German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

on amending Delegated Regulation (EU) 2019/980 (EU COM – HYS – Public Consultation)

- Ref. Ares(2026)1561886 - 11/02/2026
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Lobby Register No R001459
EU Transparency Register No 52646912360-95

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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We thank you for the opportunity to provide comments and welcome the objective of revising Commission Delegated Regulation (EU) 2019/980 (the **Delegated Regulation**) to simplify prospectus requirements, streamline their content and further standardise their format and structure in order to make their preparation and scrutiny more efficient.

We also welcome the intention to reduce administrative burdens and costs for issuers, improve comparability and comprehensibility for investors, and facilitate companies' access to EU capital markets while enhancing their attractiveness.

Against this background, we kindly ask that the following aspects be taken into account in the further legislative process concerning the **amending regulation (the "Amending Regulation")**.

1. Transitional periods

As the delegated regulation amending the Delegated Regulation is still under consultation, it remains unclear when it will enter into force. It cannot be excluded that the Amending Regulation will apply only after **5 June 2026**, i.e. after several amendments introduced by the **EU Listing Act** to **Regulation (EU) 2017/1129 (the "EU Prospectus Regulation")** become applicable. If this were to occur, a **regulatory gap** would arise for the period between **5 June 2026 and the entry into force of the Amending Regulation**, which would need to be addressed urgently.

ESMA has already considered this issue and proposed different approaches:

- In its Q&A, ESMA clarified that the provisions introduced by the Listing Act would only take full effect once the corresponding implementing provisions in Delegated Regulation (EU) 2019/980 have entered into force (see ESMA_QA_2454).
- In its public statement of 18 February 2026 (ESMA32-753890202-3066), ESMA further clarified that, with regard to the requirements in Articles 14a and 15a of the EU Prospectus Regulation, the sequencing requirements in Annex IV or V and VII or VIII should be followed. ESMA also recommends that market participants take into account the Delegated Regulation that has not yet entered into force.

In our view, both approaches are unsatisfactory as they fail to take into account that a prospectus constitutes a liability document. Prospectus preparers are liable for the accuracy and completeness of the prospectus under the applicable Prospectus Regulation and Delegated Regulations. It must therefore be clearly defined by law which provisions apply at which point in time.

Moreover, the changes relating to format, structure and content will require significant adjustments to IT systems, templates and operational processes. Such projects cannot be implemented within only a few months. Prospectus preparers and service providers will require at least 18 months following publication of the final legal acts to adapt systems, update templates and carry out the necessary testing. A transition period must therefore strictly be linked to the final availability of the Level 2 texts.

We therefore request that the current implementation deadlines under the EU Listing Act – in particular Article 4(3) of Regulation (EU) 2024/2809 – be extended, and that a transition period of at least 18 months following publication of all relevant Level 2 measures be provided.
The planned Omnibus IV package (COM(2025)501) or any other suitable legislative vehicle appears to provide an appropriate legislative vehicle to introduce the necessary adjustments.

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2. ESG disclosure requirements for non-equity securities

(Article 23a Delegated Regulation; Article 1(12) Amending Regulation)

The introduction of **ESG disclosure requirements for non-equity securities** that take ESG factors into account or pursue ESG objectives is generally welcome.

However, the precise definition of **"ESG factors"** and **"ESG objectives"** remains unclear, which creates legal uncertainty regarding the scope of application of the new **Annex 22a**.

From the perspective of issuers, it is important that sufficient scope remains for **financial product innovation**. We would therefore favour a **broad and non-exhaustive interpretation** of these concepts, with the final determination resting with the issuer, which ultimately decides how its securities are marketed. A clarification in the recitals would therefore be helpful.
Issuers also face practical challenges when issuing sustainability-linked products, as their specific features are often determined only later in the issuance process. Requiring these details to be disclosed already at the stage of **updating the base prospectus** is therefore not practical. The same applies to **product-specific supplements**.

We therefore support greater flexibility regarding ESG disclosures in prospectuses. In particular, ESG-related disclosures should be allocated to **Category C**, allowing them to be specified in the **final terms**. Specifically, the detailed allocation of proceeds (e.g., the percentage allocated to taxonomy-compliant activities under Items 1.1.1 and 1.1.2) must be classified as Category C information. At the time of the approval of a base prospectus, exact allocations are often unknown and the precise ESG allocation may be subject to change over the lifetime of a product. Classifying this as Category A would trigger frequent and highly burdensome prospectus supplements.

In addition, it should be clarified that:

- ESG-related disclosures regarding **underlying assets for certificates** (Annex 22a, item 4) should not be required to go beyond **publicly available information**. The approach should conceptually follow the existing Annex 17 in respect of underlyings. Accordingly, the categorisation of the required information in relation to underlyings must always be Category C;
- the reference to "sustainability features" (Annex 22a, item 4.1.3) is not sufficiently clear. Issuers should only be required to describe their product policy. Given the still developing legal frameworks and the absence of a unified product classification system, no mandatory positive ESG statements should be required in prospectuses; and
- links to **post-issuance information** may refer to a **main webpage rather than deep links**, which are often not yet finalised at the time of prospectus updates.

3. Additional disclosure requirements

(Article 23b Delegated Regulation; Article 1(13) Amending Regulation)

The proposed new **Article 23b** may create legal uncertainty for issuers. Under this provision, it is no longer possible to determine solely on the basis of the legal provisions whether a prospectus fulfils all disclosure requirements under the EU Prospectus Regulation. Instead, the outcome of discussions between the issuer and the competent authority must also be taken into account.

It should therefore be clarified that **a prospectus is deemed complete once the disclosure requirements agreed with the competent authority have been fulfilled**.

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4. Format requirements for single and base prospectuses (non-equity securities)
(Article 24a, 25 Delegated Regulation; Article 1(14), (15) Amending Regulation)

We explicitly welcome the Commission's approach to maintain vital exemptions regarding the sequence of information for **base prospectuses**. By granting this flexibility, the Commission strikes an appropriate balance for programmatic issuances.

However, we remain concerned about the strict format requirements introduced for **single prospectuses** (Article 24a(1a)). Mandating a rigid sequence of both the overarching elements and the specific sections within the annexes disrupts established, globally recognised market practices (e.g. ICMA standards). It forces issuers to fundamentally restructure their documentation without providing added value for investor protection. We therefore urge the Commission to grant greater structural flexibility for single prospectuses as well, ensuring that issuers can maintain established documentation formats as long as the comprehensibility of the prospectus is ensured.

5. Timelines for prospectus approval and deadlines for issuers
(Article 45a Delegated Regulation; Article 1(2) Amending Regulation)

The proposed **minimum period of 10 working days** for issuers to respond to comments from the competent authority is, in our view, insufficient, particularly in complex cases such as **new products**. The necessary internal and external coordination often cannot be completed within such a short timeframe. We therefore strongly request to explicitly stipulate that the deadline may be extended in an appropriate manner upon request of the issuer.

We also oppose the **automatic refusal of prospectus approval once the overall review period of the competent authority has expired**, particularly where delays arise due to factors outside the issuer's control (e.g. auditors). This would be impractical for complex products and could unduly hinder innovation.

Furthermore, **Article 45a(1), second subparagraph, second sentence** refers only to the **issuer**, but not to **the offeror or the person asking for admission to trading on a regulated market**. This appears to be a drafting oversight and these parties should be included.

We therefore propose following amendment to Article 45a(1), second subparagraph:

"*When the **issuer, the offeror or the person asking for admission to trading on a regulated market** has not submitted an updated draft prospectus within that deadline **and has not submitted a request for an extension of that deadline**, the competent authority may refuse approval of the prospectus*.'"

6. Combination of retail and wholesale information for non-equity securities
(Articles 7a(1)(a), (b) and 15a(1)(a), (b) Delegated Regulation; Article 1(4) and (9) Amending Regulation)

The draft amendment consolidates the previously separate annexes for **retail and wholesale non-equity securities**. However, the wording **"either of the following"** with regard to wholesale-specific or retail-specific information leaves unclear whether both categories may be combined within a **single base prospectus**.
We understand the provision to allow **wholesale-specific and retail-specific information to be combined within the same document** (Article 25(3) Delegated Regulation). We would welcome clarification in this respect.

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For issuers that regularly prepare **base prospectuses addressed to both investor categories**, it is essential that the possibility remains to include both wholesale and retail information within a single prospectus.

In practice, the information already included in base prospectuses typically covers all items required under **Annex 7a**. However, with respect to **Category C disclosures**, in particular under **Annex 15a**, which only become part of the prospectus through the **final terms**, a flexible approach is required.

Issuers should retain flexibility when structuring the final terms. In particular:

- final terms containing retail-specific annex information should only need to include those items; and
- final terms for wholesale issuances should likewise only contain the relevant wholesale information.

Combination prospectuses should therefore **not be subject to rigid sets of final terms** requiring both retail and wholesale disclosures in separate information blocks where one of those blocks is not relevant for the respective issuance.

Carrying retail disclosures into wholesale sections would unnecessarily increase the length and complexity of documentation and could reduce readability for institutional investors.

We therefore recommend clarifying that **the combination of annex disclosures for both investor categories within a single prospectus remains permissible**, while maintaining flexibility for issuers with regard to the presentation of information in the final terms.

Therefore, we propose a minor textual amendment to the introductory sentences of Articles 7a(1) and 15a(1). The wording should be amended to explicitly include combination prospectuses as follows:

*"[…] shall be referred to as either of the following **or a combination of the two**: (a) wholesale-specific... (b) retail-specific […]."*

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