Annex Call for Evidence Listing Act

DDV Position Paper

Assessment of Status Quo

Overall, the prospectus regime seems to work in substance and has generally been accepted. The major changes introduced by the Prospectus Regulation since July 2019, namely the new regime on risk factors and the requirements on prospectus summaries, have now been successfully implemented by market participants and a market practice has been established. We generally do not see a need for another substantial review of the current prospectus regime. In particular, any modifications should concentrate on singular issues without altering the material substance of the prospectus regime, thus creating no disruption to established procedures.

To complement DDV's response to the consultation on the Listing Act, we would like to elaborate on the following questions:

Ad Question 14

We believe that the current requirements for standard prospectuses generally strike the right balance between effective investor protection and a proportionate administrative burden for issuers. Therefore, any review should focus on the optimisation of particular aspects only.

- Base prospectuses for retail investors should be shorter, more focused and tailored to their needs (see question 18.2).

- For issuers supervised by a NCA, a shorter issuer description should be allowed.

- For frequent issuers, the current set up seems acceptable, but the situation appears to be different and more burdensome for new entrants to the market.

Ad Question 16

The disclosure regime as prescribed by the Prospectus Regulation, albeit a slight challenge at the outset, can now generally be adhered to by issuers. In particular, we welcome the fact that a summary does not need to be integrated in a base prospectus, but only in the specific

final terms. It is also positive to note that a key information document under the PRIIPs Regulation is not obligatory, but optional for the summary.

However, with the introduction of the new requirement to limit the summary to seven pages – even with the possible extension by two pages for multiple securities - issuers are facing severe difficulties. One possible and very simple solution could be the separate consideration of the table format which is frequently used for the documentation of multiple securities. The combined counting of both parts – summary and table – renders the use of the presentation in table format almost redundant.

Given that where the key information documents (KID) under the PRIIPs Regulation substitutes part of the summary , the maximum length is extended by three pages per product, we believe that in the case of multiple securities and where the table format is used, the stipulation of one page covering e.g. 20 products would make sense.

Furthermore, where a guarantor is part of the structure, the length of the summary should be extended by two additional pages, combined with an expansion of the permissible risk factors by five risks per guarantor. Only then, it can be assured that issuers will be treated equally. Also, in the case of a guarantor structure, the description of the guarantor should no longer be part of the securities note. A multi-partite prospectus should consist of a registration document for the issuer, registration document for the guarantor, a securities note and a prospectus summary. Accordingly, the summary should also be restructured and the guarantor should be described after the issuer. This presentation would in our opinion more investor-friendly.

Ad Question 31/32

We see no fundamental divergences between different NCAs in their approval process. However, some areas in need for optimisation and alignment can be identified:

- The time frame where feedback is provided could be tightened: more prompt responses during the scrutiny process would be desirable;
- The time frame for the scrutiny and approval of a prospectus of 10 working days from its submission seems appropriate for the first submission of a prospectus. Ideally, the same time limit should however not apply to following rounds of scrutiny of revised prospectuses which incorporate comments made by the relevant NCA (Art. 20(4) sub-para. 2 Prospectus Regulation). In these instances, it would seem more suitable to shorten the time frame foreseen in the Prospectus Regulation (e.g. to 5 working days for the second round and 3 for the third);
- Differences in the communication flow could be improved to facilitate the approval process in some instances

Where issuers are conducting a multi-jurisdictional offer of securities, only one ISIN can be attributed to the prospectus as registered with the NCA (and as forwarded to ESMA). Hence, the national registration system and possibly the European one as well – meaning the

interface for the metadata provided - should be modified to allow for the use of one ISIN in several jurisdictions.

Ad Question 41.1

One of the most controversial provisions in the Prospectus Regulation has been Art. 23 Prospectus Regulation. Under Art. 23 Prospectus Regulation, investors may withdraw their acceptances to purchase or subscribe for securities under prescribed conditions when a prospectus supplement has been published, regardless of whether the supplement was triggered by a positive or negative event pertaining to the issue of these securities.

The "quick fix" under the Capital Markets Recovery Package[1] (the "PR Quick Fix") provided for some temporary alleviations regarding some of the problems arising in conjunction with Art. 23 Prospectus Regulation, the standard of which should not be questioned. However, it is now in DDV's view of utmost importance to address the continuing issues at hand at level 1. In particular, the requirement for intermediaries to contact investors when a prospectus supplement has been published now needs to be clarified and embedded in the Prospectus Regulation to provide further legal certainty:

(1) The application of Art. 23(3) should be limited to primary market transaction, i.e. should encompass securities offered during the initial subscription period. Only during the crucial period between the subscription and the delivery of the securities, there is a close link between a financial intermediary and subscribers. Conversely, this close relationship ends where a financial intermediary is no longer in contact with the investor which is after the initial prescribed subscription period elapses (i.e. after the subscription of the securities and their delivery). Against this background and understanding, the wording in Recital 14 of the Quick Fix could be clarified accordingly.
(2) The obligation should only relate to investors who subscribed for securities based on the financial intermediary's investment advice. Only in these instances, a close link exists between the financial intermediary and the investor as his client such that a need for investor protection would trigger an information obligation.
(3) The obligation to contact investors should be amended in accordance with the Quick Fix to first allow financial intermediaries to learn about the publication of a new supplement, to identify the relevant clients and subsequently initiate an internal process to inform them about the supplement. Those steps will take some time, in particular for technical data processing by responsible internal service units or external service providers. The same day processing may in particular prove to be difficult if not impossible when a supplement is being approved late in the day.
(4) The provision should stipulate the means by which financial intermediaries may contact investors. Electronic communication would prove to be one of the most efficient ways to ensure timely communication, e.g. by requesting investors to subscribe to an electronic mailbox.

[1] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries to help the recovery from the COVID19 pandemic

Ad Question 41.2

Content of Prospectuses

For information relating to financial instruments which clients may invest in, it is currently not clear why different information requirements exist under relevant EU regulations and directives, particularly regarding the underlying standard deciding about which information needs to be disclosed.

Such information is required under the PRIIPs Regulation, MiFID II and the Prospectus Regulation, with the latter two comprising more than one standard for providing relevant information. The Prospectus Regulation requires, for the main part of the prospectus, the disclosure of all necessary information which is material to an investor for making an informed assessment of the issuer, the securities and the issuance of the relevant securities (Art. 6 Prospectus Regulation), and for the prospectus summary, the key information that investors need in order to understand the nature and the risks of the issuer and the securities (Art. 7 Prospectus Regulation).

Under the MiFID II, on a general basis, "appropriate information" is required with regard to financial instruments, including relevant risks and targeted investor type, as well as bespoke information on cost and charges for individual financial instruments (Article 24(4) MiFID II). Finally, the PRIIPs Regulation requires the disclosure of "key information" regarding the relevant financial instrument (Art. 8 PRIIPs Regulation).

As is clearly visible from this overview, there is a multitude of competing information requirements regarding product information and underlying standards. Currently, there is only one rule trying to avoid or at least reduce duplication of information: the Prospectus Regulation allows to replace part of the prospectus summary by referring to a KID. However, this possibility does not alter the mentioned multitude of competing information requirements and underlying standards. In practice, however, the different underlying standards tend to be regarded as interchangeable, based on an underlying notion that under all mentioned disclosure requirements, clients or investors need to obtain all (product related) information required for an informed investment decision, with an increasing focus on readability and understandability at the same time. This is problematic, not least due to the page limits in place for both the KID and the prospectus summary, as mentioned above. It also creates a duplication of information.

We believe that such duplication of information due to different rules and provisions should be avoided for transparency, understandability and investor protection reasons. Accordingly, the case could be made for relevant information requirements to be defined and aligned more clearly such that information required under e.g. MiFID II should not have to be repeated elsewhere. In particular, such alignment should not result in a requirement to amend the content of a prospectus.

Equivalent Accounting Standards

Pursuant to Recital 1 of Delegated Regulation 2019/979, the key financial information in the summary of a prospectus should present the key financial figures that provide investors with a succinct overview of the issuer's assets, liabilities and profitability, as well as any other key financial information that is relevant for investors to make a preliminary assessment of the financial performance and financial position of the issuer. Art. 1(1) Delegated Regulation 2019/979 stipulates that the key financial information in the summary of a prospectus shall be made up of the financial information laid down in the Annexes to Delegated Regulation 2019/980.[2] According to Annex 6 item 11.1.3, financial information must be prepared according to International Financial Reporting Standards as endorsed in the European Union based on Regulation (EC) No 1606/2002 which conveys in Art. 3 the power to the European Commission to decide on the applicability of international accounting standards. The Commission in its decision dated 12 December 2008[3] considered as equivalent to IFRS only GAAP of Japan and GAAP of the US. Given the time that has elapsed since this last decision, we would suggest an update of this decision.

[2] COMMISSION DELEGATED REGULATION (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004

[3] COMMISSION DECISION of 12 December 2008 on the use by third countries' issuers of securities of certain third country's national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements