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Future incorporation by reference under the EU Prospectus Regulation - Points to consider one year on

December 2025



For issuers with an MTN programme admitted to trading on an EEA regulated market, in December 2024 the EU Listing Act introduced a new option permitting incorporation by reference of future annual or interim financial information during the 12-month validity period of a base prospectus without the need to publish a supplement to explicitly include such information.

For further information, please contact your usual Linklaters contacts

A practical viewpoint

This new flexibility in the EU Prospectus Regulation was welcomed by market participants with many issuers in 2025 adopting this approach.

Key benefits include (i) the extension of issuance windows, enabling issuers to access the market more quickly after publication of financial information, and (ii) the cost savings of not producing a supplement.

A year on, we set out below certain operational points as well as key practical aspects.

Elective, not mandatory

Although incorporation by reference of future annual and interim financial information during the 12-month validity period of a base prospectus is permitted, it is not mandatory.

Issuers do still have the option to publish a supplement (which, in many cases, may be a same day supplement) to incorporate by reference such information should they wish.

Other markets

Exchange regulated markets such as the International Securities Market in London and the Global Exchange Market of Euronext Dublin continue to permit future incorporation by reference.

Forward incorporation by reference as it is labelled in the UK, will also be available for issuers with prospectuses approved by the FCA after 19 January 2026.

How to provide for future incorporation by reference

- To validly incorporate by reference future financial information, issuers must include a clear statement in their base prospectus, identifying the information to be incorporated by reference and including a hyperlink to where such information will be published.
- Issuers may only incorporate by reference information published during the period of validity of the base prospectus (i.e. usually 12 months).
- Without a supplement to prompt review, an issuer should consider implementing an internal process to review its base prospectus disclosure on a regular basis to ensure compliance with the disclosure requirements of the EU Prospectus Regulation, as well as to ensure that the issuer is comfortable to give the relevant representations and warranties set out in the dealer/programme agreement at the time of a drawdown.

What information can be forward incorporated by reference?

The EU Listing Act introduced into the Prospectus Regulation the possibility that new annual or interim financial information can be future incorporated by reference.

Whilst the EU Prospectus Regulation does not contain a definition of "financial information", in the Q&A ESMA published in June 2025, it has been interpreted broadly, to explicitly include management reports, corporate governance statements, remuneration reports, or valuation reports as well as financial statements and audit reports.

Significant change statements and materials adverse change statements

Ensuring continued accuracy of key prospectus statements: certain prospectus statements reference an issuer's most recent annual or interim financial information. For example, an issuer's no material adverse change statement requires an issuer to confirm that there has been no material adverse change in its prospects since the date of the last published audited financial statements or provide disclosure if there has been (in which case the statement will be 'qualified'). Similarly, the no significant change statement refers to the date of the last published annual or interim accounts.

These statements are typically updated when a base prospectus is supplemented to include annual or interim financial information. Without the need to supplement at the time of publication of annual or interim financial information, an issuer will need to consider whether these statements remain accurate in light of the latest financial information.

There has been some debate in the last year as to whether these statements can be drafted so that they are "evergreen" i.e. in a way ensuring that such statements automatically update upon incorporation by reference of new financial information. Across the EU, national competent authorities ("NCAs") will typically permit such statements to include evergreen language where they are unqualified. Therefore upon publication of new financial information which is automatically incorporated by reference into the base prospectus, the no significant change or no material change statement, as applicable, is deemed to reference the most recently published financial information. However, if the new financial information would require these statements to be qualified, a supplement will be required.

Where such statements are qualified in a base prospectus, there is no common position in the EU to date. Certain EU NCAs have, so far, been more flexible in their approach to the 'evergreening' of these statements whilst others will only permit unqualified "evergreening".

Why might an issuer still choose to supplement for financial information?

There remain valid reasons an issuer may still choose to supplement its base prospectus to incorporate by reference new annual or interim financial information:

- **Due diligence:** the process of producing a supplement is relatively straightforward, can often be done via a same day supplement, and focuses an issuer's mind on the quality of disclosure, providing an opportunity to consider if the base prospectus includes all relevant information. From an issuer and underwriter perspective it therefore serves the due diligence process.
- **Requirement to supplement for other reasons:** the perceived benefits of incorporating by reference future financial information may be negated if a prospectus supplement is required for other reasons, for example, to update disclosure or risk factors for any recent business developments.
- **Incorporating non-financial information by reference:** Issuers need to consider what information is contained within future incorporated information. For example, not all information included in an annual report might be written in an appropriate style to form part of the prospectus. Using a supplement allows the issuer to cherry-pick the information that is included by reference, by using page numbers or section headings to exclude non-relevant information from incorporation. This can be more challenging when incorporating future information by reference and is an important consideration in light of ESMA's broad interpretation of "financial information" as discussed under "What information can be incorporated by reference above".



Links

EU Prospectus Regulation:

Article 19(1b)

ESMA Q&A (June 2025) in relation to future incorporation by reference of financial information:

ESMA_QA_2255

ESMA_QA_2257

ESMA_QA_2259

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