exempt from the prospectus requirement. Member States may opt to

lower this threshold down to €5 million. (applicable from 5 June 2026).

Offer periods and withdrawal rights

- **IPO Offer Periods:** IPO prospectus must be made public three (previously six) working days before the end of the offer period.
- **Withdrawal Rights:** Deadline for investors to withdraw acceptances during book-building in case of a prospectus supplement (required in case of significant new factors, material mistakes, or material inaccuracies) is extended to three (previously two) working days.

Simplified prospectus disclosure requirements

- **Financial Information:**
 - Periods: Equity prospectuses require disclosure of two years of financial information; non-equity requires only one year.
 - Equity: Equity prospectuses must incorporate by reference (or otherwise) management report details (including sustainability reporting), removing the Operating and Financial Review (OFR).
 - Debt: Issuers of non-equity securities may include future financial information by reference in a base prospectus without an additional supplement. Additionally, the scope of other information that may be included by reference has been expanded, including sustainability disclosure.
- **Risk Factors:** prospectus may not include generic risk factors which only serve as disclaimers, or that do not give clear picture of issuer specific risks.
- **Language:** Prospectus of public offerings in only one member state may be drafted in the local language or English (subject to member state opt-out from English)
- **Length:** Equity prospectuses (for shares) limited to 300 pages (excluding summary, information incorporated by reference, and information discussing issuer's complex financial history, as the case may be)
- ESMA mandated to develop **(i)** guidelines on comprehensibility and the use of plain language, and **(ii)** technical standards to specify the template and layout of prospectuses (including font size and style requirements).

Notably, some of the simplified disclosure requirements will likely not fully be exploited by issuers in a Rule 144A offering (i.e. offerings to qualified institutional buyers in the U.S. by using an exemption from the registration re-

quirement under the U.S. Securities Act). For instance, in line with standard market practice in these offerings, it may still be appropriate (or even required by investors) to include at least some OFR disclosure, highlighting key factors affecting issuer’s results of operations. For equity offerings, this might cause to exceed the 300-page limit. Consequently, the Listing Act clarifies that securities offered simultaneously in the EU and a third country where a prospectus is prepared, standardized format, layout and length requirements will not apply.



Clarifications in ESMA’s Final Report

In line with its mandate for level 2 measures, ESMA issued a draft version of its advice in a Consultation Paper published on 28 October 2024, and later released its final technical advice in a Final Report dated 12 June 2025, including certain amendments and deletions to its original draft version.

The scope of ESMA’s technical advice includes a particular emphasis on the **structure and content of prospectuses** (other than EU Follow-on prospectus) set out in Delegated Regulation (EU) 2019/980. In addition, ESMA focusses on **ESG information** and linkage to the new EU Green Bond Regulation (Regulation (EU) 2023/2631).

Mandatory Sequence of Information

For primary issuances, ESMA proposes a new standardized format and sequence of disclosure in Art. 22 and 23 Draft Delegated Regulation (EU) 2019/980 (the **DDR**) which would be effective from 5 June 2026.

Generally, the mandatory sequence of information follows Annex I, II and III Prospectus Regulation (as amended by the Listing Act) with an amendment of Annexes of Delegated Regulation (EU) 2019/980. As a result, the new sequence of information comprises in particular:

- Stand alone prospectus for equity securities (Annex 1 and 10 DDR)
- Stand alone prospectuses for non-equity securities (Annex 6 and 13 DDR), consolidated for retail and wholesale
- Single issuer registration documents (Annex 6 DDR)

Notably for base prospectuses, ESMA acknowledges their complexity and concludes that base prospectuses for all types of securities are excluded except for single issuer registration documents for a tripartite prospectus.

Disclosure periods of financial information

Additionally, the timeframe for financial information which shall be included in the registration document has been reduced – from three years to two years for equity prospectuses, and from two years to one year for debt prospectuses. In its initial Consultation Paper, ESMA emphasized the practical importance of interpreting the term “last financial year” not strictly in terms of calendar years or specific months. This clarification is particularly relevant because a prospectus prepared during the first quarter of 2025 might only be able to incorporate fully audited financial statements from the (full) year 2023.

Therefore, ESMA has taken care to avoid introducing changes to elements such as the age of financial data in the “standard” non-equity annex that could facilitate uncertainty. However, in its Final Report, ESMA acknowledged that the interpretation of “last financial year” might be further clarified in a future Q&A. Regarding the shortened minimum disclosure periods, ESMA also recognized in the Final Report that these reduced periods may be insufficient in certain circumstances and noted that issuers retain the option to voluntarily provide additional

financial information if deemed necessary under Article 6 of the Prospectus Regulation.



Single Disclosure Standards for Non-Equity Securities

As a key element, ESMA has consolidated the existing Annexes 6 and 7, which pertain to retail and wholesale registration documents, along with Annexes 14 and 15, which relate to retail and wholesale securities, into a new standardized **Annex 6 for non-equity registration documents** and a new standardized **Annex 13 for securities notes**, both applying to retail and wholesale issuances alike under DDR. Generally, contents are based on requirements of existing EU Growth debt prospectuses, with some limited adjustments. In its Final Report, ESMA explicitly states that issuers have discretion to provide additional information in prospectuses. Moreover, ESMA now distinguishes more clearly (in particular in the item headings of each Annex) between requirements applicable to retail and wholesale issuances.

Plain Language Requirement

ESMA acknowledges in its Final Report the difficulty of implementing “plain language” requirements across the EU

due to linguistic diversity. While it may explore this issue further, no firm requirements have been made. As a result, consistent application of plain language standards across member states is unlikely in the near future, and national authorities will continue to interpret and apply this requirement differently.

ESG Disclosure Annex

The Final Report also introduces a new Annex 21 relating to the integration of ESG-related disclosure into prospectuses. The basis for such requirements forms Art. 13 Prospectus Regulation which mandates ESMA to clarify (i) for equity securities, whether the issuer is subject to sustainability reporting requirements under the Corporate Sustainability Reporting Directive (CSRD) and (ii) for non-equity securities, whether such instruments are marketed as taking into account ESG factors or pursuing ESG objectives.

The requirements set out in Annex 21 will apply from 5 June 2026 and will replace ESMA’s current requirements on **sustainability disclosure** published in July 2023 which we also covered in this **newsletter**.

Conceptually, Annex 21 serves as a building block for relevant non-equity securities to be used together with other annexes, including the categorization of information (as cat A, B or C information).

Scope

Annex 21 **applies generally** to sustainability-linked bonds and use of proceeds-bonds (e.g. green bonds or social bonds) but also covers sustainable structured products and European Green Bonds under EU Green Bond Regulation. Its application further requires that the securities are **advertised** as taking into account ESG factors or are pursuing ESG objectives. In this respect, ESMA applies a broad interpretation of “advertised”, covering oral or written communications (including in roadshows or analyst briefings) which is specific to such ESG securities. On the contrary, a general information specific only to the issuer (i.e. exclusively on corporate entity/business level) with no further connection to any ESG related securities will not trigger the application of Annex 21.

Relevant Exemption

For **EU Green Bonds** (under EU Green Bond Regulation), ESMA **exempts** issuers from the disclosure requirements of Annex 21 if (i) all information from the EuGB factsheet is

incorporated by reference into the prospectus or (ii) if the EuGB factsheet cannot be incorporated by reference as of the approval date, a statement that the EuGB factsheet will be incorporated by reference via final terms.

Contents

Disclosure required by Annex 21 follows the existing ESMA guidelines with some additional key features, as follows:

- **Main disclosure:** Prospectus shall contain clear and comprehensive explanation to help investors understand the ESG factors take into account by the securities and/or ESG objectives pursued by securities. This explanation should be unambiguous and fact-based and should include:
 - A statement as to whether or not EU Taxonomy Regulation applies or a specified third country taxonomy. ESMA also stresses that, where issuers follow only partially the EU Taxonomy Regulation (or third-country taxonomy), a clear statement of

such partial compliance shall be included.

- A statement how criteria in Art. 3 Taxonomy Regulation (or third country equivalent) are met and identify criteria which are not met
- **For use-of-proceeds bonds:**
 - Description of goal and characteristics of relevant eligible projects or activities, including how the goal is expected to be achieved
 - Permissible terms and conditions for the deviation to the minimum use of proceeds, the eligible projects and activities. In case eligible projects are not identified as of the approval date of the prospectus, the criteria used to identify eligible projects shall be described.
 - Statement whether the bonds are part of financing the entirety of the issuer's green/sustainable strategy and explain the use of proceeds bonds' contribution to such strategy



- **For sustainability-linked bonds:**
 - Description of any financial features of the securities such as interest or premium payments influenced by the fulfilment or failure of ESG objectives, including the means by which interest or redemption amounts are calculated.
 - A statement that the securities do not represent a direct investment in a sustainable product or economic activities, including products or economic activities in transition finance.
- **Materiality:** Confirmation, that the sustainability features are material for the assessment of the ESG factors taken into account by the securities or the ESG objectives pursued by the securities.
- **ESG Ratings:** In case the issuer uses ESG Ratings assigned to the securities for advertising, such ratings shall be disclosed in the prospectus, including a brief explanation of the rating's meaning (if previously published by the rating provider).
- **Advisors:** In case the issuer uses advisors to prepare any review or assurance about ESG factors taken into account or ESG objectives pursued by the securities, the prospectus shall disclose the scope of the review or assurance and by whom they were provided. For such reviews or assurances, prospectus shall include a link to the website where it can be obtained together with a disclaimer, that information on such website does not form part of the prospectus unless explicitly incorporated by reference.
- **Post-issuance information:** If post issuance information will be provided, a description of what information will be provided and where it can be obtained. In case of any review or assurance of such information, disclosure concerning the scope of such review or assurance and the type of the expected assurance provider.



Outlook

While the proposed amendments to EU Prospectus regime by the Listing Act (as reflected in ESMA's Final Report) follow current requirements and market practice, they introduce some additional items and key changes, including a structural change of the disclosure regime affecting prospectus approval procedures. Notably, the EU Commission is under no obligation to adopt ESMA's proposals but has in comparable cases done so with some minor changes. Issuers and their advisors should therefore await the Commission's adoption of the final delegated acts (due by 5 June 2026 in order to apply from then) to see the precise changes that will apply under the EU Prospectus Regulation.

Base prospectuses approved up until 4 June 2026 will be governed by the provisions of the existing PR until the end of its validity period (typically 12 months from the approval date). For approval procedures in H1 2026, competent authorities have indicated a certain flexibility to implement already the new requirements, if available by then.



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Our most recent transactions:

- Establishments and updates of debt issuance programmes and draw-downs, including inaugural green bonds and social bonds
- Various stand-alone bond issuances of banks and corporate issuers, including secured green bonds
- Bond restructurings, ranging from large volumes (> €1 billion) to small volumes (approx. 20 million)
- Issuances of regulatory capital by bank issuers, including MREL, AT1 and Tier 2 instruments.

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Our Expertise

- IPOs, capital increases and rights offerings
- Stand alone bond issuances / Debt Issuance Programmes
- Hybrid Capital (e.g. Perpetual Bonds)
- Convertible bonds
- Green or Social bonds, Sustainability-linked bonds
- US Private Placements
- Liability Management (e.g. Tender Offer, Repurchase Transactions)
- Bond Restructurings (Bondholder meetings)
- Assignable Loans (Schuldscheindarlehen)
- Registered Bonds (Namensschuldverschreibungen)

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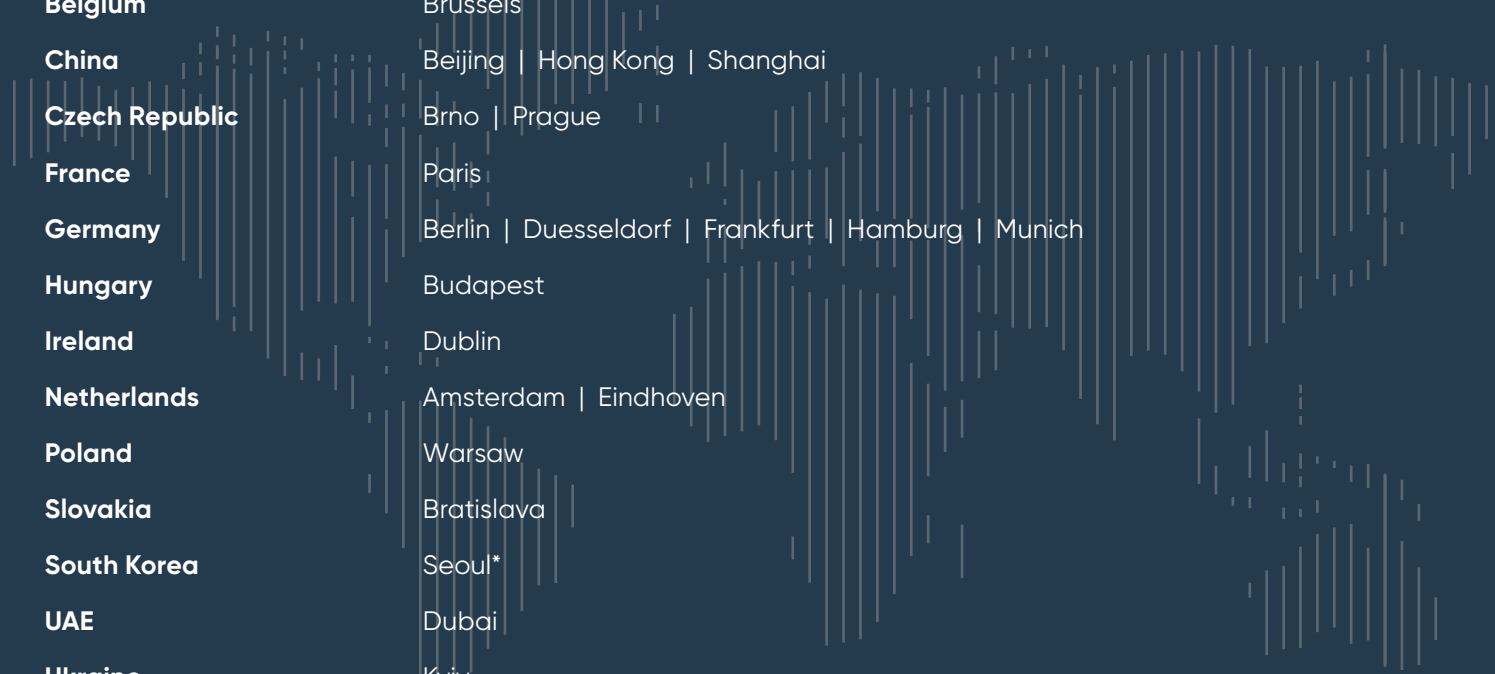
They are extremely responsive and highly qualified in this field. The drafts are always highly professional, but also understandable and realisable.

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