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EU Listing Act
– bull or bear?

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Abstract

The goal of the EU Listing Act is to make public capital markets in the EU more attractive for companies and facilitate access to capital. The legislative package, consisting of one regulation and two directives, includes a new Multiple Voting Rights Directive (MVRD) and brings a number of significant changes to the Prospectus **Regulation (PR), the Market Abuse Regulation (MAR) and the Markets in Financial Instruments Directive (MiFID II); moreover, it repeals the Listing Directive. This paper** provides an overview of the most important contents and examines whether and to what extent they are actually suitable for achieving the desired outcomes. In **addition, it takes a look at the (intended) implementation** in Germany.

Keywords: Listing Act, multiple voting rights, multiple-vote shares, MVRD, prospectus, PR, market abuse, inside information, ad hoc disclosure, MAR, MiFID II, Listing Directive

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EU Listing Act – bull or bear?

The goal of the EU Listing Act is to make public capital markets in the EU more attractive for companies and facilitate access to capital. The legislative package, consisting of one regulation and two directives, includes a new Multiple Voting Rights Directive (MVRD) and brings a number of significant changes to the Prospectus Regulation (PR), the Market Abuse Regulation (MAR) and the Markets in Financial Instruments Directive (MiFID II); *moreover, it repeals the Listing Directive. This paper provides an overview of the most important contents and examines whether and to what extent they are actually suitable for achieving the desired outcomes. In addition, it takes a look at the (intended) implementation in Germany.*

1 Overview

Although the EU has been working towards the goal of a Capital Markets Union (CMU) for years, the EU legal framework for access to capital markets is still widely perceived as too strict, inflexible and costly – especially for SMEs. The Commission therefore launched an initiative for a Listing Act at the end of 2021[1], followed by drafts for a legislative package in December 2022[2]. After an agreement in trilogue was reached already in February 2024[3], the Listing Act Package was published in the OJ on 14 November 2024. The professed goal of the Listing Act is to make public capital markets in the EU more attractive for companies and facilitate access to capital.[4] 1

The Listing Act package consists of: 2

- a new Multiple Voting Rights Directive (MVRD)[5];
- the Listing Act Regulation (LAR)[6] which amends the Prospectus Regulation (PR)[7], the

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1 Consultation page: https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2021-listing-act-targeted_en; see *J. Schmidt* NZG 2021, 1617

2 COM(2022) 760; COM(2022) 761; COM(2022) 762.

3 ST 6524/24, ST 6720/24.

4 See the title of the LAR (fn. 6); *J. Schmidt* NZG 2024, 226.

5 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, OJ L, 2024/2810, 14.11.2024.

6 Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises, OJ L, 2024/2809, 14.11.2024.

7 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, [2017] OJ L 168/12.

Market Abuse Regulation (MAR)[8] and the Markets in Financial Instruments Regulation (MiFiR)[9]; and

- the Listing Act Directive (LAD)[10] which repeals the Listing Directive[11] and amends the Markets in Financial Instruments Directive (MiFID II)[12].

The LAR enters into force in stages on 4 December 2024, 5 March 2026 and 5 June 2026; the LAD shall be transposed by 5 June 2026, the MVRD by 5 December 2026.[13]

3 In Germany, the current government has already published a draft for a "Zweites Gesetz zur Finanzierung von zukunftssicherenden Investitionen (ZuFinG II)"[14]. With elections scheduled for 23 February 2025, it has already been signalled that this draft will not be adopted by the current parliament. A new German government may set other priorities. Nonetheless, this paper discusses at least a few selected implementation proposals.

2 Multiple Voting Rights Directive (MVRD)

2.1 Background, goals and scope of application

4 With the Multiple Voting Rights Directive (MVRD), multiple voting rights, which have always been controversially discussed both at European and national level, are celebrating a comeback.[15] The aim of the MVRD is to facilitate access to capital markets: Especially in the case of start-ups and companies with long-term projects, shareholders should be able to use multiple voting rights to ensure that they can retain control of the company despite a listing on the capital market.[16] However, the elimination of competitive disadvantages also plays an important role.[17]

5 The scope of application of the MVRD is linked to the objective of facilitating access to the capital market and is quite narrow.[18] HoweverYet, the MVRD applies not only to public limited

[8] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, [2014] OJ L 173/1.
[9] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, [2014] OJ L 173/84.
[10] Directive (EU) 2024/2811 of the European Parliament and of the Council of 23 October 2024 amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC, OJ L, 2024/2811, 14.11.2024.
[11] Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities, [2001] OJ L 184/1.
[12] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), [2014] OJ L 173/349.
[13] Art. 4 LAR, Art. 3(1) LAD, Art. 7(1) MVRD.
[14] BR-Drs. 599/24.
[15] For more details on the legal development at the European and German level: *J. Schmidt* BB 2024, 643; *J. Schmidt* ECCML Working Paper 2024/1, para. 3 ff.; *Hopt/Kalss* ZGR 2024, 84 ff.
[16] Cf. recital 1-2 MVRD.
[17] See on this SWD(2022) 762, p. 140 ff.; *J. Schmidt* BB 2024, 643, 644.
[18] *J. Schmidt* BB 2024, 643, 644.

liability companies, but to all limited liability companies listed in Annex II of the Company Law Directive (CLD)[19] which may under national law issue shares and seek admission to trading of their shares on an MTF (Art. 2(1) MVRD). This takes into account the fact that some Member States (e.g. the Netherlands[20], Belgium[21]) have for some time allowed shares of private limited companies to be traded on the capital markets.[22] In Germany, the MVRD applies only to *Aktiengesellschaften (AG)* (public limited liability companies) and *Kommanditgesellschaften auf Aktien (KGaA)* (commercial partnerships limited by shares), but not to *Gesellschaften mit beschränkter Haftung (GmbH)* because the shares of *GmbH* cannot be traded on capital markets.[23] Moreover, via the relevant references in the SE Regulation[24], the national provisions implementing the MVRD will also apply to SE.[25]

The MVRD covers only multiple-vote shares (MVS)[26], but not loyalty shares or other control enhancing mechanisms[27]. Moreover, it applies to a large extent[28] only to multiple-vote share structures (MVS structures)[29] in companies that seek admission to trading of their shares on MTF, and that do not already have any shares that are already admitted to trading on an MTF or a regulated market (Art. 1(1) MVRD). 6

2.2 Adoption of new MVS structures

2.2.1 Adoption of MVS structures in the context of admission to trading on an MTF

In accordance with its narrow scope, the MVRD only requires Member States to allow MVS structures within a limited framework.[30] The only mandatory requirement is that companies that do not have shares that are already admitted to trading on a regulated market or an MTF shall have the right to adopt an MVS structure or modify an existing MVS structure for the admission to trading of their shares on an MTF (Art. 3(1) subparagraph 1 sentence 1 and 7

[19] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), [2017] OJ L 169/46; last amended by Directive (EU) 2025/25 of the European Parliament and of the Council of 19 December 2024 amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law, OJ L, 2025/25, 10.1.2025.
[20] Article 2:195 of the Dutch Civil Code. See on this *Hirschfeld,* RIW 2021, 134, 136; *Vreeman,* (2012) 9 ECL 305, 306; *Van Delft/Renssen,* (2023) 20 ECJ 1, 5.
[21] Art. 5:2 of the Companies and Associations Code. See on this *Culot,* trv-rps 2019, 443 ff.; *Houben/Meeusen,* ZEuP 2020, 11, 17; *van der Elst,* (2020) 17 ECL 25, 32.
[22] See ST 8192/23, p. 3; *J. Schmidt* BB 2024, 643, 644.
[23] See only: MüKoGmbHG/*Weller/Reichert*, 4th ed. 2022, § 15 para. 16 with further references; *J. Schmidt* BB 2024, 643, 644.
[24] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), [2001] OJ L 294/1.
[25] *J. Schmidt* BB 2024, 643, 644.
[26] Defined in Art. 2(2) MVRD.
[27] Cf. recitals 4-6 MVRD; see in more detail *J. Schmidt* BB 2024, 643, 644; *J. Schmidt* ECCML Working Paper 2024/1, para. 13.
[28] Exception: Art. 5(4) MVRD (cf. Art. 1(2) MVRD).
[29] Defined in Art. 2(3) MVRD.
[30] *J. Schmidt* BB 2024, 643, 644.

Art. 3(5) MVRD). However, Member States are free to allow MVS structures to a greater extent.[31]

8 In Germany, where the creation of new multiple voting rights in AG and KGaA (and SE) had been prohibited since 1998[32], multiple voting rights have been re-allowed by the ZuFinG[33] as from 15 December 2023 for all AG, KGaA and SE – regardless of their listing on a capital market (§§ 12 sentence 2, 135a(1) sentence 1 AktG[34]). It should be appreciated the German legislator goes beyond what the MVRD requires in this respect, because MVS structures can also be very interesting as an instrument for companies whose shares are not admitted to trading on the capital markets, e.g. in the case of family businesses.[35] The fact that § 135a(1) sentence 1 AktG allows multiple voting rights only in case of registered shares is in conformity with the MVRD.[36] The ZuFinG II draft plans to implement the prohibition of discrimination set out in Art. 3(4) MVRD in a new § 48(6) BörsG[37]-draft and a new § 74(6) WpHG[38]-draft.

2.2.2 Majority requirements

9 As a minimum standard, the MVRD stipulates that both the initial adoption of new MVS structures and the modification of existing MVS structures require a resolution of the general meeting, which must be passed by at least a qualified majority as specified in national law (Art. 3(1) subparagraph 1 sentence 2, Art. 3(5) and Art. 4(1) sentence 2 lit. a MVRD). In addition, if there are several classes of shares, the decision to adopt an MVS structure shall also be subject to a separate vote in each class of shares the rights of which are affected (Art. 3(1) subparagraph 2, Art. 3(5) and Art. 4(1) sentence 2 lit. a MVRD). On the one hand, this requirement of a (possibly "double") qualified majority ensures a high standard of protection for minority shareholders.[39] On the other hand, the MVRD thus provides at least a realistic chance of being able to introduce MVS structures in the context of a later amendment to the articles of association.[40] However, as it is explicitly only a minimum standard, Member States may also impose stricter requirements.[41]

10 German law, for example, requires the consent of all affected shareholders for the adoption of MVS structures (§ 135a(1) sentence 3 AktG). Although this is in conformity with the MVRD[42], this effectively means that it will in practice – at least in case of large publicly held

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[31] See recital 10 sentences 1-2 MVRD.
[32] Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (KonTraG) v. 27.4.1998, BGBl. I, 786.
[33] Gesetz zur Finanzierung von zukunftssichernden Investitionen (Zukunftsfinanzierungsgesetz – ZuFinG) v. 11.12.2023, BGBl. I Nr. 354.
[34] Aktiengesetz v. 6.9.1965, BGBl. I, 1089 (as amended); current version available at https://www.gesetze-im-internet.de/aktg/BJNR010890965.html.
[35] *J. Schmidt* BB 2024, 643, 645.
[36] See in more detail *J. Schmidt* BB 2024, 643, 645; consenting *Schlitt/Ries/Lepke* AG 2024, 466 para. 24.
[37] Börsengesetz (BörsG) v. 16.7.2007, BGBl. I, 1330 (as amended); current version available at https://www.gesetze-im-internet.de/b_rsg_2007/BJNR135100007.html.
[38] Gesetz über den Wertpapierhandel (Wertpapierhandelsgesetz - WpHG) v. 26.7.1994, in the version of the new publication of 9 September 1998, BGBl. I, 2708 (as amended); current version available at https://www.gesetze-im-internet.de/wphg/BJNR174910994.html.
[39] *J. Schmidt* BB 2024, 643, 645.
[40] *J. Schmidt* BB 2024, 643, 645.
[41] *J. Schmidt* BB 2024, 643, 645.
[42] *J. Schmidt* BB 2024, 643, 645; *Schlitt/Ries/Lepke* AG 2024, 466 Rn. 26.

companies – only be possible to adopt MVS structures when the company is first incorporated.[43] The MVRD should give the German legislator reason to reconsider this rather rigid requirement and allow the adoption of new MVS structures by a qualified majority.[44]

2.3 Safeguards for minority shareholders

2.3.1 Minimum standard

As regards the protection of minority shareholders, Art. 4(1) sentence 2 lit. b MVRD also establishes only a minimum standard, allowing Member States to choose between two different instruments to limit the impact of multiple-vote share structures on the decision-making process at the general meeting. 11

The first alternative is to set a maximum voting ratio (Art. 4(1) sentence 2 lit. b point i MVRD). As regards the specific ratio, the Member States are completely free.[45] Germany, for example, has set a maximum ratio of 1:10 (§ 135a(1) sentence 2 AktG). France has set a maximum ratio of 1:25 for companies listed on an MTF[46], but there is no maximum ratio for companies listed on a regulated market. 12

The second alternative is to lay down stricter requirements for the decisions of the general meeting subject to a qualified majority of the votes cast as specified in national law (Art. 4(1) sentence 2 lit. b point ii MVRD). In this respect, Member States again have a choice between two options: in addition to a qualified majority of the votes cast, they can require either (1) a qualified majority of the share capital represented at the meeting or of the number of shares represented at the meeting, or (2) a separate vote in each class of shares the rights of which are affected. The specific level of qualified majority is left to national law.[47] However, two types of decisions are expressly excluded: on the one hand, the appointment and dismissal of members of the administrative, management and supervisory bodies of the company and, on the other hand, operational decisions to be taken by such bodies which are submitted to the general meeting for approval. With respect to these two types of decisions, the Member States can therefore allow unrestricted use of multiple voting rights. Otherwise, the very purpose of MVR would be thwarted – especially the appointment and removal of directors is of pivotal importance for the function of MVR as control enhancing mechanisms.[48] German law, for example, also fulfils this second alternative, since it requires a qualified majority of ¾ of the share capital represented for all amendments to the articles of association and for all fundamental and structural decisions.[49] 13

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[43] *J. Schmidt* BB 2024, 643, 645. See very critical also *Bretschneider* NJOZ 2024, 1121, 1123; *Ceesay* AG 2024, S1, S4 f.; *DAI*, Stellung-nahme v. 10.5.2023, 1.2.1; *Florstedt* NZG 2024, 139, 142; *Harnos* AG 2023, 348, 350; *Kalss* ZHR 187 (2023) 438, 492; *von der Linden/Schäfer* DB 2023, 1077, 1078; *Schlitt/Ries/Lepke* AG 2024, 466 Rn. 27; *Stiegler* NotBZ 2024, 286 (289). But see in favour: *Gebhard/Herzog* ZIP 2023, 1161, 1164; *Seidel* NZG 2023, 1205, 1211.

[44] *J. Schmidt* BB 2024, 643, 645.

[45] *Hopt/Kalss* ECGI Law WP 786/2024, p. 6; *J. Schmidt* BB 2024, 643, 645.

[46] Art. L22-10-46-1 I C. com.

[47] *J. Schmidt* BB 2024, 643, 645.

[48] Cf. recital 14 sentence 2 MVRD.

[49] See in more detail *J. Schmidt* BB 2024, 643, 646; *J. Schmidt* ECCML Working Paper 2024/1, para. 28; *J. Schmidt* NZG 2025, 3 para. 11.

2.3.2 No mandatory ESG link

14 The Commission[50] and the European Parliament[51] had linked the safeguards with the general ESG agenda. Both proposals would have been very problematic because, in the end, there will be no resolution that is not in some way related to the impact of company's activities on human rights and the environment.[52] Multiple voting rights would thus be significantly devalued.[53] Fortunately, both proposals did not make it into the final text.

2.3.3 Optional further safeguards

15 Art. 4(2) sentence 1 MVRD expressly permits Member States to provide for further safeguards to ensure adequate protection of the interests of shareholders who do not hold MVS. Art. 4(2) sentence 2 MVRD lists three different types of sunset clauses as examples: transfer-based, time-based, and event-based sunset clauses. However, Member States may also provide for other safeguards, such as a restriction of multiple voting rights in case of certain decisions.[54]

16 German law stipulates a time-based sunset clause providing for the expiry of MVR 10 years after listing, with the possibility of an extension to 20 years (§ 135a(2) sentences 2-7 AktG). Moreover, MVR expire in the event of a transfer of the shares (§ 135a(2) sentence 1 AktG). Furthermore, German law excludes the effect of MVR in case of the appointment of auditors and special auditors (§ 135a(4) AktG).

2.4 Transparency

17 In addition, the European legislator appropriately relies on protection through transparency by way of new disclosure obligations in the area of capital markets law.[55]

2.4.1 Disclosure prior to admission of shares to trading

18 Firstly, companies that have MVS structures and whose shares are to be traded or are traded on an MTF shall disclose certain information in the prospectus or admission document – depending on what the company uses, in the prospectus pursuant to Art. 6 PR, in the EU growth issuance prospectus pursuant to Art. 15a PR, in the admission document pursuant to Art. 33(3)(c) MiFID II or in any admission document required by national law or by the rules of the relevant MTF (Art. 5(1)-(2) MVRD).

19 Art. 5(3) MVRD sets out an exhaustive list of the information to be disclosed. It included information on the company's share structure (lit. a), any restrictions on the transfer of shares and on voting rights (lit. b-c), and – crucially – the identity of shareholders holding MVS. However, in contrast to the Commission's draft[56], this is now limited to shareholders holding MVS

[50] COM (2022) 761, Art. 5(2)(d).
[51] JURI report, A9-0300/2023, Art. 5(1)(ba).
[52] Cf. *Joint Statement of Nordic Company Law Scholars*, N&ECL 24-01, p. 4; *J. Schmidt* BB 2024, 643, 646; critical with regard to the ambiguities this raises *also ECLE,* OBLB 5.9.2023; *Handelsrechtsausschuss des DAV*, Opinion 11/2023, p. 21; *Lieder/Stüttgen* NZG 2024, 753; *Wilhelm* BKR 2024, 747, 755.
[53] See *Joint Statement of Nordic Company Law Scholars*, N&ECL 24-01, p. 4; *J. Schmidt* BB 2024, 643, 646.
[54] *J. Schmidt* BB 2024, 643, 646.
[55] *J. Schmidt* BB 2024, 643, 646.
[56] COM(2022) 761, Art. 6(1)(e).

representing 5 % of the voting rights of all shares in the company and subject to the proviso that these are known to the company. Like in the Commission's draft, the identity of the natural or legal person entitled to exercise voting rights on behalf of such shareholders, if applicable, must also be indicated. At least in the case of such larger multi-voting participations, the European legislator considers such disclosure to be necessary in order to enable potential investors to make an informed investment decision and thus to increase confidence in functioning capital markets as a whole.[57] However, since only the name of natural persons must be given in accordance with the principle of data minimisation[58], there is of course the risk that a clear identification is not possible, at least in the case of persons with "commonplace names" (e.g. Helmut Schmidt or James Smith). Anyone who wants to secure control of a company through a large package of MVS even after going public on an MTF will in the future be able to do so only at the price of disclosing their identity.[59] This seems appropriate, considering that in the case of companies listed on a regulated market, shareholdings of 5 % or more of the voting rights have been subject to disclosure requirements for years (Art. 9 Transparency Directive[60]) and that the Member States can set even lower reporting thresholds (Art. 3(1a) subparagraph 4 point i Transparency Directive)[61].

2.4.2 Disclosure in the annual financial report

In case of any changes to the information listed in Art. 5(3) MVRD after admission to trading, companies must publish this information in the annual report pursuant to Art. 78(2)(g) Delegated Regulation (EU) 2017/565[62] (if their shares are traded on an SME growth market) or in any annual financial report required by national law (if their shares are traded on an MTF) (Art. 5(1)(b), (2)(b) MVRD). This ensures that shareholders, investors, and the market are also informed if there are any changes in relation to the information listed in Art. 5(3) MVRD after admission to trading.[63] 20

2.4.3 Identification of MVS structures ("marker")

In addition, shares of companies with multiple-vote share structures will be required to have a special "label" in order to be able to identify them clearly, quickly and unambiguously (Art. 5(4) sentence 1 MVRD).[64] This takes up a proposal by the European Parliament, which had suggested the designation "WVR" for "weighted voting rights".[65] However, since it was 21

[57] Cf. recital 17 sentences 5-6 MVRD.
[58] Cf. recital 17 sentence 4 MVRD; see also EDPS Opinion 4/2023, p. 6.
[59] *J. Schmidt* BB 2024, 643, 647.
[60] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, [2004] OJ L 390/38; last amended by the LAD.
[61] § 33 (1) sentence 1 of the WpHG requires a notification even in case of 3 %.
[62] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, [2017] OJ L 87/1; last amended by Del. Regulation (EU) 2021/1254, [2021] OJ L 277/6.
[63] *J. Schmidt* BB 2024, 643, 648.
[64] See also recital 18 sentence 1 MVRD.
[65] JURI report, A9-0300/2023, Art. 6(2a).

apparently not possible to reach a consensus on this, Art. 5(5) MVRD now provides that the details will be regulated by RTS to be drafted by ESMA. Yet, as recital 13b sentence 2 MVRD shows, it is still envisaged to include a marker in the stock name of the companies concerned. Provided that the details are regulated pragmatically, in principle, such a "MVS label" seems to be a good idea to ensure that all market participants can identify multiple-vote share structures quickly, easily, and reliably.[66] Everyone can then decide for themselves whether they perceive this "multiple-vote share label" as a "warning signal" or as a "hallmark of excellence".[67]

2.4.4 Relevance from a German perspective

22 German law does not yet provide for transparency requirements that comply with Art. 5 MVRD.[68] Pursuant to the draft of the ZuFinG II, the implementation of Art. 5 MVRD will be effected by way of a new § 76a WpHG-draft and a new § 48b BörsG-draft; notwithstanding some linguistic deviations, there will not be any "gold-plating" in this respect.[69]

2.5 Interim conclusion on the MVRD

23 Against the background of the quite different approaches in the Member States with regard to multiple-vote share structures, the MVRD overall creates only a basic harmonisation with a narrowly limited scope of application, which leaves Member States a great deal of room for manoeuvre.[70] This may be seen as regrettable from the perspective of harmonisation.[71] However, this approach has the advantage that, on the one hand, even Member States that have so far been sceptical will have to allow multiple-vote share structures at least within certain limits, and, on the other hand, Member States that want to (continue) to allow multiple-vote share structures to a larger extent will not be unduly restricted.[72] In the end, regulatory competition will let the market decide what is best and this can then be incorporated into the review of the MVRD.[73]

3 Market structure and conditions of for the admission of shares to trading

3.1 Repeal of the Listing Directive

24 The Listing Directive (also known as the Consolidated Admissions and Reporting Directive – CARD), one of the "bedrocks" of EU capital markets law, will be repealed as of 5 December 2026 because large parts have become redundant and/or have been replaced by other EU legislation.[74]

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[66] *J. Schmidt* BB 2024, 643, 648.
[67] *J. Schmidt* BB 2024, 643, 648.
[68] *J. Schmidt* BB 2024, 643, 648.
[69] See Explanatory Notes ZuFinG II, BR-Drs. 599/24, 171, 189-190.
[70] *J. Schmidt* BB 2024, 643, 648.
[71] *J. Schmidt* BB 2024, 643, 648.
[72] *J. Schmidt* BB 2024, 643, 648.
[73] *J. Schmidt* BB 2024, 643, 648.
[74] Cf. recital 10 LAD.

This effectively means that the concept of "official listing" has been deliberately abandoned at European level because it is considered outdated in view of the system of trading venues now anchored in MiFID II and MiFIR; however, Member States may maintain it at national level.[75] In Germany, the former market segments "amtlicher Handel" and "geregelter Markt" have already been merged through the FRUG[76] into a single market segment, the "regulierter Markt" (§§ 32 ff. BörsG) as from 1 January 2007; there is therefore no need for an adjustment in this respect. 25

However, the requirements regarding market capitalisation and free float (Art. 43, 48 Listing Directive) have been transferred – with some modifications – into the newly inserted Art. 51a MiFID II.[77] Since proper trading and efficient price discovery require a sufficiently large and liquid market[78], Art. 51a(1) MiFID II continues to require a foreseeable market capitalisation of at least 1 million EUR for the initial admission to trading on a regulated market. The free float requirements, which were widely seen as too high a hurdle for going public[79], have fortunately been lowered significantly and made more flexible. Instead of 25 %, Art. 51a(4) MiFID II now requires only that at least 10 % of the subscribed capital represented by the class of shares concerned by the application for admission to trading is held by the public at the time of admission to trading. Moreover, Art. 51a(5) MiFID II provides Member States with significant leeway to adopt a free float requirement tailored to the specific situation in the respective Member State while at the same time ensuring that all Member States impose some kind of adequate free float requirement.[80] In Germany, the draft for a ZuFinG II plans to amend § 9 BörsZulV[81] accordingly.[82] 26

3.2 MTF segments as SME growth market

In order to foster the development of SME growth markets, it has been clarified in MiFID II that a segment of an MTF can be registered as an SME growth market and the requirements for this (Art. 4(1)(12), Art. 33 MiFID II).[83] In Germany, for example, Scale has existed as a segment of the "Freiverkehr" since 2017. 27

[75] Cf. recital 13 LAD.
[76] Gesetz zur Umsetzung der RL über Märkte für Finanzinstrumente und der Durchführungsrichtlinie der Kommission (Finanzmarktrichtlinie-Umsetzungsgesetz) v. 16.7.2007, BGBl. I, 1330.
[77] For more details see Lehmann/Kumpan/*J. Schmidt*, European Financial Services Law, 2nd ed. 2025, Art. 51a MiFID II (forthcoming).
[78] See with respect to the implementation of Art. 48 Listing Directive in German law: BT-Drs. 72/87, 74.
[79] See on this SWD(2022) 762, Annex 7.
[80] Lehmann/Kumpan/*J. Schmidt*, European Financial Services Law, 2nd ed. 2025, Art. 51a MiFID II para. 19.
[81] Verordnung über die Zulassung von Wertpapieren zum regulierten Markt einer Wertpapierbörse (Börsenzulassungs-Verordnung - BörsZulV) v. 15.4.1987, in the version of the new publication of 9 September 1998, BGBl. I, 2832 (as amended), current version available at https://www.gesetze-im-internet.de/b_rszulv/BJNR012340987.html.
[82] See on this Explanatory Notes ZuFinG II, BR-Drs. 599/24, 161.
[83] Cf. recitals 8-9 LAD. ESMA had already clarified this in Q&A, cf. ESMA70-872942901-38, 5.1, question 8.

4 Prospectus Regulation

4.1 Scope of application of the Prospectus Regulation: new dual-threshold system

28 Under the original system, Member States can set a threshold of 1-8 million EUR and set out disclosure requirements at national level for offers of securities to the public below that level (Art. 1(3), 3(2) PR); this had led to rather divergent national frameworks that caused problems in practice.[84] As of 5 June 2026, it will therefore be replaced by a new dual-threshold system: As a general rule, a threshold of 12 million EUR applies (total aggregated consideration in the Union for the securities offered per issuer or offeror calculated over a period of 12 months); however, in order to take account of the different sizes of national capital markets, Member States may instead set a threshold of only 5 million EUR (Art. 3(2)-(2c) PR as from 5 June 2026). Offers of securities to the public below that threshold shall be exempted from the obligation to publish a prospectus under the PR if they do not require passporting (cf. Art. 3(2)(a) PR as from 5 June 2026). However, Member States may require a document containing certain information, the extent and level of which must be equivalent to or lower than the information set out in Art. 7(4)-(10), (12) PR (Art. 3(2d) PR as from 5 June 2026). The new system will not be really simple, but at least simpler and more harmonised.

29 In Germany, the draft of the ZuFinG II provides that the standard threshold of 12 million EUR shall apply; however, a "Wertpapier-Informationsblatt" (securities information sheet) if none of the exemptions listed in § 4 sentence 2 WpPG[85]-draft applies (§ 4 sentence 1 WpPG-draft).[86]

4.2 More exemptions from the prospectus requirement

30 In a very welcome move, the exemptions from the prospectus requirement for secondary emissions have been significantly extended. The volumes for the exemption from the prospectus requirement for admission to trading on a regulated market in Art. 1(5)(a) and (b) PR have been raised from 20 % to 30 %. In addition, Art. 1(4)(da) PR sets out a new volume-based exemption from the prospectus requirement for offers of securities to the public (less than 30 % over a 12-months period).

31 In addition, an exemption applies (irrespective of the volume of the emission) both in case of admission to trading and in case of offers of securities to the public where the securities are fungible with securities that have already been admitted to trading continuously for at least 18 months if there is no connection with a takeover by means of an exchange offer, a merger or a division (Art. 1(4)(db), (5)(ba) PR). The previous exemption in Art. 1(5)(j) PR is thus redundant and will be deleted.[87]

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[84] See SWD(2022) 762, p. 241; COM(2022) 762, p. 4.

[85] Gesetz über die Erstellung, Billigung und Veröffentlichung des Prospekts, der beim öffentlichen Angebot von Wertpapieren oder bei der Zulassung von Wertpapieren zum Handel an einem organisierten Markt zu veröffentlichen ist (Wertpapierprospektgesetz - WpPG) of 22 June 2005, BGBl. I, 1698 (as amended); current version available at https://www.gesetze-im-internet.de/wppg/BJNR169810005.html.

[86] See on this Explanatory Notes ZuFinG II, BR-Drs. 599/24, 177.

[87] Cf. recital 13 sentence 7 LAR.

The new exemptions from the prospectus requirement for offers of securities to the public apply for securities admitted to trading on a regulated market or SME growth market. However, in order to ensure adequate investor protection[88], all new exemptions require a short-form document containing the key information set out in Annex IX is made available to the public and that the issuer is not subject to a restructuring or insolvency proceedings. With respect to the "traditional" exemption set out in Art. 1(5)(a) PR this was not considered necessary because in that case the securities are fungible with securities already admitted on the same regulated market. 32

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Exception	Art. 1(4)(da) PR	Art. 1(5)(db) PR	Art. 1(5)(a) PR	Art. 1(5)(ba) PR
markets covered	regulated market SME growth market	regulated market SME growth market	regulated market	regulated market
fungibility with	securities admitted to trading on the same market	securities admitted to trading on any market for at least 18 months	securities admitted to trading on the same market	securities admitted to trading in any market for at least 18 months
volume Limit	< 30 % within 12 months	-	< 30 % within 12 months	-
exclusion	no restructuring or insolvency proceedings	no restructuring or insolvency proceedings	-	no restructuring or insolvency proceedings
transparency	short-form document with key information	short-form document with key information	-	short-form document with key information

Consequently, the volume limit in Art. 1(5)(b) PR (shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities) has also been raised to 30 %. Moreover, the threshold for continuous or repeated emissions by credit institutions in Art. 1(4)(j) PR, which had already been doubled on an interim basis by the Capital Markets Recovery Package[89], has now been raised permanently from 75 million EUR to 150 million EUR. 34

4.3 Format and content of the prospectus

The Listing Act Regulation also introduces significant reforms regarding the format and content of the prospectus – albeit (largely) only as from 5 June 2026. With these reforms, the European legislator wants to not only to reduce the costs for issuers, but also to improve readability and comprehensibility for investors.[90] 35

[88] Cf. recital 13 sentences 3-4 LAR.
[89] See the now deleted Art. 1(4)(l) PR, which had been inserted by Regulation (EU) 2021/337, [2021] OJ L 68/1.
[90] Cf. recitals 6 sentence 2, 15, 16 sentences 1-3, 20 LAR.

4.3.1 Standardised format and page limit

36 Firstly, prospectuses shall be drawn up in a standardised format and the information disclosed shall be presented in a standardised sequence (Art. 6(2) PR as from 5 June 2026). The template and layout, including the font size and style requirements, will be specified in RTS (Art. 6(8), 13(1) subparagraph 1 PR. In preparation, ESMA has already published a consultation document.[91] In principle, such standardisation will undoubtedly facilitate drawing up, reading and comparing prospectuses. However, it must not become a "straight-jacket" which makes it impossible to take due account of specific characteristics. This is also echoed in ESMA's consultation paper, which explicitly advocated a pragmatic approach.[92] Hopefully, ESMA will then also take such a pragmatic approach with the "Guidelines on comprehensibility and the use of plain language" that it is to draw up (Art. 6(7) PR). Considering the often extremely complex economic and financial issues, "guidelines for plain language" with regard to prospectuses almost seem like an oxymoron.

37 Secondly, prospectuses relating to shares shall be of a maximum length of 300 pages of A4-sized paper (Art. 6(4) PR as from 5 June 2026). With respect to other equity securities and non-equity securities, the European legislator deliberately refrained from introducing a page limit due to the broad range of different instruments, including complex ones.[93] But also with regard to shares, it is questionable whether such a strict page limit makes sense: Whereas 300 pages may be (more than) sufficient for "plain vanilla prospectuses", they may become a problem in some special cases – not least with regard to the (unclear) consequences for prospectus liability.[94] Yet, upon a closer look, the strict page limit is not so strict after all: The summary, the information incorporated by reference, the additional information to be provided where the issuer has a complex financial history or has made significant financial commitments, and the information to be provided in case of a significant gross change, shall not be taken into account for the maximum length (Art. 6(2) subparagraph 2, Art. 6(5) PR as from 5 June 2026).

38 Besides, the stipulations regarding standardisation and page limit fortunately do not apply when securities are to be admitted to trading on a regulated market in the EU and are simultaneously offered to or privately placed with investors in a third country (Art. 6(6) PR as from 5 June 2026); otherwise, the supposed "relief" would have exactly the opposite effect, because the issuer would then have to prepare two separate prospectuses.[95]

4.3.2 Summary

39 The summary as the "key and essential document"[96] for investors is also being standardised to a greater extent. The order of the sections and the order of the information within the sections is now mandatory (Art. 7(4)-(8) PR as from 5 June 2026). Moreover – like for the prospectus – there will be RTS specifying the template and layout as well as guidelines on language (Art. 7(14), (15) PR). As a welcome clarification, the PR now explicitly allows charts,

[91] ESMA32-117195963-1276.
[92] ESMA32-117195963-1276, para. 21-22.
[93] Cf. recital 16 sentence 5 LAR.
[94] Cf. *Hutter* NZG 2023, 861; *Schlitt/Ries/Lepke* AG 2024, 466 Rn. 6; *Scholl/Lenz/Doll* DB 2023, 499, 505; *Veil/Wiesner/Reichert* ECFR 2022, 445, 473 f.; *Wilhelm* BKR 2024, 747, 749.
[95] Cf. recital 18 LAR.
[96] Cf. recital 20 LAR.

graphs or tables; but these count towards the (still generally applicable) limit of 7 A4-sized paper (Art. 7(3) PR as from 5 June 2026). But when a guarantee is provided, the page limit shall be extended by one additional page per guarantor (Art. 7(7) subparagraph 5 PR as from 5 June 2026). In addition, there are selective "ESG innovations": The warning section shall, where applicable, include a statement that the company has identified environmental issues as a material risk, and issuers subject to the Taxonomy Regulation[97] shall include a statement on whether their activities are associated with economic activities that qualify as environmentally sustainable (Art. 7(5) subparagraph 2 lit. g, Art. 7(6) lit. a point vi PR as from 5 June 2026).

4.3.3 Cutting back minimum content

Another key element of the reform is a new concept for and a reduction of the minimum content of the prospectus. To this end, Annexes I, II and III of the PR are amended, aligning them to the level of disclosure of the EU Growth prospectus.[98] 40

Inter alia, historical financial information is no longer required for the last three years, but only for the two latest financial years (for equity securities) or the last financial year (for non-equity securities) (Annex I point XI PR). 41

However, issuers of equity securities shall now either incorporate by reference or include the information set out in the (consolidated) management reports, and, where applicable, the sustainability reporting for periods covered by the historical financial information (Annex I point IV PR). This is intended to enable investors to consider ESG-aspects when taking informed investment decisions; at the same time, it is intended to prevent "greenwashing".[99] Yet, from the point of view of issuers, this means that there is a risk of prospectus liability if the management reports – and in particular the sustainability reporting – contain incorrect information.[100] 42

In cases where non-equity securities are advertised as taking into account ESG factors or pursuing ESG objectives, the Commission will adopt a delegated act defining the specific information to be included in the prospectus (Art. 13(1) subparagraph 2 lit. g, Art. 13(1a) PR). In this respect, corresponding risks of prospectus liability may arise. 43

4.3.4 Risk factors

As regards risk factors, the hitherto existing requirement to rank the most material risk factors in each category was complicated and burdensome for issuers.[101] Yet, the Commission's proposal to delete the requirement to rank risk factors completely[102] was not accepted. Instead, Art. 16(1) subparagraph 5 sentence 2 PR now "only" requires that the most material risk factors shall be listed in a manner with the materiality assessment required under Art. 16(1) 44

[97] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, [2019] OJ L 198/13; last amended by Regulation (EU) 2019/2088, [2019] OJ L 317/1.
[98] Cf. recital 25 LAR.
[99] Cf. recital 26 sentences 1-4 LAR.
[100] *Schlitt/Ries/Lepke* AG 2024, 466 para. 9; see also *Sauer/Buchta* DB 2024, 1327, 1331; *Scholl/Lenz/Döhl* DB 2023, 499, 502 f.
[101] Cf. COM(2022) 762, recital 34 sentnence 3; recital 40 sentence 2 LAR.
[102] Cf. COM(2022) 762, recital 34 sentence 3 and Art. 16(1) PR-draft.

subparagraph 3 PR. Although this is certainly a simplification[103], the area of risk factors continues to pose a significant risk of prospectus liability.[104]

45 Moreover, it has been expressly clarified that a prospectus shall not contain risk factors that are generic, that only serve as disclaimers, or that do not give a sufficiently clear picture of the specific risk factors of which investors are to be aware (Art. 16(1) subparagraph 2 PR, recital 40 sentence 4 LAR); however, this should be a matter of course and ultimately only codifies the previous ESMA guidelines[105].

4.3.5 Incorporation by reference

46 Since all information of relevance to financial services, capital markets and sustainability will in the future be publicly available via the European Single Access Point (ESAP), the Commission had proposed to make it mandatory to incorporate this information only by reference[106]. However, Members of the European Parliament had concerns that this would make prospectuses less comprehensible for investors.[107] Thus, incorporation by reference remains voluntary (Art. 19(1) PR). This is regrettable because it leaves the potential for simplification inherent in the new ESAP untapped. Once ESAP is fully functional, this should be reconsidered.

47 At any rate, (consolidated) management reports including, where applicable, the sustainability reporting, may now also be incorporated by reference (Art. 19(1)(f) PR) and issuers may also include information that is not required for the prospectus by reference on a voluntary basis (Art. 19(1a) PR). Moreover, new annual or interim financial information may now be incorporated into a base prospectus by reference, i.e. a supplement is no longer mandatory[108] (Art. 19(1b) PR).

4.4 New special types of prospectus

4.4.1 EU Follow-on prospectus instead of simplified prospectus for secondary issuances

48 Since the uptake of the simplified prospectus for secondary issuances has been rather limited[109], it will be replaced by a new EU Follow-on prospectus (Art. 14a PR as from 5 March 2026). It follows a similar model as the EU Recovery prospectus, which expired on 31 December 2022[110], but had been significantly more attractive as the simplified prospectus for secondary issuances.[111]

49 But whereas the EU Recovery prospectus was only available for shares, the EU Follow-on prospectus will be available for all types of securities (Art. 14a(1) PR as from 5 March 2026). The only requirement is – in simplified terms – that the relevant securities have been admitted to

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[103] *Hoppe/Knop* DIRK-Blog 28 March 2024; *Scholl/Lenz/Döhl* DB 2023, 499, 505.
[104] *Schlitt/Ries/Lepke* AG 2024, 466 para. 7; s. ferner auch *Sauer/Buchta* DB 2024, 1327, 1331.
[105] ESMA31-62-1293, para. 22-23
[106] COM(2022) 762, recital 36, Art. 19(1) subparagraph 1 PR-draft.
[107] PE749.153v01-00, p. 22.
[108] See previously Art. 18(1) Regulation (EU) 2019/979, [2019] OJ L 166/1.
[109] 2020: 5.9 % of total prospectuses approved; 2021: 7.7 % of all prospectuses approved (SWD(2022) 762, p. 179).
[110] Cf. Art. 14a, 47a PR as inserted by Regulation (EU) 2021/337, [2021] OJ L 68/1.
[111] Cf. recital 29 LAR; SWD(2022) 762, p. 181 ff.

trading on a regulated market or SME growth market continuously for at least 18 months (Art. 14a(1) PR as from 5 March 2026); unlike in case of the EU Recovery Prospectus, there is no volume limit.

Like the standard prospectus, the EU Follow-on prospectus is a document of a standardised format and the information disclosed shall be presented in a standardised sequence based on the order of disclosure set out in Annex IV (equity securities) and Annex V (non-equity securities); details will be specified in RTS (Art. 14a(7)-(8) PR as from 5 March 2026). In contrast to the standard prospectus, an EU Follow-on prospectus requires neither financial information for the last 12 months nor management reports. An EU Follow-on prospectus that relates to shares shall be of a maximum length of 50 pages of A4-sized paper (Art. 14a(5) PR as from 5 March 2026), requires only an alleviated summary (Art. 7(12a) PR as from 5 March 2026) and the time limit for approval is reduced to 7 working days (Art. 20(6a) PR as from 5 March 2026). 50

However, this new EU Follow-on prospectus will probably only be attractive for issuers in situations where there is no traditional marketing is carried out on the basis of a prospectus (e.g. rights issues with pre-placement, admission of shares issued from capital increase in kind); due to its specific limits, it is unlikely to be suitable for more complex cases.[112] 51

4.4.2 EU Growth issuance prospectus instead of EU Growth prospectus

The EU Growth prospectus has also turned out to be inadequate; it will therefore be replaced by a new EU Growth issuance prospectus with lighter requirements (Art. 15a PR as from 5 March 2026) to make the listing documentation for SMEs even less complex and burdensome and to enable SMEs to achieve even more important savings.[113] 52

The EU Growth issuance prospectus may be used by: (a) SMEs[114], (b) other issuers whose shares are, or are to be, admitted to trading on an SME growth market, (c) issuers that have no securities traded on an MTF and an average number of employees of up to 499, where the total aggregated consideration in the EU of the securities offered to the public is less than 50 million EUR calculated over a period of 12 months (Art. 15a(1) PR as from 5 March 2026). 53

The EU Growth issuance prospectus shall also be a document of a standardised format and the information disclosed shall be presented in a standardised sequence based on the order of disclosure set out in Annex VII (equity securities) and Annex VIII (non-equity securities); details will be specified in a delegated act (Art. 15a(7)-(8) PR as from 5 March 2026). In contrast to the standard prospectus, it requires financial information only for the last 12 months and management reports only in case of a market capitalisation above 200 million EUR; however, it requires, for example, information on the growth strategy and objectives. An EU Growth prospectus that relates to shares shall be of a maximum length of 75 pages of A4-sized paper (Art. 15a(5) PR as from 5 March 2026) and requires only an alleviated summary (Art. 7(12a) PR as from 5 March 2026); but in contrast to the EU Follow-on prospectus there is no reduced time limit for approval. 54

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[112] *Kuthe* ZIP 2023, 773, 776; *Sauer/Buchta* DB 2024, 1327, 1329; *Schlitt/Ries/Lepke* AG 2024, 478 para. 58; *Wilhelm* BKR 2024, 747, 752.
[113] Cf. recital 33 LAR.
[114] Defined in Art. 2(f) PR.

55 It remains to be seen whether the simplifications will be sufficient to make the EU Growth Issuance Prospectus more successful than the previous EU Growth Prospectus. Practitioners have already expressed concerns that the concise format may in certain cases not be sufficient to provide investors with adequate information – and thus avoid liability risks.[115]

4.5 Scrutiny, approval, publication, supplements

56 There are also selected – but very relevant – reforms with regard to the scrutiny and approval procedure, publication and supplements. Of particular note here is the harmonisation of the scrutiny criteria and the maximum overall timeframe for scrutiny and decision making; but both will only be effected by a delegated act of the Commission (Art. 20(11) PR). Moreover, the minimum time period between the end of the publication of the prospectus and the end of the offer in case of an initial offer to the public has been decreased from 6 to 3 working days (Art. 21(1) subparagraph 2 PR); this can significantly reduce the transaction risk, especially in highly volatile market situations[116].

4.6 Language and digitalisation

57 Very welcome is also the deregulation with regard to language and digitalisation. In the future, prospectuses can generally be prepared in a "language customary in the sphere of international finance" (i.e. typically English) (Art. 27(1) subparagraphs 1 PR as from 5 June 2026). Only the summary shall be available in a language accepted by the home Member State and will thus potentially have to be translated (Art. 27(1) subparagraph 4 PR as from 5 June 2026). However, there is one fly in the ointment in the form of a Member State option to require that the prospectus for an offer of securities to the public or an admission to trading on a regulated market which is sought only in that Member State is drawn up in a language accepted by the competent authority of that Member State (Art. 27(1) subparagraph 2-3 PR as from 5 June 2026); this should be abolished at the next opportunity. At any rate, in Germany, the draft for the ZuFinG II includes a new § 21(2) WpHG-draft providing that accepted languages within the meaning of Art. 27 PR are German and English; this means that in case of an English prospectus, it will no longer be necessary to translate the summary into German.[117]

58 Moreover, investors can now only request a copy in electronic format free of charge (Art. 21(11) PR). This abolition of the right to a free paper copy has been long overdue; it saves costs and protects the environment[118].

4.7 Third country regime

59 Finally, in order to facilitate the access of third country issuers, including SMEs, to public markets in the EU[119], the third country regime has been amended. Since the previous equivalence

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[115] *Bösl/Dudeck/Hofmann* CF 2024, 36, 40; *Schlitt/Ries/Lepke* AG 2024, 466 para. 15; *Wilhelm* BKR 2024, 747, 750.

[116] *Scholl/Lenz/Döhl* DB 2023, 499, 505; *Sauer/Buchta* DB 2024, 1327, 1330; *Schlitt/Ries/Lepke* AG 2024, 466 para. 15.

[117] Cf. Explanatory Notes ZuFinG II, BR-Drs. 599/24, p. 178.

[118] Cf. recital 51 LAR.

[119] Cf. recital 56 sentence 3 LAR.

framework proved to be impracticable and was never used[120], Art. 29(4) PR now provides that the Commission adopts implementing acts determining that the legal and supervisory framework of a third country is equivalent; moreover, the equivalency criteria have been expanded to encompass also provisions on liability, validity of the prospectus, risk factors, scrutiny, approval and publication of the prospectus and supplements. In return, prospectuses which have been approved by the competent authority of such a third country will only have to be filed with (and not approved by) the competent authority of the home Member State provided that the conditions set out in Art. 29(1) PR are fulfilled. This new system has two clear advantages: Equivalence is decided uniformly at EU level while the expansion of the equivalency criteria at the same time ensures comprehensive equivalency. However, it remains to be seen whether and to what extent it will actually be sued in practice or whether third-country issuers will simply continue to prepare a prospectus in accordance with the PR.

5 MAR

5.1 Decoupling of insider trading prohibition and ad hoc disclosure

5.1.1 Overview

In the area of market abuse, the Listing Act – in a real paradigm shift – decouples the insider trading prohibition and ad hoc disclosure: As from 5 June 2026, intermediate steps in a protracted process will no longer require ad hoc disclosure (→ 5.1.2); by contrast, the insider trading prohibition will continue to be triggered by an intermediate step in a protracted process (→ 5.1.3). The rationale is that the current requirement of ad hoc disclosure in case of intermediate steps in a protracted process on the one hand imposes a considerable burden on issuers.[121] On the other hand, disclosure of information at a very early and/or preliminary stage may actually mislead investors rather than contribute to efficient price formation and the elimination of information asymmetry.[122] 60

5.1.2 Inside information

The concept of inside information thus remains essentially unchanged and continues to cover intermediate steps in a protracted process, if they, by themselves, satisfy the criteria of inside information (Art. 7(3) MAR). There is only a small amendment in the form of an extension of the definition of frontrunning in Art. 7(1)(d) MAR: It no longer applies only to persons charged with the execution of orders concerning financial instruments, but all categories of persons that may be aware of a future order.[123] 61

[120] Cf. SWD(2022) 762, p. 203; ESMA31-59-1451.
[121] Cf. *Veil/Wiesner/Reichert* ECFR 2022, 445, 485 f.; *Wedemann* ZIP 2024, 2373.
[122] Cf. recital 67 sentence 3 LAR; *Hansen* FS Per Samuelsson, 2024, 171, 192; but see critical e.g. *Sajnovits* ZBB 2024, 345, 350 ff. with further references.
[123] Cf. recital 63 LAR.

5.1.3 Ad hoc disclosure

5.1.3.1 No ad hoc disclosure requirement for intermediate steps in a protracted process

62 However, in the future intermediate steps in a protracted process will no longer be subject to an ad hoc disclosure requirement; instead, only the final circumstances or the final event shall be required to be disclosed (Art. 17(1) subparagraph 1 sentences 2-3 MAR as from 5 June 2026). The focus is thus now on when exactly such "final circumstances" or "final event" exist. In this regard, recital 67 sentences 3, 5-6 LAR provide some indications and examples. In addition, the Commission has been empowered to adopt a delegated act setting out a non-exhaustive list of final events and final circumstances and the moment when they are deemed to have occurred and are to be disclosed (Art. 7(12)(a) PR). This provides issuers with some important guidelines. Moreover, one may expect that the list will at least cover the most common cases.[124] However, in the remaining cases the demarcation will often be fraught with uncertainty, especially since an event which may seem "final" from one point of view may, from a different point of view, just as well be considered to be only an intermediate step on the way to another "final event".[125]

63 Moreover, issuers will still be forced to check whether a certain intermediate step already constitutes inside information: Firstly, the concept of inside information remains essentially unchanged and all other legal consequences associated with it (in particular the prohibition of insider trading) continue to apply if an intermediate step in a protracted process constitutes inside information. Secondly, intermediate steps that constitute inside information shall be kept confidential until an ad hoc disclosure obligation arises once the final circumstances or final event have occurred (Art. 17(1a) PR as from 5 June 2026); however, where the confidentiality is no longer ensured, the issuer shall disclose (Art. 17(7) subparagraph 1 MAR as from 5 June 2026). However, in the future, at least in clear-cut cases, issuers will no longer have to decide in the initial phase of a protracted process whether a delay of disclosure is possible in accordance with Art. 17(4) MAR or whether they have to disclose immediately[126]; instead, they can wait as long as confidentiality is ensured. Whether much has really been gained by this in view of the remaining and new demarcation issues will probably only become clear in the first years of practice under the new legal framework.

[124] See also *Martin* DB 2024, 1393, 1396.

[125] See already CJEU of 28 June 2012, *Geltl,* C-19/11, ECLI:EU:C:2012:397, para. 37; *Hellgardt* AG 2024, 57, 63 f.; *Wedemann* WM 2024, 2121, 2123. See on this also *Sajnovits* ZBB 2024, 345, 353 f.

[126] *De Wolf/Baveghems/Keuleers*, EU Listing Package – key amendments to the Market Abuse Regulation and the Prospectus Regulation, 8.10.2024 (https://www.eubelius.com/system/files/2024-10/eu_listing_act_de_wolf_baveghems_keuleers_working_paper_20241008.pdf), para. 6; see also Martin DB 2024, 1393, 1395 ff.

5.1.3.2 Changes regarding the delay of ad hoc disclosure

The abolition of the ad hoc disclosure obligation for intermediate steps in a protracted process also removes one of the most important use cases of the possibility to delay ad hoc disclosure pursuant to Art. 17(4) MAR.[127] Although not entirely, because at least in cases where it is uncertain whether there is actually only an intermediate step or already a final event, issuers will be well advised to consider a precautionary delay.[128] Moreover, a delay may also be relevant in a wide variety of other situations, e.g. if the core elements of a merger have been agreed upon and the management has taken the decision to sign it (pursuant to recital 67 sentence 6 LAR this is deemed to be a final event), but the signing has not yet taken place.[129] 64

The LAR also includes some welcome changes regarding the conditions for the delay of disclosure: Since the requirement that the delay of disclosure "is not likely to mislead the public" had given rise to uncertainty[130], it will be clarified – in line with the previous ESMA guidelines[131] – that it is necessary that the inside information "is not in contrast with the latest public announcement or other type of communication [...] on the same matter" (Art. 17(4) subparagraph 1 lit. b MAR as from 5 June 2026). Moreover, the Commission has been empowered to adopt a delegated act setting out a non-exhaustive list of such situations (Art. 17(12)(b) MAR). 65

In addition, it has been clarified that the non-disclosure of an inside information related to intermediate steps in protracted processes is not subject to the delay requirements set out in Art. 17(4) MAR (Art. 17(4a) MAR as from 5 June 2026); this is only logical since there is no longer a disclosure obligation in these cases. 66

However, the Commission's proposal to require the issuer to inform the competent authority of its intention to delay disclosure of inside information and provide a written explanation of how the conditions were met, immediately after the decision to delay is taken[132], was not accepted. Although this would have enabled the competent authorities to receive information on delays in a timely manner[133], it met with fierce resistance from practitioners due to the considerable practical problems it would have entailed[134]. Hence, the tried and tested *ex-post* model will continue to apply: the issuer shall inform the competent authority and provide a written explanation of how the conditions were met only once the information is disclosed (Art. 17(4) subparagraph 2 MAR). 67

Finally, the special delay rule for credit institutions and financial institutions set out in Art. 17(5) MAR has already been amended as from 4 December 2024: Until now, it had been 68

[127] *Hellgardt* AG 2024, 57, 65; *Martin* DB 2024, 1393, 1397; *Pijls*, The duty to publicly disclose inside information under the EU Listing Act, http://dx. doi.org/10.2139/ssrn.4896453, p. 5-6; *Wedemann* WM 2024, 2121, 2123.
[128] Cf. *Sajnovits* ZBB 2024, 345, 352; *Wedemann* ZIP 2024, 2373, 2377; *Wedemann* WM 2024, 2121, 2123.
[129] *Martin* DB 2024 1393, 1397; *Pijls*, The duty to publicly disclose inside information under the EU Listing Act, http://dx. doi.org/10.2139/ssrn.4896453, p. 6
[130] Cf. recital 70 sentence 4 LAR; SWD(2022) 262, p. 221; TESG, Empowering EU Capital Markets for SMES. Making listing cool again, 2021, p. 75.
[131] ESMA70-159-4966, para. 12.
[132] COM(2022) 762, Art. 17(4) subparagraph 2 MAR-draft.
[133] Cf. COM(2022) 762, recital 61 sentence 3; see on this also *Roth* BKR 2024, 514, 521.
[134] See e.g. *Kuthe* ZIP 2023, 773, 782; Position paper of Deutsches Aktieninstitut on the amendments to the EU Market Abuse Regulation under the proposal for an EU Listing Act, 28.2.2023, p. 9. See on this also *Wedemann* WM 2024, 2121, 2123 f.

controversial whether it can also be used by an issuer that is a parent undertaking of such an institution; this has now been expressly clarified since the rationale of the provision applies also in these cases.[135] By contrast, the extension also to other related undertakings proposed by the Commission[136], has not been included in the final text. This decision of the legislator must be accepted; hence, there is no room for applying Art. 17(5) MAR by analogy in such cases.[137]

5.1.4 Insider lists

69 The Commission's proposal to require only lists of permanent insiders[138] did not prevail due to considerable concerns by ESMA, the Council and the European Parliament regarding the effective enforcement of the prohibition of insider trading[139]. Limiting insider lists to permanent insiders will thus continue to be reserved for issuers whose financial instruments are admitted to trading on an SME growth market (provided the respective Member State has not opted out) (Art. 18(6) MAR). But in order to reduce the regulatory burden, there will fortunately be alleviated format for all insider lists; details will be governed by ITS for which ESMA will have to submit a draft by 5 September 2025 (Art. 18(9) MAR).

5.2 Managers' transactions (directors' dealings)

70 The legal framework for managers' transactions (directors' dealings) will also be liberalised in some respects. In order to avoid an undue burden for persons discharging managerial responsibilities and ensure that the market is not flooded with irrelevant disclosures[140], the threshold has been raised from 5 000 to 20 000 EUR (Art. 19(8) MAR). Simultaneously, Member States have been allowed more leeway to take national market conditions into account: The competent authorities may increase the threshold to 50 000 EUR or decrease it to 10 000 EUR (Art. 19(9) MAR). In Germany, the BaFin had increased the threshold to 20 000 EUR under the previous framework[141]; hence, it might now increase it to 50 000 EUR[142].

71 In addition, the exceptions from the closed period requirement in Art. 19(12) MAR have been expanded in order to promote consistency rules across different asset classes.[143] Furthermore, the new Art. 19(12a) MAR adds an exception for transactions or trade activities that do not relate to active investment decisions or that result exclusively from external factors or actions of third parties; in such cases, the rationale of the closed period requirement is a priori not applicable.[144]

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[135] See in more detail *Wedemann* WM 2024, 2121, 2124.
[136] COM(2022) 762, Art. 17(5) MAR-draft.
[137] *Wedemann* WM 2024, 2121, 2124.
[138] COM(2022) 762, Art. 18(1) MAR-draft.
[139] ESMA24-436-1547; PE749.153v01-00, p. 31, 76; ST 10322/23, Art. 18 MAR-draft.
[140] Cf. recital 74 sentence 1 LAR.
[141] BaFin, AV v. 24.10.2019, WA 25-QB 4100-2019/0035.
[142] *Wilhelm* BKR 2024, 747, 755.
[143] Cf. recital 75 LAR.
[144] Cf. recital 76 LAR.

5.3 Further amendments

The simplifications regarding the previously rather cumbersome[145] procedure for reporting and disclosing buy-back programmes are also very welcome: Transactions relating to the buy-back programme no longer have to be reported to all competent authorities of all relevant trading venues, but only to the competent authority of the most relevant market in terms of liquidity; moreover, disclosure in aggregated form is sufficient (Art. 5(1)(b), (3) MAR). 72

There have also been useful adjustments with respect to market soundings: Art. 11(4) MAR is now explicitly worded as a safe harbour, i.e. in case of compliance with the conditions listed, the disclosure is deemed to be made in the normal exercise of a person's employment, profession or duties for the purpose of Art. 10(1) MAR and therefore does not constitute unlawful disclosure of inside information.[146] At the same time, it has been clarified that market soundings are not per se unlawful if the conditions laid down in Art. 11(4) MAR have not been fulfilled, but that then an assessment on a case-by-case basis is necessary.[147] Moreover, the definition of market soundings has been broadened in order to include communications of information not followed by any specific announcement of a transaction (Art. 11(1) MAR).[148] 73

Amendments have also been made with regard to liquidity contracts (Art. 13(12) subparagraph 1 lit. d MAR). Furthermore, there is a new mechanism to exchange order data (Art. 25a MAR), new provisions on data protection (Art. 29 MAR) and amendments as regards administrative sanctions (Art. 30(2) subparagraph 1 lit. e-g, j, subparagraph 3, (4) MAR; Art. 31(1) MAR). 74

6 Further amendments to MiFID II and MiFIR

6.1 Research unbundling rules

Although the research unbundling rules had already been liberalised by the 2021 "MiFID II Quick Fix"[149], the decline of investment research (in particular as regards SMEs) has not slowed.[150] Hence, there LAD includes a further liberalisation: The amended Art. 24(9a) MiFID II no longer contains a threshold and there are new special rules on issuer-sponsored research in Art. 24(3a)-(3c) MiFID II. Whether this will be sufficient to really revitalise the market for investment research remains to be seen. In Germany, the ZuFinG II draft plans to implement these new rules in a new § 63a WpHG-draft, amendments in § 70(6a) WpHG and a new § 70(6b) WpHG-draft.[151] 75

[145] Cf. recital 62 sentences 2-4 LAR; *Martin* DB 2024, 1393, 1398.
[146] Cf. recital 65 sentences 1-2 LAR; *Martin* DB 2024, 1393, 1399; *Schlitt/Ries/Lepke* AG 2024, 466 Rn. 70 (with further references as regards the previous academic discussion).
[147] Cf. recital 65 sentences 3 LAR; *Martin* DB 2024, 1393, 1399; *Schlitt/Ries/Lepke* AG 2024, 466 Rn. 70.
[148] Cf. recital 64 LAR.
[149] Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis, [2021] OJ L 68/14.
[150] Cf. recital 3 LAD.
[151] Cf. Explanatory Notes ZuFinG II, BR-Drs. 599/24, p. 169 f.

6.2 Order data

76 Pursuant to the amended Art. 25(2), (3) MAR, competent authorities are now able to access order data not only on an ad hoc request, but also on an ongoing basis; moreover, the format of such data is being harmonised.[152]

7 Summary and conclusion

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(1) The goal of the EU Listing Act is to make public capital markets in the EU more attractive for companies and facilitate access to capital.

(2) As regards multiple voting rights, the MVRD establishes a basic harmonisation with a narrowly limited scope of application, which leaves Member States a great deal of room for manoeuvre.

(3) With the repeal of the Listing Directive, the concept of official listing has been officially abandoned at EU level. However, the requirements on market capitalisation and free float have been transferred – with some modifications – to MiFID II.

(4) As regards prospectus law, there have been a number of significant reforms: There is a new dual-threshold system as regards the scope of application of the PR, the exemptions from the prospectus requirement for secondary issues have been expanded, format and content of the prospectus have been significantly reformed and standardised, the simplified prospectus for secondary issuances is replaced by a new EU Follow-on prospectus, the EU Growth prospectus is replaced by a new EU Growth issuance prospectus, and there are various liberalisations and simplifications regarding scrutiny, approval, publication, supplements, language and digitalisation; plus, the third country regime has been revamped.

(5) In the area of market abuse, the Listing Act – in a real paradigm shift – decouples the insider trading prohibition and ad hoc disclosure. In addition, there are amendments regarding insider lists, managers' transactions (directors' dealings), buy-back programmes and market soundings.

(6) Upshot: With the Listing Act many important adjustments are being made. Overall, however, one would have wished the European legislator more courage to completely comb through the historically grown "jungle" of disparate legal acts and restructure the legal framework as a whole in a clearer and more streamlined way. At any rate, even the most efficient legal framework will as such not trigger a capital markets boom as long as the economic conditions are not adequate.

[152] Cf. recital 79 LAR.