

**Feedback to the European Commission on the Technical advice under the Prospectus Regulation / ESMA's Final Report (31-62-800) dated 28 March 2018**

The DDV welcomes the efforts and thorough assessment by ESMA underlying its Final Report - Technical advice under the Prospectus Regulation - dated 28 March 2018 (the "**Final Report**"), in particular in reviewing and considering the responses it has received to its Consultation Papers published on 6 July 2017 and containing draft technical advice on the format and content of the prospectus, the EU Growth prospectus and scrutiny and approval.

The DDV and its members have a strong interest in the Prospectus Regulation 2017/1129 (the "**Prospectus Regulation**") and any delegated acts adopted pursuant to it operating in such a way as to ensure maximum investor protection and market efficiency. The efficiency of the regulatory framework under the Prospectus Regulation and the functioning of the (base) prospectus regime are crucial for the DDV's members who rely on it for the issuance of retail structured (debt) products across the EU member states. In such context, the DDV had expressly welcomed the consultation of the draft technical advice on the format and content of the prospectus published on 6 July 2017. The DDV recognises that ESMA has all in all taken a practicable approach while at the same time safeguarding investor protection. However, ESMA had regrettably not fully reflected some important aspects and petitions raised by the DDV and other stakeholders.

We would like to note in general, that the prospectus is not a standalone document but rather one piece of information within an information regime. Hence, it is of utmost importance to safeguard the consistency of regulation – in this case especially regarding the prospectus regulation, PRIIPs and MIFID II. The principle of proportionality should be evaluated having in mind the overall regulatory information provision for investors.

In view of the above, the DDV is particularly concerned about the following aspects of the Consultation Paper not being considered in ESMA's Final Report:

***Proposed requirement to include the issue price of the securities in the prospectus in the case of an admission to trading.*** ESMA proposes in its Final Report that the issue price of the securities to be included in the prospectus in the case of an admission to trading (cf. Question 42 of ESMA's Final Report).

ESMA erroneously considers that disclosure of the issue price, from an investor perspective, would always provide a valuable indicator on which to base an investment. In fact, however, such issue price would only be accurate for the instant when trading begins (rather than for a longer period of time or over the life of the securities) and, therefore, would in the DDV's view be of limited informational value to any subsequent investors in the securities.

**Proposed requirement to include implicit costs in the prospectus.** ESMA proposes in its Final Report that expenses charged to the purchaser should also include implicit costs i.e. those costs included in the price (cf. Question 40 of ESMA's Final Report).

While the DDV agrees that, in principle, information on (implicit) costs is important for retail investors in order to make an informed investment decision, the DDV considers the existing PRIIPs Regulation and MiFID II rules, already requiring the disclosure of product costs for securities, including implicit costs, as sufficient to ensure a high level of disclosure and investor protection. In both cases, the development of the costs disclosure methodology, with the aim to provide investors with meaningful and understandable information, has taken considerable time and effort. Therefore, in the DDV's view, the mere presentation of implicit costs together with expenses charged to the investor in a (base) prospectus, would not enhance the overall transparency for investors and might even lead to potential misjudgements by retail investors. Against this background, the DDV views the requirement to include implicit costs in a (base) prospectus as redundant. Instead, the DDV proposes that issuers be required to refer the costs information provided in the KIDs in respect of and by distributors of the relevant debt securities (i.e., under the PRIIPs Regulation and MiFID II rules).

In addition, the DDV notes that no methodology has been proposed by ESMA in its Final Report for the determination of such implicit costs. If the European Commission agreed to ESMA's proposal, guidance on the determination of such implicit costs should be given to ensure a level playing field across issuers in Europe.

The DDV votes for a disclosure according to Article 50(2) of the MiFID II DR since

1. MiFID II has a wider scope in terms of the financial instruments covered, and also covers non-PRIIPs.
2. The MiFID II cost calculation that is to be transmitted to distributors as an input factor for their cost disclosure is conducted in-house more often, so the data for cost disclosure in prospectuses is already available. This considerably lowers the effort required for practical implementation.

**Proposed requirement to include a credit rating previously assigned to an issuer of retail non-equity in the prospectus.** ESMA proposes in its Final Report that an issuer of retail non-equity securities should be required to include a credit rating previously assigned to it in the (base) prospectus (cf. Question 29 of ESMA's Final Report). Although ESMA noted a split response with regard to this proposal in the consultation process, ESMA maintains its proposal to provide such information, as part of the registration document requirements. The credit rating assigned to the securities is retained in the securities note.

While ESMA claims in its Final Report that this proposal has been made on the basis of investor protection, the inclusion of the issuer's credit rating will, in the DDV's view, not enhance the overall transparency of a (base) prospectus for the benefit of investors, but might even be confusing for retail investors, in particular due to the various different ratings which can be assigned to an issuer by a rating agency (e.g. long-term issuer credit ratings vs. short-term issuer credit ratings) and also due to differences in the rating methodologies of the various rating agencies.

Overemphasising the issuer's credit rating in a (base) prospectus might even lead to potential misjudgements by retail investors if they were to solely rely on the issuer's credit rating, rather than assess each individual issuance of non-equity securities on a case-by-case basis.

Accordingly, these proposals identified above do not, in the DDV's view, fully comply with the principles of proportionality and coherency which the European Commission stipulated in its request for technical advice (updated 26 January 2018) that ESMA should take into account.

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