The EU Listing Act

OVERVIEW OF SIGNIFICANT CHANGES IN MARKET ABUSE LAW

Executive Summary

- **Intermediate steps** in a protracted process no longer have to be disclosed as soon as possible.
- In future, only the final circumstance or **final event** will be subject to immediate public disclosure.
- The **prohibitions on insider dealings** and the obligation to maintain an **insider list** remain unchanged.
- If there are sufficiently accurate rumours regarding intermediate steps that are relevant for insider trading regulations, this information must be disclosed immediately.
- Disclosure may now only be delayed on the issuer's own responsibility (i.e. **self-exemption**), provided that the information the issuer intends to delay does not contrast with its previous communications.
- The **reporting threshold** for transactions by managers or related parties has been raised to EUR 20,000.
- Further minor changes concern the reporting obligations for **share buy-back programmes**.

I. Introduction

After much back and forth, the **EU Listing Act** came into force on 4 December 2024. The Listing Act is a package of legal acts issued by the EU legislator, which includes a series of amendments and, in some cases, significant changes to market abuse law. The aim of the Act is to make Europe's capital market more attractive. To this end, the new legislation aims to reduce the excessive listing obligations for issuers, while at the same time continuing to ensure an appropriate level of investor protection and transparency. GSK partners **Bernd Graßl** and **Philipp Mössner** present the key changes to the EU Market Abuse Regulation (MAR) under the EU Listing Act below.

II. Significant changes to public disclosure obligations for inside information

1. Intermediate steps no longer require ad hoc disclosure

The EU Listing Act introduces a fundamental change to the regulations on the public disclosure of inside information (also known as "ad hoc disclosure"). This relates in particular to the disclosure obligation during "protracted processes", i.e. in the case of circumstances that consist of various intermediate steps leading up to a particular final event, such as (public) takeovers, M&A transactions, capital measures or transformations. According to the new rules, which will apply from 5 June 2026, **intermediate steps in a protracted process** no longer have to be disclosed as soon as possible, even if they constitute inside information.

In future, only the final circumstance or final event will be subject to immediate public disclosure after its occurrence (Art. 17(1) subparagraph 1, sentences 2, 3 MAR as amended). This is to avoid causing any confusion for investors by publishing preliminary information at a very early stage. As a result, it is no longer necessary for an issuer to delay the public disclosure of an intermediate step by exempting itself from the disclosure obligation in accordance with Art. 17(4) MAR (cf. Art. 17(4a) MAR as amended). A resolution to delay the disclosure (with the involvement of the Management Board) is therefore no longer required, and the corresponding documentation obligations no longer apply.

Nevertheless, issuers still need to assess instances of inside information closely when they first occur in the form of a relevant intermediate step as part of a protracted process: The **prohibition of insider dealing** (Art. 14 MAR) *and* the obligation to **maintain an insider list** (Art. 18 MAR) remain unaffected. It is only the **obligation to disclose** the intermediate step that no longer applies. In this respect, the concept of inside information is decoupled from the ad hoc disclosure obligation. If an intermediate step qualifies as inside information (Art. 7(2) sentence 2, (3) MAR), the corresponding insider trading regulations and requirements must continue to be observed (unchanged).

2. Definition of final events subject to disclosure

The practical difficulty of the new rules lies in **distinguishing** an intermediate step relevant for the purposes of insider trading regulation from the occurrence of the final event subject to disclosure. In the case of a protracted process, (only) the final event must be disclosed immediately after its occurrence (Art. 17(1) subparagraph 1 sentence 3 MAR as amended). The Commission has been empowered to adopt a delegated act setting out a non-exhaustive list of final events or final circumstances in such protracted processes, and to specify for each event and circumstance the moment when it is deemed to have occurred (Art. 17(12)(a) MAR as amended). As things currently stand, the delegated act is to be adopted by July 2026 at the latest. Already on 7 May 2025, ESMA has published a concrete proposal for a non-exhaustive list of final events or circumstances (Final Report – Technical advice concerning MAR and MiFID II SME GM, 7 May 2025, ESMA74-1103241886-1086).

Nevertheless, making this distinction may cause **difficulties** in practice. In specific cases, a final event or a final circumstance could also be regarded as an intermediate step in a process that continues over a longer period of time – meaning that the event or circumstance would *not* have to be disclosed as a mere intermediate step as part of a larger, protracted process. In addition, a mere *intermediate step* within an intra-group reorganisation *as such* may not yet be subject to ad hoc disclosure, but the overriding *reasons* for the reorganisation may be. In the interests of prudence, it is therefore advisable in cases of doubt to delay the disclosure of the relevant inside information (in the form of a possible final event, should such an event potentially have occurred) in accordance with the existing self-exemption provisions (Art. 17(4) MAR).

3. Confidentiality and disclosure obligations in the event of rumours

The issuer's duty of confidentiality continues to apply (unchanged) to (insider-relevant) intermediate steps in

protracted processes. These continue to qualify as inside information, except that they are no longer subject to ad hoc disclosure under the new rules. However, if **confidentiality** is no longer guaranteed with regard to the intermediate step(s) that has/have occurred, the issuer must disclose the inside information immediately. This also applies in particular in situations where a **rumour** explicitly refers to undisclosed inside information in the form of a relevant intermediate step, provided that the rumour is "*sufficiently accurate*" to indicate that the confidentiality of the information is no longer ensured (Art. 17(7) subparagraph 2 MAR as amended).

In this respect, too, the requirements of insider trading law remain unaffected, meaning that an issuer must continue to check and monitor on an ongoing basis whether confidentiality is still ensured – especially for as long as "only" intermediate steps have occurred. The internal compliance requirements, such as locked drives, confidential treatment of documents, separate email distribution lists, etc., remain unchanged in this respect.

4. New rules for delaying the public disclosure obligation (self-exemption)

Issuers still have the option of delaying the immediate disclosure of inside information on their own responsibility (Art. 17(4) MAR). A new provision in this respect is that the inside information that the issuer intends to delay must **not contradict** the latest public announcement or other type of communication by the issuer on the same matter to which the information refers; this replaces the previous requirement that the delay of disclosure be unlikely to mislead the public (Art. 17(4) subparagraph 1 b) MAR as amended). The regulation thus adopts similar wording to that previously contained in the ESMA Guidelines on delaying the disclosure of inside information.

This change brought about by the EU Listing Act serves to clarify that the issuer must refer directly to its own previous public announcements when assessing the delay. In the interests of ensuring a standardised interpretation of this criterion, the Commission is also empowered to adopt a non-exhaustive list of situations in which the inside information that the issuer intends to delay is in contrast with the issuer's latest public announcement on the same matter (Art. 17(12) (b) MAR as amended).

III. Changes relating to managers' transactions (directors' dealings)

The EU Listing Act includes an increase in the **reporting threshold** for transactions by managers or related parties from the previous EUR 5,000 to EUR 20,000 (Art. 19(8) MAR as amended). However, the German Federal Financial Supervisory Authority (BaFin) had already made use of the existing option available to national supervisory authorities and raised the reporting threshold to EUR 20,000. The corresponding new provision in Art. 19(9) sentence 1 MAR as amended now provides supervisory authorities with the option of raising the reporting threshold to EUR 50,000 or lowering it to EUR 10,000. It remains to be seen to what extent BaFin (in Germany) and the CSSF (in Luxembourg) will make use of this option.

IV. Changes to share buy-back programmes

The EU Listing Act provides some, albeit rather small, relief for the administrative burden associated with **share buy-back programmes**. *Firstly,* the issuer's obligation to publicly disclose the trades carried out in *detailed* form no longer applies; this already corresponds to the previous practice of publication in *aggregated* form only (Art. 5(1) lit. a) MAR as amended); however, the issuer's obligation to provide detailed reporting to the competent authority and on its website remains unchanged.

Secondly, all transactions in connection with buy-back programmes now only have to be reported to the authority of the **most relevant market in terms of liquidity**, which shall forward the information to the competent authorities of the other trading venues upon request (Art. 5(3) MAR as amended); previously, reports had to be made to *all* competent authorities, meaning that an issuer first had to determine on which trading venues its shares were traded and otherwise comply with the relevant

transmission channels. The administrative burden previously associated with this is now no longer necessary.

V. Summary and outlook

The amendments and new provisions of the Market Abuse Regulation as amended by the EU Listing Act are to be welcomed in principle, as they provide – as intended by the legislator – a certain degree of relief for issuers. However, it remains to be seen how the changes regarding the public disclosure of inside information will be implemented in practice, in particular against the background of the delegated acts still to be adopted to define final events and circumstances within protracted processes and to specify circumstances in which a delay in the disclosure of inside information conflicts with the issuer's previous communications. It also remains to be seen how the respective administrative practices of BaFin and the CSSF will develop. Nevertheless, issuers should already be taking a close look at the new rules and start adapting their processes to make sure they are suitably prepared when the changes to the ad hoc disclosure obligations come into force in June 2026.

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At GSK Stockmann, we know this regulatory framework inside and out since we apply it on a daily basis. In cross-border matters, our teams work seamlessly across our offices in Germany, Luxembourg and London. Our 360-degree advisory approach ensures that we provide real added value for our clients.

If you have any questions, please feel free to contact us directly at any time.

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