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Listing Act: Prospectus Regulation Amendments

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Introduction

Regulation (EU) 2024/2809 (part of the so-called "Listing Act"), published in the Official Journal of the EU on 14 November 2024 and in force since 4 December 2024, introduces significant amendments to Regulation (EU) 2017/1129 (the "**Prospectus Regulation**"). Most of its provisions will become applicable on 5 June 2026, simultaneously with the entry into application of the Delegated Regulation amending the Commission Delegated Regulation ("**CDR**") 2019/980 adopted by the Commission on 7 May 2026. In this article we analyse the most relevant changes for issuers, intermediaries and investors, with a particular focus on the new exemptions from the obligation to publish a prospectus, the regime applicable to the base prospectus, and the operational implications for tokenized securities, in light of the ESMA Final Report ESMA32-117195963-1417 of 12 June 2025 and the ESMA public statement of 7 May 2026.

New Exemptions from the Obligation to Publish a Prospectus

The Listing Act significantly reshapes the perimeter of the exemptions from the obligation to publish and have a prospectus approved by a National Competent Authority ("**NCA**"). The most operationally relevant change is the permanent increase of certain quantitative thresholds, originally raised on a temporary basis by the Capital Markets Recovery Package (Regulation (EU) 2021/337).

First, in respect of debt securities issued on a continuous or repeated basis by credit institutions, the exemption under Article 1(4)(j) of the Prospectus Regulation is permanently raised to a total aggregated consideration in the Union **not exceeding EUR 150 million** per institution over a 12-month period (compared to the previous standard threshold of EUR 75 million). The measure, originally conceived to give the banking system additional breathing space during the pandemic, is being made permanent to support capital markets-based funding by credit institutions.

Second, a dual-threshold system is introduced for small public offers. The previous regime - which allowed Member States to set thresholds ranging from EUR 1 million to EUR 8 million - is replaced by a principal harmonised threshold of **EUR 12 million** per issuer or offeror, calculated over 12 months. Member States may alternatively opt for a reduced threshold of EUR 5 million. Below these levels, offers are exempt from the prospectus requirement, save for any passporting obligation (applicable from 5 June 2026). The exemptions for fungible securities (the threshold rises from 20% to 30% of the aggregated consideration) and for securities continuously admitted to trading on a regulated market for at least 18 months are also confirmed and extended; in both cases, subject to the filing of

a short-form summary document (maximum 11 sides of A4) with the competent authority, with no approval required

Offer Periods, Withdrawal Rights and Simplified Disclosure

On the procedural side, the Listing Act reduces to three working days (down from six) the minimum period during which an Initial Public Offering (IPO) prospectus must be made available to the public before the end of the offer period. Mirroring this change, the deadline for investors to withdraw their acceptances following the publication of a prospectus supplement - required where significant new factors, material mistakes or material inaccuracies arise - is extended to three working days (previously two), striking a balance between transaction efficiency and investor protection during the book-building phase.

On the disclosure side, several meaningful simplifications are introduced. The mandatory historical financial information period is shortened: two financial years for equity prospectuses and one financial year for non-equity prospectuses. Equity prospectuses will have to incorporate by reference (or otherwise reproduce) the management report, including the sustainability reporting section, with the consequent removal of the traditional Operating and Financial Review (OFR) section. For debt issuers, it will now be possible to incorporate by reference future financial information into a base prospectus without the need to publish a dedicated supplement.

Particularly notable is the new regime governing risk factors: the prospectus may no longer include generic risk factors that serve merely as disclaimers, or that do not provide a clear picture of the issuer-specific risks. The mandatory ranking of the most material risk factors is replaced by a requirement to list, within each category, the most material risks in a manner consistent with the assessment carried out by the issuer.

Standardised Format, Page Limit and Mandatory Sequence

The Listing Act introduces a standardised format for prospectuses - applicable to both equity and non-equity securities - and imposes a standardised sequence of disclosure. As stated in the amending Regulation 2024/2809, the stated aim is to make the prospectus a more harmonised and readable document across EU markets, irrespective of the jurisdiction where securities are offered to the public or admitted to trading on a regulated market.

In quantitative terms, equity prospectuses (relating to shares) are subject to a maximum length of 300 sides of A4 paper, excluding the summary, the information incorporated by reference and, where relevant, the additional information required for issuers with a complex financial history or significant financial commitments. This length limit does not apply where the securities are offered simultaneously in the EU and in a third country in which a prospectus is also prepared, in order to avoid conflicts with established market practices (such as Rule 144A offerings in the United States).

ESMA has been mandated to develop (i) guidelines on comprehensibility and on the use of plain language, and (ii) implementing technical standards specifying the template and layout of prospectuses, including font size and style requirements.

For primary issuances, ESMA proposes a new standardised disclosure sequence in Articles 22 and 23 of the Draft Delegated Regulation (DDR) amending CDR 2019/980, effective from 5 June 2026. The mandatory sequence follows Annexes I, II and III of the Prospectus Regulation (as amended by the Listing Act) and is articulated as follows: stand-

alone prospectuses 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), and single-issuer registration documents (Annex 6 DDR).

Base Prospectus and Tokenized Securities: a More Flexible Regime

Perhaps the most operationally significant development - particularly for those active in the primary market, including offerings of tokenized securities executed under a base prospectus - is the treatment afforded to base prospectuses in the ESMA Final Report ESMA32-117195963-1417 of 12 June 2025.

At paragraph 22 of Section 4.1.1, ESMA expressly acknowledges the complexity and the structural heterogeneity of base prospectuses, noting that the Annexes to the Listing Act "*may be suitable for IPO and 'plain vanilla' debt issuance prospectuses that concern a single issuer*", but are difficult to apply literally to base prospectuses covering multiple issuers or products, or to prospectuses involving linked disclosure annexes (such as those for depository receipts, closed-end funds and URDs linked to the "standard" equity registration document).

At paragraph 23, ESMA accordingly concludes that a strict format and sequence based on the Annexes to the Listing Act should apply only to IPO or "plain vanilla" debt prospectuses prepared by a single issuer, whereas "*For other cases, such as **base prospectuses** or those involving 'linked' disclosure annexes, the incumbent requirements which are now in Articles [22] or [23] of the CDR on scrutiny and disclosure are preferable*". This means that issuances of tokenized securities (always depending on the underlying qualification of the product) – may remain subject to the previous regime, more flexible as set out in the former Articles 24 et seq. (now Articles 22 and 23 of the CDR on scrutiny and disclosure, in the renumbered version referenced in paragraph 27 of the Report).

At paragraph 24, ESMA further clarifies that, although the general rule excludes base prospectuses from the strict sequence, the amended Article [23(2)] of the CDR on scrutiny and disclosure requires that single-issuer registration documents follow the order set out in Annex II of the Listing Act where they are intended to be used in a tripartite base prospectus, in order to avoid format inconsistencies with the same registration document when re-used in a tripartite stand-alone prospectus.

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