

Listing Act amendments to the Prospectus Regulation

The reform of the Prospectus Regulation to facilitate access to funding through securities markets, especially by SMEs, is pending publication in the OJEU.

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1. Introduction

On 8 October last the Council of the European Union adopted a package of reforms known as the 'Listing Act', the texts whereof had been approved by the European Parliament on 24 April, with publication pending in the Official Journal of the European Union by the end of the year. The Listing Act's amendments to the Market Abuse Regulation, as well as the amendments to MiFID II/ MiFIR and the repeal of the Admis-

sions Directive, were discussed in separate papers^{1,2}. In this paper we only address the amendments to the Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June).

The new Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market, the last text included in this Listing Act package, will be discussed at a later stage.

¹ See this [link](#).

² See this [link](#).

2. Main amendments to the regulation of the issuance and admission to trading prospectus

In line with the Commission's Capital Markets Union (CMU) action plan, the amendments aim to enable companies to access funding sources other than bank lending and to promote SMEs' access to SME growth markets as a means of raising funds and, where appropriate, accessing other capital markets. To this end, it is necessary to make more flexible the rules governing the prospectus to be published in public offers or applications for admission to trading. But the reform of the Prospectus Regulation also affects listed companies on a regulated market by facilitating, as we shall see, secondary issuances and reducing from six to three days the period for making the prospectus available to the public in the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time.

a) In general, in order to reduce the fragmentation of the European issuance market, the threshold triggering the obligation to publish a prospectus is raised from the 8 million currently provided for in the Regulation to 12 million euros per issuer or offeror calculated over a period of twelve months. Member States may decide to impose the obligation to draw up a prospectus from EUR 5 million upwards, as is currently the case in the national law of Austria, Belgium, Cyprus, Estonia, Malta, the Netherlands, Slovenia and Spain for issuances by credit institutions. Below the EUR 12 - or 5 - million threshold, the obligation to publish

the prospectus disappears, although Member States may provide in their national law for the obligation to publish an information document for offers below these thresholds.

The prospectus exemption threshold is raised to 12 million euros

- b) A second major amendment concerns secondary issuances under Article 1(5) of the Prospectus Regulation: the threshold for exemption from the obligation to publish a prospectus in cases of applications for admission to trading of securities already listed on a regulated market is raised from 20 to 30 per cent. The prospectus exemption extends to share subscription rights. Unlike offers to the public of less than EUR 12 million (or EUR 5 million if Member States so provide), such secondary issuances will require an information document to be made available to the public and filed with the competent authority of the home Member State, 'but [shall] not be subject to its approval', as stated in recitals 11 and 13 of the amending Regulation.
- c) A new exemption from the obligation to draw up a prospectus is introduced: an offer of securities fungible with securities that have been admitted to trading on a regulated market or an SME growth market continuously for at least 18 months preceding the offer of the new securities, provided that all of the following conditions are met: a) the securities offered to the public are not issued in connection with a

takeover by means of an exchange offer, a merger or a division; b) the issuer of the securities is not subject to a restructuring or insolvency proceedings; and c) a document containing the information set out in Annex IX is filed, in electronic format, with the competent authority of the home Member State and made available to the public at the same time as it is filed with the competent authority.

d) Moreover, the temporary exemption from the prospectus requirement for debt issues by credit institutions for amounts not exceeding EUR 150 million under the terms of Article 1(4)(l) of the Prospectus Regulation is made permanent.

e) In order to reduce the complexity of the prospectus documentation and to make the prospectus a more harmonised document across the Union, a standardised format is introduced for both equity and non-equity securities offered to the public or admitted to trading on a regulated market, taking care that the prospectuses are not overloaded with redundant or marginally irrelevant information and regardless of whether it is a single document or several documents. Maximum lengths are introduced for the prospectus depending on the type of issuance or the purpose of the transaction, with a maximum length of 300 sides of A-4 sized paper in the case of offers of securities to the public.

f) The simplified prospectus for secondary issuances by companies already admitted to trading on a regulated market

or an SME growth market under Article 14 of the Prospectus Regulation is replaced by a simpler prospectus in a standardised format (EU Follow-on prospectus), which may also be used by listed companies in other cases, such as the *leap* to the regulated market from the SME growth market or those envisaged - until December 2022 - under the EU Recovery prospectus referred to in Article 14a of the Prospectus Regulation, renamed EU Follow-on prospectus after the reform.

g) In the same vein of reducing costs and information in the prospectus and to facilitate SMEs' access to securities markets, the Regulation is amended with a new Article 15a that introduces an EU Growth issuance prospectus, a 'lighter prospectus' for issuances by SMEs or other companies with a market

The prospectus exemption for secondary issuances is raised to 30%

capitalisation of up to EUR 500 million, the securities of which are admitted to trading on the SME growth market, as well as for offers to the public of less than EUR 50 million over a period of 12 months by issuers with securities not listed on multilateral trading facilities and a number of employees not exceeding 499.

h) As regards the templates of prospectus, Annexes I to V of the current regulation are unified in a single Annex I ('The Prospectus'). Attention is drawn to

the reduction of the historical financial reporting period for equity securities from three to two years. The new Annexes II and III are devoted to the content of the registration document and the securities note respectively. The information to be provided in simplified prospectuses (EU Follow-on prospectus and EU Growth Issuance prospectus) is listed in the following five new annexes to the Regulation.

Most of the above amendments will enter into force 20 days after the publication of the Regulation in the Official Journal of the European Union. Those relating to sim-

plified prospectuses (EU Follow-on and EU Growth Issuance prospectus) will enter into

Prospectus templates are simplified in terms of format and content

force 15 months after the entry into force of the reform. The 12 million threshold below which no prospectus is required (new Art. 3(2) of the Prospectus Regulation) will apply eighteen months after the entry into force of the amending Regulation, which is also envisaged for the 300 sides of paper limit to the prospectus and some issues relating to sustainability information to be included in the prospectus.