

EU Listing Act: prospectus, market abuse and listing regimes

On 13 March (and following prior reporting on the EU Listing Act publication in the [First Quarter 2023 edition](#) of this Quarterly Report), ICMA submitted its [comments](#) on the European Commission's [proposed Listing Act Regulation/COM\(2022\) 762](#) (LAR, notably amending the EU's [Prospectus Regulation](#) and [Market Abuse Regulation](#)) and [proposed Listing Act Directive / COM\(2022\) 760](#) (LAD, notably repealing the EU's [Listing Directive](#)).

Prospectus Regulation (PR) amendments

ICMA was pleased to note the PR's "core" regimes (relating to single document base prospectuses and standalone prospectuses) have been mostly maintained, together with some helpful improvements in reducing administrative burdens for issuers (also touching some of the more "specialist" regimes relating to tripartite prospectuses and secondary issuance/follow-on prospectuses).

ICMA's comments however flagged some further improvements (including specific drafting suggestions) and other points relevant to the Listing Act's policy intentions of promoting European public market activity in the context of CMU. These notably emphasised:

- (a) the need to retain the *status quo* for fungible issuance exemptions, given investor protection and liability concerns;
- (b) it should be clear that future financial statements can indeed be incorporated by reference into base prospectuses;
- (c) that incorporation by reference should not be mandatory, since comprehensibility and legibility risks can sometimes arise in this respect (but noting also that the scope of any mandatory requirement would not be as wide as it might first seem);
- (d) that "tripartite" prospectuses (consisting of registration document or universal registration document, securities note and if applicable a summary) should benefit from (i) the new EU follow-on prospectus regime (subject to the general query below), (ii) the ability to incorporate future financials by reference (as noted above) and (iii) the ability to be updated in respect of a new registration document or universal registration document;
- (e) that imposing restrictions on issuers such as page limits and mandatory formats is inconsistent with the overriding policy purpose of helping issuers and encouraging access to public markets by easing administrative burdens (bearing in mind the significant civil liability faced by issuers if they do not clearly include material information in a prospectus);

- (f) it should be clear that, in line with the intention stated in the relevant recital, the disclosure requirement regarding sustainability reporting and the related assurance opinion does not apply in a non-equity context;
- (g) that whilst the centralisation of third country equivalence is welcome, some of the proposed requirements are quite granular and it would be unfortunate if this meant it would be challenging to reach any decisions on equivalence (ICMA's prior position was that equivalence should focus on whether a third country regime provides adequate investor protection in line with the PR's objectives rather than being exactly identical).

The ICMA comments also queried whether the new EU follow-on prospectus regime would be of use in the bond context, to the extent many of its requirements seem equity-like and/or imposing more onerous requirements than the "core" PR regimes relating to bonds (with various examples being listed).

Market abuse regime (MAR) amendments

ICMA welcomed the amendments confirming the soundings regime as a voluntary safe harbour from the prohibition on unlawful disclosure of inside information (without prejudice to disclosure of inside information being otherwise lawful). In this respect, ICMA noted the need for consequent amendment in due course of the related technical standards.

Listing Directive repeal

ICMA also noted that while the provisions of the Listing Directive are considered to be largely historic and/or redundant, they are understood to underpin certain national "listing" regimes that it would be useful to keep. (ICMA's comments referenced the Securities Official List of the Luxembourg Stock Exchange, in terms of its size and compatibility with distributed ledger technology bonds that are ineligible for full MiFID trading platforms.)



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