



# ARTICLE

## LISTING ACT: PUBLICATION OF TEXTS DESIGNED TO MAKE EU CAPITAL MARKETS MORE ATTRACTIVE

Securities law - Capital markets | 20/11/24 | Jean-Damien Boulanger



The *Listing Act*, which aims to make the European Union's capital markets more attractive to companies and to facilitate the listing of SMEs on European stock exchanges, was published in the Official Journal of the European Union on 14 November 2024.

It consists of three texts:

- Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending the Prospectus (2017/1129), Market Abuse (MAR) (596/2014) and Markets in Financial Instruments (MiFIR) (600/2014) Regulations;
- Directive (EU) 2024/2810 of the European Parliament and of the Council of 23 October 2024 on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility; and
- Directive (EU) 2024/2811 of the European Parliament and of the Council of 23 October 2024 amending the Markets in Financial Instruments Directive (MiFID) (2014/65/EU).

### Main amendments to the Prospectus Regulation

- The obligation to publish a prospectus will no longer apply to offers to the public of securities that are fungible with securities already admitted to trading, provided that (1) they represent less than 30% of the number of existing securities over a 12-month period, (2) the issuer is not the subject of restructuring or insolvency proceedings and (3) a summary document (a document no longer than 11 A4 pages) is filed with the competent authority (but not subject to its approval).
- By way of consistency, for exemptions from the obligation to publish a prospectus in connection with an admission to trading, the ceiling of 20% of the number of securities already admitted to trading is raised to 30%.
- A new exemption is created for both public offers and admissions to trading of securities that are fungible with securities already admitted to trading for a continuous period of at least 18 months prior to the offer or admission to trading of the new securities, provided that (1) they are not issued in connection with a takeover by means of a public exchange offer, a merger or a division, (2) the issuer is not the subject of restructuring or insolvency proceedings and (3) a summary document is filed with the competent authority.
- The exemption from the obligation to publish a prospectus for "small offers" has also been extended: currently for offers of up to €8 million over a 12-month period, this amount has been increased to €12 million (although Member States may choose to lower this threshold to €5 million).
- The clarity and conciseness of the prospectus have also been improved (standardised format, maximum length of 300 A4 pages). Two new streamlined prospectus formats have been introduced: the EU Follow-on prospectus (which replaces and simplifies the simplified disclosure regime for secondary issuances) and the EU Growth issuance prospectus (which replaces and simplifies the EU Growth prospectus).
- It should also be noted that, in the case of an initial public offering, the period during which a prospectus must be made available to the public has been reduced from 6 to 3 business days prior to the closing of the offering. It will also be possible to file a universal registration document without prior approval after a single approval (instead of two).

### Main amendments to the Market Abuse Regulation

- The main change made to the Market Abuse Regulation is that it exempts from immediate disclosure inside information related to "*intermediate steps in a protracted process*" (typically M&A processes). Only the final circumstances or final event must be disclosed, as soon as possible after they have occurred.
- In addition, one of the three conditions for delaying disclosure to the public of inside information has been changed. Currently, these conditions are: (1) immediate disclosure is likely to prejudice the legitimate interests of the issuer, (2) delay of disclosure is not likely to mislead the public, and (3) the issuer is able to ensure the confidentiality of the information. Condition (2) (the meaning of which could have been considered unclear) has been replaced by the absence of contradiction with the issuer's most recent communication (a more objective and verifiable assessment that reflects ESMA's recent guidelines).
- With regard to the reporting of transactions carried out by directors and closely associated persons: the threshold corresponding to the amount of transactions carried out in the course of a calendar year above which the reporting

obligation applies is raised from EUR 5,000 to EUR 20,000, with the national authorities being able to decide to raise this threshold to EUR 50,000 or to lower it to EUR 10,000.

It should be noted that while most of the amendments to the Market Abuse Regulation will apply from 4 December 2024, the aforementioned amendments concerning inside information relating to "*intermediate steps in a protracted process*" and the delay of disclosure to the public will apply from 5 June 2026.

#### The main contributions of the two *Listing Act* directives

- Directive (EU) 2024/2810 on multiple-vote share structures establishes common rules on multiple-vote share structures in companies seeking admission to trading of their shares on a multilateral trading facility. This text responds to the reluctance of many entrepreneurs to consider the possibility of listing their company for fear of losing control of their business.

The text creates minimum harmonisation at EU level:

- removal of obstacles to the creation of structures with multiplevoting shares before they are listed;
- limiting the impact of multiplevote shares on the decision-making process at general meetings (either by means of a maximum ratio of the number of votes attached to the multiple-vote shares to the number of votes attached to the shares with the lowest voting rights, or by limiting the decisions that the general meeting can take by qualified majority);
- introduction of transparency measures (in particular concerning the structure of the company's shares and their characteristics, any restrictions on voting rights or on the transfer of shares).

- The aim of Directive (EU) 2024/2811 amending MiFID is to revitalise the investment research market and ensure that companies, particularly SMEs, are adequately covered by research. To this end, the text removes the market capitalisation threshold below which it is possible to link commissions associated with execution services and research. It also recognises issuer-sponsored research (i.e. research that is paid for in full or in part by the issuer) as investment research if it complies with a code of conduct to be drawn up by ESMA.
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